

Gender and Generational Issues Across Borders

By Alana Bassin and Lisa Ridgedale



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Twelve years ago, the authors of this article graduated from the same law school and went their separate ways. One eventually moved to Canada, where she prosecutes breaches of the Securities Act for the British Columbia Securities Commission in Vancouver, and the other moved to Minneapolis, where she is a partner with the law firm of Bowman and Brooke LLP. Despite the authors' geographic and practice area differences, they have had remarkably similar observations of the rate at which women are leaving the practice of law.

In 2006, the National Association of Women Lawyers published data from a national survey on retention and promotion of women in law firms. In particular, it sought to investigate the 50/15/15 conundrum: 50 percent of the law graduates have been women over the past 15 years, and yet only 15 percent are equity partners. The survey questionnaire was sent to the 200 largest firms in the United States as defined by *American Lawyer* in 2005. The study showed that 45 percent of associates are women, 16 percent of equity partners are women, and women's role in gover-

nance was even less—only 5 percent of managing partners were women. Trying to determine whether age or seniority skewed the results, the study went even deeper by looking at the year of graduation. It showed, for example, that for people graduating between 1990 and 1995 (a time when approximately 50 percent of the graduates were women), only 21 percent of the equity partners were women. It further showed that the average compensation for nonequity partners who are men was \$239,000, whereas for women it was \$207,400; for male equity partners it was \$510,000, and for women it was \$429,000.

Comparatively, in Canada, 60 percent of law school graduates are women, yet only 26 percent of lawyers in private practice are women. The number of women who are partners in law firms or who hold management positions in government or in-house jobs is even smaller. The Longitudinal Study of Ontario Lawyers from 1990 to 2002 showed that women leave private practice at significantly higher rates than men do. It also showed that women leave the practice of law altogether at remarkably higher rates than their male counterparts do. Similar to the United States, it showed that, in many cases, women have not been rewarded with professional responsibilities similar to those of their male counterparts with the same experience and that there remains a gap between the earnings of male lawyers and female lawyers.

It is true that, not too long ago, women were a minority in law schools and in the profession, so the fact that women are now graduating from law schools in such high numbers is indeed something to celebrate. However, despite certain advances of women in the legal profession and despite the equal number of women graduates at the start of their careers, there is a troubling attrition of women from the practice of law as they progress through their careers.

An examination of these phenomena in both the United States and Canada makes it clear that the landscape is different in each country. In Canada, lawyers are

required to “article” for a year before being called to the bar. The year of articling consists of a two-month practical legal training course in which law school graduates learn practical skills such as law office management, oral advocacy, client interviewing, and how to complete real estate transactions. Following the course, the articling student must practice in a law firm under the guidance of a principal. It is expected that, during those 10 months, the student will be exposed to as many areas of the law as possible.

In addition, Canada's universal health care system creates a society in which individuals are much less tied to their jobs and more flexible to move. But perhaps the most significant issue is the difference in the maternity leave policies.

Women in both Canada and the United States face the so-called maternal wall. Modern professional women, including lawyers, are caught in a double social bind: They enter the workforce, which, even in modern times, continues to some extent to be based on a male-dominated Edwardian model according to which professionals are expected to work long hours and give 100 percent devotion to their careers. This was possible in years past, because the professional male had a spouse at home, giving 100 percent of her time to the family and the home. Despite many advances in policies and attitudes today, a major problem for women with professional careers continues to be that women still disproportionately bear the responsibility for child care and family, compared with men.

Canada has been more proactive in recognizing this issue by providing women with one year of maternity leave during which they receive a monthly payment from the federal government representing 65 percent of their annual salary (with a maximum payout of roughly \$1,400 per month, which, for the majority of lawyers, is nowhere near 65 percent of their annual salary). Some firms or organizations voluntarily supplement this monthly government payment, but many do not. Canada's parental leave policy also makes it manda-

tory for employers to hold the job for the year's duration (or make a similar position available after the one-year period) and allows for fathers to take a period of paid leave to care for a child.

