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# *Crossroads to Innovation and Diversity: The Careers of Women Lawyers in Quebec*

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The author examines women lawyers' status and mobility in Quebec. After outlining the structure of the legal profession in Quebec, the author reviews women's entry into the law. Although Quebec was the last province to grant women admission to the practice of law, the province today has greater representation of women than elsewhere in North America.

To illustrate the gender disparities in the contemporary Quebec legal profession, the author presents the findings of her 1999 survey of members of the Barreau du Québec. The study reveals notable differences between men and women, particularly in terms of age, experience, remuneration, and representation in sectors of legal practice. Women lawyers tend to be less satisfied than men with the ability to balance work and personal life. Also, more women lawyers than men intend to seek new work or leave the practice of law, raising troubling issues of loss of human capital and legal talent from the profession.

L'auteur examine le statut et la mobilité des avocates au Québec. Après avoir dressé un plan de la structure de la profession légale au Québec, l'auteur revoit l'entrée des femmes dans le domaine du droit. Quand bien même que le Québec fut la dernière province à admettre les femmes dans la pratique du droit, la province d'aujourd'hui a une plus grande représentation de femmes dans le domaine du droit qu'ailleurs en Amérique de Nord.

Afin d'illustrer les disparités de genre dans la profession légale moderne au Québec, l'auteur présente les résultats d'un sondage de 1999 auprès des membres du Barreau du Québec. L'étude révèle des différences notoires entre les hommes et les femmes, notamment en ce qui a trait à l'âge, l'expérience, la rémunération et la représentation dans les domaines de la pratique légale. Les avocates semblent être moins satisfaites que les hommes de la capacité à équilibrer leur vie professionnelle et personnelle. Pour autant, plus d'avocates que d'avocats ont l'intention de rechercher un nouveau travail ou de quitter la pratique du droit ce qui engendre des problèmes de perte de capital humain et de talent juridique pour la profession.

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\* Department of Sociology, Queen's University. Je voudrais remercier Carole Brosseau, Jocelyne Olivier, Sophie Bourque et le Comité sur les femmes dans la profession juridique au Barreau du Québec pour leur encouragement et assistance avec ce projet de recherche. Je voudrais aussi remercier le Centre de recherche en droit public, Faculté de droit, Université de Montréal, d'avoir fourni l'auteur avec un milieu encourageant de recherche productif pendant un congé sabbatique. I also acknowledge valuable research assistance of Joanna Kim, Sandra Enns, and Karyn Eisler. Joan Brockman, Stephen Baron, and four anonymous reviewers offered constructive comments on an earlier version. This paper was presented in May 2001 at the Canadian Law and Society Association's annual meetings in Quebec City. The research study was supported by a grant from the Social Sciences and Humanities Research Council of Canada (#816-96-0035) and an Izaak Walton Killam Memorial research fellowship, both of which I gratefully acknowledge. The views expressed in this paper are those of the author and do not necessarily reflect the views of the Barreau du Québec.

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Revue de droit de McGill 2002

To be cited as: (2002) 47 McGill L.J. 699

Mode de référence : (2002) 47 R.D. McGill 699

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## **Introduction**

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## Introduction

Although Quebec in 1941 was the last province to grant women admission to the practice of law, the province today has a greater representation of women within the legal profession (over 40%) than elsewhere in North America.<sup>1</sup> Parallel to this demographic transformation, the profession itself has undergone significant structural transitions. Structural change within law firm practice has consisted of a subtle rescripting of traditional roles, rising bureaucratization, and a movement toward salaried employment.<sup>2</sup> A new stratum of salaried partners, permanent associates, and equity partners has emerged in recent years.<sup>3</sup> The bureaucratization of law practice has led to a declining frequency of general practice and increasing incidence of early specialization, emerging sub-specialties in law,<sup>4</sup> and involvement in large-scale litigation.<sup>5</sup>

Yet, for women, as well as for ethnic minorities and the economically disadvantaged, the impact of these changes has been detrimental in many cases, with blocked opportunities at the levels of permanent associates and subordinate roles within bureaucracies. The overall hierarchical structure of the profession has remained intact, and possibly even intensified.<sup>6</sup> Women in English Canada and the United States con-

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<sup>1</sup> F.M. Kay & J. Brockman, "Barriers to Gender Equality in the Canadian Legal Establishment" (2000) 8 *Feminist Legal Studies* 169.

<sup>2</sup> R.L. Nelson, *Partners with Power: The Social Transformation of the Large Law Firm* (Berkeley: University of California Press, 1988).

<sup>3</sup> R.J. Gilson & R.M. Mnookin, "Sharing among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits" (1985) 37 *Stan. L. Rev.* 313 at 315-16; F.M. Kay & J. Hagan, "Changing Opportunities for Partnership for Men and Women Lawyers during the Transformation of the Modern Law Firm" (1994) 32 *Osgoode Hall L.J.* 413 at 418 [hereinafter Kay & Hagan, "Changing Opportunities"]; J.S. Kaye, "Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality" (1988) 57 *Fordham L. Rev.* 111 at 114; M. Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Melbourne: Oxford University Press, 1996) at 187.

<sup>4</sup> Barreau du Québec, *Rapport du Comité sur l'avenir des jeunes avocats* (Montreal: Barreau du Québec, 1988). The report notes that numerous new fields of law have emerged in the past decade including: "le droit d'auteur, le droit de l'informatique, le droit nucléaire, le droit spatiale, le droit des communications par satellites, le droit de l'immigration, le droit de la sécurité sociale, le droit des valeurs mobilières, etc" (*ibid.* at 37). See also J.P. Heinz *et al.*, "The Changing Character of Lawyers' Work: Chicago in 1975 and 1995" (1998) 32 *Law & Soc'y Rev.* 751 at 760-62.

<sup>5</sup> M. Galanter & T. Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (Chicago: University of Chicago Press, 1991).

<sup>6</sup> J. Hagan & F. Kay, "Hierarchy in Practice: The Significance of Gender in Ontario Law Firms" in C. Wilton, ed., *Inside the Law: Canadian Law Firms in Historical Perspective*, vol. 7 (Toronto: University of Toronto Press, 1996) 530 at 531 [hereinafter Hagan & Kay, "Hierarchy in Practice"].

tinue to confront significant barriers to their advancement.<sup>7</sup> Research studies demonstrate that women experience limited success in securing articles and first jobs,<sup>8</sup> delayed partnerships,<sup>9</sup> reduced earnings,<sup>10</sup> under-representation in private practice<sup>11</sup> and

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<sup>7</sup> J. Brockman, "'Resistance by the Club' to the Feminization of the Legal Profession" (1992) 7:2 C.J.L.S. 47 [hereinafter Brockman, "Resistance"]; J. Dixon & C. Seron, "Stratification in the Legal Profession: Sex, Sector, and Salary" (1995) 29 Law & Soc'y Rev. 381; J. Hagan, M. Huxter & P. Parker, "Class Structure and Legal Practice: Inequality and Mobility among Toronto Lawyers" (1988) 22 Law & Soc'y Rev. 9; Law Society of British Columbia, *Gender Equality in the Justice System*, vol. 1 (Vancouver: Law Society of British Columbia, 1992) c. 3.

<sup>8</sup> M.T. Huxter, "Survey of Employment Opportunities for Articling Students and Graduates of the Bar Admission Course in Ontario" (1981) 15 L. Soc. Gaz. 169; S. Neallani, "Women of Colour in the Legal Profession: Facing the Familiar Barriers of Race and Sex" (1992) 5 C.J.W.L. 148.

<sup>9</sup> See e.g. K. Donovan, "Women Associates' Advancement to Partnership Status in Private Law Firms" (1990) 4 Geo. J. Legal Ethics 135; C.F. Epstein *et al.*, "Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession" (1995) 64 Fordham L. Rev. 291; S.E. Foster, "The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?" (1995) 42 UCLA L. Rev. 1631; J. Hagan *et al.*, "Cultural Capital, Gender, and the Structural Transformation of Legal Practice" (1991) 25 Law & Soc'y Rev. 239 at 257; Kay & Hagan, "Changing Opportunities", *supra* note 3; F.M. Kay & J. Hagan, *The Structural Dynamics of the Law Firm*, Appendix 13 to *Report of the Canadian Bar Association Task Force on Gender Equality in the Legal Profession* (Ottawa: Canadian Bar Association, 1993) at 45; F.M. Kay & J. Hagan, "Raising the Bar: The Gender Stratification of Law-Firm Capital" (1998) 63 American Sociological Review 728; M.S. Kende, "Shattering the Glass Ceiling: A Legal Theory for Attacking Discrimination against Women Partners" (1994) 46 Hastings L.J. 17; P. MacCorquodale & G. Jensen, "Women in the Law: Partners or Tokens?" (1993) 7 Gender & Society 582; M.F. Radford, "Sex Stereotyping and the Promotion of Women to Positions of Power" (1990) 41 Hastings L.J. 471; J.N. Scott, "A Woman's Chance for a Law Partnership" (1987) 71 Sociology and Social Research 119; S.J. Spurr, "Sex Discrimination in the Legal Profession: A Study of Promotion" (1990) 43 Indus. & Lab. Rel. Rev. 406.

<sup>10</sup> See e.g. B.D. Adam & D.E. Baer, "The Social Mobility of Women and Men in the Ontario Legal Profession" (1984) 21 Canadian Review of Sociology and Anthropology 21; J. Hagan, "The Gendered Stratification of Income Inequality among Lawyers" (1990) 68 Social Forces 835 [hereinafter Hagan, "Gendered Stratification"]; F.M. Kay & J. Hagan, "The Persistent Glass Ceiling: Gendered Inequalities in the Earnings of Lawyers" (1995) 46 British Journal of Sociology 279 [hereinafter Kay & Hagan, "Persistent Glass Ceiling"]; K. Robson & J.E. Wallace, "Gendered Inequalities in Earnings: A Study of Canadian Lawyers" (2001) 38 Canadian Review of Sociology and Anthropology 75.

<sup>11</sup> See e.g. F.M. Kay, *Women in the Legal Profession: A Report Submitted to the Law Society of Upper Canada* (Toronto: Law Society of Upper Canada, 1989) at 84; C. Menkel-Meadow, "The Comparative Sociology of Women Lawyers: The 'Feminization' of the Legal Profession" (1986) 24 Osgoode Hall L.J. 897 at 902 [hereinafter Menkel-Meadow, "Comparative Sociology"]; C. Menkel-Meadow, "Feminization of the Legal Profession: The Comparative Sociology of Women Lawyers" in R.L. Abel and P.S.C. Lewis, eds., *Lawyers in Society: Comparative Theories*, vol. 3 (Berkeley: University of California Press, 1989) 196 at 198 [hereinafter Menkel-Meadow, "Feminization of the Legal Profession"]; F.M. Kay, "Women in the Legal Profession" (1990) 24 L. Soc. Gaz. 55; F.M. Kay,

elite specializations,<sup>12</sup> difficulties balancing career and family responsibilities,<sup>13</sup> sexual harassment<sup>14</sup> and discrimination,<sup>15</sup> and higher rates of attrition from law practice.<sup>16</sup> Despite these widespread transformations in law practice and evidence of significant gender disparities elsewhere in North America, there exists a paucity of research on the legal professions in Quebec,<sup>17</sup> particularly studies that focus on issues of gender and diversity.<sup>18</sup>

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N. Dautovich & C. Marlor, *Barriers and Opportunities within Law: Women in a Changing Legal Profession* (Toronto: Law Society of Upper Canada, 1996).

<sup>12</sup> See e.g. Canadian Bar Association Task Force on Gender Equality in the Legal Profession, *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa: Canadian Bar Association, 1993) at 59; Law Society of Upper Canada, *Transitions in the Ontario Legal Profession: A Survey of Lawyers Called to the Bar between 1975 and 1990* (Toronto: Law Society of Upper Canada, 1991) at 16.

<sup>13</sup> See e.g. M. Harrington, *Women Lawyers: Rewriting the Rules* (New York: Alfred A. Knopf, 1993) at 187; Kay, Dautovich & Marlor, *supra* note 11, c. 6; F.M. Kay, "Balancing Acts: Career and Family among Lawyers" in S.B. Boyd, ed., *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* (Toronto: University of Toronto Press, 1997) 195 [hereinafter Kay, "Balancing Acts"].

