

Final Report -
Retention of Women in
Private Practice Working Group

The Law Society of Upper Canada



May 22, 2008



The Law Society of Upper Canada | Barreau du Haut-Canada

*Photograph by Julia McArthur of the sculpture of "Themis" by Jack Harmon at
The Law Courts, Vancouver. Website: www.julia.mcarthur.name.*

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EXECUTIVE SUMMARY

I - OVERVIEW

1. Women have been entering the legal profession and private practice in record numbers for at least two decades. However, they have been leaving private practice in droves largely because the legal profession has not effectively adapted to this reality. This report discusses the differences between the legal careers of women and men and outlines business and social reasons for developing strategies to retain women in private practice. It also makes a series of recommendations to promote the advancement of women in the private practice of law.
2. Women's realities, which often include childbirth and taking on a significant share of the family responsibilities, impact on the choices they make in their professional lives. While neither the Law Society nor the profession generally should, nor can, determine the roles women play in their own family relationships, the failure of the profession to adapt to what is not a neutral reality will inevitably affect the quality and competence of the legal services available to the public.
3. The departure of women from private practice means that the legal profession is losing a large component of its best and brightest in core areas of practice. Studies have shown the staggering cost of associate turnover, which is estimated at \$315,000 for a four year associate. This cost is equally applicable to associate turnover of men and women, but women are more likely than men to leave their firms before joining the partnership. A shift in thinking is required both on the part of associates and on the part of the employers/firms. This shift would recognize the biological reality of an associate's child bearing years, for which some accommodation is required, the long term nature of a career in private practice and the economic realities of operating a law firm.
4. The legal profession should not assume that change will occur without conscious efforts to create a shift in the legal culture. Law firms have a legal responsibility to provide environments that allow women to advance without barriers based on gender. It is in the public interest for the providers of private legal services to reflect the make up of the society in which we live.
5. We also note that the responsibility to provide leadership in the retention and advancement of women in private practice does not only lie with law firms. Law societies and legal associations have a responsibility to the legal profession and to the public to act as catalysts to influence change and to empower women to take responsibility for their careers and progress.
6. Self-regulation of the legal profession is a privilege and relies on the assumption that the profession is in the best position to set standards and establish ethical rules of conduct for the bar and to regulate lawyers in the best interest of the public. Meeting the public interest requires lawyers to have a sense of professionalism, which includes a sense of

integrity, honour, leadership, independence, pride, civility and collegiality.¹ A profession that is representative of the public, and one that provides equal opportunities to men and women serves to enhance the sense of professionalism of our legal profession.

7. In response to the realities outlined above, the Law Society created in 2005 the Retention of Women in Private Practice Working Group (the “Working Group”) with a mandate to,
 - a. identify best practices in law firms and in sole practice to enhance the retention of women;
 - b. determine the role of the Law Society in addressing the issue of retention of women in private practice;
 - c. design and implement strategies for medium and large law firms to retain women;
 - d. develop strategies to respond to the socio-economic needs of women in small firms and sole practices including the viability of their practices as well as their unique child-care challenges; and
 - e. take into account the needs of women from diverse communities.
8. In developing its recommendations, the Working Group considered findings of focus groups conducted with women and interviews conducted with Managing Partners. It also reviewed literature about challenges faced by women in the legal profession, more particularly private practice, and best practices in the legal profession in Ontario, in Canada and in foreign jurisdictions. The Working Group’s recommendations aim at allowing women lawyers to make career choices related to their aspirations, may they decide to work as in-house counsel, as government lawyers, in private practice or to stay at home, without being hindered by barriers based on gender.
9. From March to May, 2008, the law Society embarked on a province-wide consultation to seek the profession's comments on the report and proposed recommendations. The Law Society held meetings in Toronto, Ottawa, Sudbury, Oakville, Kingston, Windsor, Thunder Bay, Orillia, Ajax and London with lawyers, including law firm managing partners and presidents of legal associations. Approximately 900 lawyers and students attended the meetings and the Law Society received more than 55 written submissions.
10. The final consultation attracted a broad spectrum of lawyers, men and women, from all types of practice settings and firm sizes, the government, in-house counsel, articling and law students. Participants included associates, partners and managing partners of all levels of experience and practising in a wide range of areas.
11. Responses to the final consultation were overwhelmingly positive, with some lawyers indicating that they hope this is a first step toward further initiatives. an overview of the final consultation findings is presented in sections VII and VIII of this report. A Final Consultation Report is also available on-line at www.lsuc.on.ca.

¹ Chief Justice of Ontario Advisory Committee on Professionalism, Working Group on the Definition of Professionalism, December 2001, *The Gazette, Professionalism: A Century of Perspectives*, 2002, at 28-38.

II - RESEARCH FINDINGS

12. Studies have identified the following challenges in private practice:
 - a. although men and women identify time spent with their family as the aspect of their lives that gives them the most satisfaction, maintaining demanding law careers often conflict with family life and is the most common reason for leaving law practice;
 - b. the most immediate issues for women in private practice appear to result from childbirth and parenting responsibilities;
 - c. women are particularly affected by the unavailability of support and benefits such as part-time partnerships, part-time employment, predictable hours, job sharing and flexibility in hours;
 - d. women in small firms or in sole practices face unique challenges in part because of the lack of income or benefits during leaves and lack of assistance to maintain the practice during absences;
 - e. women from Aboriginal, Francophone and/or equality-seeking communities are often more vulnerable and their experiences and perspectives should be taken into account when developing strategies to retain and advance women in private practice.

13. The Working Group reviewed best practices in Ontario and in other jurisdictions to develop its recommendations. The following conclusions can be drawn from this review:
 - a. Similar findings are noted in other jurisdictions in Canada and in foreign jurisdictions.
 - b. Barriers faced by women are systemic and will require organizational and cultural change, along with a focus on the issue if meaningful change is to occur.
 - c. A number of initiatives designed to assist women would also benefit male lawyers.
 - d. The experiences and realities of women in larger firms are significantly different than those of women in smaller environments, and therefore recommendations to address challenges faced by women in large and medium firms should be different than those designed to address the needs of women in small firms and sole practices.
 - e. The recommendations and implementation should take into account the unique challenges faced by women lawyers who are members of Aboriginal, Francophone and/or equality-seeking communities and their historic under-representation in the legal profession.
 - f. In the context of large and medium firms, systemic cultural change is necessary and firms will require leadership and commitment from managing partners to implement practices such as the following:
 - i. the collection and analysis of law firms' demographic data to assist in the development of strategies based on the firm's needs;
 - ii. the adoption, acceptance and effective implementation of maternity/parental leaves and flexible work arrangements;
 - iii. programs to assist women to become leaders, both inside and outside their firms, such as effective mentoring programs, gender-based networking opportunities and leadership skills development opportunities.

- g. Women in small firms and sole practices are particularly vulnerable because they do not have the financial or human resources to take leaves. The following initiatives would be beneficial:
 - i. access to funding to cover some of the expenses of leaves of absences;
 - ii. access to practice locums and guidelines to assist in retaining locum lawyers to maintain the practice while on leave;
 - iii. access to networking opportunities.

III - THE RECOMMENDATIONS

- 14. The recommendations are divided into the following five categories:
 - a. recommendation for large (100 lawyers or more) and medium (between 5 and 100 lawyers) firms;
 - b. direct support and resources;
 - c. recommendations for small firms (5 lawyers or fewer) and sole practices;
 - d. recommendations to work with law schools;
 - e. recommendations to create opportunities for women from Aboriginal, Francophone and/or equality-seeking communities;
 - f. assessment of effectiveness of programs and identification of further strategies.

A - Recommendation for Large and Medium Size Firms

RECOMMENDATION 1 – JUSTICIA THINK TANK - LAW FIRM COMMITMENT TO WOMEN’S ADVANCEMENT

- 15. **That the Law Society implement a three-year pilot project (the “Justicia Think Tank”) 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, as described in this report and in the Law Firm Commitment at TAB 2.**
- 16. Through the Justicia Think Tank, the Law Society together with the participating law firms will commit to adopting programs for the advancement and retention of women, including the collection by law firms of demographic information about their lawyers, providing effective parental leaves and flexible work arrangements, developing networking, mentoring and business development opportunities, and placing women in leadership positions.
- 17. As a first step, participating law firms will collect and maintain demographic information about their lawyers. Although the information will not be provided to the Law Society or be made public without the consent of the firm, participating law firms will collect and maintain demographic information as benchmarks for the development of programs for the advancement of women lawyers. Initiatives developed in other jurisdictions have shown that tracking demographic information about women within firms is key to developing initiatives tailored to the firm environment and to fully understanding gaps and needs. Participating law firms will commit to maintaining demographic information, including differences among practice groups, to identify areas where they have more or

less been successful in retaining and advancing women and to develop strategies for improvement.

