

# The Retention and Advancement of Women in Manitoba's Legal Profession

## Next Steps

“Not enough has changed.”

August 29, 2022

# Next Steps in the Retention and Advancement of Women in Manitoba’s Legal Profession

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\* Report initially drafted by Melanie R. Bueckert (Legal Research Counsel, Manitoba Court of Appeal) and Stacey Soldier (Associate, Cochrane Saxberg Johnston Johnson Scarcello LLP). The irony that it was prepared during our ‘spare time’ is not lost on us. Thank you to the Hon. Madam Justice L. Kim Antonio (Manitoba Court of Queen’s Bench, Family Division) Tanya M. Keller (Partner, Sternat Managire Law Corp.), Sofia Mirza (Partner, Fillmore Riley LLP) and Lynda Troup (Partner, Thompson Dorfman Sweatman LLP) for providing feedback on our draft report, and to the 100 attendees at the February 1, 2022 Zoom roundtable. Please note that the report’s introduction was written by the Hon. Madam Justice Diana Cameron (Manitoba Court of Appeal).

\*\* Unless otherwise indicated, quotations in this report are taken from comments made by roundtable participants.

## INTRODUCTION

On February 1, 2022, the Canadian Chapter of the International Association of Women Judges (CCIAWJ) partnered with the Law Society of Manitoba and the Manitoba Bar Association to host a roundtable event titled “The Retention and Advancement of Women in the Legal Profession – Next Steps.”

The event was hosted by the Law Society of Manitoba via Zoom. It constituted one of a series of roundtables being held by a number of provinces with the goal of finding solutions to the issue of why women continue to leave the practice of law. It is anticipated that these discussions will continue on both the provincial and national level.

Chaired by Justice Diana Cameron (Manitoba Court of Appeal) with the aid of Justice Lori Spivak (Manitoba Court of Appeal), Chief Judge Margaret Wiebe (Provincial Court of Manitoba) and Justice Kim Antonio (Manitoba Court of Queen’s Bench) on behalf of the CCIWJ, the event was organized and facilitated by numerous women volunteers from the legal profession. A list of the organizing committee members is attached at the end of this report. Also included in the list are the articling students and law students who volunteered their time to participate in and take notes of the discussions.

The event was attended by a diverse group of approximately 100 women, who were either practicing or had practiced in the legal profession in Manitoba. Prior to the commencement of the discussions, opening comments were given by Justice Freda Steel of the Manitoba Court of Appeal. As she noted, while many advances have been made by women in the profession, there remain many challenges. The goal of this roundtable was to define the challenges faced by women and discuss the next steps in moving forward toward increased retention and advancement of women in the legal profession.

## KEY THEMES

1. Structure of the profession, particularly the focus on billable hours
2. Competing work and family demands, including maternity leave challenges
3. Mentorship
4. Sexism and sexual harassment

### Structure of the Profession

The current structure of the legal profession continues to present significant challenges for many women in the profession. For some, traditional work structures continue to promote the advancement or success of male colleagues. For others, otherwise positive advances in the profession, including the use of technology, have created different and greater opportunities, but many still struggle to find the elusive balance that many female lawyers need as the primary caregiver for their family. As one practitioner with over 40 years of experience observed, “with the advent of social media and instant communication, the practice of law has gotten more demanding over the years.”

The billable hour continues to be heavily relied on for many private practice practitioners. A compensation model that is tied solely or significantly to a lawyer’s billed hours can impact a female lawyer’s perceived success and does not always take into account the additional work many female lawyers take on for their firm or the profession as a whole.

One traditional view is that work comes first; some lawyers with different priorities (who may wish to take vacation time, not work every weekend, etc.) have been told by senior members of their firms that

priorities other than work show that they “aren't committed enough”. A structure that uses how many hours lawyers work as the main, or the only metric of value and success, should change. In private practice, “the pressure to bill is huge.”

Undue pressure may be caused by focusing only on billable hours. Monthly billing / collections reports distributed to other lawyers in the firm may encourage competition, but can also undermine peer support. Some women are of the view that monthly reports do not take into account other important non-billable factors that may lead to increased value and success, such as marketing, building a legal practise, volunteer committee work, board of directors commitments and a effective work / life balance.

Further, some law firm compensation structures do not fully take into account other non-billable time, including important non-billable work like mentorship. Some women lawyers also reported being the ones more often asked to serve on internal committees and to organize social events without compensation.

An ongoing concern is the retention of women in private practice. While private practice offers flexibility to many, it can also create a double-edged sword when the flexibility to work during non-traditional work hours leads to an overall increase in hours worked and the potential for burnout.