<sup>14</sup> See e.g. Law Society of Alberta, *Women and the Legal Profession in Alberta: Highlights of the Survey of Active Members* (Calgary: Law Society of Alberta, 1992) at 18; J. Brockman, *Gender in the Legal Profession: Fitting or Breaking the Mould* (Vancouver: UBC Press, 2001) c. 4 at 69ff [hereinafter Brockman, *Gender in the Legal Profession*]; J. Brockman, D. Evans & K. Reid, "Feminist Perspectives for the Study of Gender Bias in the Legal Profession" (1992) 5 C.J.W.L. 37 at 57; K. Czapan-skiy, "Gender Bias in the Courts: Social Change Strategies" (1990) 4 Geo. J. Legal Ethics 1 at 3.

<sup>15</sup> J. Brockman, "Leaving the Practice of Law: The Wherefores and the Whys" (1994) 32 Alta. L. Rev. 116 at 139 [hereinafter Brockman, "Leaving the Practice of Law"]; C.F. Epstein, "Tinkerbells and Pinups: The Construction and Reconstruction of Gender Boundaries at Work" in M. Lamont & M. Fournier, eds., *Cultivating Differences: Symbolic Boundaries and the Making of Inequality* (Chicago: University of Chicago Press, 1992) 232 at 244.

<sup>16</sup> See e.g. Brockman, "Resistance", *supra* note 7 at 58; Brockman, "Leaving the Practice of Law", *ibid.* at 123; F.M. Kay, *Leaving the Practice of Law: The Effects of Departures from Law on Women's Representation in the Profession* (Ottawa: Canadian Bar Association, 1994) at 15; F.M. Kay, "Flight from Law: A Competing Risks Model of Departures from Law Firms" (1997) 31 Law & Soc'y Rev. at 301 [hereinafter Kay, "Flight from Law"].

<sup>17</sup> But see E. Mackaay, *Les avocats et la discrimination: rapport préliminaire sur le sondage 1991* (Montreal: Barreau du Québec, 1991) [hereinafter Mackaay, *Les avocats et la discrimination*]; E. Mackaay, *Les avocats du Québec: sondage général 1991* (Montreal: Barreau du Québec, 1991) [hereinafter Mackaay, *Les avocats du Québec*]; Marcon Économie, *Enquête économique auprès des membres: sondage général 1998* (Montreal: Barreau du Québec, 1999).

<sup>18</sup> But see Barreau du Québec, *Women in the Legal Profession* (Montreal: Barreau du Québec, 1992) [hereinafter Barreau, *Women in the Legal Profession*]; M. Rochette, *Les femmes dans la profession juridique au Québec: de l'accès à l'intégration, un passage coûteux*, cahier 40 (Quebec City: Groupe de recherche multidisciplinaire féministe, Université Laval, 1990).

In this article, I examine the status and mobility of women in the legal profession of Quebec. The analysis proceeds in several distinct stages. In Part I, I provide an overview to the activities, structure, and governance of the legal professions within Quebec, the only civil law jurisdiction in Canada. I also examine the historic struggle of women to gain entry to legal practice in Quebec, which sets the stage for an examination of the contemporary situation of men and women in the Quebec legal profession. Part II introduces the research methodology, including sampling strategy and survey design, and summarizes the main findings of my survey of Quebec lawyers. Finally, conclusions and suggestions for avenues of future research are raised in Part III.

## I. The Legal Professions of Quebec

### A. Overview

Legal practice in Quebec is confined to members of two incorporated professional organizations: the Barreau du Québec<sup>19</sup> and the Chambre des notaires du Québec.<sup>20</sup> A distinction is drawn in Quebec between *avocat(e)s*, whose responsibilities are largely those of lawyers elsewhere in Canada, and the more specialized *notaires*, who are concerned with the formalization, authentication, and preservation of title documents, wills, and other legal instruments.<sup>21</sup> In English Canada, lawyers operate as both bar-

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<sup>19</sup> The Barreau du Québec was formally incorporated in 1849 by the *Act to incorporate The Bar of Lower-Canada*, S.Prov. C. 1849, c. 46. For a history of the Quebec Bar, see P. Beullac & E. Fabre-Surveyer, eds., *Le centenaire du Barreau du Montréal, 1849-1950* (Montreal: Ducharme, 1949); J. Boucher, ed., *Le Barreau à 125 ans: son passé, son avenir* (Montreal: Barreau du Québec, 1974); G.-E. Rinfret, *Histoire du Barreau de Montréal*, 2d ed. (Cowansville, Qc.: Yvon Blais, 1999); C. Veilleux, *Aux origines du Barreau québécois, 1779-1849* (Sillery, Qc.: Septentrion, 1997).

<sup>20</sup> The Chambre des notaires du Québec was officially created as a professional corporation in 1847 by the *Act for the organization of the Notarial Profession in that part of this Province called Lower Canada*, S.Prov. C. 1847, c. 21. For a complete history, reaching back to the French colonial period, see J.-E. Roy, *Histoire du notariat au Canada depuis la fondation de la colonie jusqu'à nos jours* (Lévis, Qc.: Revue du notariat, 1899-1902); A. Vachon, *Histoire du notariat canadien, 1621-1960* (Quebec City: Presses de l'Université Laval, 1962). For more contemporary discussions of the notarial profession in Quebec, see E. Kimmel, "The Notarial System and Its Impact on Canadian Law," in R.A. Landry & E. Caparros, eds., *Essays on the Civil Codes of Quebec and St. Lucia* (Ottawa: University of Ottawa Press, 1984) 109; J. Mackay, "La roi sur le notariat: son évolution et son histoire" (1989) 91 R. du N. 421; J.E.C. Brierley & R.A. Macdonald, *Quebec Civil Law: An Introduction to Quebec Private Law* (Toronto: Emond Montgomery, 1993).

<sup>21</sup> See H.W. Arthurs, R. Weisman & F.H. Zemans, "The Canadian Legal Profession" (1986) A.B.F. Res. J. 447. See also C. Thomasset, "Impacts des profils professionnels sur la formation juridique au Québec: d'aujourd'hui à hier" (2000) 30 R.G.D. 479.

risters and solicitors, although they may identify their work as primarily either that of solicitor or barrister.<sup>22</sup>

The current system of exclusive jurisdictions in Quebec specifies that notaries traditionally practice in the areas of real estate, wills and estates, marriages, and family mediation; while litigation (criminal law, civil litigation, divorce, and so on) and advocacy are the realm of lawyers. Only lawyers can be appointed as judges.<sup>23</sup> Notaries hold a position as both legal counsel and public officials and are trained to express legal opinions in all areas of law.<sup>24</sup> The existence of two corporations with differently defined jurisdictions has significantly affected the evolution of the civil code over the past century. Since the mid-1880s the two corporations have competed to assume the mantle of “true defender” of the code, to define the civil law curriculum within law faculties, and to promote differing approaches to law reform.<sup>25</sup>

In contemporary Quebec, *avocat(e)s* dominate the legal profession through their legislative roles and by sheer numeric representation. At the time of this study (1999), *notaires* represented 15% and *avocat(e)s* represented 85% of Quebec’s legal profession. Among the province’s 17,946 lawyers, 40% were women. Women’s representation among notaries was even higher: 43%.<sup>26</sup> The representation of women within the Quebec legal professions is greater than elsewhere in North America.<sup>27</sup> Yet, little is known about the involvement and experiences of women in Quebec legal practice. To better understand women’s participation in Quebec, it is important to examine their historic entry to the practice of law in Quebec and the gains they have made over the past sixty years.

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<sup>22</sup> The training of notaries in English Canada varies from province to province. Generally, the training consists of correspondence courses from community colleges, universities, and distance education institutions. For example, in the province of British Columbia notaries must take a twenty-week correspondence court through the Open Learning College and a forty-three-week correspondence course through the University of British Columbia. See J. Brockman, “‘Better to Enlist Their Support than to Suffer Their Antagonism’: The Game of Monopoly between Lawyers and Notaries in British Columbia, 1930-81” (1997) 4 *International Journal of the Legal Profession* 197 at 225.

<sup>23</sup> Kay & Brockman, *supra* note 1.

<sup>24</sup> *Ibid.* at 170.

<sup>25</sup> For a detailed discussion of these contested terrains, see Brierley & Macdonald, *supra* note 20 at 61.

<sup>26</sup> Kay & Brockman, *supra* note 1 at 176.

<sup>27</sup> By way of comparison, the percentages of women in the legal profession in provinces outside Quebec, from west to east in Canada, are as follows: Yukon 34.6%, Northwest Territories and Nunavut 28.1%, British Columbia 27.6%, Alberta 26.4%, Saskatchewan 24.7%, Manitoba 24%, Ontario 30.2%, New Brunswick 26.1%, Nova Scotia 28.2%, Prince Edward Island 35.2%, Newfoundland 26.8%. *Ibid.*

### **B. The Entry of Women into the Quebec Legal Profession**

The first woman to be admitted to the Bar in Canada was Clara Brett Martin in 1897 in the province of Ontario. All other Canadian provinces, with the exception of Quebec, took steps to admit women to the profession in the years following Brett Martin's landmark victory.<sup>28</sup> Women entered the legal profession in New Brunswick in 1905, British Columbia in 1912, Manitoba and Alberta in 1915, Saskatchewan in 1917, Nova Scotia the next year, followed by Prince Edward Island in 1926, and Newfoundland in 1933.<sup>29</sup> In 1941 Quebec became the last province in Canada to pass legislation allowing women to practice law. Women finally entered legal practice the following year, two years after obtaining the right to vote.<sup>30</sup>

Since the second half of the nineteenth century, numerous reasons have been invoked to refuse women access to the legal profession. Reasons often emphasized women's delicate nature and procreative destiny, as well as the psychology of women that was perceived to be incompatible with the logical character of the legal system. Other reasons centred on the interpretation of legislation and whether the term "person" was intended to exclude women from law practice.<sup>31</sup> The Quebec legal profession received its first challenge with Annie Macdonald Langstaff. She first applied for admission to the Quebec Bar in 1914. Langstaff found herself in a peculiar dilemma before the law. She was a single mother with an eight-year-old child, separated from her husband since 1906. She was "separated as to property", meaning she could administer but not sell property, and was not permitted to conduct business without the permission of her husband. Not knowing the whereabouts of her husband further complicated Langstaff's difficult situation. Following graduation from the Faculty of Law at McGill University, Langstaff attempted to take the examination preliminary to becoming a student-at-law in 1914. The board of examiners refused to permit her to sit the examination and she issued a writ of mandamus against the Bar of the Province of Quebec, requesting a court order allowing her to write the examination.<sup>32</sup> Langstaff

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<sup>28</sup> Rochette, *supra* note 18 at 55-56. See also F. Harel-Giasson & M.-F. Marshis-Mouren, *Les premières femmes comptables agréées et leurs consœurs des autres professions: des pionnières dont on peut être fier*, Rapport de recherche n° 85-01 (Montreal: H.E.C., 1985) at 9.

<sup>29</sup> Rochette, *ibid.* at 56.

<sup>30</sup> *Ibid.*; Harel-Giasson & Marshis-Mouren, *supra* note 28.

<sup>31</sup> Rochette, *ibid.* at 53; A. Sachs & J. Hoff Wilson, *Sexism and the Law: A Study of Male Beliefs and Legal Bias in Britain and the United States* (Oxford: Martin Robertson, 1978) at 255; R. Pearson & A. Sachs, "Barristers and Gentlemen: A Critical Look at Sexism in the Legal Profession" (1980) 43 *Mod. L. Rev.* 400.

<sup>32</sup> M.J. Mossman, "'Invisible' Constraints on Lawyering and Leadership: The Case of Women Lawyers" (1988) 20 *Ottawa L. Rev.* 567 at 571 [hereinafter Mossman, "Invisible Constraints"]; B. Baines,



took her case to the Quebec Superior Court, which promptly dismissed her petition on several grounds. Langstaff was a woman “and what was still more objectionable, a women under marital authority.”<sup>33</sup> The court also decided that the use of the male pronouns in the legislation could not possibly be construed so as to include the feminine.<sup>34</sup>

Justice Saint-Pierre asserted that his role was not to decide whether it would be “more fair and more reasonable”<sup>35</sup> to allow women’s entry to the profession of law, but only whether the legislature had intended to include women through the usage of the male pronoun in statute.<sup>36</sup> In dismissing her request, Justice Saint-Pierre expressed the hope that “her ambition in life should be directed towards the seeking of a field of labor more suitable to the sex and more likely to ensure for her the success in life to which her irreprocheable [*sic*] conduct and remarkable talents give her the right to aspire.”<sup>37</sup>

*Langstaff* was argued and decided during the First World War. This was a time of considerable social upheaval and uncertainty in which ideas about the appropriate roles of women and men were being challenged by the departure of many young men for military service in Europe. Yet, Justice Saint-Pierre chose to sanction prevalent assumptions regarding the distinction between public and private spheres, and the work most appropriate for women.<sup>38</sup> Therefore, he interpreted the intention of the legislature to exclude women according to those assumptions:

I would put within the range of possibilities though by no means a commendable one, the admission of a woman to the profession of solicitor or to that of *avoué*, but I hold that to admit a woman and more particularly a married woman as a *barrister*, that is to say, as a *person who pleads cases at the bar before judges or juries in open court and in the presence of the public*, would be nothing short of a direct infringement upon public order and a manifest violation of the law of good morals and public decency.<sup>39</sup>

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“Women and the Law” in S. Burt, L. Code & L. Dorney, eds., *Changing Patterns: Women in Canada* (Toronto: McClelland & Stewart, 1988) at 160.

