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May 7, 2008

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Dear Josée:

On behalf of the Ontario Bar Association (OBA) I am pleased to provide you with our submission on the Law Society's Retention of Women in Private Practice Working Group.

The submission was prepared by an OBA Working Group chaired by Maryellen Symons.

The OBA represents more than 17,000 lawyers from every region across Ontario making us well positioned to advise on this important issue.

I trust you will find the enclosed submission both informative and helpful.

Yours truly,

Greg Goulin
President
Ontario Bar Association



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**Submission of the
Ontario Bar Association
to the
Law Society of Upper Canada
on
The Retention of Women in Private
Practice**

Submitted on *May 7, 2008*

Submitted by:

Greg Goulin

President

Ontario Bar Association

Table of Contents

THE OBA WORKING GROUP	4
THE OBA WORKING GROUP'S PROCESS	4
GENERAL OBSERVATIONS.....	4
RESPONSES TO THE RECOMMENDATIONS.....	5
RECOMMENDATIONS FOR LARGE AND MEDIUM SIZE FIRMS	5
RECOMMENDATIONS FOR SMALL FIRMS AND SOLE PRACTITIONERS	6
OBA WORKING GROUP MEMBERS.....	12

The OBA Working Group

The OBA Working Group consists of 9 lawyers and one articling student, supported by one OBA staff member. The lawyers are of different ages, in different phases of their professional and personal lives, from large, medium and small firms and sole practice throughout the Province, francophone lawyers and members of racialized groups. It brings a wide range of perspectives to the consideration of the Law Society's questions and recommendations.

The OBA Working Group's Process

The Working Group held four meetings in person and by teleconference. In addition to live discussion, the members of the Working Group provided individual written responses to the Law Society's recommendations. These responses were collated and circulated for review and further comment. Responses obtained from lawyers who were not in the working Group were also incorporated.

General observations

Certain recurring themes deserve specific mention at the outset.

The Working Group noted that the retention of women in private practice, while it specifically involves and affects women, is not an issue for women only.

- Many younger lawyers, both women and men, find that the culture in law firms is not conducive to a balanced, humane life. Young lawyers want more balance in their lives. They are not willing to sacrifice all other aspects of life (family, volunteer activities, community involvement, physical and mental health) for their work.
- The retention of women in private practice is an access to justice issue. The disproportionate departure of women from private practice leaves a less diverse pool of lawyers to provide services to an increasingly diverse public.
- Law firm culture has to change and adapt to accept and promote the thinking that it is beneficial to take active steps to support and retain women.
- The OBA working Group endorses the approach, reflected in the Report, that flexible hours, a variety of partnership options, and other firm policies that allow for individualized work patterns are not accommodations purely for women or for parents of small children, but are a focussed effort by the firm to retain talent, both male and female, at various stages of life and career.

- The “business of law” aspects must be addressed. Firms need to be made aware of the true value of retaining individuals during leaves of absence and periods of less than full time employment. Once firms understand this, lawyers will be compensated fairly and remain on career track.

Responses to the Recommendations

Recommendations for large and medium size firms

1. That the Law Society implement a three-year pilot project (the “Justicia Pilot Project”) for firms of more than 25 lawyers and the two largest firms in each region, in which firms commit to adopting programs for the retention and advancement of women.

We support this recommendation.

The Working Group notes that, in some regions, the two largest firms may have far fewer than 25 lawyers. They may be near the low end of the “medium size” range. Some participants in the Working Group practice in such firms. The issues for a lawyer in a firm of 100 or more are likely to be different from the issues for a lawyer in a firm of 12 or 15 that is the largest in its region. The resources available will certainly be different. The “Justicia Pilot Project” will need to take account of these differences. What works for large firms in the largest urban centres and what works for the low-medium-size “largest” firm in a small centre may not be the same.