18. Participating law firms will also commit to developing and/or maintaining programs, based on the needs of their lawyers and the expectations of the firm, in the following main areas:
 - a. maternity/parental leaves and flexible work arrangements;
 - b. networking and business development; and
 - c. mentoring and women in leadership roles.
19. It is anticipated that the Justicia Think Tank will also lead to the development of best practices, model policies and precedents that will be made readily available to the profession. Non-participating law firms will be encouraged to use the available resources and adopt best practices for their own firms. The Working Group is of the view that the Justicia Think Tank, a first of its kind in Canada, will lead the way for innovative systemic change in the legal profession.
20. For the full considerations underlying the Working Group's recommendation, please consult the full report .

B - Direct Support and Resources

RECOMMENDATION 2 - DIRECT SUPPORT FOR WOMEN

21. **That the Law Society, in collaboration with legal associations where appropriate, provide direct support to women through programs such as a leadership and professional development institute and on-line resources, as described in this report.**
22. Studies have identified a number of direct support programs that would be of great value to women. Those programs are designed to provide networking opportunities and on-line resources to women and to gather information about why women and men move from their work environments. As a first step in the implementation of recommendation 2, the Working Group proposes the following initiatives:
 - a. Women's Leadership and Professional Development Institute;
 - b. On-line Women's Resource Centre;
 - c. Gathering information about changes of status.

Women's Leadership and Professional Development Institute

23. Professional development programs focused on the business of law and the availability of networking opportunities designed for women have been identified as valuable initiatives for women in the profession. Such programs are also important to the career advancement of women from Aboriginal, Francophone and/or equality-seeking communities.
24. Therefore, the Working Group proposes that the Law Society create a Women's Leadership and Professional Development Institute to provide professional development opportunities specifically designed to develop women as leaders and rainmakers. The Working Group is of the view that the Law Society should partner in this endeavour with

legal associations that also have expertise and experience in this area. Activities of the Institute could include an annual symposium at which professional development opportunities are designed for women, such as workshops and seminars on networking, the business of law, becoming a rainmaker, remaining on the partnership track and ramping down and ramping up a practice before and after leaves. The Institute could also provide an opportunity to recognize the contributions of women lawyers and law firms.

25. It is anticipated that the Law Society would also work with regional law associations to develop programs that meet the needs of women in regions.

On-line Women's Resource Centre

26. The Working Group proposes that the Law Society develop an on-line Women's Resource Centre. The Law Society already has an extensive website, which includes professional development resources and resources in the area of equity and diversity. The Women's Resource Centre would build on existing on-line resources by offering tools and information focused on issues related to women's advancement, which could include,
 - a. practice management tips for women and building their professional profile;
 - b. maintaining profitability while having a family life;
 - c. model maternity and flexible arrangement policies and guidelines;
 - d. information about networking opportunities for women;
 - e. information about individual coaching opportunities for women;
 - f. information about effective mentoring for women, including how to seek out mentors.
27. Through the consultation process, women lawyers indicate that they would benefit from coaching services on career development, including effective client management, ramping down and ramping up a practice for a maternity leave and remaining on the partnership track while assuming parenting responsibilities. Some firms have begun offering such programs, while others have not identified this as a key initiative or have indicated that they do not have the resources to implement such services. The Working Group proposes that the Law Society promote access to coaching services by working with legal associations and law firms to identify such services. It is not anticipated that the Law Society would provide coaching services directly to women.
28. The best practices developed in the Justicia Think Tank would also be included in the Women's Resource Centre and made readily available to the profession.

Gathering information about changes of status.

29. The Law Society proposes to survey lawyers, when they change their status with the Law Society. The change of status survey would provide up-to-date information about factors that lead to changes in career paths. The initiative would allow the Society to maintain ongoing information about the movement of its lawyers. The voluntary survey would keep track of reasons behind a status move and include questions about gender, age, disability, sexual orientation, membership in a racialized community, year of call, type of work environment and area of law, factors that influence the decision to change work environment or to leave the practice of law, level of satisfaction and questions about how to keep lawyers in the legal profession. The survey would allow the Law Society to identify trends about the demographic of the profession, former and current employment,

satisfaction with aspects of practising law, reasons for leaving private practice and returning to practice and desired changes to the profession. With approximately 7000 status changes per year, it is anticipated that the survey findings will allow the Law Society to develop targeted programs to promote equality within the profession.

30. For the full considerations underlying the Working Group's recommendation, please consult the full report.

C – Recommendations for Small Firms and Sole Practitioners

RECOMMENDATION 3 - PRACTICE LOCUMS

31. **That the Law Society develop a five-year pilot project to promote and support practice locums, as described in this report.**
32. In addition to the financial challenges faced by women in small firms and sole practices, particularly when they have family responsibilities, women face challenges in finding available and competent lawyers to maintain their practice during leaves of absence, or to assist them with some of the work on a temporary basis. Such concerns have also been raised in the report of the Law Society of Upper Canada's Sole Practitioner and Small Firm Task Force. As a result, the Working Group proposes the creation of a practice locum program.
33. The practice locum project would include the following features:
 - a. an on-line registry, developed in collaboration with legal associations where appropriate, of locum lawyers, specifying information such as the lawyer's qualifications, system for remuneration and expenses, location, availability, timing and practice area and references/discipline history;
 - b. guides and checklists on how to make a locum arrangement operate effectively, including how to deal with client conflicts;
 - c. sample locum agreements including non-compete clauses;
 - d. other resources as required.
34. The Working Group is of the view that the development and support of a practice locum project would benefit women, and men, in at least two ways:
 - a. it would allow women and men to take leaves of absence or to have flexible work schedules while having the opportunity to rely on competent lawyers to maintain their practice on a temporary basis;
 - b. it would also allow women and men to undertake practice locum work when they wish to have flexible careers.
35. For the full considerations underlying the Working Group's recommendation, please consult the full report.

RECOMMENDATION 4 - FUNDING FOR LEAVES

36. **That the Law Society implement a three-year Parental Leave Benefit Pilot Program, effective in 2009, as follows:**
- a. **benefits are available to lawyers in firms of five lawyers or less, including sole practitioners, who have no access to other maternity/parental/adoption financial benefit programs under public or private plans;**
 - b. **provide a fixed sum of \$3,000 a month for three months (maximum \$9,000 per leave per family unit) to cover among other things expenses associated with maintaining their practice during a maternity, parental or adoption leave.**
37. The purpose of a parental leave benefits program is to reduce the financial hardship when a lawyer, woman or man, in a small firm or sole practice takes a parental leave. It is not intended as income replacement, but rather to help defray some of the cost of maintaining a practice during the leave. The program would be implemented in combination with the practice locum pilot project and would therefore also assist lawyers on parental leave defray the costs associated with retaining a practice locum. The program would be available to men and women who wish to take a leave related to the birth or the adoption of a child.
38. The mandate of the Law Society of Upper Canada is to regulate the legal profession in the interest of the public. In adopting this recommendation, the Law Society would be assisting lawyers to remain in small firms and sole practices, including practices in non-urban areas, hence alleviating the shortage of legal services in some geographical areas. This program may also encourage practitioners, and perhaps a more diverse pool of lawyers, to join small firms or to set up sole practices, where they might otherwise be discouraged from doing so because of financial considerations related to taking parental leaves.
39. These types of funding programs originated in Québec in 2003 when the Barreau approved a parental assistance program for self-employed lawyers. The parental assistance program for self-employed lawyers was made available to members not covered by any other public or private parental plan, such as Employment Insurance plans or parental benefits offered by an employer through formal policy or individual agreements. The program provided that, upon the birth or adoption of a child, the Barreau would give to the member an amount equivalent to the operating expenses incurred while his or her professional activities were temporarily suspended, to a maximum of \$1,500 per month. The Barreau adopted the following three types of benefits:
- a. up to three months benefits for maternity leave;
 - b. up to 1 month benefit for parental leave;
 - c. up to 1 month benefit for adoption leave.
40. The program came into effect on January 1, 2005 and remained in place for one year until January 1, 2006 when the Québec provincial government adopted the Québec Parental

Insurance plan, which provided benefits to self-employed workers in Québec. During the period of one year, the Barreau received 53 requests for funding.

Estimated Costs

41. The Law Society retained the services of Eckler Ltd.² to estimate the number of recipients of the benefits and the costs of the program. The Eckler Report, presented at **TAB 4**, estimates that approximately 60 lawyers per year would benefit from the program. The estimated costs are as follows:

	2009	2010	2011
Scenario 1 ³	\$506,700	\$523,800	\$540,000
Scenario 2 ⁴	\$243,000	\$261,000	\$303,300

42. The estimated costs per member are as follow:

	2009	2010	2011
Scenario 1	\$15	\$15	\$15
Scenario 2	\$5	\$6	\$8

43. The Working Group considered the costs for the Law Society or for LawPRO to administer the program. It is estimated that one staff member either at the Law Society or at LawPRO would be required to administer the fund. This is consistent with the experience of the Barreau du Québec, which also assigned one staff member to administer its parental leave benefit program.
44. For the full considerations underlying the Working Group's recommendation, please consult the full report.