<sup>33</sup> *Langstaff v. Bar of Quebec* (1915), 47 R.J.Q. 131 at 133 (Sup. Ct.) [hereinafter *Langstaff*].

<sup>34</sup> *An Act respecting the Bar of the Province of Quebec*, S.Q. 1886, c. 34 [hereinafter *Bar Act*] provided for the admission to the profession. Section 43 required that the candidate for admission to practice “mention his name, surname, age, residence, whether he is a British subject by birth or naturalization, the date of his admission to study, of the registration of his certificate and of his indentures ...”

<sup>35</sup> *Langstaff*, *supra* note 33 at 138.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.* at 145.

<sup>38</sup> Mossman, “Invisible Constraints”, *supra* note 32 at 578.

<sup>39</sup> *Langstaff*, *supra* note 33 at 139 [emphasis in original].

Langstaff pursued her case to the Quebec Court of Appeal where her appeal was subsequently rejected.<sup>40</sup> Dissent in the appeal court decision reveals contesting views prevalent at that time. Justice Lavergne dissented from the majority decision to dismiss the appeal.<sup>41</sup> The logic of his argument took a dramatically different path from that of his colleagues on the bench. The fact that the law expressly prohibited women from working as notaries, being elected to Parliament, and serving on juries implied that the legislature's failure to forbid women from becoming lawyers signified an intent to permit them to join the profession.<sup>42</sup> Justice Lavergne contended that if the legislator had wanted to say that a woman could not be a lawyer, he would have said so:

Le candidat à l'étude du droit peut être ou du sexe masculin ou du sexe féminin sans distinction. ... Si le législateur avait voulu dire qu'une femme ne pourrait être avocat, il l'aurait dit.<sup>43</sup>

The majority of the court, however, supported the conclusion of the lower court and dismissed Langstaff's appeal. Somewhat circularly, Chief Justice Archambeault viewed the fact that no woman had been admitted to the Bar in Quebec as demonstrating the absence of legislative intent to include women in the eligibility requirements for the practice of law.<sup>44</sup>

It was not until nearly thirty years later that an amendment to the *Bar Act* was passed, permitting the first woman to be called to the Quebec Bar. Yet, the amendment did not pass easily, and was passed only with "what was in some instances almost violent opposition on the part of the members of the Bar."<sup>45</sup> In 1942 Elizabeth Monk became the first woman to be called to the Quebec Bar.

Ironically, the proportion of women has escalated more rapidly in Quebec than anywhere else in Canada<sup>46</sup>—from 3% of lawyers in 1967 to 25.6% in 1987.<sup>47</sup> These

<sup>40</sup> *Langstaff v. Bar of Quebec* (1916), 25 R.J.Q. 11 (K.B.) [hereinafter *Langstaff* (K.B.)]; Kay & Brockman, *supra* note 1 at 172-73.

<sup>41</sup> *Langstaff* (K.B.), *ibid.* at 12-14.

<sup>42</sup> The nature of judicial choices among different versions of legislative intent is explored in M.J. Mossman, "Feminism and Legal Method: The Difference It Makes" (1986) 3 *Australian Journal of Law & Society* 30; M.J. Mossman, "Feminism and Legal Method: The Difference It Makes" (1987) 3 *Wisconsin Women's Law Journal* 147; Mossman, "Invisible Constraints", *supra* note 32.

<sup>43</sup> *Langstaff* (K.B.), *supra* note 40 at 13.

<sup>44</sup> *Ibid.* at 20.

<sup>45</sup> L. Smith, M. Stephenson & G. Quijano, "The Legal Profession and Women: Finding Articles in British Columbia" (1973) 8 *U.B.C. L. Rev.* 137 at 141 [footnotes omitted]. See also Mossman, "Invisible Constraints", *supra* note 32 at 571, n. 12.

<sup>46</sup> Hagan & Kay, "Hierarchy in Practice", *supra* note 6 at 545.

<sup>47</sup> Rochette, *supra* note 18 at 4.

numbers rose steadily in the 1990s, from 31% in 1991<sup>48</sup> to 40% in 1999.<sup>49</sup> At the end of the 1990s no other province or territory in Canada had a greater percentage of women legal practitioners than Quebec.<sup>50</sup> The tremendous rise in women's entry to law practice has been attributed to changing demands for legal services,<sup>51</sup> a postwar boom that extended into the sixties and created new demands for female labour,<sup>52</sup> and the aspirations of women to effect social change through law, including changes sought by the women's movement.<sup>53</sup> The differences between Quebec and other provinces have been imputed, in part, to the Quiet Revolution and an accompanying movement of francophone male lawyers into business in the 1970s.<sup>54</sup> With growing opportunities in business and commerce for men, the doors to law practice may have been left ajar for women to enter a once exclusionary domain. There is likely more to this story, as indications further afield reveal these differences between English and French Canada are mirrored in comparisons of England and France, another contrast of common and civil law jurisdictions.<sup>55</sup>

### C. Contemporary Studies of Quebec Lawyers

Contemporary studies of lawyers in Quebec reveal numerous disparities between men and women. Men earn, on average, considerably higher salaries than do women

<sup>48</sup> Sommet de la Justice, *La situation des femmes dans l'administration de la justice: état de la situation*, Document de consultation 1.4. (Quebec City: Gouvernement du Québec, Ministère de la Justice, 1991) at 5.

<sup>49</sup> Kay & Brockman, *supra* note 1 at 176.

<sup>50</sup> The only provinces close to Quebec in their representation of women lawyers were Prince Edward Island (35%) and the Yukon (34.6%). The largest province (in terms of population and lawyers) in Canada, Ontario, consisted of only 30% women lawyers. The provinces with the lowest representation of women in the legal profession were Manitoba (24%) and Saskatchewan (25%). For a detailed analysis of women's representation in the legal profession across regions of Canada, see Kay & Brockman, *ibid.* at 174-77; J. Hagan, "Gender and the Structural Transformation of the Legal Profession in the United States and Canada" in M.T. Hallinan, D.M. Klein & J. Glass, eds., *Change in Societal Institutions* (New York: Plenum Press, 1990) 49 at 50-52 [hereinafter Hagan, "Structural Transformation"].

<sup>51</sup> P. Pashigian, "The Number and Earnings of Lawyers: Some Recent Findings" (1978) A.B.F. Res. J. 51.

<sup>52</sup> A. Cherlin, "Changing Family and Household: Contemporary Lessons from Historical Research" (1983) 9 Annual Review of Sociology 51.

<sup>53</sup> See e.g. R. Chester, *Unequal Access: Women Lawyers in a Changing America* (South Hadley, Mass.: Bergin & Garvey Publishers, 1985); Hagan, "Structural Transformation", *supra* note 50.

<sup>54</sup> Hagan, "Structural Transformation", *ibid.* at 52.

<sup>55</sup> Menkel-Meadow, "Feminization of the Legal Profession", *supra* note 11.

in the Quebec legal profession.<sup>56</sup> According to a 1999 report to the Barreau du Québec, men earned salaries of on average \$69,500 while women's salaries averaged \$54,100.<sup>57</sup> Another report also revealed that nearly half of all women surveyed (47%) complained that they received lower salaries than men with similar status and responsibilities.<sup>58</sup> The issue of women being paid lower salaries relative to their male colleagues was more prevalent in Montreal (51% compared with 39% in Quebec City and 40% in other regions of Quebec), among those without children (53% compared with 40% with children), in the business sector (67%), and among employees (51%).<sup>59</sup> An interesting correlation was revealed between earnings and parental status: earnings were highest for men with children, followed by men without children, followed closely by women without children. Women with children finished last.<sup>60</sup> The gap in earnings characterized by gender and parental status existed even for relatively junior lawyers. Bilodeau's 1988 study of Quebec lawyers under age 35 revealed that 47% of women with children earned less than \$29,000 per year, compared with 11% of women lawyers without children.<sup>61</sup>

Similar to women lawyers elsewhere in Canada and the United States, Quebec women lawyers reported problems reconciling family responsibilities and obligations of law practice.<sup>62</sup> A 1988 survey of young lawyers conducted by the Association du Jeune Barreau de Montréal found that a sizeable proportion (53%) estimated that family responsibilities would be difficult to reconcile with work obligations.<sup>63</sup> A general survey of the Quebec legal profession conducted in 1991 also found women reporting difficulties balancing professional and family responsibilities and cited a lack

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<sup>56</sup> Rochette, *supra* note 18 at 5.

<sup>57</sup> Marcon Économie, *supra* note 17 at 32. This difference is further magnified when net revenues are included with salaries. Male lawyers averaged \$104,000 and their female counterparts averaged \$53,000.

<sup>58</sup> Barreau, *Women in the Legal Profession*, *supra* note 18 at 59.

<sup>59</sup> *Ibid.* at 60.

<sup>60</sup> Rochette, *supra* note 18 at 136-39; M.-F. Bich, "De l'art de passer à travers les mailles du filet: prolégomènes et polémique" (Faculté de droit, Université de Montréal, 1990) at 27 [unpublished].

<sup>61</sup> E. Bilodeau, "Qui êtes-vous, jeune avocat?" *Le Journal du Barreau* (15 December 1988) 2 [hereinafter Bilodeau, "Qui êtes-vous?"].

<sup>62</sup> E. Bilodeau, "Les enfants d'avocats assiègent les cabinets!" (1989) 1:3 *Maîtres* 9; J.L. MacBride-King & H. Paris, *Concilier les exigences professionnelles et les responsabilités familiales: une enquête sur les avocats et sur les cabinets d'avocats*, Rapport préparé pour l'Association du Jeune Barreau de Montréal (Montreal: Barreau du Québec, 1988) at 1-38; F. Descarries & C. Corbeil en collaboration avec C. Gill & C. Séguin, *Travail et vie familiale: une difficile articulation pour les mères en emploi: rapport synthèse* (Montreal: Centre de recherche féministe de l'Université du Québec à Montréal, 1994) at 10-23.

<sup>63</sup> MacBride-King & Paris, *ibid.* at 12.

of benefits, particularly the unavailability of maternity leave, as a source of dissatisfaction with working conditions.<sup>64</sup> Nearly one third (32%) of women lawyers mentioned problems specifically related to workplace benefits or receiving no benefits at all. Twenty percent focused on a lack of maternity leave and child-related benefits.<sup>65</sup> Women lawyers with children reported difficulties with irregular work hours (36%), balancing parental responsibilities and professional obligations as a lawyer (20%), and intolerant attitudes of colleagues at work.<sup>66</sup> A sizeable proportion of women (29%) reported experiencing difficulties achieving career advancement during the past five years. This percentage was particularly high among women with children (35% compared with 24% of those without children) and among women practicing corporate law (40%).<sup>67</sup> A common problem following maternity (or parental) leaves was the difficulty of retaining files and clients as well as maintaining professional relationships with colleagues in the firm.

Furthermore, surveys conducted in Quebec reveal that, for women, having children had particularly deleterious effects on their careers. For example, when male lawyers were asked to what extent having children had influenced the progress of their career, 60% responded that it had no effect, while only 26% of women reported similarly.<sup>68</sup> In contrast, 65% of women estimated that their family responsibilities had negative repercussions for their careers. This difficult reality was attributed to the inability to work supplementary hours, to take on additional files or supplementary responsibilities, and to participate in work meetings or social activities during evening hours. The consequences were reduced earnings and slower promotions.<sup>69</sup> As Bilodeau notes, the majority of women with children interrupted their work for one to six months (63%), although a surprising 20% reported not interrupting their work for their first delivery.<sup>70</sup>

Sexual harassment<sup>71</sup> and experiences of sexual discrimination<sup>72</sup> also permeate the profession. The 1992 general survey of members by the Barreau revealed that one in seven women lawyers (15%) perceived that others in her workplace were subject to sexual harassment, and one in nine (11.4%) reported experiences of sexual harass-

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<sup>64</sup> Barreau, *Women in the Legal Profession*, *supra* note 18 at 24.