“We need to be careful as we create flexible options, that we don't create a system where we cannot turn off. Once I started demonstrating I will answer emails at 11pm, that started to become expected.”

Private law firms consistently lose female associates and partners to government and corporate (in house counsel) employers. The perception is that as government and other corporate environments better understand and address the different circumstances that women sometimes face in a meaningful way (such as topping-up maternity leave benefits). Participants who had moved into such roles commented that new and different challenges can exist in such environments and that time pressures often do continue, with less flexibility to take time off.

Many women practice family law, child protection and criminal defence, which are areas that can involve more vicarious trauma and take a harder personal toll, leading to burnout. In criminal cases, any need to reschedule matters creates added pressures and concerns given *R v Jordan*, 2016 SCC 27.

Some female practitioners have experienced resistance to necessary changes to reflect the reality of women practicing law, or which recognize that people have lives outside of work. Some feel that there needs to be attitude shift: if you have other obligations, you are not less of a lawyer. Those that expect that the first priority in life is work, and everything else should be less important, need to change. As Justice Steel observed in her keynote address, “perhaps the structure of the practice of law has to change, not us. Perhaps the problem is not that women need to change, but rather that the traditional standards of success need to change.”

## Competing Work & Family Demands

“You can feel like you are failing your whole life if you try to meet other people’s expectations of what it means to be successful.”

Many participants reported feeling set up to have unrealistic work expectations and feel it is unfair. Others have expressed being pulled in too many directions, feeling like they are doing everything (family/relationship/health/job) poorly, which is causing some women to consider leaving the profession. In some legal work environments, there is less acceptance of those that wish to put their families first. Some participants expressed the view that you cannot be a good lawyer and a good parent – the stress and guilt are too much.

Some participants advised that they experienced a lack of respect and understanding from some members of the judiciary about the importance of childcare to lawyers who are also parents. The pandemic has created additional issues, when lawyers are expected to return to ‘business as usual’ without an understanding of the new challenges that parents are facing.

One participant noted that some women choose to prioritize their role as mothers. This lessens the pool of women available for leadership positions, as leadership roles often entail more time and responsibility, which commitment may not be possible for women, especially those with young children.

On the other hand, women lawyers without children may have to take on additional responsibilities when accommodation is granted to lawyers who are mothers. One law firm associate called to the Bar in 2018 shared their view that “there is a culture of ‘asking’ associates with children versus ‘tasking’ younger, childless, female associates.”

### Maternity Leave

Maternity leave continues to be a major issue for many of the roundtable participants, especially in private practice. Participants described experiencing feelings of insecurity about taking maternity leave – will there be a practice to come back to? ‘Will the person who takes over my files while I’m away give them back when I return?’ Women can be overwhelmed by guilt, feeling that they are ‘letting the firm down’ by going on maternity leave, especially in smaller firms.

Participants also described coming back to work after maternity leave as challenging. Historically, women have found it difficult to re-establish sources of work upon resumption of practice. Further, if they cannot make enough money to cover the expenses of childcare, female lawyers may be required to consider different employment or leaving the profession altogether.

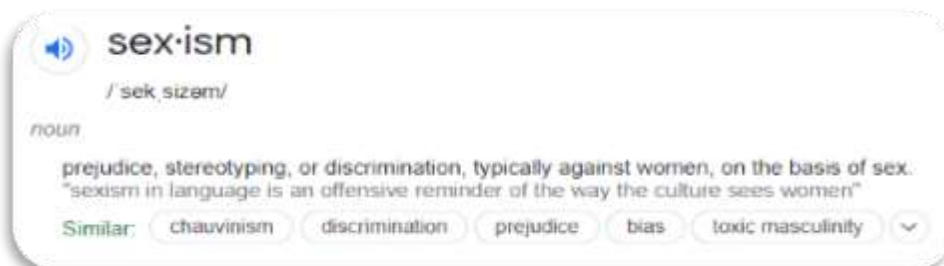
“I was very saddened to see how little has changed over my 40 years of legal practice – especially for the women raising children.”

