

**HOW DO WE SUPPORT WOMEN WHO CHOOSE A LAW CAREER?**

Remarks of the Rt. Hon. Beverley McLachlin, P.C.  
Chief Justice of Canada

for a Panel Discussion for the Canadian Bar Association's National Women Lawyers Forum  
and Standing Committee on Equity

**Calgary, Alberta  
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Good afternoon. I am honoured to be here to participate in this panel organized by the National Women Lawyers Forum of the Canadian Bar Association.

This afternoon, I would like to raise a few issues to start the discussion of how we support can support women who choose a career in law. My comments will focus on the problem of women leaving the private practice of law, and what can be done to address this issue. In focussing on the issue of women leaving private practice, either for other areas of law, or leaving law altogether, I do not in any way wish to suggest that other types of legal practice are less important than private practice. The reason I address private practice is because it is a concern when we see a systemic exodus of talented women from one area of the profession.

Let me start by describing the problem. Certainly, women have made tremendous strides in the legal profession. When I was called to the bar in 1969, women were a minority in the

**CHECK AGAINST DELIVERY**

laws schools, and in the profession. Today, over 50 percent of graduates of Canadian law schools are women.<sup>1</sup>

Yet despite these advances, and despite the equal number of women law graduates at the start of their careers, there is a troubling attrition of women in private practice as they progress through their careers. Women leave private practice at significantly higher rates than their male colleagues. Women leave the practice of law altogether at significantly higher rates than men.<sup>2</sup> In many cases, women have not been rewarded with professional responsibilities similar to their male counterparts of equivalent experience.<sup>3</sup> There is still a significant wage gap between the earnings of Canadian men and women<sup>4</sup> and this holds true for lawyers.<sup>5</sup>

Our profession has struggled for many years with these issues. Many of these issues were identified by Madam Justice Bertha Wilson in her 1993 report for the Canadian Bar Association Task Force on Gender Equality in the Legal Profession, *Touchstones for Change*:

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<sup>1</sup> *Beyond a Reasonable Doubt: Lawyers State Their Case on Job Flexibility*, Catalyst Report, 2006 at 2.

<sup>2</sup> *Turning Points and Transitions: Women's Careers in the Legal Profession; A Longitudinal Study of Ontario Lawyers 1990-2002*, Report to the Law Society of Upper Canada, September 2004, at 106-110; J.M. Leiper, *Bar Codes*, UBC Press, 2006 at 145-46.

<sup>3</sup> *Turning Points*, supra note 2 at 107.

<sup>4</sup> Statistics Canada, Canadian Social Trends (Industry Canada, 2004: Cat. No. 11-008) 24 at 27.

<sup>5</sup> *Turning Points*, supra note 2 at 107.

**CHECK AGAINST DELIVERY**

*Equality, Diversity and Accountability*.<sup>6</sup> Although there has been progress, much remains to be done. The Law Society of Upper Canada has a working group on the problem of the retention of women in private practice, which is in the process of consulting with women lawyers and law firms to identify best practices, policies and initiatives to help retain women.<sup>7</sup> Individual lawyers, law firms, and professional organizations, like the Women's Law Forum, are working to try and address this issue.

The causes of the failure to retain women in private practice are complex, including attitudes that restrict advancement, business practices that set up roadblocks, and a culture that still places the main burden of child-rearing and family on women's shoulders.

What is clear is that there are enormous costs to this loss of talented women – costs to the women themselves, to law firms, to the profession, and to society. Although some women may be happy with their decisions to leave private practice, for many it is a very painful decision, which can mean giving up dreams and ambitions. The cost to law firms is significant. A recent study has estimated the average cost to a law firm of an associate's departure at \$315,000, based on investment costs (such as recruitment and training), and separation costs.<sup>8</sup>

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<sup>6</sup> *Touchstones for Change, Equality, Diversity and Accountability* (Canadian Bar Association, 1993).

<sup>7</sup> "Retention of Women in Private Practice", *Ontario Lawyers Gazette*, Spring 2007, vol. 11, no. 1, at p. 5.

<sup>8</sup> *Beyond a Reasonable Doubt: Building the Business Case for Flexibility*, Catalyst Report, 2005 at 9.

But the cost is not merely financial. There is a cost in loss of talent, and in loss of diversity. These costs affect the profession as a whole, and society.

What then, can we do to support women who choose a career in law? I will talk about three areas where we can focus our attention: flexibility in work arrangements; recognition of the different paths of some women's careers; and mentoring and attitudes.

### 1. Flexibility in work arrangements

Let me start with the issue of childcare, and family responsibilities. A major problem responsible for women leaving private practice or leaving the profession altogether is that women still disproportionately bear the responsibility for childcare and family, compared to men. Modern professional women are caught in a double social bind. They enter a workplace largely based on an Edwardian male-dominated model, where the professional was expected to work long hours and give 100 per cent devotion to his career – this because Mama was giving 100 per cent to looking after home and children. Yet, they cannot work these long hours or give the required 100 per cent effort because they are also women, with the responsibilities of motherhood and family that women have always had.