Collecting and maintaining demographic information

The exercise of collecting and maintaining demographic information is a good “consciousness-raising” tool for law firms and a necessary step in developing programs designed to retain women lawyers. If providing the information to the Law Society is voluntary, it may be difficult to know whether, or how effectively, the participating firms are carrying out this commitment. We recognize that the Law Society does not have the power to require participating firms to collect and maintain demographic information. We suggest that incentives might encourage firms to share their information with the Law Society and permit the Law Society to make the information available to the profession in aggregated, non-identifying form.

The experience of OBA Working Group members conforms to the finding of the Report that childbirth and parenting responsibilities have a significant impact on the career decisions women lawyers make. Some women leave private practice because they have difficulty combining an active practice (especially a litigation practice) with primary caregiver responsibilities. Others take different career paths from the outset, or choose the area of law in which they will practise, based on these realities.

It is important to gather and share models of lawyers who have remained on the partnership track, successfully, despite not fully participating at the traditionally expected level. Different levels of partnership, fluidity of practice during different stages of one's life and the transparency of paths to reach partnership need to be addressed.

2. That the Law Society, in collaboration with legal associations where appropriate, provide direct support to women in large and medium firms through programs such as a leadership and professional development institute and on-line resources.

Having more or different CLE-type programs will not be enough. Programs must be low-cost and practical, and led by persons who have experience with the various issues. Networking, practice development, maternity leaves differ depending on firm size and on practice area. There is no one-size-fits-all solution.

Mentoring and professional development programs directed to women, in particular, are crucial to allow the development of professional confidence in women. They should be available to women in sole and small-firm practice as well as to women in large and medium firms. While informal support networks may be in place in smaller centres, more formal support networks and associations that foster contact and learning would be of benefit to women practitioners. At the same time, it is important to facilitate women's access to "traditional" networking opportunities from which, at present, they are excluded.

The proposed Women Leadership and Professional Development Institute must have sufficient funding to make it accessible to women from all types of law firms, across the Province. Women practice disproportionately in smaller firms, in government and in legal aid — on both the certificate side and the clinic side — where there is not enough money for attending symposia and workshops. Best practices must be made "readily available to the profession" in a way that takes into account the financial and other resources of the wide diversity of lawyers and law firms.

A "blog" component to the on-line resource centre might be a cost- and time-effective way of linking women to discuss concerns and share ideas.

Recommendations for Small Firms and Sole Practitioners

3. That the Law Society develop a five-year pilot project to promote and support practice locums.

Practice locums could allow lawyers to make smooth transitions from work to leave of absence and back, allow firms to avoid disruptions in work flow, allow clients to be served while their usual lawyer is unavailable, and allow lawyers to take leaves for reasons other than new parenthood. Locums would also provide an alternative, flexible

form of practice for women (or men) raising children and for experienced lawyers who are not ready for full retirement.

There are challenges to implementing practice locums:

- It may be difficult to find experienced locum lawyers who are willing to go to distant places because of the locum's own circumstances.
- There would need to be a sufficient number of bilingual locums. Bilingual lawyers are in short supply in some regions and often feel pressured or obliged to remain on files during a leave so that the clients can be served.
- In smaller cities there would not be enough work to employ a locum full time. If a lawyer came in from another city, housing and travel costs would need to be addressed.
- The lawyer going on leave might not be willing to turn files and clients over to a lawyer she does not know and trust. She would not have quality control. There would be no guarantee that the locum lawyer would generate enough income to cover his or her costs.
- The lawyer on leave needs to review the work of the locum lawyer to know what is happening, or has happened, during her absence. Issues of efficiency, responsibility and liability arise when a file is shared or transferred back and forth.
- In many cases locum lawyers might be working part time, either by choice or because of the nature of locum practice. Should the Law Society consider a reduced fee for part-time practitioners? Can LawPro offer reduced insurance premiums for lawyers who practice part time? What level of practice activity is necessary for a lawyer to maintain competence?
- A project to support and promote practice locums must be carefully thought out and implemented so that these concerns are adequately addressed.

4. That the Law Society implement a three-year Parental Leave Benefit Pilot Program (providing \$3,000 a month for three months to lawyers in firms of five lawyers or fewer who have no access to other parental benefit plans).