RECOMMENDATION 5 - DIRECT RESOURCES

45. **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.**
46. Studies have indicated that the Law Society and legal associations have a role to play in providing direct resources to women in sole practices and in small firms. As a first step in the implementation of this recommendation, the Working Group proposes that the following resources be developed:
- a. on-line resources for women in sole practices and small firms;

² Eckler Ltd. is a Canadian-based firm offering actuarial and consulting services. It is Canada's largest independently owned actuarial consultancy, with offices across Canada and throughout the Caribbean.

³ The assumption is at 100% of Ontario fertility rate, 5% per year increase in number of females, 0.8% per year increase in number of males, 100% take up of benefits for females and 20% take up for males.

⁴ The assumption is at 80% of Ontario fertility rates as the base for females and 100% for spouses of males, 3% per year increase in number of females and 0.8% per year in number of males, a take up rate for females of 50% for 2009, 60% for 2010 and 80% for 2011 and a take up rate of 15% for males.

- b. practice management advice;
- c. direct supports.

On-line Women's Resource Centre

47. Women in sole practices and small firms have indicated that they would benefit from having access to on-line resources. The Working Group proposes that the Women's Resource Centre include not only resources for women in large and medium firms, but also resources to address the needs of women in small firms and sole practices. The resources could include regional lists of available childcare service providers, lists of regional networks and CLE events for women and resources to assist in setting up a business and providing legal services. The Law Society would also work with regional legal associations, women's organizations and organizations that promote equality and diversity in the legal profession to determine how to develop effective on-line resources for women in sole practices and small firms.

Access to Practice Management and Career Development Advice

48. Women noted that they faced challenges because of difficulties in finding lawyers that can advise them on how to develop and manage their career effectively. This type of advice is particularly critical for women who wish to have, or have, children. This initiative could be developed in collaboration with legal associations.
49. The Law Society provides, through its Practice Management Helpline, assistance in interpreting the *Rules of Professional Conduct*. Experienced counsel is available to provide insight on the Rules, Law Society legislation and by-laws as well as ethical and practice management issues that lawyers may be facing. The Practice Management Helpline could expand its services to provide resources or refer women to resources designed for women in sole practices and small firms. The current Practice Mentorship Initiative is also available to connect lawyers with experienced practitioners in relevant areas of law to help deal with complex substantive legal issues or specific procedural issues outside of the Law Society's advisory mandate. This program could be expanded to cater to the needs of women in sole practices and small firms.
50. In order to draw on external resources, the Law Society could also work with regional legal associations to enhance the way it provides career and practice management assistance to women in sole practices and small firms.

Direct Support

51. In addition to the recommendations mentioned above, the Working Group proposes that the Law Society continue to provide direct resources to women in small firms and in sole practice, such as career, client and business development workshops and guidelines on effective marketing tips, career development options, and business development skills for women.
52. For the full considerations underlying the Working Group's recommendation, please consult the full report.

D -Working with Law Schools

RECOMMENDATION 6 – BEGINNING AT LAW SCHOOL

53. **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.**
54. Law schools have begun offering programs to inform law students, in some cases gender specific programs for women law students, about the realities of the practice of law. The Working Group proposes that the Law Society work with law schools throughout Ontario to organize programs that will prepare women law students for the practice of law. More particularly, information and education opportunities about the practice of law, the business of law, types of practices, practising in diverse work settings and available resources could be provided.
55. For the full considerations underlying the Working Group's recommendation, please consult the full report.

E - Women from Aboriginal, Francophone and/or Equality-Seeking Communities

RECOMMENDATION 7 – CREATION OF ADVISORY GROUP

56. **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.**
57. In 2005, the Equity and Aboriginal Issues Committee adopted an Equality Template to be applied by the Law Society, including benchers and staff, to the development of policies and programs to ensure that activities of the Law Society are guided by equality, diversity and access to justice principles. The template defines the terms “equality” and “diversity” and recognizes the uniqueness of Aboriginal and Francophone communities. It also assists benchers and staff in integrating principles of equality within its work. The Working Group proposes that the template be applied to the implementation of the recommendations in this report.
58. To ensure that the template is consistently applied and that the perspectives of women lawyers who are members of historically under-represented groups in the profession are included throughout the implementation of the project, the Working Group recommends that an advisory group of women lawyers from Aboriginal, Francophone and/or equality-seeking communities be created. The Advisory Group would provide advice and expertise to the Law Society in the implementation of the recommendations.
59. For the full considerations underlying the Working Group's recommendation, please consult the full report.

RECOMMENDATION 8 – NETWORKING

60. **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.**
61. Research findings emphasize the importance of networking opportunities when entering and advancing in the legal profession and in private practice. Activities and programs offered by legal associations such as the Canadian Association of Black Lawyers, the Association des juristes d'expression française de l'Ontario ("AJEFO"), the South Asian Bar Association, the Sexual Orientation and Gender Identity Committee ("SOGIC") of the Ontario Bar Association ("OBA"), ARCH Disability Law Centre and the Indigenous Bar Association, to name a few, have been critical to assist students and lawyers in the profession. The Working Group recommends that the Equity and Aboriginal Issues Committee facilitate, in collaboration with legal associations and the Equity Advisory Group/Groupe consultatif en matière d'équité, the development of networks and strategies focused on the needs of women from Aboriginal, Francophone and/or equality-seeking communities.
62. For the full considerations underlying the Working Group's recommendation, please consult the full report.

F - Assessment

RECOMMENDATION 9 – REVIEW PROGRAMS AND NEXT STEPS

63. **That, after a period of three years of implementation of programs, and after a period of five years of implementation of the Practice Locum program, the Law Society assess the effectiveness of each program and identify further strategies for the retention and advancement of women in private practice.**
64. It is recommended that the effectiveness of programs implemented in the context of this project should be assessed after a period of implementation as specified in recommendation 9 to identify gaps and develop further strategies that may assist women in private practice. The Working Group recognizes that cultural and systemic change takes time. However, it believes that regular reviews of its programs will allow the Law Society to monitor their effectiveness and adapt the programs based on needs.
65. For the full considerations underlying the Working Group's recommendation, please consult the full report.

IV – RESOURCE IMPLICATIONS

66. Approximately \$70,000 in funding is available for the implementation of the Retention of Women Working Group recommendations in 2008.
67. A significant portion of the existing Law Society staff member's time will be reoriented from the development of other model policies and the Equity Initiatives Department's professional development programs to this initiative. In 2008, any additional staffing requirements will be covered under the funding already approved by Convocation for the implementation of the initiative. It is anticipated that in subsequent years, 1.0 of a full-time equivalent position will be required to continue to effectively implement the initiative.

RECOMMENDATION	STAFFING	PROGRAM EXPENSE	OTHER
1 Justicia project	0.3 of a full-time staff equivalent (beginning in 2009)	<p>\$15,000 for 2008 expenses to coordinate meetings will be covered by funds already approved by Convocation (Convocation already approved \$70,000 for implementation of project)</p> <p>\$15,000 per annum in 2009 and 2010 to coordinate meetings.</p> <p>\$20,000 in 2011 to assess effectiveness of project.</p>	
2 Direct support	0.3 of a full-time equivalent position (beginning in 2009)	<p>\$30,000 per annum to implement the Institute. It is anticipated that this would be offset by course revenues.</p> <p>Design of change of status survey estimated at up to \$25,000 per annum, funded from existing budget in Equity Initiatives Department.</p>	Incremental resource requirements may accumulate
3 Practice locums	0.3 of a full-time equivalent position (beginning in 2009)	Not expected to be material	
4 Parental leave	One additional staff member included in funding (see next column).	\$600,000 per annum in 2009, 2010, and 2011. Thereafter to be determined.	

RECOMMENDATION	STAFFING	PROGRAM EXPENSE	OTHER
5 Direct resources	0.1 of full- time equivalent position (beginning in 2009)	Not expected to be material.	Incremental resource requirements may accumulate
6 Law school initiative	Not expected to be material.	Not expected to be material	Incremental resource requirements may accumulate
7 Advisory group	Nominal	Nominal	Teleconference three times a year.
8 Networking	Methodology to be determined.	To be determined	
9 Review	Methodology to be determined.	To be determined	
Total 2008	No additional position required	No additional funding required	
Total 2009 - 2011	1.0 of full-time equivalent per year	\$600,000 per year	

THE REPORT

I - MOTIONS

68. The following are the proposed recommendations:

Large firms (100 lawyers or more) and medium firms (between 5 and 100 lawyers)

Recommendation 1 – That the Law Society implement a three-year pilot project (the “Justicia Think Tank”) 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, as described in this report and in the Law Firm Commitment at TAB 2.