We must try to move society and families off the unrealistic, outmoded and unfair assumption that only women should bear the lion's share of responsibility for child-care, and ease the child-care burden on women. Ultimately, if we are serious about the advancement of

**CHECK AGAINST DELIVERY**

women, we must address the child-care issue. Our daughters and our sons must accept that child-care is a shared responsibility. A movement toward more equal responsibility is not an impossible dream. Many younger men want to be more involved in bringing up their children than their fathers may have been

We must address the demands and structure of our workplace, to bring it into closer harmony with the reality of the modern world where men and women share family responsibilities. The same pressures that are exerted by management on women are, of course, felt by men who contemplate seeking a better balance between their work and family responsibilities. The workplace must accept this as a fact of life, and allow more flexible working arrangements for parents of both sexes during the crucial child-raising years.

We should be asking what can be done to encourage flexibility in the workplace. In today's electronic world, with the advent of BlackBerrys and computers, it is no longer absolutely necessary for workers to be physically at work in order to accomplish the job effectively. Is the corporate culture one that needlessly glorifies work at the expense of the family? Do we tend to automatically make a decision to give the high-profile files to the man without children, instead of an equally-talented woman with a family? We should develop a corporate culture that accepts sabbaticals and part-time work and acknowledges that long hours do not necessarily equate to quality and productivity. When experienced, talented women leave a business because it does not allow for a better balance, there is a real cost to the organization.

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It is vitally important in discussing the issue of flexible work arrangements that these arrangements not be associated with stigma, or with second-class citizenship in law firms. There is a perception,<sup>9</sup> and unfortunately to some degree, a reality, that women (or men) who take advantage of flexible work arrangements will be relegated to second-tier status within their firms; that they will be viewed as a lacking commitment; that their chances for partnership will be hurt.

Certainly, there must be some give and take in flexible work arrangements. I think most people agree that a trade-off for working fewer hours includes some reduction in pay. But it does not seem necessary to me that a part-time practice should necessarily exclude a lawyer from the ability to take part in the decision-making structure of the firm, or to become a partner in a firm. Some firms are now beginning to make room for part-time partners. This is an important development. Because accommodations which permit work-life balance only at the cost of becoming a second-class citizen in a firm will not be successful in the long term.

## 2. Recognition of different career paths of some women

In her recent book titled *Off-Ramps and On-Ramps: Keeping Talented Women on the Road to Success*, economist Sylvia Ann Hewlett noted that many women professionals have

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<sup>9</sup> *Beyond a Reasonable Doubt: Lawyers State Their Case on Job Flexibility*, Catalyst Report, 2006 at 4, 11.

different career arcs than the typical career path of a male professional. The classic model of a man's career is of continual, linear progress. Some women also follow this traditional model. But many women's careers do not follow this linear progression, and are marked by "off-ramps" and "on-ramps", when women may strike a different balance between work and family.<sup>10</sup> Women may "off-ramp" by stopping work, working part-time, or moving to a less demanding job for personal reasons, such as children. This different career pattern can hurt women's advancement, because it does not fit into the traditional model.

The profession needs to help women develop "on-ramps" – such as creative ways of parcelling out work so that women can maintain professional ties with their firms and clients even when they want a more flexible schedule. And we need to assist women to accelerate their careers when they are ready to return to the "fast-track."

We must recognize that a full career is a long time, 30 or 40 years. Flexibility, and taking into account the demands of family, particularly young children, for a few years within a long career, should not permanently close the door to certain types of professional roles. The profession needs to change attitudes so that flexibility in the workday, and in the arc of a career is not a source of stigma.

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<sup>10</sup> Sylvia Ann Hewlett, *Off-Ramps and On-Ramps: Keeping Talented Women on the Road to Success*, Harvard Business School Press, 2007 at 13-16

**CHECK AGAINST DELIVERY**

### 3. Mentoring and attitudes

The legal profession does a good job at mentoring that focuses on the technical side of work – how to write a good factum or memo, client development. But the profession does not do as well in helping lawyers to progress through a career, and to maintain their goals and ambitions, if their career pattern does not fit the traditional model. Law firms must make clear to all young lawyers, and indeed all members of the firm, that people will be valued for the quality of their work, and that if at different times in a career an individual needs flexibility, that need will be supported, and not viewed as failure, or a lack of commitment.

Let me close by sounding an note of caution about viewing work-life balance issues solely through the lens of gender. The factors that drive some women to follow different career paths can apply to men too: the desire to look after family; the desire to take time off to enjoy other activities; the desire to have a well-rounded life. In order to retain talented people, law firms will have to adapt, and bring more flexibility and humanity to the workplace.

I know my remarks fall short of providing all of the answers to the complicated question of how we can support women who choose a career in law. But I hope these remarks will serve as the basis for a lively discussion of the issues. I look forward to hearing the comments of Eugene, Linda and David, as well as your questions and comments.

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