This recommendation met with very mixed reactions from the Working Group members and others who provided comments. The responses fall into four categories:

(i) *The proposal is useful and should be carried out*

- The Law Society has identified a genuine problem, provided a thoughtful analysis, and given a workable initial approach. The fee increase to fund the parental leave pilot program is minimal. The proposal is a start, at least, toward easing the financial stress of taking time off for the birth or adoption of a child.

- The funds are not intended to replace income, but to defray overhead expenses for a short period.
- A short-term pilot project to test the feasibility and results of maternity/parental leave funding, before deciding whether to institute a permanent program, is reasonable and fair.
- Sadly, the legal profession is behind most other professions with respect to these issues. They are societal issues, affecting both women and men, not solely women's issues.

(ii) *The proposal is good, but does not go far enough.*

- Three months is a very short time and \$3,000 a month is not enough to cover overheads or pay a replacement lawyer.
- The proposal does not do anything to help employees of small firms. Employment Insurance provides significantly less than \$3,000 a month (the maximum benefit is about \$1,250 a month). Smaller firms and organizations cannot afford to top up the benefits or offer extended leaves.
- The real challenge for women lawyers who bear or adopt children and are their primary caregivers is not the time around the birth or adoption; it is all the years of childhood that follow.
- The fundamental problem for sole-practice and small-firm lawyers without access to other benefits is that self-employed individuals are not included in the Employment Insurance regime and do not have access to its benefits, limited though they are.

(iii) *There are serious equity issues and jurisdictional issues in the funding proposal*

- If the Law Society of Upper Canada, as a condition of licensed practice, requires that we pay increased fees to supplement leaves for those who choose to have children during their career, it may be discriminatory towards those who do not have children, have already had them, or need to take a leave because of bereavement, separation or recovery from addictions, or to care for older family members.
- It is not the role of the regulator to provide parental leave benefits, or other individual benefits, out of Members' fees.

(iv) *The OBA should put forward an alternative proposal*

The OBA should commend the Law Society for bringing this issue to the fore and providing a nuanced and sophisticated analysis. At the same time, while it is (at this stage) only a proposal for a limited pilot project, the funding of parental leaves has the

potential to be a divisive issue within the profession in Ontario. It is likely that some of the support for such a plan will come from lawyers who would not themselves benefit from it, while some of the opposition may come from lawyers who would benefit.

As an alternative, it has been suggested that the OBA vigorously lobby the provincial government to provide parental leave benefits to self-employed workers, as the government has done in Quebec.

This would be a major lobbying project. In Quebec, the government (with the support of employers, labour unions, employees and self-employed workers) engaged in nine years of negotiations with the federal government to bring in a provincial plan that extends maternity and parental benefits to both employed and self-employed workers.¹ During that time Quebec also litigated the constitutional validity of the maternity and parental benefits granted under the *Employment Insurance Act*.² Finally, in 2005, Ottawa and Québec entered into an agreement under which the provincial government's program replaces the maternity, paternity and adoption benefits provided under federal Employment Insurance. The Quebec Parental Insurance Plan came into effect on January 1, 2006. The maternity and parental benefits program of the Barreau du Québec had been introduced in 2003, near the end of the provincial-federal negotiation process. As the Report of the LSUC Working Group notes, at paragraph 166 on page 50, the Barreau plan is now almost obsolete.

The OBA Working Group recommends that the OBA commit itself to lobbying the Ontario government to enter into an agreement with the federal government similar to the agreement between Ottawa and Quebec. The OBA would seek support for its efforts from the Law Society and from other stakeholders.

5. That the Law Society provide access, in collaboration with legal associations where appropriate, to resources for women in sole practices and small firms through programs such as on-line resources and practice management and career development advice, as described in this report.

Programs to support women are crucial and should be equally available to women in sole practice, small, medium and large firm settings.