<sup>65</sup> *Ibid.* at 60.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.* at 70.

<sup>68</sup> I. Paré, "Carrière et famille sont difficiles à concilier" *Le Journal du Barreau* (15 September 1987) 2. These problems were reported by 57% of lawyers surveyed.

<sup>69</sup> *Ibid.* at 2.

<sup>70</sup> Bilodeau, "Qui êtes-vous?", *supra* note 61.

<sup>71</sup> Mackaay, *Les avocats du Québec*, *supra* note 17 at 121.

<sup>72</sup> Mackaay, *Les avocats et la discrimination*, *supra* note 17 at 17.

ment in their job.<sup>73</sup> Similarly, a survey of Quebec lawyers under 35 years of age in 1986 revealed that 40% of young women lawyers identified sexual discrimination as the most disagreeable aspect of their employment.<sup>74</sup> In sum, these studies, although few in number, reveal a pattern of gender inequity characterized by a gap in earnings for equivalent work, difficulties reconciling career and family responsibilities, and problems of sexual harassment and discrimination.

## II. Findings of the Study

This study is based on data collected through a 1999 mail survey of active members of the legal profession in Quebec. This survey was conducted from January to March 1999. A disproportionate stratified simple random sample was selected using the membership records of the Barreau du Québec in order to obtain equal numbers of female and male practitioners. Disproportionate stratified sampling is a technique that (1) ensures that sufficient cases are selected from all strata including the smaller ones and (2) enables a weighted estimation of overall population parameters. The sampling procedures make it necessary to weigh the data to obtain unbiased estimates of the total population. These weights restore unequal population size relationships among strata by assigning greater or lesser importance to sample elements. This stratification scheme is superior because it allows us to over-sample female lawyers, ensuring an adequate number of cases for comparative analyses (50% female; 50% male), while restoring the population distribution to the analyses (40% female; 60% male).<sup>75</sup>

One thousand lawyers, randomly selected from the membership mailing lists of the Barreau du Québec, were mailed a 28-page booklet questionnaire. This survey instrument consisted of 121 questions and examined the following dimensions of legal practice: job satisfaction, education and professional training, opportunities and conditions of work, household and family history, and professional work histories. Each questionnaire was accompanied by a letter of introduction from Me Jocelyne Olivier, Chair of the Women in the Legal Profession Committee at the Barreau du Québec. This introductory letter explained the purpose of the study, sampling procedures, and

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<sup>73</sup> Barreau, *Women in the Legal Profession*, *supra* note 18 at 20.

<sup>74</sup> Bilodeau, "Qui êtes-vous?", *supra* note 61.

<sup>75</sup> For a detailed explanation and discussion of weighting procedures (estimation and sampling error computation for disproportionate samples), see Law Society of Upper Canada, *supra* note 12 at 9-10; S. Sudman, *Applied Sampling* (New York: Academic Press, 1976) at 126-30; E.S. Lee, R.N. Forthofer & R.J. Lorimor, "Analysis of Complex Sample Survey Data: Problems and Strategies" (1986) 15 *Sociological Methods & Research* 69. See also R.K. Som, *A Manual of Sampling Techniques* (London: Heinemann Educational, 1973); W.G. Cochran, *Sampling Techniques*, 3d ed. (New York: John Wiley & Sons, 1977); V. Barnett, *Elements of Sampling Theory* (London: English Universities Press, 1974).

ethical issues relating to confidentiality and anonymity. Lawyers in the original random sample were sent a postcard reminder after two weeks. A follow-up letter of encouragement was sent to non-respondents after one month, and a follow-up postcard reminder after another two weeks.<sup>76</sup> These follow-up efforts served to enhance the response rate. In total, 580 usable questionnaires were returned, yielding a 58% response rate. Taking into account the number of lawyers who had withdrawn from legal practice, those who had relocated, and deceased members of the profession,<sup>77</sup> the adjusted response rate is 60%.<sup>78</sup>

### A. Demographic and Professional Profiles

Table 1 presents a demographic profile of respondents in this survey. The mean year of call to the Bar was 1982 for men and 1989 for women. On average, male lawyers were 6 years older than the average age among female lawyers. The mean age of men was 43 years, as compared with 37 years for women. Men were more likely to be married than women. Approximately 76% of the male lawyers reported they were married or co-habiting, compared with 65% of the female lawyers. Men were also more likely to be parents—68% reported they had children, compared with 45% of the women. Men were also more likely to have larger families. For example, 19% of male lawyers reported they had three or more children, whereas only 6% of female lawyers reported having three or more children.

Not surprisingly, the majority of lawyers in Quebec speak French as their first language (86%). Another 9% speak English as their first language and 4% speak another language as their first language. Interestingly, men are more likely than women to speak English as their first language (12% compared with 6%). This significant difference also plays out in Table 2 where men were more likely than women to self-identify as a minority by language. Eight percent of men compared with 4% of

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<sup>76</sup> All correspondence, including the questionnaire, introductory letter, and postcards, was conducted in French. Introductory letters and the questionnaires were translated into English and mailed to lawyers who requested English versions of the surveys.

<sup>77</sup> In fifteen cases, secretaries, and in some cases colleagues, returned the surveys with letters explaining that the individual was either no longer practicing law, had left the law firm (or place of employment), or had recently died. These cases were excluded.

<sup>78</sup> This response rate is significantly higher than that obtained through most surveys of professionals, where response rates of 30% to 50% are more typical. J. Brockman, "Gender Bias in the Legal Profession: A Survey of Members of the Law Society of British Columbia" (1992) 17 *Queen's L.J.* 91 at 100; Robson & Wallace, *supra* note 10 at 82; J.E. Wallace, "Corporatist Control and Organizational Commitment among Professionals: The Case of Lawyers Working in Law Firms" (1995) 73 *Social Forces* 822.

women reported themselves to be a minority in the legal profession based on their language.

TABLE 1: DEMOGRAPHIC PROFILES

	Men	Women	Significance <sup>a</sup>
<b>General</b>			
Mean year graduated from law school	1981	1987	p<.001
Mean year called to bar	1982	1989	p<.001
Mean year of birth	1956	1962	P<.001
Mean age	43.46	37.01	P<.001
<b>Marital Status</b>			
	Men (N=344)	Women (N=232)	Total (N=576)
Married or co-habiting	76.2	64.7	71.5
Single <sup>b</sup>	23.8	35.3	28.5
Pearson $\chi^2$ Value=9.009, d.f.=1, p<.01			
<b>Children</b>			
	Men (N=348)	Women (N=232)	Total (N=580)
No children	32.5	55.2	41.6
One or more children	67.5	44.8	58.4
Pearson $\chi^2$ Value=29.538, d.f.=1, p<.001			
<b>First Language</b>			
	Men (N=346)	Women (N=231)	Total (N=577)
French	83.8	90.0	86.3
English	11.8	5.6	9.4
Another language	4.3	4.3	4.3
Pearson $\chi^2$ Value=6.353, d.f.=2, p<.05			

<sup>a</sup>T-test of difference of means with two-tailed tests of significance.

<sup>b</sup>Single includes: never married or co-habited, widowed, divorced or separated.

### B. *Minority Status*

Ethnic and racial minorities remain staggeringly few in number in the legal profession. Approximately 4% of lawyers identified themselves as minorities based on ethnicity or race, while 1% stated that they were a minority by physical appearance (see Table 2). The differences between men and women on each of these questions of



minority status were insignificant. However, more significant differences emerge when we consider minority status based on sexual orientation and religion. Four percent of men self-identified as a minority based on their sexual orientation compared with less than 1% of women lawyers. Men were also more likely to identify as minority groups based on religion: 6% of men compared with 3% of women described themselves as a minority in Quebec based on their religion. Overall, women were significantly less likely than their male counterparts to identify themselves as a minority group member. Fully 89% of female lawyers reported they did not consider themselves to be part of a minority group compared with 81% of male lawyers.

TABLE 2: MINORITY STATUS

	Men (N=345)	Women (N=232)	Total (N=577)
<b>Minority by ethnicity or race</b>			
No	95.4	96.1	95.7
Yes	4.6	3.9	4.3
Pearson $\chi^2$ Value=.192, d.f.=1, p=N.S.			
<b>Minority by physical appearance</b>			
No	98.8	99.1	99.0
Yes	1.2	0.9	1.0
Pearson $\chi^2$ Value=.119, d.f.=1, p=N.S.			
<b>Minority by language</b>			
No	92.2	96.1	93.8
Yes	7.8	3.9	6.2
Pearson $\chi^2$ Value=3.694, d.f.=1, p<.05			
<b>Minority by sexual orientation</b>			
No	96.2	99.1	97.4
Yes	3.8	0.9	2.6
Pearson $\chi^2$ Value=4.648, d.f.=1, p<.05			
<b>Minority by religion</b>			
No	93.6	97.4	95.1
Yes	6.4	2.6	4.9
Pearson $\chi^2$ Value=4.347, d.f.=1, p<.05			
<b>Minority</b>			
No	81.4	89.3	84.6
Yes	18.6	10.7	15.4
Pearson $\chi^2$ Value=6.604, d.f.=1, p<.01			

### C. Full-time versus Alternative Work Arrangements

The vast majority of lawyers work full-time in the practice of law (88%) (see Table 3). Women are only slightly more likely than men to work on a part-time basis

(9% compared with 6%), to take a leave from law practice (3% compared with 1%) or to be outside the paid workforce (5% compared with 3%). These differences are small in magnitude and statistically insignificant.

TABLE 3: FULL-TIME VERSUS ALTERNATIVE WORK ARRANGEMENTS BY GENDER

	Men (N=342)	Women (N=230)	Total (N=572)
Full-time	90.4	83.5	87.6
Part-time	5.6	9.1	7.0
On a leave	1.2	2.6	1.7
Not at all	2.9	4.8	3.7

Pearson  $\chi^2$  Value=6.178, d.f.=3, p=N.S.

#### D. Contemporary Work Settings

The contemporary work settings of lawyers in Quebec are displayed in Table 4. Here the differences are sizeable and statistically significant. Women were significantly more likely to work in government (30%) than were men (18%). Although a higher percentage of women worked as associates or employees in law firms (15%) compared with men (10%), men were significantly more likely to hold positions as partners in law firms (31% compared with 13% of women). Men were more inclined to work with Legal Aid or law clinics (5% compared with 1% of women), while women were slightly more likely to work with community or non-profit organizations (4% compared with 2% of men) and in "other" employment settings not identified by the survey (5% compared with 3% of men). Similar percentages of men and women worked with corporations (*e.g.* as in-house counsel), as sole practitioners, and as legal academics. Overall, more men worked in the private practice of law.<sup>79</sup>

<sup>79</sup> These figures very closely parallel those in the Ontario legal profession, where 61% of male lawyers worked in private practice compared with 46% of female lawyers. See Kay, Dautovich & Marlor, *supra* note 11 at 23.

TABLE 4: CURRENT WORK SETTING BY GENDER

	Men (N=332)	Women (N=220)	Total (N=552)
Associate or employee of law firm	10.2	15.0	12.1
Community or non-profit organization	1.5	3.6	2.4
Corporation	10.2	11.4	10.7
Government	18.4	30.0	23.0
Legal academic	1.8	1.4	1.6
Legal Aid or law clinic	4.5	0.9	3.1
Partner	30.7	12.7	23.6
Private industry	0.6	2.7	1.4
Sole practitioner	18.7	17.3	18.1
Other	3.3	5.0	4.0

Pearson  $\chi^2$  Value= 42.110, d.f.=9, p<.001

### ***E. Size of Firms***

When we focus on the private practice of law, additional gender differences are noteworthy (see Table 5). First, among private practitioners, a sizeable proportion of women work as sole practitioners (31% compared with 23% of men). However, the office of sole practitioner remains largely a male domain, with men constituting the majority (62%). The largest proportion of both male and female lawyers worked in small-firm settings (42% overall). Within firm practice, women were more highly represented in small firms of fewer than 10 lawyers. More than half (53%) of women lawyers worked in small firms, compared with 36% of male lawyers. In contrast, women were significantly less represented among the very large law firms of 50 or more lawyers, where only 8% of women lawyers worked compared with 20% of male lawyers. Men were also more highly represented in the mid-size firms of 21-50 lawyers (12% compared with 6% women) and in small to mid-size firms of 11 to 20 lawyers (9% compared with 2% women). Thus, men were more highly represented in mid-size to large firms, while women were more highly represented as sole practitioners and in small firms.