By contrast, the United States has no formal federal maternity leave policy. The authors of this article found that, at best, the trend in private practice is up to 12 weeks of paid maternity leave (with many firms giving less and fewer firms giving more). There do not appear to be any formal studies on how the one-year maternity leave in Canada has affected the rate of attrition for women lawyers. Although one could argue it generally makes it easier for women to return to the workforce, anecdotally it appears that many of the women lawyers in Canada are not taking a full year off, and those who do face the reality that, when they return to work, they will be one more year behind their counterparts in pay, advancing to partnership, building their portfolio, and/or client relationships and marketing.

Notably, employers in the legal arena in both countries, regardless of gender, also face generational gaps between the baby boomer, Generation X, and Generation Y lawyers. Consequently, the legal profession as a whole is seeing a new generation of lawyers, not just women, who seem to be more open to lateral moves and more focused on quality-of-life issues.

In 2005, *Canadian Lawyer* magazine conducted a survey of associates working at mid- to large-sized firms. The survey showed that young lawyers are placing a higher value on their personal goals and commitments. They are seeking more flexibility in the way they work, and they are more comfortable expressing their needs and preferences. The tension around the issue of work-life balance exists because the profession is generally driven by client demands and the concept of the billable hour, one that many lawyers think warrants reconsideration.

Following this 2005 survey, 10 of the largest firms in Canada sponsored a survey conducted by Catalyst, a not-for-profit group in Canada and the United States that

works for the advancement of women in business. The results of the Catalyst survey were remarkable. They revealed that of the 850 associates polled from 100 firms, 84 percent of women and 66 percent of men said they would choose to switch firms if the new firm provided more opportunity for work-life balance. The survey also found that 62 percent of female associates and 42 percent of male associates expected to leave their current firms within the next five years. Firms that do not provide their lawyers flexibility not only risk losing talented lawyers, but they do so at a high cost. The Catalyst survey found that the estimated financial loss when an associate leaves a firm is \$315,000.

Similar studies conducted by Catalyst in the United States have shown that close to 50 percent of female law graduates cite work-life balance as the number-one reason for choosing their jobs. An even higher percentage of women working as in-house counsel cite work-life balance as a reason for choosing their current employers. And as in Canada, replacing a lawyer is estimated to cost about two times the average associate's salary (or \$300,000).

Although the generational gap is felt regardless of gender, the value that members of Generation Y place on life outside of work, compounded by the maternal wall factor, suggests that the uphill battle in retaining women attorneys will continue. Firms in both countries are employing "women's initiatives" to ensure that best practices are being used to retain and develop women lawyers. Such best practices consist of creating marketing opportunities, mentoring, business-development training, flexibility in work, and leadership opportunities, among others. However, these initiatives are found mostly in the large national firms and are not widespread in either country. Firms, especially in the United States, are also trying to combat attrition by offering benefits beyond traditional maternity leave, such as paid day care for infants or emergency day care. Again, however, these types of benefits are more common in the larger and national firms. Although such efforts

are commendable, they are not enough.

At the end of the day, despite the differences in both countries' social policies, the statistics regarding women in the legal profession appear to be remarkably similar. Women in both countries are not advancing at the same rate as men in areas of pay, partnership, management, and leadership.

Whether it is generational issues such as the members of Generation Y seeking a more balanced life, external factors such as family life, or internal factors such as lack of access to business-development opportunities or opportunities to work on interesting cases, women in Canada and the United States are not progressing as they should be in the private and public legal sphere. Although the problem is exceedingly complex and the possible remedies are legion, it is clear that the solution has to be multifaceted with a commitment from all interested parties. Employers need to continue to address the generational changes, maternal-wall issues, and other inherent barriers that may exist in developing and retaining their women lawyers. This may include being committed to trying to help women navigate their careers by following a less traditional model with flexible schedules or hours. Likewise, women lawyers need to realize that a fulfilling and meaningful career means they need to be equally committed to the cause and flexible with respect to their expectations. Although not always the case, opportunities for development are more likely to come to those who do good work and are willing to work hard. Unless all interested parties are committed, change is unlikely. ●

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