Direct Support and Resources

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

Small firms (5 lawyers or fewer) and sole practices

Recommendation 3 – That the Law Society develop a five-year pilot project to promote and support practice locums, as described in this report.

Recommendation 4 – That the Law Society implement a three-year Parental Leave Benefit Pilot Program, effective in , 2009, as follows:

- a. benefits are available to lawyers in firms of five lawyers or less, including sole practitioners, who have no access to other maternity/parental/adoption financial benefit programs under public or private plans;**
- b. provide a fixed sum of \$3,000 a month for three months (maximum \$9,000 per leave per family unit) to cover among other things expenses associated with maintaining their practice during a maternity, parental or adoption leave.**

Recommendation 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.

Work with law schools

Recommendation 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.

Women from Aboriginal, Francophone and/or equality-seeking communities

Recommendation 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.

Recommendation 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.

Evaluate effectiveness of programs

Recommendation 9 – That, after a period of three years of implementation of programs, and after a period of five years of implementation of the Practice Locum program, the Law Society assess the effectiveness of each program and identify further strategies for the retention and advancement of women in private practice.

II - BACKGROUND

69. The legal profession began witnessing an increase in the proportion of women lawyers in Ontario in the mid-1970s, and by the end of the 1990s, the proportion of women entering the legal profession had reached more than 50 percent.⁵ However, over the years, research findings have identified a range of issues affecting the likelihood of women advancing and remaining in the legal profession, most particularly in private practice. Law Society data shows that, over the last ten years, women have been leaving private practice two to three times more often than men.⁶
70. In her 1993 report *Touchstones for Change: Equality, Diversity and Accountability*⁷, Justice Bertha Wilson referred to private practice as “the paradigm for the profession”.⁸ One that remains the central image when we think of the practice of law. At the time, she identified two trends in private practice: that a higher proportion of women enter other sectors of the legal profession at the initial entry level, and that there is a higher attrition rate for women than men from private practice. In her view, change in the private bar was essential to achieving gender equality, and women would have to attain a critical mass and be present in powerful positions to influence change. Law societies were identified as important agents of change and as organizations that could and should exhibit leadership on gender issues.
71. Justice Wilson went on to make a series of recommendations to promote gender equality within private practice. The recommendations, addressed to firms, legal associations and law societies, covered a broad range of systemic practices, such as hiring practices, allocation of work, addressing client attitudes, client development, mentoring, admission to partnership, exclusion from influential committees, accommodation of family

⁵ *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997) [*Bicentennial Report*]. See also Michael Ornstein, *The Changing Face of the Ontario Legal Profession, 1971-2001* (Toronto: Law Society of Upper Canada, October 2004) [Ornstein report]. The following represents the percentage of women entering the legal profession: in 2000, 50% of lawyers; in 2001, 51% of lawyers; in 2002, 52% of lawyers; in 2003, 54% of lawyers; in 2004, 54% of lawyers; in 2005, 57% of lawyers; and in 2006, 53% of lawyers.

⁶ Based on statistical data maintained by the Law Society.

⁷ (Ottawa: Canadian Bar Association, August 1993) [*Touchstones for Change*].

⁸ *Touchstones for Change, ibid.* at 81.

responsibilities, billable hours, maternity, parental and family leaves, income replacement for self-employed lawyers, temporary replacements to provide legal services, alternate work arrangements, child care services, sexual harassment and workplace equity.

72. The report created momentum for change, and much has changed since its publication. Law firms, legal associations and law societies all established programs to promote gender equality in the legal profession, and the Law Society has played a role in this endeavour. It began to address gender equality issues in the legal profession in the late 1980s, well before *Touchstones for Change*. By 1996, it had created a standing committee of Convocation, the Equity and Aboriginal Issues Committee (the “Committee”)⁹, with a mandate to develop for Convocation's approval, policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to Aboriginal and French-speaking peoples, and to consult with Aboriginal, Francophone and equality-seeking communities in the development of such policy options.¹⁰ It also created the Equity Initiatives Department and the Equity Advisory Group (the “EAG”)¹¹, an advisory group consisting of expert lawyers in the area of equality rights.
73. In its 1997 *Bicentennial Report*, the Law Society of Upper Canada recognized its role and responsibility in the advancement of equity and diversity and formally committed to the goals of achieving equality and diversity within the legal profession. It adopted sixteen broad recommendations to promote equity and diversity in all areas of the Law Society’s activities, including policy development, governance, education, regulation and employment and contracting for legal services.
74. Notwithstanding the leadership role that law societies and legal associations have taken to promote equality in the legal profession, and the work that has been done by law firms to

⁹ The Equity and Aboriginal Issues Committee was not the first Law Society committee created to address gender equality issues in the legal profession. In 1988, the Law Society established a Women in the Legal Profession Subcommittee to consider emerging issues relating to women in the profession. In 1990, it became a standing committee of Convocation. In 1989, the Equity in Legal Education and Practice Committee was created. In 1996, the Women in the Legal Profession Committee and the Equity in Legal Education and Practice Committee were merged into the Admissions and Equity Committee, which later became the Equity and Aboriginal Issues Committee.

¹⁰ By-Law 3 – *Benchers and Convocation and Committees*.

¹¹ Formerly the Treasurer’s Advisory Group.

retain women in private practice, research findings still show that women face inequalities and barriers in the legal profession. More particularly, findings indicate that a large proportion of women do not remain in private practice, even if private practice is their preferred choice of employment.

75. In March 2004, in part to mark the ten-year anniversary of *Touchstones for Change*, the Shirley Greenberg Professorship in Women and the Legal Profession and the Human Rights Research and Education Centre co-sponsored a conference at the University of Ottawa to reassess the status of women within the profession. Professors Elizabeth Sheehy and Sheila McIntyre, in *Calling for Change: Women, Law, and the Legal Profession*, a book published as a result of the conference, note that much has stayed the same or worsened since the publication of *Touchstones for Change*. They observe “Women still face unequal pay and unequal professional credibility, recognition and opportunities within the profession [...] Studies have documented the consistent rate at which women leave the practice of law, the ways in which women’s care giving roles continue to conflict with professional structures, the existence of expectations that have not adjusted to women’s presence in the profession, or to men and women’s parenting responsibilities.”¹²
76. On September 26 and 27, 2005, the Law Society held a benchers’ planning session to identify core issues that would drive policy making between 2005 and 2007. Benchers identified the issue of retaining women in private practice as a priority, and decided that the Law Society should develop strategies to address this issue.
77. As a result, the Law Society created the Retention of Women Working Group with a mandate to,
 - a. identify best practices in law firms and in sole practice to enhance the retention of women;
 - b. determine the role of the Law Society in addressing the issue of retention of women in private practice;
 - c. design and implement strategies for medium and large law firms to retain women;

¹² (Ottawa: University of Ottawa Press, 2006) at 4.

- d. develop strategies to respond to the socio-economic needs of women in small firms and sole practices including the viability of their practices as well as their unique child-care challenges; and
 - e. take into account the needs of women from diverse communities.
78. Members of the Working Group are Laurie Pawlitzka and Bonnie Warkentin (Co-Chairs), Nathalie Boutet (Representative of the Association des juristes d'expression française de l'Ontario - AJEFO), Marion Boyd, James Caskey, Soma Choudhury (Representative of the Equity Advisory Group), Paul Copeland, Katherine Hensel (Representative of Rotiio>taties Aboriginal Advisory Group), Janet Minor, Julie Ralhan, Linda Rothstein, Mark Sandler, Joanne St. Lewis and Beth Symes.¹³
79. The Retention of Women Working Group met on January 25, 2006 to set out the preliminary framework for addressing the issue of retention of women in private practice. The Working Group decided to focus on identifying solutions and developing practical tools and best practices originally by undertaking a comprehensive consultation with women lawyers and law firms. The Working Group wished to avoid duplicating studies that had already been done on the issue of retention of women in private practice. It was decided that this initial consultation would also serve as a catalyst to create change in the legal profession and to enhance awareness about these issues and possible solutions.
80. The Law Society retained the services of the Gandalf Group to conduct the initial consultation with women lawyers and managing partners of law firms. The Gandalf Group presented its report to the Law Society in February 2007¹⁴, which included proposed best practices for the legal profession. A summary of the Gandalf Group findings is presented in this report.
81. The Retention of Women Working Group also created an Expert Advisory Group of women from large, medium and small law firms and from sole practices across the

¹³ The membership of the Working Group has changed since its inception. The following individuals have also participated in the Working Group: Justice Kim Carpenter-Gunn, Justice Laurence Pattillo, Andrea Alexander, Ritu Bhasin (representative of the EAG), Dr. Richard Filion, Holly Harris, Thomas Heintzman and Tracey O'Donnell.