TABLE 5: SIZE OF FIRMS BY GENDER\*  
(PRIVATE PRACTICE ONLY)

	Men (N=198)	Women (N=99)	Total (N=297)
Sole practitioner	22.7	31.3	25.6
2-10 lawyers	36.4	52.5	41.8
11-20 lawyers	8.6	2.0	6.4
21-50 lawyers	12.1	6.1	10.1
More than 50 lawyers	20.2	8.1	16.2

Pearson  $\chi^2$  Value=18.878, d.f.=4, p<.001

\* Mean average firm size for men is 51 lawyers (standard deviation=79.54). In contrast, the mean average firm size among women is 35 lawyers (standard deviation=106.54).

### F. Fields of Law

The most common fields of law practiced were corporate and commercial law (18%), followed by civil litigation (16%), and family law and divorce (11%) (see Table 6).<sup>89</sup> Several statistically significant differences in gender representation are noteworthy. The most sizeable difference is that of the representation of women and men in corporate and commercial law. Here we find 23% of men practice law compared with only 10% of women. In contrast, women are more highly represented among family law practice, where 16% of women work compared with only 7% of men.<sup>81</sup> Smaller differences exist across other fields of law. For example, men are slightly more likely to practice criminal law, debtors' and creditors' rights, and administrative and constitutional law. In contrast, women are more likely than men to practice in the areas of labour relations, municipal law, and immigration law.

<sup>89</sup> Lawyers were asked "In what area do you mainly work?" Respondents were asked to circle one response only. Response categories included: (1) criminal law, (2) real estate, (3) corporate and commercial, (4) estates, wills, and trusts, (5) debtors and creditors' rights, (6) civil litigation, (7) family law and divorce, (8) taxation, (9) labour relations, (10) administrative and constitutional law, (11) municipal law, (12) landlord and tenant, (13) immigration, (14) patents, trademarks, and copyright, (15) air and marine law, and (16) other fields of law (please specify).

<sup>81</sup> These differences are paralleled in research conducted with Ontario lawyers. These gender differences in Quebec are larger in the case of corporate and commercial law and reduced in the case of family law. In Ontario 5% of men compared with 18% of women practiced family law, while 15% of men compared with 11% of women practiced corporate and commercial law. See Kay, Dautovich & Marlor, *supra* note 11 at 29.

TABLE 6: FIELDS OF LAW BY GENDER

	Men (N=324)	Women (N=219)	Total (N=543)
Administrative and constitutional law	7.7	5.9	7.0
Civil litigation	15.7	16.0	15.8
Corporate and commercial	22.8	10.0	17.7
Criminal law	11.1	7.8	9.8
Debtors' and creditors' rights	7.1	2.7	5.3
Estates, wills, and trusts	0.3	0.9	0.6
Family law and divorce	7.1	16.4	10.9
Immigration	0.6	2.7	1.5
Labour relations	7.7	10.5	8.8
Landlord and tenant	0.6	0.5	0.6
Municipal law	1.2	5.0	2.8
Patents, trademarks, and copyright	1.9	2.3	2.0
Real estate	2.5	2.3	2.4
Taxation	4.9	4.6	4.8
Other	8.6	12.3	10.1

Pearson  $\chi^2$  Value= 44.123, d.f.=14, p<.001

### G. Geographic Regions within Quebec

Within the province of Quebec, the majority of lawyers are concentrated in the urban centres of Montreal and Quebec City. This is not surprising, as these are the province's two largest cities in terms of population, shipping, and commerce. These business centers have attracted 68% of the province's lawyer population. Yet, an interesting difference emerges here: while women and men work in Quebec City in equivalent proportions (16.6% of women and 16.4% of men), men are significantly more likely than women to work in Montreal. This gender difference is paralleled by women's high representation in the government sector and men's strong representation in corporate and commercial law practice. Fifty-five percent of male lawyers work in Montreal compared with 46% of female lawyers. On average, 2% to 4% of lawyers work in each of the regions identified by the survey across Quebec. Only 4% of lawyers reported working outside Quebec but within Canada, and just over 1% surveyed reported working outside of Canada.

TABLE 7: REGION OF WORK

	Men (N=337)	Women (N=220)	Total (N=557)
Abitibi-Temiscamingue	0.3	0.9	0.5
Arthabaska	0.6	2.3	1.3
Bas Saint-Laurent	2.4	1.8	2.2
Bedford	0.3	0.9	0.5
Côte-Nord	0.3	1.4	0.7
Hull	3.9	5.0	4.3
Laurentides-Lanaudière	4.5	4.1	4.3
Laval	3.0	3.2	3.1
Longueuil	1.8	4.1	2.7
Montreal	54.6	45.9	51.2
Quebec City	16.6	16.4	16.5
Richelieu	2.1	2.3	2.2
Saint-François	2.1	2.7	2.3
Saguenay	1.8	1.4	1.6
Trois-Rivières	2.4	0.9	1.8
Outside of Quebec, within Canada	2.4	5.9	3.8
Outside of Canada	1.2	0.9	1.1

Pearson  $\chi^2$  Value= 13.719, d.f.=16, p=N.S.

### H. Education and Professional Training

Table 8 presents the levels of education attained prior to law school entry for men and women. The majority of women entered law school following CEGEP<sup>82</sup> (55% compared with 41% of men). Women were also slightly more inclined to pursue law school partway through a university degree (12% compared with 7% of men). In contrast, men were slightly more likely to pursue law school following completion of a bachelor's degree (44% compared with 27% of women). Approximately 4% of law-

<sup>82</sup> CEGEP (Collèges d'enseignement général et professionnel), a system of colleges of general and professional education, is a two-year programme of study following secondary school and is a prerequisite for university admission in Quebec.

yers had completed a master's degree prior to law school entry (6% of men and 2% of women).

TABLE 8: EDUCATION PRIOR TO LAW SCHOOL ENTRY

	Men (N=346)	Women (N=232)	Total (N=578)
Secondary school	0.3	2.6	1.2
CEGEP	41.3	55.2	46.9
University education (degree incomplete)	6.6	12.1	8.8
Bachelor's degree	43.9	27.2	37.2
Master's degree	5.5	2.2	4.2
Doctorate	0.3	0	0.2
Other	2.0	0.9	1.6

Pearson  $\chi^2$  Value= 32.456, d.f.=6, p<.001

Thirty-six percent of Quebec's lawyers completed their law school training at Université de Montréal (see Table 9). The next highest percentage of graduates came from Université Laval in Quebec City where 21% of men and 25% of women lawyers completed their law studies. Approximately 12% of men and women studied at Université de Sherbrooke and Université d'Ottawa. Another 12% of men and 8% of women studied at McGill University. Recall that men were also more likely to be anglophones than were women in Quebec law practice, and this representation is paralleled in attendance at the only English law school in the province. Another 6% of lawyers pursued their legal studies at Université du Québec and only 1% attended other law schools.

TABLE 9: LAW SCHOOL ATTENDED

	Men (N=347)	Women (N=231)	Total (N=578)
McGill University	12.1	7.8	10.4
Université de Montréal	36.0	35.5	35.8
Université de Sherbrooke	11.5	11.7	11.6
Université d'Ottawa	13.3	10.8	12.3
Université du Québec	5.2	8.2	6.4
Université Laval	20.7	25.1	22.5
Other	1.2	0.9	1.0

Pearson  $\chi^2$  Value= 6.477, d.f.=6, p=N.S.



## I. Mentoring

The first significant step in a legal career, following law school, is the period of articles. The majority of lawyers in Quebec (67%), as elsewhere, completed their articles in the private practice of law (see Table 10). Nearly one third (32%) of all lawyers completed their articles in small-firm settings of fewer than 10 lawyers. Although statistically significant differences in work settings appear to emerge later in the careers of men and women, their articling positions reveal no significant gender differences. Approximately 16% of lawyers completed their articles in government settings, 11% with Legal Aid or law clinics, and about 5% with sole practitioners. Very few lawyers undertook their articles with corporations (2.5%), private industry (0.4%), or community or non-profit organizations (1%).

TABLE 10: ARTICLING SETTING

	Men (N=338)	Women (N=229)	Total (N=567)
Community or non-profit organization	1.2	0.9	1.1
Corporation	2.1	3.1	2.5
Government	13.0	19.7	15.7
Law firm: 2-9 lawyers	32.2	31.4	31.9
10-19 lawyers	8.0	7.4	7.8
20-49 lawyers	11.5	10.5	11.1
50-74 lawyers	3.6	2.2	3.0
75+ lawyers	9.5	6.6	8.3
Legal Aid or law clinic	10.1	11.4	10.6
Private industry	0.3	0.4	0.4
With a sole practitioner	6.2	3.5	5.1
Other	2.4	3.1	2.6

Pearson  $\chi^2$  Value= 9.474, d.f.=11, p=N.S.

Fundamental to establishing a solid career in law are the mentoring experiences that take place early in law practice. Table 11 provides an overview to the characteristics of mentors and mentoring relationships in first jobs. The majority of male and female lawyers reported that a more senior lawyer acted as a mentor to them (72%). Nearly half (49%) reported one person who acted as their advisor or mentor, while 23% had more than one person who mentored them. Twenty-eight percent of young lawyers were without a mentor or advisor in their first job. The relationship with advisors was described as close by 60% of lawyers, very close by 18% and not close (or

not at all close) by 21% of lawyers. There were no statistically significant differences between men and women in either their opportunities for mentors or the closeness of that relationship. There were, however, significant differences between women and men lawyers and the gender of their advisor. Women were more likely to be mentored by another woman lawyer (18% compared with 8% of men). The vast majority of lawyers (88% overall) were advised by senior male lawyers. The majority of lawyers (76%), gained clients, files, and referrals through these mentoring-protégé relationships. This mentoring relationship appeared to be particularly salient to women, who described these relationships as helping them often (or very often) to acquire files, clients, or referrals (51% of women compared with 39% of men). Men also benefitted through these mentoring relationships with files and clients, but were slightly more inclined than women to describe these referrals as occurring 'not very often' or 'never' (27% of men, compared with 20% of women).

TABLE 11: MENTORING EXPERIENCES OF PROTEGÉS

	Men		Women		Total
<b>Advisor at first job (N=573)</b>					
Yes, one person acted as my advisor/mentor	48.0		49.8		48.7
Yes, more than one person acted as my advisor/mentor	20.8		26.0		22.9
No	31.2		24.2		28.4
Pearson $\chi^2$ Value= 4.052, d.f.=2, p=N.S.					
<b>Nature of relationship with advisor (N=404)</b>					
Very close	18.9		17.5		18.3
Close	60.9		59.6		60.4
Not very close	19.3		19.9		19.6
Not at all close	0.9		2.9		1.7
Pearson $\chi^2$ Value= 2.569, d.f.=3, p=N.S.					
<b>Gender of advisor (N=405)</b>					
Male	92.3		82.4		88.1
Female	7.7		17.6		11.9
Pearson $\chi^2$ Value= 9.418, d.f.=1, p<.01					
<b>Mentoring relationship helped you in acquiring files, clients, or referrals (N=397)</b>					
Very often	12.1		22.3		16.4
Often	26.8		28.9		27.7
Sometimes	33.8		28.3		31.5
Not very often	12.6		10.2		11.6
Never	14.7		10.2		12.8
Pearson $\chi^2$ Value= 9.115, d.f.=4, p<.05					
<b>Approximate age of mentor at time of mentoring (N=504)</b>					
	Men		Women		Sig. <sup>a</sup>
	Mean	S.D. <sup>b</sup>	Mean	S.D.	
	40.53	7.97	42.20	8.26	p<.05

<sup>a</sup>T-test of difference of means with two-tailed tests of significance.

<sup>b</sup>Standard deviation.

The quality of these mentoring experiences is explored further in Table 12. The most highly ranked dimensions of mentorship were teaching, advocacy, acting as a sounding board, advice, and role modeling. Lower evaluations included the dimensions of confidentiality, protection, and organizations. There were no statistically significant differences between men and women on each of these measures. Again, there are no significant differences between women and men in their quality of mentoring experiences.

TABLE 12: QUALITY OF MENTORING FUNCTIONS<sup>a</sup>

Dimensions of mentorship	Mean Averages			Significance <sup>b</sup>
	Men (N=260)	Women (N=180)	Overall (N=440)	
on teaching	3.91	4.04	3.96	N.S.
on advocacy	3.85	3.94	3.89	N.S.
as a sounding board	3.62	3.77	3.68	N.S.
on advice	3.56	3.74	3.63	N.S.
on problem-solving	3.58	3.69	3.63	N.S.
as role model	3.53	3.67	3.58	N.S.
on protection	3.37	3.57	3.45	N.S.
on case/dossier management	3.40	3.47	3.43	N.S.
on office politics	3.42	3.43	3.42	N.S.
on organizations	3.25	3.29	3.27	N.S.
on client management	3.21	3.29	3.24	N.S.
on confidentiality	2.97	2.79	2.89	N.S.