We support the development and proper funding of an Online Women's Resource Centre, a practice management advice module and other direct supports for sole and small-firm practitioners. The recommendation is that the Law Society provide access to resources "in collaboration with legal associations where appropriate". Smaller associations and less populated areas have a greater need for these resources and less capacity to put their own resources behind a shared project. These concerns need to be addressed.

¹ See http://www.rqap.gouv.qc.ca/index_en.asp for information on the Quebec Parental Insurance Plan, including a summary of the background and history of the Plan.

² The Supreme Court of Canada eventually held that the federal benefits do not exceed the legislative competence of the federal Parliament nor encroach on the legislative jurisdiction of Quebec.

Some lawyers have reported that the Law Society's current Practice Management Helpline is of limited use. They report that responses to calls for assistance tend to be limited to identifying the applicable section of the Rules of Professional Conduct, without providing any deeper insight. An Online Women's Resource Centre will not be helpful unless it provides a deeper level of service and insight. It needs to be well thought out and creatively implemented; it should not duplicate what is already available to women.

There is a perception that the current mentoring program does not allow a mentor to assist a mentee with substantive legal questions. A Member should be able to obtain assistance with practice management, career development and substantive legal questions from a program of direct resources. Collaboration between the Law Society and legal organizations, with due regard to the capacity of smaller organizations, is important.

6. That the Law Society work with law schools to provide access to information and education opportunities about the practice of law, the business of law, types of practices, practising in diverse work settings and available resources.

Curriculum is more than just the subject matter taught in formal courses. Every educational institution has assumptions, beliefs and values, conveyed in numerous ways, which it does not always state and challenge. The implicit curriculum of law school — which probably varies from school to school, while retaining some common elements — teaches students about their place in society as lawyers, about how different kinds of practice are ranked and valued, about what the students should strive for and what aspects of their former life they must leave behind. Each law school needs to examine its implicit curriculum from the perspective of students from all equality-seeking groups and from the perspective of the society in which its graduates will practice.

Young women and men attending law school need to be made aware of the challenges involved in having a successful law practice and a healthy personal and family life. They need to know what resources are available to help them meet the challenges well.

Law students need to be aware of the full range of practice possibilities. In keeping with the recommendation for a locum practice pilot project, locum practice should be presented as one of the possible careers in law.

The law school curriculum should be developed in a way that encourages policies that favour the retention of women in private practice. Young men and women are striving to live balanced lives. The law school curriculum should address this.

7. That the Law Society create an advisory group of women lawyers from Aboriginal, Francophone and/or equality-seeking communities to assist with the implementation of the recommendations outlined in this report.

The OBA recognizes that women from Aboriginal, Francophone and/or equality-seeking groups face additional barriers in private practice. The OBA supports this recommendation and offers its experience and expertise to assist in creating the advisory group.

It has been suggested that older women entering the legal profession for the first time (after a career change, for example, or after raising a family), and women re-entering the profession after an absence, also face barriers and should be included in such an advisory group.

8. That the Equity and Aboriginal Issues Committee facilitate the development of networking strategies focused on the needs of women from Aboriginal, Francophone and/or equality-seeking communities in firms of all sizes.

This recommendation is very important. More and more women from diverse backgrounds are becoming lawyers. Although many of the challenges faced by women in these groups are similar to those faced by women in “mainstream” communities, some challenges are unique and must be addressed. Retaining women from diverse communities in private practice is essential to ensuring access to justice for all.

At the same time that it is important to link women from Aboriginal, Francophone and/or equality seeking communities, it is perhaps equally important to facilitate their access to and involvement in traditional networking opportunities from which they are excluded at present.

9. That, after a period of three years of implementation of programs developed under recommendations 2 and 6 to 8, or at the end of each pilot project developed under recommendations 1, 3, 4 and 5, the Law Society assess their effectiveness and identify further strategies, if appropriate, for the retention and advancement of women in private practice.

Assessment at the end of a pilot project, or at a specified time for ongoing projects, is essential. Ideally, there would also be some ongoing assessment in order to monitor the direction the recommendations are taking and steer them or adjust course as necessary.

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