¹⁴ Report available on request to the Equity Initiatives Department of the Law Society of Upper Canada.

province to provide advice in developing its recommendations. The Expert Advisory Group is composed of a representative group of women lawyers, including representation based on firm size, membership in Aboriginal, Francophone and/or equality-seeking communities, region, area of practice, age and experience in the legal profession. The Expert Advisory Group provided invaluable advice in developing the recommendations and members are to be commended for their dedication and work on this project.

Members of the Expert Advisory Group¹⁵ are,

- a. Aida Abraha, Rehovos Law Chambers, Toronto;
- b. Lisa Borsook, WeirFoulds LLP, Toronto;
- c. Gina Brannan, Brannan Meiklejohn Barristers, Toronto;
- d. Georgina Carson, Macdonald & Partners LLP, Toronto;
- e. May Cheng, Fasken Martineau Dumoulin LLP, Toronto;
- f. Kirby Chown, McCarthy Tetrault LLP, Toronto;
- g. Neena Gupta, Gowling Lafleur Henderson LLP, Kitchener;
- h. Julia Holland, Torys LLP, Toronto;
- i. Alison Hurst, Counsel, Toronto;
- j. Freya Kristjanson, Borden Ladner Gervais LLP, Toronto;
- k. Mary-Jo Maur, Barrister and Solicitor, Kingston;
- l. Noa Mendelsohn Aviv, Canadian Civil Liberties Association;
- m. Lana Nakonechny, Dickson MacGregor Appell LLP, Toronto;
- n. Sue-Lynn Noel, Owens, Wright LLP, Toronto;
- o. Cynthia Petersen, Sack Goldblatt Mitchell LLP, Toronto;
- p. Joanne Clarfield-Schaefer, Bennett Jones LLP, Toronto;
- q. Jennifer Sims, Law Society of Upper Canada;
- r. Victoria Starr, Barrister and Solicitor, Toronto;
- s. Deborah Watkins, Daoust Vukovich LLP, Toronto;
- t. Jennifer Watson, Barrister and Solicitor, Toronto;
- u. Heather Williams, Cavanagh Williams, Ottawa; and
- v. Ruby Wong, Cassels Brock & Blackwell LLP, Toronto.

¹⁵ Carole Curtis also participated in the work of the Expert Advisory Group prior to her appointment to the bench.

82. The Expert Advisory Group and the Working Group met throughout 2006 and 2007 to review findings in this area and develop recommendations for the Committee's consideration.
83. On September 23 to 25, 2007, benchers attended a planning session to identify priorities for the next four years. Diversity and equality within the profession, access to justice and small firms and sole practices were all identified as priorities. The issue of retaining women in private practice is an integral part of those priorities.
84. On February 21, 2008, the Working Group outlined its recommendations to Convocation and proposed to undertake a consultation with the profession. Convocation approved a province-wide consultation to seek the profession's comments on the report and proposed recommendations. The consultation was held between March and May 2008. During that period, the Law Society held meetings in Toronto, Ottawa, Sudbury, Oakville, Kingston, Windsor, Thunder Bay, Orillia, Ajax and London with lawyers, including law firm managing partners and presidents of legal associations. Approximately 900 lawyers and students attended the meetings and the Law Society received over 55 written submissions.
85. The consultation process proved to be overwhelmingly positive. This is largely due to the active collaboration and participation of presidents of legal associations, local librarians and benchers and the Law Society is grateful for their assistance in this project.
86. The final consultation attracted a broad spectrum of lawyers, men and women, from all types of practice settings and firm sizes, the government, in-house counsel, articling and law students. Participants included associates, partners and managing partners of various levels of experiences and practising in a broad range of areas. We heard from women and men from all over the province.
87. This report is divided as follows:
 - a. The role of organizations;
 - b. Challenges faced by women;

- c. The Gandalf Group findings;
- d. Existing initiatives and best practices;
- e. Deloitte & Touche's initiative;
- f. Findings of the final consultation;
- g. Considerations underlying the Working Group's recommendations;
- h. Overall costs.

III - ROLE OF ORGANIZATIONS

A - Role of the Law Society of Upper Canada

88. The mandate of the Law Society is to “govern the legal profession in the public interest by [...]upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.” The *Law Society Act*¹⁶ specifies that, in carrying out its functions, duties and powers under the Act, the Law Society must have regard to the following principles:
- a. to maintain and advance the cause of justice and the rule of law;
 - b. to act so as to facilitate access to justice for the people of Ontario;
 - c. to protect the public interest;
 - d. to act in a timely, open and efficient manner;
 - e. to uphold standards of learning, professional competence and professional conduct for licensees.
89. It is the Law Society's core role and responsibility to facilitate access to justice and protect the public interest. In 2001, women represented 51.2% of the Ontario population, while women lawyers represented only 32% of the legal profession, and 24% of lawyers in private practice. Women now represent 37% of the legal profession and 28% of lawyers in private practice. While in the last 5 years, the percentage of women entering private practice averaged 50%, the percentage of women lawyers in private practice averaged 42%. On the other hand, the percentage of men entering private practice

¹⁶ R.S.O. 1990, c. L8, s. 4.2.

averaged 58%, while the percentage of men in private practice for the last 5 years averaged 60%.¹⁷

90. With the critical mass of women entering the legal profession in larger numbers than men and the disproportionate number of women leaving private practice, the Law Society must play a leading role in addressing gender based systemic barriers that lead women lawyers to leave private practice when they would otherwise remain.
91. Justice Wilson cautioned in 1993¹⁸ that if women do not remain in private practice, they will not occupy the powerful positions in the profession and will consequently be unable to influence structural change at the higher levels of the profession. She noted the importance of law societies' leadership in this area and their role as catalysts to influence change.
92. Women's realities, which often include childbirth and taking on a significant share of the family responsibilities, impact on the choices they make in their professional lives. While neither the Law Society nor the profession generally should, nor can, determine the roles women play in their own family relationships, the failure of the profession to adapt to what is not a neutral reality will inevitably affect the quality and competence of the legal services available to the public.
93. The loss of talent as a result of gender based barriers will likely have an impact on the legal profession's capacity to offer legal services to the Ontario public. It is not expected that the critical mass of women entering the profession will lead to significant systemic change without a cultural shift in the profession as a whole and without the Law Society's leadership. This has been the experience in the U.S. where firms have committed, through the influence of bar associations, to make systemic change to their leadership structure, work arrangements and business models to meet the needs of women and enhance women's chances of advancement.

¹⁷ Statistical information compiled from Law Society data.

¹⁸ See *Touchstone for Change*, *supra* note 7.

94. Further, self-regulation of the legal profession is a privilege and relies on the assumption that the profession is in the best position to set standards and establish ethical rules of conduct for the bar and to regulate lawyers in the best interest of the public. Meeting the public interest requires lawyers to have a sense of professionalism, which includes a sense of integrity, honour, leadership, independence, pride, civility and collegiality.¹⁹ A profession that is representative of the public, and one that provides equal opportunities to men and women serves to enhance the sense of professionalism of our legal profession.
95. This report recommends that the Law Society not only provide a leadership role, but also provide direct resources and support to enhance the retention of women in private practice. The report recommends that the Law Society work toward creating a culture within the legal profession that recognizes the length of a career in private practice and facilitates women's ability to continue in private practice for reasons that are related to their aspirations and not because of gender-based barriers.

B – Role of Legal Associations

96. Women lawyers practise in all areas of law²⁰, in every region of the province and in firms of every size. The importance of networking, mentoring and professional development opportunities is well recognized as key to women lawyers' success in the profession. Legal associations and organizations have played an important and significant role in providing such services to their members. Women lawyers benefit from these services, and from memberships in legal associations such as the County and District Law Associations, the Ontario Bar Association, the Canadian Bar Association, the Advocates' Society, to name a few. Women also benefit from the services offered by legal associations that focus on programs and initiatives designed specifically for women, and associations created to provide networking programs and services for lawyers from Aboriginal, Francophone and/or equality-seeking communities, such as the Women's

¹⁹ *Supra* note 1.

²⁰ Fiona M. Kay, C. Masuch and P. Curry, *Turning Points and Transitions: Women's Careers in the Legal Profession – A Longitudinal Survey of Ontario Lawyers 1990-2002* (Law Society of Upper Canada, September 2004) [*Women's Careers*]. Studies indicate that the three most common fields practised by women in 2002 were "other", family law and divorce, and corporate and commercial. Men were more likely to practise in civil litigation, real estate and corporate and commercial.