<sup>a</sup> Respondents were asked about their first job: "The following are non-exclusive, often overlapping, functions that can be served by mentors. Please rank the quality of mentorship you believe you received on these dimensions." Categories of response: 1=very poor, 2=poor, 3=indifferent, 4=good, 5=very good.

<sup>b</sup> T-test of difference of means with two-tailed tests of significance.

### J. Contemporary Work Responsibilities and Conditions of Work

Several research studies have shown women to hold lower positions of power in the hierarchy of legal practice, even when taking into account their years of experience in practice.<sup>83</sup> Research has shown that women possess lower autonomy, authority, access to positions of policy decision-making, and reduced supervision of students and junior lawyers.<sup>84</sup> Table 13 provides evidence in support of these prior findings. Lawyers in this study were asked: "In the last five years, how often have you been involved in: hiring articling students or lawyers, assigning files to other lawyers, or supervising other lawyers, policy, management or remuneration decisions?" Response categories included: (1) never, (2) rarely, (3) sometimes, (4) frequently. A comparison of means, presented in Table 13, reveals that women are significantly less likely to be involved in any of these capacities (*i.e.*, hiring, assigning of files, supervising, or policy, management, and remuneration decisions).<sup>85</sup>

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<sup>83</sup> Hagan, Huxter & Parker, *supra* note 7; Kay, Dautovich & Marlor, *supra* note 11.

<sup>84</sup> Hagan, Huxter & Parker, *ibid.* at 33.

<sup>85</sup> It should be noted that this difference may be, in part, attributable to women's relatively recent entry to the profession in sizeable numbers. It may be that a sizeable majority of women are new to the profession, in positions of reduced responsibility, and not yet in positions of power to participate in these decision-making capacities. However, this explanation seems insufficient in light of the mean year of call to the Bar (1989), years of employment experience (10), and mean average age (37) among women lawyers in this study. The argument that women are simply still too new to the profession to hold such positions of authority and that with time these inequities will disappear has proven inadequate as an explanation in several other studies. See generally Epstein *et al.*, *supra* note 9; C. Menkel-Meadow, "Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change" (1989) 14 *Law & Social Inquiry* 289 [hereinafter Menkel-Meadow, "Exploring a Research Agenda"]; Menkel-Meadow, "Feminization of the Legal Profession", *supra* note 11; Menkel-Meadow, "Comparative Sociology", *supra* note 11; Brockman, Evans & Reid, *supra* note 14; Kay & Hagan, "Persistent Glass Ceiling", *supra* note 10; J. Hagan & F. Kay, *Gender in Practice: A Study of Lawyers' Lives* (Oxford: Oxford University Press, 1995) [hereinafter Hagan & Kay, *Gender in Practice*]; Chester, *supra* note 53; Thornton, *supra* note 3.

TABLE 13: ADMINISTRATIVE RESPONSIBILITIES

	Men (N=286)		Women (N=181)		Significance <sup>a</sup>
	Mean	S.D. <sup>b</sup>	Mean	S.D.	
<b>In the past five years how often have you been involved in:</b>					
Assigning files to other lawyers	2.83	1.12	2.43	1.13	p<.001
Hiring articling students or lawyers	2.34	1.24	2.11	1.15	p<.05
Policy, management, or remuneration decisions	2.77	1.21	2.52	1.30	p<.05
Supervising other lawyers	2.59	1.23	2.13	1.18	p<.001

<sup>a</sup>T-test of difference of means with two-tailed tests of significance.

<sup>b</sup>Standard deviation.

The content of work is further explored in Table 14. Lawyers were asked to report approximately what percentage of their working time was spent on each of the following tasks over the last year: administrative work, promotion and client development, keeping up-to-date, uncompensated law-related work (education and professional development, free legal advice, Canadian Bar Association, Law Society committees), teaching, practicing law, legal research, and other responsibilities. Not surprisingly, the largest proportion of time was devoted to law practice. However, men were able to devote a greater percentage of their time (61% on average) to the practice of law compared with their female colleagues (55% on average). Women's time allotment was only slightly higher (and with greater variation than that of men) for promotion and client development, keeping up-to-date, uncompensated law-related work, and teaching. However, women did invest a significantly higher percentage of their time in legal research (18% of their time) compared with men (14% of their time). This might in part reflect the fact that women occupy different positions within the legal hierarchy, often as associates or less senior positions, where legal research may occupy a greater share of their workload.<sup>86</sup>

<sup>86</sup> The author conducted additional analyses to examine the distribution of time across professional responsibilities for several independent age groups: 20-29 years, 30-39 years, 40-49 years, 50 years and older. Interesting gender differences persist across age groupings. Among lawyers in their twenties, women perform on average nearly twice as much administrative work as men (16% of women's time compared with 8% of men's time). Women also engage in nearly three times as much uncompensated law-related work (12% of their time compared with 4% of men's time). Gender differences appear to be insignificant among lawyers in their thirties, but re-emerge in their forties and fifties,

TABLE 14: DISTRIBUTION OF TIME ACROSS PROFESSIONAL RESPONSIBILITIES<sup>a</sup>

	Men (N=286)		Women (N=181)		Significance <sup>b</sup>
	Mean (%)	S.D. <sup>c</sup>	Mean (%)	S.D.	
Administrative work	17.31	19.17	19.61	20.60	N.S.
Keeping up-to-date	9.25	9.03	10.78	11.60	N.S.
Legal research	14.37	13.56	18.48	18.21	p<.05
Practicing law	61.09	22.43	55.13	24.88	p<.01
Promotion and client development	9.81	8.46	9.06	12.72	N.S.
Teaching	5.76	10.00	7.97	15.94	N.S.
Uncompensated law-related work	7.07	8.05	8.30	10.14	N.S.
Other	35.81	35.23	47.30	35.14	N.S.

<sup>a</sup> Lawyers were asked: "In the last year, approximately what percentage of your working time was spent on the following?"

<sup>b</sup> T-test of difference of means with two-tailed tests of significance.

<sup>c</sup> Standard deviation.

Table 15 presents information on the clientele responsibilities of private practitioners. A modest proportion of clientele was based outside Quebec. Lawyers reported, on average, less than 20% of their clientele to be based outside the province. The majority of lawyers worked with francophone clients (71%). Lawyers reported that, on average, 31% of their clientele spoke English as their first language (Note: percentages will not add to 100% because these figures represent averages across all lawyers). A difference between men and women and the clientele emerged among allophone clients. Women were significantly more likely to serve clients who spoke a language other than French or English as their first language (24% of clients on average among female lawyers, compared with 15% of clients among male lawyers). Men were also significantly more likely to spend a greater proportion of their time over the past twelve months representing corporate clients (56% of their time compared with 45% of women's clientele time). Yet, interestingly, there were no significant differences between men and women and their respective abilities to recruit clients to the firm. Approximately 66% of the clients with whom lawyers dealt were clients they brought into the firm. Moreover, women and men rated their abilities to obtain business for their firms on an even level. Approximately 19% of lawyers assessed their abilities as very good, 20% as above average, and

where women take on a greater share on average of uncompensated law-related work and teaching compared with their male colleagues.

45% as average. Only 16% felt their abilities to obtain business for their firms were below average or poor.

TABLE 15: CLIENTELE RESPONSIBILITIES  
(PRIVATE PRACTICE ONLY)

	Men		Women		Sig. <sup>a</sup>
	Mean (Avg. %)	S.D. <sup>b</sup>	Mean (Avg. %)	S.D.	
What proportion of your clientele are based outside Quebec?	20.45	28.42	15.54	23.79	N.S.
What proportion of your clients speak as their first language ...?					
French	71.27	30.19	73.12	30.07	N.S.
English	33.51	29.63	30.06	28.75	N.S.
Other	14.94	19.03	24.43	30.91	p<.05
During the past 12 months, what proportion of your time was spent representing other clients?					
Work representing corporate clients	55.78	33.09	44.58	37.80	p<.01
Work representing other clients	49.40	33.97	65.38	36.12	p<.001
In your practice do you primarily deal with ...?	Men (N=208)		Women (N=98)		Total (N=306)
Clients you bring in	67.8		63.3		66.3
Clients of the firm	32.2		36.7		33.7
Phi Value=.045, d.f.=1, p=N.S.					
How would you rate your ability to obtain business for your firm?	Men (N=213)		Women (N=98)		Total (N=311)
Very good	20.7		14.3		18.6
Above average	21.1		18.4		20.3
Average	42.7		49.0		44.7
Below average	7.5		10.2		8.4
Poor	8.0		8.2		8.0
Pearson $\chi^2$ Value= 2.886, d.f.=4, p=N.S.					

<sup>a</sup>T-test of difference of means with two-tailed tests of significance.

<sup>b</sup>Standard deviation.



A further aspect of working conditions across sectors of legal practice is the hours worked by lawyers. Table 16 displays the hours worked within private and non-private practice. Some studies have speculated that women may work less hours, thereby helping to explain reduced earnings or promotion opportunities.<sup>87</sup> This study revealed one statistically significant difference between men and women and the hours they work: men billed, on average, a greater number of hours than did women. Men billed, on average, 1,433 hours per year, while women billed, on average, 1,098 hours. It should be noted, however, that the variation around the mean is considerably larger for men than women (standard deviations of 1,892 for men compared with 579 for women). The average number of hours docketed by private practitioners in the 1998 fiscal year was 1,552 hours, billable hours were estimated at 1,378 hours, and the percentage of hours for which the lawyers claimed credit averaged 89%. Lawyers in private practice worked on average 8.45 hours per weekday and 4.27 hours each weekend. Lawyers in non-private practice averaged 8.44 hours each weekday and estimated that they worked on average 3.89 hours each weekend. Although the hours worked per weekday are similar between private and non-private practitioners, it should be noted that there was greater variation among the private practitioners,<sup>88</sup> suggesting some private practitioners work extremely long hours, while others are able to constrict their hours greatly.

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<sup>87</sup> Robson & Wallace, *supra* note 10 at 90.

<sup>88</sup> For example, the standard deviations in private practice weekday hours were 2.10 for male lawyers and 2.33 for female lawyers. In comparison, the standard deviations in non-private practice weekday hours were 1.28 for men and 1.56 for women.

TABLE 16: HOURS OF WORK

	Men		Women		Significance <sup>a</sup>
	Mean	S.D. <sup>b</sup>	Mean	S.D.	
<b>Private practice of law (N=288)</b>					
Hours docketed in the last fiscal year	1516.25	509.26	1570.42	644.50	N.S.
Hours billed in the last fiscal year	1432.76	1892.15	1098.43	578.50	p<.05
Percentage of hours you claimed credit for	90.70	18.13	84.02	21.39	N.S.
Hours worked each weekday	8.54	2.10	8.28	2.23	N.S.
Hours worked each weekend	4.54	5.79	3.67	4.01	N.S.
<b>Non-private practice (N=229)</b>					
Hours worked each weekday	8.45	1.28	8.42	1.56	N.S.
Hours worked each weekend	3.80	6.57	4.03	5.99	N.S.

<sup>a</sup>T-test of difference of means with two-tailed tests of significance.

<sup>b</sup>Standard deviation.

The financial remuneration of lawyers, and gender disparities in particular, has been a topic receiving considerable attention in recent years.<sup>89</sup> In the 1997 fiscal year, average earnings after business deductions and before taxes were reported as \$65,000 to \$69,000 by men and \$45,000 to \$49,000 by women. Disparities are particularly striking at either end of the income spectrum. For example, 32% of women earned less than \$30,000 per year, compared with only 11% of men. In the higher earnings ranges, we find 24% of men compared with 15% of women earned \$70,000 to \$99,999, while 15% of men earned \$100,000 to \$150,000 compared with 4% of women. At the highest level, 9% of men earned over \$150,000, while only 3% of women achieved this level of remuneration.