### Mentorship

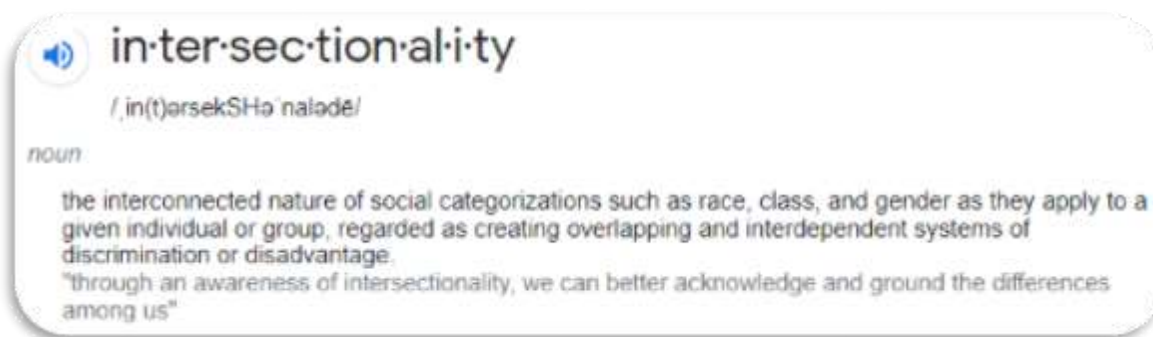
Most participants indicated that mentorship was vital to their success and to the success of the women around them. Mentorship comes in many forms (senior partner, colleagues, friends, clients, etc.). The ability to share experiences and to assist others who are going through issues another female lawyer has had to navigate is desired and needed.

There is no doubt that the desire or need to be a mentor can create additional pressure on the scarce commodity of time. This can be more so for those with diverse backgrounds. For instance, some women of colour had been asked to participate in diversity, inclusion and bias training in firm committees, often involving non-billable unpaid work.

## Sexism & Sexual Harassment



Even in the #MeToo era, sexism and sexual harassment remain ongoing barriers for women. Women participants reported being disrespected by clients, colleagues and sometimes judges; and expressed feelings of not being seen as equals. After relating an example of such behaviour, one participant noted, "the disrespect directed at the person was not just a comment on the person's work, but on the person herself."



Discrimination and racism have no place in the practice of law. Intersectionality adds layers of complexity for racialized lawyers and lawyers who identify as 2SLGBTQ+. One participant, who identifies as Black, shared: "I feel like I have to work twice as hard as everyone else in the profession". Another participant observed: "When working with Indigenous clients, there's a big disconnect for non-Indigenous lawyers where they're not able to understand the experience of being an Indigenous lawyer and working with mostly Indigenous clients..." An Indigenous lawyer shared her difficulties with obtaining employment as a Crown prosecutor, being required to disclose family members who had ties to the criminal justice system as part of the application process. An Indigenous woman said, "people make assumptions about me because I look white and they think they can say things." In conversations about professional attire or court robes, the experiences of transgender and non-binary people are often not considered. Participants recounted being misgendered or not addressed with their preferred pronouns.

Unconscious bias is difficult to tackle; it is easier to address conduct that is overt than when it is insidious. Women continue to struggle against the power imbalance in the legal profession.

## FACTORS THAT SUPPORT SUCCESS

After sharing the challenges that exist for women lawyers in the profession, participants were asked to identify factors that support a woman lawyer in being successful in her chosen field.

Many participants noted that setting boundaries in their work life set them up for success. For example, some women reported setting boundaries regarding responsiveness (expectation to answer emails, etc.) and have mentors and allies support and reinforce the boundaries they set. To increase the chances of success and retention, women need supportive colleagues who understand and care about the challenges they face. One participant shared that a women's group chat within her firm helped provide a mechanism for talking about the hard issues directly affecting women in the legal profession.

"The most effective way to deal with issues is having a senior mentor to help navigate the politics; if you have someone who can rally for you, it's a huge thing for dealing with issues that come up."

As noted elsewhere, mentorship was identified consistently as a factor that supported success. In addition to a mentor within a firm or an organization, participants noted that building relationships with other female lawyers in your area of practice (including through the Bar Association) can also support the retention and advancement of women in the profession. It also may be of value to talk to someone outside the practice of law to gain a clearer perspective.

Access to childcare and other effective supports for mothers such as flexible work arrangements are also key factors supporting success for mothers returning to the practice of law.

"Give yourself permission to try another firm or structure or have a different experience."

## NEXT STEPS

One practitioner with over 40 years of experience stated: "I don't believe we can make significant change without educating both men and women on how each perceives the other and the systemic issues that underlie these perceptions. ... For women to succeed at the highest levels, women and the men they work with need to have a better understanding of each other."