Law Association of Ontario, the Legal Education and Action Fund, the National Association of Women, the Law and the Feminist Legal Analysis Committee of the Ontario Bar Association, the Canadian Association of Black Lawyers, SOGIC of the OBA, the South Asian Bar Association, the Arab Canadian Lawyers Association, ARCH Disability Law Centre, the Association des juristes d'expression française de l'Ontario and the Indigenous Bar Association.

97. These memberships and the connections they allow women practitioners to make with others in the legal community have proven to be significant contributors to their success in private practice. They are particularly critical for women lawyers who practise in small firms and as sole practitioners, women who practise in non-urban regions and women from historically under-represented communities in the legal profession. Isolation from other lawyers is a significant complaint of sole practitioners.²¹ Further, regional legal associations and organizations have an important role to play in developing programs to support women in their practice in non-urban regions.
98. Therefore, the Working Group is of the view that the Law Society should closely collaborate with legal associations to develop strategies to retain women in private practice and to ensure that programs and services are offered to women practising in firms of all sizes and as sole practitioners and in every region of the province.
99. During its final consultation with the legal profession, the Law Society held meetings with representatives of the County and District Law Presidents' Association ("CDLPA"), the Advocates' Society, the Equity Advisory Group, the Women's Law Association of Ontario, the Feminist Legal Analysis Committee of the Ontario Bar Association ("OBA"), the Executive Committee of the OBA, the South West Region Women's Law Association and regional county and district law associations. Representatives of associations voiced their strong support for the project and indicated that they wish to work with the Law Society to implement the recommendations. Associations also expressed their support through written submissions, which have been summarized in

²¹ *Final Report of the Sole Practitioner and Small Firm Task Force* (Toronto: Law Society of Upper Canada, 2005) [Sole and Small Report]. See also *Retaining Women in Private Practice* (Ottawa: Gandalf Group, 2007) [*Retaining Women*].

sections VII and VIII of this report and in the Final Consultation Report available on-line at www.lsuc.on.ca.

C - Role of Law Firms

100. Law firms also have a significant role to play in working with the Law Society and legal associations to develop creative strategies and best practices to retain women who wish to remain in private practice.

101. The Law Society acknowledges that the practice of law is a competitive business and is market driven. Women represent half of the intellectual capital and talent entering the legal profession; hence the importance and urgency for law firms to adopt systemic changes and provide the resources to assist women lawyers who wish to remain in private practice. While only 18% of lawyers in private practice in 1990 were women, the proportion of women in private practice increased steadily in the 90s, reaching 28% of lawyers in private practice in 2007.²²

102. In *Beyond a Reasonable Doubt: Building the Business Case for Flexibility*²³, Catalyst Canada calculated the staggering cost to a firm of an associate's departure, which is estimated at \$315,000 for a fourth year associate.²⁴ The study also found that "women generally are more likely than men to report their intention to stay with their firms for five years or less. Given that women now comprise 50 percent or more of law school graduates across Canada's top law schools, law firms that are intent on recruiting and retaining the best candidates need to identify and address the core issues which may undermine a supportive work environment for women associates."²⁵

103. In addition to the cost of associate turn over, law firms' ability to compete for clients and the best talent has become critical in an increasingly competitive market. Research and

²² Law Society of Upper Canada data base.

²³ *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (Toronto: Catalyst Canada, 2005) [Business Case].

²⁴ Although it appears that Catalyst has not calculated the revenue generated by the associate in billable hours to compensate for the costs of losing an associate, the decrease in an associate's billable hours from the time the departure decision is announced to when he or she actually leaves the firm is taken into account.

²⁵ Quantifying the cost of associate turnover, as undertaken by Catalyst, varies depending on the contextual features of a law firm, along with intangible costs of turnover. Catalyst, *Business Case*, *supra* note 23 at 19.

practical experience support the business case for law firms to create an environment where women succeed and lead. Clients today are more likely to expect that law firms actively promote diversity within the workplace and often consider that as an important factor in selecting legal counsel. Corporations such as Wal-Mart, Gap and Mercedes Benz in the U.S. increasingly hire law firms that show a commitment to equality and diversity.

104. Lawyers from historically under-represented communities in the profession are also entering the profession in greater numbers, and in proportion with the Ontario population.²⁶ Yet, they remain greatly under-represented in medium and large firms. The business case for diversity is recognized in U.S. law firms and Canadian law firms will have to provide an environment that is inclusive and promotes diversity in order to maintain their competitiveness with their U.S counterparts.
105. It is time that law firms recognize the long term contributions and commitments that women make to private practice, and the value of allowing women to temporarily interrupt their careers for childbirth and family responsibilities. Society has long recognized that women require the economic and social security to take maternity and parental leaves and to be able to return to the labour market and be ensured continued employability and reintegration.
106. The legal profession should not assume that change would occur without conscious efforts to create a shift in the legal culture. Law firms have a legal responsibility to provide environments that allow women to advance without barriers based on gender. Substantive equality between men and women is a constitutionally recognized right and a right recognized in the Ontario *Human Rights Code*²⁷ (the “Code”). The Code provides that every person has a right to equal treatment with respect to employment without discrimination because of sex, which encompasses the right to equal treatment without discrimination because a woman is or may become pregnant. Therefore, it is law firms’

²⁶ See Ornstein report, *supra* note 5 and Fact Sheet on the changing face of the legal profession at <http://www.lsuc.on.ca/latest-news/b/fact/changing/>.

²⁷ R.S.O., 1990, c. H-19.

legal obligations as employers and service providers to ensure that men and women are treated equally and without discrimination.

107. Catalyst Canada also notes in *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance*, that the “more positive associates’ perceptions of their work-life balance, the more positively they feel about their long-term prospects with their firms” and that “lawyers’ perceptions of their firms’ management and leadership directly influence their satisfaction with work-life balance”.²⁸
108. Therefore, not only does it make good business sense for law firms to implement strategies to attract, retain and promote women within their ranks, but law firms’ senior partners will also have to show leadership for such initiatives to be successful. The Working Group believes that the Law Society will have to work in close collaboration with law firms to develop programs to retain women in private practice.
109. During its final consultation, the Law Society met with regional law firms and with managing partners of large and medium law firms in Toronto. Firms are overwhelmingly of the view that it is critical to address the issue of women leaving private practice, and that a cultural shift within firms will require leadership and commitment from managing partners. The response to the project was overwhelmingly positive and a number of law firms have indicated their commitment to work with the Law Society on this initiative. Some firms have also sent written submissions, which were taken into account in this report.

IV - THE GANDALF GROUP FINDINGS

110. Studies have identified the following challenges faced by women in private practice (summary at **TAB 1**), which were taken into account by the Working Group in developing its recommendations:
 - a. although men and women identify time spent with their family as the aspect of their lives that gives them the most satisfaction, maintaining demanding law

²⁸ *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance* (Toronto: Catalyst Canada, 2005) at 18 [*Creating Opportunities*].

- careers often conflict with family life and is the most common reason for leaving law practice;
- b. the most immediate issues related to the practice of law that women face appear to result from childbirth and parenting responsibilities;
 - c. women are particularly affected by the unavailability of support and benefits such as part-time partnerships, part-time employment, predictable hours, job sharing and flexibility in hours;
 - d. women in small firms or in sole practices face unique challenges in part because of the lack of income or benefits during leaves and lack of assistance to maintain the practice during absences;
 - e. women from Aboriginal, Francophone and/or equality-seeking communities are often more vulnerable and their experiences and perspectives should be taken into account when developing strategies to retain and advance women in private practice;
 - f. similar findings are noted in other jurisdictions in Canada and in foreign jurisdictions;
 - g. barriers faced by women are systemic and will require organizational and cultural change, along with a shift in resources, policies and programs in the legal profession.
111. In 2006, the Law Society retained the Gandalf Group to conduct a qualitative research project designed to generate ideas about programs, supports and services that would meet the needs of women in a variety of private practice circumstances and that have been, or could be, undertaken by law firms, the Law Society and law associations to retain women in private practice.
112. The research proceeded in two steps. First, focus groups were held with women currently in private practice, or who had left private practice across the province. This phase was designed to explore potential programs that law firms and the Law Society could undertake to assist women to remain in, or re-enter, private practice. The second phase consisted of a series of one-on-one interviews with managing partners of large and medium firms across Ontario. Interviews were also conducted with governmental

lawyers. This second phase was designed to understand how law firms approach this issue, to identify best practices that could be adopted more widely and to explore how the Law Society could assist law firms in their efforts to retain women.²⁹ The following is a summary of those findings.

A - Programs that Could Assist Women – Feedback from the Focus Groups

113. Because the main purpose of the Gandalf Group study was to identify programs and initiatives that could assist women in private practice in all types of work environments, the core information gathered during the focus groups centered around finding out what women believe would assist them. The results were structured based on firm size, large and medium³⁰ as one group and small firms and sole practitioners as a second group.