These striking gender disparities in earnings raise several pressing questions. Is the gap in earnings attributable to women's relatively recent entry to law practice, with few women possessing extensive practice experience? Is the gender gap the result of women's higher representation in government and part-time employment or their reduced billings, on average, in private practice? The results of this study reveal

<sup>89</sup> Robson & Wallace, *supra* note 10; Hagan, "Gendered Stratification", *supra* note 10; Kay & Hagan, "Persistent Glass Ceiling", *supra* note 10.

that women are, on average, 7 years more recently called to the Bar than their male counterparts (see Table 2) and more highly represented in government employment. Yet, the majority of women work in private practice (see Table 4). The small differences between men and women and full-time versus part-time work were non-significant and the vast majority of Quebec lawyers (88%) work on a full-time basis (see Table 3). However, women are less likely than their male colleagues to be partners (see Table 4), to practice in financially rewarding fields of law (see Table 6), or to hold esteemed positions of authority with vast responsibilities (see Tables 13, 14 and 15). In private practice, women's billable hours are lower, on average, than those of men (see Table 16). Are these gender differences sufficient to explain the full gap in earnings? Further multivariate analyses, allowing us to control for an array of relevant predictor variables, are needed to address this question with reference to Quebec's legal profession. Recent studies elsewhere in Canada<sup>90</sup> and the United States<sup>91</sup> suggest a sizeable portion of the gender gap in earnings remains unexplained net of these predictors of income.

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<sup>90</sup> J. Hagan, "The Gender Stratification of Income Inequality among Lawyers" (1990) 68 *Social Forces* 835; Kay & Hagan, "Persistent Glass Ceiling", *ibid.* at 279-310; Robson & Wallace, *ibid.*; D.K. Foot & D.A.A. Stager, "Intertemporal Market Effect on Gender Earnings Differentials: Lawyers in Canada, 1970-1980" (1989) 21 *Applied Economics* 1011.

<sup>91</sup> C. Chui & K. Leicht, "When Does Feminization Increase Equality? The Case of Lawyers" (1999) 33 *Law & Soc'y Rev.* 557.

TABLE 17: 1997 EARNINGS BY GENDER<sup>a</sup>

	Men (%) (N=327)	Women (%) (N=221)	Total (%) (N=548)
Under \$10,000	2.4	5.9	3.8
\$10,000 to \$14,999	1.2	4.1	2.4
\$15,000 to \$19,999	3.1	5.4	4.0
\$20,000 to \$24,999	1.8	8.1	4.4
\$25,000 to \$29,999	2.4	8.1	4.7
\$30,000 to \$34,999	4.6	5.9	5.1
\$35,000 to \$39,999	4.6	4.5	4.6
\$40,000 to \$44,999	5.5	6.3	5.8
\$45,000 to \$49,999	4.0	6.8	5.1
\$50,000 to \$54,999	5.8	5.9	5.8
\$55,000 to \$59,999	3.4	5.9	4.4
\$60,000 to \$64,999	6.4	5.9	6.2
\$65,000 to \$69,999	6.7	4.5	5.8
\$70,000 to \$74,999	7.3	5.4	6.6
\$75,000 to \$79,999	3.7	3.6	3.6
\$80,000 to \$84,999	4.9	2.7	4.0
\$85,000 to \$89,999	4.0	1.8	3.1
\$90,000 to \$94,999	1.8	0.9	1.5
\$95,000 to \$99,999	2.1	1.8	2.0
\$100,000 to \$149,999	14.7	3.6	10.2
\$150,000 to \$199,999	4.9	1.4	3.5
\$200,000 to \$299,999	2.1	0.9	1.6
\$300,000 to \$399,999	1.2	0.0	0.7
\$400,000 to \$499,999	0.6	0.0	0.4
\$500,000 +	0.6	0.5	0.5

Pearson  $\chi^2$  Value= 68.153, d.f.=24, p<.001

<sup>a</sup> Thirty-two respondents (6%) declined to report their earnings. Lawyers were asked: "In which of the following groups did your earnings for 1997 fall? (After business deduction and before taxes.)"

### K. Job Satisfaction

These gender disparities in earnings, work responsibilities, clientele, and fields of legal practice, lead us to consider the implications for job satisfaction. The questionnaire included a series of questions intended to tap different dimensions of job satisfaction. One set of questions examined satisfaction with the extent to which the work allows one to balance career and family responsibilities and an assessment of one's job in terms of recommending it to others. Respondents were invited to score their responses along a series of scales. Satisfaction with the way your job allows you to balance your work and your personal life was scored along a scale of 1 (very dissatisfied) to 5 (very satisfied). Respondents were asked, "Do you ever feel that although you might like to leave your job, the benefits of your position and your personal responsibilities prevent this?" Answers to this question were ranked as follows: (1) never, (2) not very often, (3) some of the time, (4) most of the time, and (5) all of the time.

Respondents were also asked if they would recommend their job to a friend. This scale paralleled the question regarding satisfaction with career/personal life balance (1=discourage it greatly to 5=recommend it highly). There were also a series of questions designed to tap lawyers' intentions to leave their professional position or legal career. Respondents were asked a series of four questions: (1) Over the *past year* have you considered looking for a new job? (2) Are you *at the moment* looking for a new job? (3) Are you looking to change careers? (4) Over the *next year* do you plan to look for a new job? Responses to each of these questions were scored along a scale of five possible responses: (1) definitely not, (2) no, (3) perhaps, (4) yes, on occasion, and (5) definitely. The results are displayed in Table 18.

Numerous differences between men and women are statistically significant. Women exhibited lower satisfaction than their male colleagues with how the job allows them to balance work and personal life. This finding is not unique. Numerous studies have identified women's dissatisfaction with available workplace supports, benefits, and accommodation for family responsibilities.<sup>92</sup> A finding that is more troubling, and with considerable implications for the profession, is the number of women considering leaving the profession. Women were significantly more likely than their male colleagues to report having looked for a new job in the past year, looking for a new job at present, and planning to seek new employment in the next year. Women

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<sup>92</sup> Hagan & Kay, *Gender in Practice*, *supra* note 85; Epstein *et al.*, *supra* note 9; Mossman, "Invisible Constraints", *supra* note 32; C.F. Epstein, *Women in Law*, 2d ed. (Urbana, Ill.: University of Illinois Press, 1993) c. 6 [hereinafter Epstein, *Women in Law*]; Kay, "Balancing Acts", *supra* note 13.

were also more likely than male lawyers to state that they planned to change careers, leaving the profession of law.<sup>93</sup>

TABLE 18: JOB SATISFACTION BY GENDER

	Men (N=345)		Women (N=228)		Significance <sup>a</sup>
	Mean	S.D. <sup>b</sup>	Mean	S.D.	
Satisfied with how job lets you balance work and personal life	3.80	0.98	3.58	1.02	p<.01
Benefits of position and personal responsibilities prevent quitting	3.48	1.15	3.29	1.25	N.S.
Recommend job to a friend	3.48	1.07	3.46	1.09	N.S.
Looked for a new job in the past year	3.03	1.43	3.41	1.34	p<.01
Looking for a new job at the moment	2.33	1.27	2.62	1.36	p≤.01
Looking to change careers	2.79	1.23	2.99	1.22	p<.05
Plan to look for new job next year	2.56	1.26	2.93	1.33	p<.001

<sup>a</sup>T-test of difference of means with two-tailed tests of significance.

<sup>b</sup>Standard deviation.

### L. Balancing Personal and Professional Realms

The problems reported in balancing career and family responsibilities lead us to consider available workplace supports, including maternity leave policies. Sixty-eight percent of male and 45% of female lawyers were parents at the time of the survey. Lawyers were asked the question: "Have you ever taken a parental leave? (Example: maternity or paternity leave, leave of absence to care for your spouse, children or parents, etc.)" Among lawyers with children, 35% of women and 16% of men reported having taken a parental leave from work (see Table 19). Women with children expressed greater variation in their assessment of maternity leave policies at their office or firm than did their male counterparts. For example, 35% of women (compared with 22% of men) said they were highly satisfied with the maternity leave policy at their office. Thirteen percent of women with children (in comparison with 4% of men) were dissatisfied or very dissatisfied with available maternity leave options. Men with children were most likely to be undecided on their views related to maternity leave

<sup>93</sup> I also analyzed this relationship between gender and intention to leave law practice across cohorts in the profession. Gender differences in intentions to leave law appear to emerge among lawyers in their thirties, rather than in their twenties or once careers are well established in one's forties and fifties. For a detailed analysis of job exits among lawyers, see Kay, "Flight from Law", *supra* note 16.

policies (50%), while only a minority of women held such dispassionate views (30%). Women with children were also more proactive in trying to influence policy in this area. Thirty-four percent of women reported they had tried a great deal or to some extent to influence maternity leave policies. In contrast, 22% of men had similarly tried to influence these policies. The majority of lawyers with children said they had not at all tried to influence maternity leave policy (65% of men and 51% of women). The outcomes of these efforts were not impressive. The majority of lawyers with children (nearly 70%) reported that their efforts to influence maternity leave policies met with failure or were uncertain of any progress (68%).

**TABLE 19: PARENTAL LEAVES TAKEN  
(LAWYERS WITH CHILDREN)**

	Men	Women	Total
<b>Have you ever taken a parental leave? (N=568)</b>			
Yes	16.3	34.7	23.6
No	83.7	65.3	76.4
Phi Value=-.211, d.f.=1, p<.001			
<b>Satisfaction with maternity leave policy at office? (N=276)</b>			
Highly satisfied	21.6	34.9	25.7
Satisfied	24.7	22.1	23.9
Undecided	50.0	30.2	43.8
Dissatisfied	3.2	5.8	4.0
Very dissatisfied	0.5	7.0	2.5
Pearson $\chi^2$ Value= 20.284, d.f.=4, p<.001			
<b>Have you tried to influence the policy in this area? (N=276)</b>			
A great deal	2.6	12.8	5.8
To some extent	18.9	20.9	19.6
Very little	13.2	15.1	13.8
Not at all	65.3	51.2	60.9
Pearson $\chi^2$ Value= 12.758, d.f.=3, p<.01			
<b>Were you successful in your efforts? (N=179)</b>			
Very successful	5.8	6.9	6.1
Successful	24.0	29.3	25.7
Uncertain	18.2	25.9	20.7
Unsuccessful	14.9	15.5	15.1
Very unsuccessful	37.2	22.4	32.4
Pearson $\chi^2$ Value= 4.268, d.f.=4, p=N.S.			

The lack of accommodation for family responsibilities and lawyers' concerns about available workplace supports, including parental leaves, is a particularly pressing issue when one considers the figures in Table 20. Lawyers were asked the question: "When the children are at home (for medical reasons or require transportation to activities) who leaves work most often?" The majority of women (63%) reported it was them who left work most often to attend to children. Only 13% of male lawyers reported they were the most likely candidate to leave work for their children. Men more often reported that it was the person they live with who attended to the children's demands during work hours (45% compared with only 10% of female lawyers). Men were more likely than women to state there was an equal division of responsibility between themselves and the person with whom they live (25% compared with 19% of women). Male lawyers were also more likely to report that the person with whom they live works in the home and attends to the children (11% compared with only 1% among women). However, female lawyers were more likely (5% compared with 0.5% of men) to report there is someone (a relative or paid employee) who helps out when children are sick or require interruptions from work. However, such arrangements were extremely rare; only 2% of lawyers with children reported having this sort of an arrangement to shield them from workplace interruptions. Quite striking in this table is the number of hours devoted to family responsibilities. Women reported double the number of hours dedicated to family obligations (40.18 hours) compared with their male colleagues (22.06 hours); in essence women are working the equivalent of a double shift.



TABLE 20: FAMILY RESPONSIBILITIES

	Men (N=196)	Women (N=92)	Total (N=288)		
<b>When the children are at home (for medical reasons or require transportation to activities) who leaves work most often?</b>					
You	12.8	63.0	28.8		
The person you live with	45.4	9.8	34.0		
Child's other parent (if not living with you)	6.1	2.2	4.9		
The person you live with and yourself leave work	24.5	18.5	22.6		
One of us already works in the home	10.7	1.1	7.6		
There is someone else who helps out (relative or employee)	0.5	5.4	2.1		
Pearson $\chi^2$ Value=96.19, d.f.=5, p<.001					
Mean average number of hours spent per week on family responsibilities (N=285)	Men (N=196)		Women (N=89)		Sig. <sup>a</sup>
	Mean	S.D. <sup>b</sup>	Mean	S.D.	
	22.06	14.82	40.18	25.60	p<.001

<sup>a</sup>T-test of difference of means with two-tailed tests of significance.

<sup>b</sup>Standard deviation.

### III. Conclusions

Quebec is a rapidly changing society in which women and men are developing legal careers, often under challenging economic and professional circumstances. In this article, I have sought to provide a historical account of the entry of women to Quebec legal practice and to explore contemporary patterns of gender disparity within the profession. The findings of this study reveal several notable differences between the backgrounds of women and men prior to entering the legal profession. For example, women were on average seven years younger than their male counterparts, with fewer years of work experience. Men, on average, had higher levels of education prior to law school admission, although there were no significant gender differences in the choice of law school. Men, more often than women, spoke English as a first language

and a higher proportion of men practiced law in Montreal, the financial capital of the province.<sup>94</sup>

Consistent with prior research, women were over-represented among family law practitioners, while men were significantly more likely to practice in the lucrative domain of corporate and commercial law. Women were more likely to work in the government employment sector, an area of perhaps more consistent hours of work and reasonable workplace supports, but a considerably less prosperous sector of legal practice. Men were more likely than women to work in the private practice of law, particularly as partners, while women were more highly represented among the associate ranks within law firms and as sole practitioners. Women were also more inclined to work in small firm practices, while their male colleagues were more highly represented in the very large corporate law firms.