Roundtable participants were asked, "What changes need to occur in the profession in order for women to remain and succeed?" They proposed a number of next steps, including:

### Structure & Culture of the Profession

1. Change the definition of success, starting on the first day of law school
2. Educate managing partners on the issues surrounding the retention and advancement of women in the profession
3. Encourage firms to consider alternatives to equity partnership
4. Encourage firms to assess a lawyer's value to the firm beyond billed hours or billing targets. Encourage firms to consider a lawyer's non-monetary contributions in determining success and contribution, including the time female lawyers donate to the firm and to the profession as a whole.

5. Encourage firms to consider job-sharing and part-time opportunities, especially in private practice
6. Encourage systems to temporarily transfer files during leaves, akin to a ‘buddy’ system, to ensure that there will be a practice to which women can return
7. Consider part-time practicing fees for women who are taking on a primary care giving role such that their ability to earn a living is significantly impacted, building on the Law Society’s current pilot project
8. Encourage women to form their own firms or be leaders in existing firms to change firm culture; provide additional guidance and resources for women who decide to establish their own firms
9. Educate women on how to negotiate better, more realistic pay arrangements
10. Encourage the profession to consider group pension plan options to provide greater financial security

### Competing Work & Family Demands

11. Normalize remote work and other flexible working arrangements – educate firms to assist with abolishing any stigma
12. Create a resource that serves as a contact point for women attempting to re-enter the profession
13. Educate lawyers and firms on parental leave policies
14. Encourage firms to consider providing maternity leave top-up
15. Research ways of obtaining funding for daycare and before and after school childcare programs

### Mentorship

16. Designate a person within the organization to provide feedback and answer questions about advancement
17. Provide mentorship opportunities for women lawyers, especially those having children; encourage people in more senior roles to provide greater mentorship
18. Create office support groups and provide additional networking opportunities

### Sexism & Sexual Harassment

19. Educate lawyers about avenues available for complaints against members of the judiciary
20. Encourage women to be confident and self-promoting
21. Provide support to those women who feel they need to overcome insecurity or deferential behaviours
22. Encourage law schools to offer a course in the first year of law school (with a refresher in the PREP program), for all law students, specifically geared to explaining the differences between genders in terms of perceptions and the underlying systemic issues that cause people to behave the way they do in workplace settings<sup>2</sup>

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<sup>2</sup> Recommended resource: Joanne Lipman, *That’s What She Said – What Men Need to Know (and Women Need to Tell Them) About Working Together* (New York: HarperCollins, 2018).



## Closing Remarks

The legal profession is a demanding one. The climate for women in the profession has changed over the years and continues to evolve. Through the roundtable and report we hope to promote the retention and advancement of women in the profession, as well as contribute to a national committee of the CCIAWJ advancing this issue. We thank the amazing women who participated in this roundtable and made clear that we have a ways to go for greater success and opportunity for women lawyers in the profession. This report aims to be an impetus for change by starting an ongoing dialogue.

*The Organizing Committee*

## ORGANIZING COMMITTEE MEMBERS

### Organizing Committee

<b>Justice Diana Cameron</b>	Manitoba Court of Appeal
<b>Chief Judge Margaret Wiebe</b>	Provincial Court of Manitoba
<b>Justice Lori Spivak</b>	Manitoba Court of Appeal
<b>Justice L. Kim Antonio</b>	Manitoba Court of Queen's Bench
<b>Leah Kosokowsky</b>	Chief Executive Officer, Law Society of Manitoba
<b>Lynda Troup</b>	Past President, Law Society of Manitoba; Thompson Dorfman Sweatman LLP
<b>Tanya Keller</b>	Vice President, Manitoba Bar Association; Sternat Managire Law Corporation
<b>Sofia Mirza</b>	Past President, Manitoba Bar Association; Fillmore Riley LLP
<b>Jacqueline St. Hill, Q.C.</b>	Manitoba Public Prosecution Service
<b>Karine Pelletier</b>	Manitoba Labour Board
<b>Kelli Potter</b>	Patersons LLP
<b>Lisa LaBossiere</b>	Myers LLP
<b>Meira Gisser</b>	Professional Institute of the Public Service of Canada
<b>Stacey Soldier</b>	Cochrane Saxberg Johnston Johnson Scarcello LLP
<b>Victoria Truong</b>	Duboff Edwards Schacter Law Corporation

### Note Taker Participants

<b>Alexa Smith</b>	Articling Student, Fillmore Riley LLP
<b>Allison Kilgour</b>	Law Student, University of Manitoba
<b>Ashley Fouad</b>	Law Student, University of Manitoba
<b>Emily Rempel</b>	Articling Student, Fillmore Riley LLP
<b>Janelle Gobin</b>	Law Student, University of Manitoba
<b>Kaitlin Trager</b>	Law Student, University of Manitoba
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