Large and Medium Firms

114. Women identified programs that could help them in the following areas:

- a. managing work and family responsibilities;
- b. remaining in the partnership track and attaining partnership;
- c. mentoring programs and networking.

115. Women indicated that written policies on flexible work arrangements, reduced hours with reduced pay, flexibility to work from home, job sharing, maternity leave and wind-down and ramp-up processes, would greatly assist women and men in balancing work and life responsibilities in large and medium firms. Women also indicated that more transparent communications about the availability of such written policies would be valuable.

116. Women are also of the view that programs to assist them to progress through the partnership track would be useful, including processes to increase fairness in the assignment of client files and career guidance tailored to their needs. The availability and acceptance of alternative career paths apart from full partnership and programs to enhance women's full participation in firm management positions and committees were also identified as key to their success.

²⁹ Findings of the study are available on request to the Law Society's Equity Initiatives Department.

³⁰ For the purpose of the Gandalf Group study, large firms are defined as firms of 100 lawyers or more and medium firms are firms of between 5 and 100 lawyers.

117. Women who indicated that they were the most comfortable at their firms were those who had found a champion among the partners and this senior lawyer took an active interest in developing the woman's career, including assisting in client relations, the practice of law and career development.
118. Client networking or business development activities structured to meet women's needs were typically not available. Women thought that networking programs tailored to the needs of women, being championed by a senior partner through a mentoring program and client development training would be positive programs.

Small and Sole Practice

119. Women in small firms³¹ and sole practices identified two main areas of concern related to leaves: the lack of financial support or income and the lack of support to help maintain their practice and client services. More specifically, the following programs were identified as potentially useful:
- a. a bank of locum lawyers;
 - b. sources of funding during leaves of absence;
 - c. reduced fees for continuing legal education;
 - d. dedicated resources to help women plan for leaves; and
 - e. programs, such as networking opportunities, to support lawyers on leave.
120. Women in small firms and sole practices also identified the importance of client development skills. They suggested that seminars and materials on strategies and tactics that would help them carry out effective client development efforts and that would support networking either with other lawyers or with the wider community would be useful. Women also rated of equal importance programs to assist women in business planning, including billing and practice planning, accounting and management.

³¹ For the purpose of the Gandalf Group study, small firms are firms of five lawyers or less. This is consistent with the approach used by the Law Society of Upper Canada's Sole Practitioner and Small Firm Task Force. See *Sole and Small Report, supra* note 21.

121. Mentoring was considered important, particularly to women with less than ten years in practice and practising in small firms and sole practices. Two types of mentoring programs were suggested: to offer guidance on practical issues related to the practice of law and to help women network with senior female members of the bar.

B - What Managing Partners Say

122. The Gandalf Group conducted twenty-five one-on-one interviews with managing partners of large and medium sized firms in several locations across Ontario. The interviews proceeded in two phases. The first phase consisted of 16 interviews with law firms that were selected based on criteria that indicated that they already have in place best practices (Pool A). Pool A firms had a representation of women partners that was higher than large Toronto law firms' average; a higher proportion of women than the proportion of women in the profession; gender or diversity programs; and/or a woman managing partner. The second group of firms (Pool B) was selected because the firms did not meet the criteria described above. The following summarizes the findings of the interviews.
123. There was a consensus that there is no problem attracting women to private practice. The majority of law school graduates are women and intake tends to reflect the proportion of women in law schools at over 50 percent.
124. The Gandalf Group notes that firms recognize the business case for retaining women. They know the considerable loss in investment in training and client development when women and men leave. It is a cost that firms want to avoid where possible by making it easier for people to stay and return after a leave. Most firms reported that a lawyer does not begin to be profitable for the firm until the fourth year. This is also the time when a significant number of women have already opted out of private practice.
125. Firms also noted increased pressure from clients to deal with firms with equal gender representation. A growing number of clients are women and many are women lawyers who left private practice and would like more diversity in the firms they hire. Some women clients are more comfortable dealing with women and request their legal services.

Additionally, larger corporations and especially large multinational firms are more likely to request diversity in the law firms they hire.

126. The business case for retaining lawyers is so clear that virtually all firms try to do whatever possible to retain lawyers, male or women, although women consistently pose more of a challenge. However, virtually all firms indicated that they prefer to do it in an ad hoc way based on individual demand and in accordance with the larger business constraints of their firms. All firms see maternity leave as important and many offer flexible work arrangements, including individualized flexible work arrangements and reduced hours for reduced pay. Only a few firms are offering gender specific programs, such as gender specific business development or client networking activities.

Women from Equality-Seeking Communities

127. The Gandalf Group findings indicate that participating firms do not track the number of women students, associates or partners from equality-seeking communities. There were a few firms with racialized or Aboriginal lawyers, and some large firms in Toronto noted that racialized women were employed at the associate level.
128. A few firms sought deliberately to increase their diversity either to meet client demand or because they thought it important. Others insisted they were meritocracies without regard to gender or race. However, beyond the initial hire, none (except a large multinational) provided particular programs for women from equality-seeking communities. While law firms do not gather or monitor the number of students, associates or partners from equality-seeking communities, associations such as the Womens' Law Association of Ontario, the Canadian Association of Black Lawyers, the South Asian Bar Association, the AJEFO and the Law Society's Equity Advisory Group are monitoring progress in this area.

Progression of Women within Private Practice

129. While almost all firms reported women in equal or greater numbers than men at the articling and junior associate level, most also reported losing women disproportionately at the senior associate level. Maternity and parenting responsibilities, particularly when women have more than one child, are the most significant factors that lead to the

departure of women from private practice, primarily associates who tend to leave before they join the partnership. In some firms, joining the partnership could take a decade or more, making it likely that women who want to start a family would do so before they join the partnership.

130. Most firms reported significantly fewer women than men as partners. Although the fact that historically there has been fewer women in the profession may explain this disparity, there continues to be a disproportionate loss of women at the senior associate level. Many firms assume the proportion of men and women partners will slowly change with time.
131. Women did not constitute more than one-third of members on executive committees or compensation committees at any firm interviewed. In fact, in most firms, women made up less than 25% of executive committee members. The proportion of women at decision-making levels in private practice is in sharp contrast to government where women tend to be involved in decision making levels in far higher numbers and at the most senior levels.

Suggested Programs

132. Virtually every participant was of the view that the key to retaining lawyers is for firms to be flexible in their approach. It is the degree of flexibility exercised by firms that varies widely. Some firms had begun not simply addressing gender differences such as maternity leave, but were also seeking to address the culture of the firm and its work practices. Some firms had good and effective flexible work arrangements and reduced hours for reduced pay, recognizing that family responsibilities extended beyond the first four months after the birth of a child. Other firms were still dealing with maternity leave on an ad hoc basis and had not considered major cultural changes, such as gender specific client networking styles. All firms were of the view that retaining women was important as it means retaining important talent, although they felt quite challenged by the constraints imposed by the demands of some of their practice areas and their compensation structure.

133. Most Pool A firms had written policies for maternity leave and a few had written policies on flexible or reduced hours. Only two firms indicated they had programming, such as client networking or business development, specifically aimed at developing women lawyers.
134. Most Pool B firms had begun looking at the gender equality issue fairly recently, and some had begun instituting changes. Most firms were accommodating women on an informal and individual level.
135. Due to the relatively small number of interviews conducted with law firms, differences among firms based on firm size are not conclusive. However, there appear to be differences between medium and large firms in how they approach this issue and in their flexibility to meet individual needs. The Gandalf Group notes that medium firms tend not to have the resources, specifically personnel time, to codify practices and policies. Very often the managing partner is the only person addressing administration and human resource issues. However, some medium firms are better at making accommodations to keep women lawyers, and do so on an individual and ad hoc basis. For instance, some medium firms make individualized ad hoc arrangements with women lawyers that seem to be effective, such as offering flexible work arrangements, reduced billable hour targets, and alternative partnership criteria.

Maternity and Parental Leaves

136. With only a few exceptions, participating firms offer maternity leaves, but not paid parental leaves. Most firms have written maternity leave policies with a minimum of 17 weeks leave with top-up to full salary. Some firms often top-up for a full year, although some of those want the money returned over time. These policies are primarily for associates and staff. Partners tend to negotiate their own arrangements and it appears that they meet less resistance to longer and more generous leaves.
137. While maternity leave appears to be uniformly accessed, paid parental leave tends either not to exist at all, or to be shorter and more ad hoc. Few firms have written policies allowing for parental leave. Further, few men fully access parental leave. In short, this creates a stigma that temporary leaves are meant for women.