The main difference in time investment occurred in private practice with regard to billable hours. Men billed on average 335 hours more per year than their female counterparts. Yet, the variation in billable hours is far greater for men than women, suggesting that some men are billing extremely long gruelling hours, while others are able to limit their billable time commitments considerably. Other time obligations, in terms of overall number of hours worked, weekend hours, docketed hours, and overall time commitments within sectors of private and non-private practice proved insignificant between women and men. These findings challenge contemporary conceptions of private practice as being the more demanding setting in terms of hours devoted to law. Furthermore, the similar hours worked by men and women within *non-private practice* suggest that time commitment to law has little to do with the gender gap in earnings in these settings. Finally, the analysis suggests that the key to understanding the impact of time investment on career advancement and remuneration within *private practice* lies with the issue of billable hours. How is it that men and women in the private practice of law tend to work similar overall hours, including weekend and evening hours and overall docketed hours, yet the average number of billable hours is greater for men? How do legal tasks and responsibilities vary between men and women such that women, on average, bill fewer hours? Why is it that women seem

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<sup>94</sup> A proficiency in English may operate to the advantage of lawyers representing clientele outside the province of Quebec, particularly those negotiating financial transactions with corporate clientele from the United States or provinces outside Quebec. The higher percentage of men speaking English as a first language may also work as a disadvantage in the sense that these lawyers represent a minority within Quebec and most legal transactions (including their pleas in court) are generally conducted in French. However, one's first language is not a measure of facility in other languages, and to the extent that lawyers are fluent in both official (or more than two) languages, this may offer enhanced human capital.

more consistent in their high level of billable hours, yet there is tremendous variation among men, with some men billing a heroic (or more accurately stated, exhausting) number of hours, while other men exhibit a routine of reduced moderate billables? Multivariate analyses are needed to examine these disparities and their impact on promotions and earnings.

These findings lend some support for economic models of gender disparity, specifically human capital theory.<sup>95</sup> Human capital theory suggests that employees make rational choices to invest in themselves, through education, professional training, cultivation of specializations, and commitment to billable hours that will be rewarded by employers.<sup>96</sup> This approach suggests that women choose employment sectors and positions that are more compatible with family responsibilities.<sup>97</sup> In the legal profession, for instance, women tend to work in fields of law and work settings that offer optimum conditions for achieving a balance between work and family. Unfortunately, these same positions offer lower returns on their human capital investments.<sup>98</sup> The inference of this theory is that men make different choices than women in the legal practice; by placing priority on their occupational career men enhance their human capital assets and are subsequently rewarded for their professional commitment.<sup>99</sup> The implication, of course, is that women would achieve comparable success to that of men in law practice if only they made similar choices and efforts as men. Future research should examine women's motivations for working within particular sectors of law practice, certain fields of law, smaller law firms, and with reduced billings. Research needs to unpack the extent to which these outcomes are the product of choice versus constraint or selection by employers.

This study found that mentorship and articling experiences were similar for men and women. There were no statistically significant differences between the types of articling positions and the quality of mentorship experienced by men and women in the early stages of law practice. However, interesting differences emerged in the

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<sup>95</sup> G.S. Becker, *Human Capital*, 2d ed. (New York: National Bureau of Economic Research, distributed by Columbia University Press, 1975) [hereinafter Becker, *Human Capital*]; G.S. Becker, *A Treatise on the Family* (Cambridge, Mass.: Harvard University Press, 1981) [hereinafter Becker, *Treatise*]; J. Mincer, "Intercountry Comparisons of Labor Force Trends and of Related Developments: An Overview" (1985) 3 *Journal of Labor Economics* 51 at 51-52.

<sup>96</sup> Becker, *Human Capital*, *ibid.*; Becker, *Treatise*, *ibid.*

<sup>97</sup> S.W. Polachek, "Occupational Self-Selection: A Human Capital Approach to Sex Differences in Occupational Structure" (1981) 63 *Review of Economics and Statistics* 60 at 60-69.

<sup>98</sup> K.E. Hull & R.L. Nelson, "Assimilation, Choice, or Constraint? Testing Theories of Gender Differences in the Careers of Lawyers" (2000) 79 *Social Forces* 229.

<sup>99</sup> G.S. Becker, "Human Capital, Effort, and the Sexual Division of Labor" (1985) 3 *Journal of Labor Economics* 533 at 533-58; Becker, *Treatise*, *supra* note 95; Mincer, *supra* note 95.

analysis regarding the clientele represented by men and women lawyers. First, women lawyers were more likely than male lawyers to represent minority group clientele, including allophones. Second, male lawyers were more likely than their female colleagues to represent wealthy corporate clients.

These differences in clientele responsibilities resonate with a social capital perspective to gender disparities in law practice. Social capital theory emphasizes the critical role of 'facilitators' and professional contacts, including mentors, clientele, and relationships (within and beyond the law firm) that may offer important and timely information, assist in building professional reputations, and offer conduits to promotions and enhanced earnings potential.<sup>100</sup> Future work should explore the distribution of files among junior lawyers, the recruitment of new clients to firms, and the social networks within law firms that generate differences between men and women in the types of clients they represent.

Women lawyers in this study reported lower levels of satisfaction with the ability to balance work and personal life. Women also tended to hold more definite views on available maternity leave arrangements (either very positive or extremely negative) than their male counterparts who tended to hold positions of neutrality on available parental leave options. And while women, on average, showed considerable initiative in attempting to influence existing parental leave policies, their efforts met with little success. The dissatisfaction with the lack of available workplace supports, including maternity leave options and flexible hours, was further compounded by the pressures facing women lawyers to devote greater time to family responsibilities, including interruptions at the office, while facing less equitable divisions of responsibility within the domestic sphere. Women's disadvantaged positions, in terms of lower representation among partners and senior positions of authority as well as lower decision-making capacity, renders them less influential in terms of developing alternative organizational forms of legal work, including improved workplace support systems and more predictable hours.

These findings regarding family-work time commitments and a lack of organizational support systems can be understood through structural theory. Structure affects women in the legal profession in three ways. First, women's careers within law practice are influenced by the opportunities and barriers imposed by an organizational structure established prior to women's entry to the profession in large numbers. These organizational structures include the structure of work arrangements themselves, such as available benefits, maternity leave policies, (in)flexibility of hours, opportunities

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<sup>100</sup> R.S. Burt, *Structural Holes: The Social Structure of Competition* (Cambridge, Mass.: Harvard University Press, 1992).

for part-time work arrangements, scheduling of meetings and social events, and leave arrangements.<sup>101</sup>

Second, women's power to effect meaningful change within the profession of law is shaped by their structural location relative to others. Women are disproportionately represented among the lower echelons of legal practice, as associates and as junior lawyers in non-private practice settings.<sup>102</sup> As such, legal practice often represents an organizational context "where women do not have access to the same opportunities for power and efficacy through activities or alliances."<sup>103</sup> This disadvantaged position within the social structure of law practice implies "invisible constraints",<sup>104</sup> including a lack of influence over others, reduced autonomy, and lower power to participate in policy decision-making within organizational settings.<sup>105</sup>

Third, the institutional arrangements characteristic of law practice assume that a spouse carries out the private obligations of family, housework, and private emergencies. At a structural level, law practice represents "two-person single careers."<sup>106</sup> This work arrangement is highly gendered and assumes a division of labour in which women's work is dedicated to the private sphere of family and home, while men's work is devoted to the public sphere of legal professional. Seron and Ferris contend that the careers of male lawyers benefit from wives who manage domestic work, care for children, and support their husband's careers through various accommodations.<sup>107</sup> The career support offered by wives affords male lawyers greater freedom to exercise

<sup>101</sup> Brockman, *Gender in the Legal Profession*, *supra* note 14, c. 7 at 196ff.; M.J. Mossman, "Lawyers and Family Life: New Directions for the 1990's (Part One)" (1994) 2 *Feminist Legal Studies* 61; M.J. Mossman, "Lawyers and Family Life: New Directions for the 1990's (Part Two)" (1994) 2 *Feminist Legal Studies* 159. As Menkel-Meadow observes, "the more interesting questions may lie in explorations of the content of work and how legal work is defined, structured, and elaborated to reinforce and encode particular conceptions of how that work should be conducted." Menkel-Meadow, "Exploring a Research Agenda", *supra* note 85 at 304.

<sup>102</sup> Epstein, *Women in Law*, *supra* note 92; Hagan & Kay, "Hierarchy in Practice", *supra* note 6 at 557; Hagan & Kay, *Gender in Practice*, *supra* note 85 at 44; Menkel-Meadow, "Exploring a Research Agenda", *ibid.* at 307.

<sup>103</sup> R.M. Kanter, *Men and Women of the Corporation* (New York: Basic Books, 1977) at 199-200.

<sup>104</sup> *Ibid.* at 567.

<sup>105</sup> Hagan & Kay, *Gender in Practice*, *supra* note 85 at 175. See also H. Sommerlad & P. Sanderson, *Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (Dartmouth: Ashgate Publishers, 1998) c. 4; Thornton, *supra* note 3, c. 6 at 73ff.

<sup>106</sup> H. Papanek, "Men, Women, and Work: Reflections on the Two-Person Career" (1973) 78 *American Journal of Sociology* 852.

<sup>107</sup> C. Seron & K. Ferris, "Negotiating Professionalism: The Gendered Social Capital of Flexible Time" (1995) 22 *Work and Occupations* 22 at 24; A. Abbott, "The New Occupational Structure: What Are the Questions?" (1989) 16 *Work and Occupations* 273 at 286.

their human capital by working longer hours, and with greater flexibility of hours, and to build social capital in the form of clientele networks and collegial relationships through participation in work-related social activities.<sup>108</sup> Further research needs to assess empirically these various structural constraints. To what extent does the organizational structure of law practice, particularly within firms, constrain women's career mobility and their ability to influence workplace policies regarding schedules, organization of legal work, and parental leaves? How do men and women lawyers with an array of family arrangements (single, dual careers, same-sex relationships, and more traditional spousal support) fare professionally?

The perspectives of human capital, social capital, and structuralism are particularly relevant to an understanding of the entry and advancement of women in law practice. Each theory identifies resources and opportunities (as well as barriers and constraints) that are vital to developing successful legal careers. The differences in human capital, social capital, and structural factors manifest themselves in particular outcomes for women lawyers, including fewer opportunities for supervision, policy planning, management or remuneration decisions; reduced rates of partnership; lower remuneration; depressed levels of job satisfaction; and greater temptation to entertain careers outside law practice. Women lawyers' active involvement in contemporary job searches, as well as their intentions to seek new employment or leave the profession, raise troubling issues about a loss of human capital and legal talent more generally from the profession.

Future studies also need to unravel professional development and social networks established through effective mentor-protégé relationships early in legal careers. How do junior lawyers develop their clientele, field specializations, and reputation, and how do they inform themselves about the culture and work habits specific to their work environment? A more complete understanding of gender disparities in law practice needs to examine systematically the full range of work responsibilities, the division of labour, and importantly, the partitioning of time across a spectrum of hourly accountability. Beyond a consideration of emerging policies in the workplace, research needs to examine the impact of women on the legal profession. The high representation of women in the Quebec legal profession, now surpassing 50% of recent law graduates, suggests Quebec may see more diverse legal careers, creative workplace arrangements, and expansion of innovation in practice settings than elsewhere. This opportunity for change in organizational structure and styles of practice should not overlook the potential downfall in law practice, including the potential exodus of women from legal practice in Quebec. The results of this study suggest that women lawyers,

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<sup>108</sup> Seron & Ferris, *ibid.*

more so than men, are actively seeking enhanced mobility within legal careers, as well as the lure of attractive employment opportunities outside the legal profession.

Finally, further work should engage in a comparative analysis of civil and common law jurisdictions of Canada. How does the legal profession in Quebec, particularly gender dynamics and career diversification, compare with other Canadian provinces? Comparative analyses might examine governance of the professions, the structure of legal practice, specializations, and clientele, as well as firm hierarchies across legal systems. Canada offers a unique opportunity in which to engage in such comparative analyses of the legal profession across civil and common law traditions.

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