138. Most firms reported that taking a leave sets women back on the partnership track. Almost all firms consider that the time spent on leave should not count when a woman is considered for partnership. In some instances women have stayed on the partnership track timetable by maintaining client contact during leave, taking shorter leaves (4 months), and not taking consecutive leaves.
139. Maternity leave arrangements for partners tend to be ad hoc and more flexible. On average, partners tend to take shorter leaves (4 to 6 months) and to maintain client contact while on leave. In one instance a firm reported a partner taking alternative work arrangements after maternity leave. The firm had fewer than 25 lawyers and the partners operate essentially as sole practitioners sharing costs. Reduced hours worked in that instance largely because the partners were not responsible for ‘rainmaking’ for the rest of the firm.
140. Firms report that women at the senior associate and partner level who maintain client contact are less likely to have their careers set back. Virtually every firm provides remote secure electronic access to facilitate working from home. For all firms, maternity leaves are seen as a cost of doing business as more women enter these firms. However, the traditional business model means that minimizing the time or impact of the leave is advantageous to the woman’s career and the firm.

Partnership Track

141. Best practices were identified to assist women in remaining in the partnership track, such as transparent and accountable processes to promote fairness in client file assignments, individualized career guidance and alternative partnership models. Enhancing women’s full participation in firm management positions and committees were also seen as important.

Preparing and Returning from Leaves

142. Most firms have a formal winding-down process where the department or practice head (if the firm is large enough) manages the hand-over, which usually begins 3 to 4 months before maternity leave. To maintain contact during a leave, most firms invite lawyers on

leave to participate in all firm or client events. Firms report little interest among women in maintaining files or client relationships. The winding-down process appears easier in firms in which there is a service team approach, with multiple lawyers interacting with clients, than in firms in which client interaction generally revolves around a single lawyer. One firm has materials available to help women navigate the leave process.

143. Most firms do not have a formal ramp-up process upon return, but tend to make allowances in the first few months to allow for a gradual reintegration. In two firms, women systematically return from a maternity leave on reduced hours scheduling and are allowed to work from home. Only one of these firms is predominantly composed of women. The other firm puts a premium on supporting women in this way so as not to lose valuable talent and investments. In both cases, the firms report that the flexibility in approach has helped to retain women who would otherwise have left the firm.
144. One firm offers coaching sessions for men and women expecting a baby. The sessions are designed to help with family adjustments and to help with career planning with new family responsibilities. This program has been identified as very successful and a best practice.
145. Only a few firms indicated that they guaranteed a good flow of work when a woman lawyer returns from a leave. In cases where firms hold the work during the leave, the firms tend to use a service team approach and report that re-entry is relatively easy. Other firms that guarantee a good work flow for returning women were firms involved in long-term client relationships or that had litigation that stretched on for long periods of time. Clients were told that firm policy was to return files to the lawyers.
146. Using a service team approach and a winding down period allows easy reintegration of women into the firm. When possible, women found it positive that the firm would guarantee the return of files and clients when returning from a leave.

Flexible and Alternative Work Schedules

147. Continuing flexible and alternative work schedules may be one of the most essential programs for retaining women. Firms with flexible hours and/or reduced hours with reduced pay report the best retention rates.
148. Very few firms have written flexible or reduced hours with reduced pay policies or a formal policy detailing alternative work arrangements. Firms seemed to prefer individualized arrangements because individual needs vary considerably and firms want the ability to offer additional incentives for those lawyers they thought were critical to keep.
149. Of the firms that did have formal written policies and routine uptake on the policies, most found they were very helpful in retaining women in the firm, especially women with children. For a few firms, women regularly returned from maternity leave on a reduced hour with reduced pay basis. Some maintained a reduced hour with reduced pay schedule until parenting responsibilities were reduced. These arrangements appear to hold women back from the timetable for partnership track, but they also retain women in private practice. Firms tend to see this as a vital accommodation and a positive one for the firm.
150. Some firms have moved with varying degrees of success towards flexibility and alternative work arrangements to respond to retention concerns. A couple of firms have moved to unique alternative arrangements or have created categories of work that are more predictable. However, firms expressed reluctance about part-time arrangements, stating that part-time arrangements tend to be too difficult to manage. Firms were sometime willing to allow shorter days or one day less a week.
151. A couple of firms with very high retention rates subsidized lower revenue generation for a substantial period of time, believing it to be an investment that would pay off over time as women were able to achieve partnership, devote themselves full-time to the firm and generate significant revenue.
152. While firms face challenges in finding ways to implement effective flexible work arrangements to accommodate women with parental responsibilities, their legal

responsibility to provide environments that allow women to advance without barriers based on gender remains. As mentioned, substantive equality between men and women is a right recognized in the Ontario Code.³² The Code provides that every person has a right to equal treatment with respect to employment without discrimination because of sex, which encompasses the right to equal treatment without discrimination because a woman is or may become pregnant. Therefore, it is law firms' legal obligations as employers and service providers to ensure that men and women are treated equally and without discrimination.

Business and Client Supports

153. Only four firms thought there was a need to create particular programs for women in the firm to teach business development, networking or career planning. Most firms thought those needs were common to recent calls of both gender and that training programs or mentoring systems would address any gaps. In essence, they see their current programs as 'gender neutral' and assume they are as appropriate for women as for men.
154. In one firm, several programs are tailored to the needs of women lawyers. The firm has initiated a women's group to propose programs and policies that would assist them in career development. The firm has also begun a quarterly newsletter that profiles women in the firm, discusses women's issues and serves as a forum for women lawyers. The firm also instituted client networking programs that are likely to interest women, such as purchasing tickets to cultural events in addition to sports events.
155. Managing partners say they are turning to the women in the firm to set up informal groups to identify the demand for changes and to lay out potential initiatives, as well as to set up informal mentoring systems. One firm has initiated a formal women's network within the firm. In a number of firms, any existing women's networks were informal and no interviewee said those informal groups had brought forward suggestions for major change.

³² *Supra* note 27.

156. The following best practices were identified: client networking/business development practices focused for women lawyers and women clients, such as client development activities and lawyer networking activities around cultural events, cinema, museum openings, and theatre rather than hockey games and golf. Other networking activities such as speakers who address gender differences in client development, a women's network within the firm to identify issues and propose policies, a newsletter that profiles women lawyers or that discusses women's issues and resources within the profession were also identified as positive initiatives.

Mentoring

157. Most firms interviewed have formal mentoring programs where mentoring is focused on career development, client networking and the practice of law. In only one firm was there a concerted effort to match junior women associates with a senior woman role model. All other mentoring programs adopted a gender neutral system of matching.
158. Most firms said there were not enough women partners to adequately mentor the high proportion of women among junior lawyers. Mentoring within the firm was seen as successful when a senior lawyer, male or female, champions a woman. Networking programs tailored to the needs of women such as programs available at the lunch hour and those in which women can network with one another to provide support and advice were viewed as best practices.

V - EXISTING INITIATIVES AND BEST PRACTICES

A - Law Society of Upper Canada

159. As mentioned earlier, the Law Society of Upper Canada has been promoting equality rights for women in the legal profession by adopting a number of programs and initiatives to influence systemic and cultural change. Within the last decade, the Law Society has built its internal capacity to promote equality in the legal profession by creating a permanent department, the Equity Initiatives Department, to provide leadership, research skills and resources in the area of equity and diversity.

160. In addition, the Law Society increased its capacity to promote equality and diversity by creating the following:
- a. the Equity and Aboriginal Issues Committee, a standing committee of Convocation;
 - b. the Equity Advisory Group, a group of lawyers who are experts in the area of equality rights;
 - c. the Retention of Women in Private Practice Working Group and its Expert Advisory Group, to develop strategies to promote the retention of women in private practice;
 - d. the Discrimination and Harassment Counsel Program, to provide confidential advice to those who believe that they have been the subject of harassment or discrimination by a lawyer;³³
 - e. model policies and guidelines for the legal profession;³⁴
 - f. continuing legal education programs in the area of equity and diversity;
 - g. customized professional development programs for external lawyers and staff at organizations in various regions of Ontario;³⁵
 - h. the Equity and Diversity Mentoring Program to match law students and recent calls to the bar with experienced lawyers;
 - i. the Equity Public Education Series, which provides networking and education opportunities for lawyers by celebrating days and months of significance, such as the International Women's Day. The events are organized in collaboration with legal associations such as the Feminist Legal Analysis Committee of the Ontario Bar Association, Women's Future Fund and Women's Law Association of Ontario.

B - Best Practices – Other Canadian Jurisdictions

161. Most provincial law societies have adopted initiatives and programs to promote equality and diversity in the legal profession. For example, the law societies of British Columbia,

³³ The Discrimination and Harassment Counsel has provided assistance to more than 2000 individuals since its inception in 1999.

³⁴ Model policies and guidelines in the area of equity and diversity for the legal profession are available on line at <http://mrc.lsuc.on.ca/jsp/equity/policies-publications-reports.jsp>.

³⁵ In 2006, the Law Society designed and delivered equity and diversity professional development programs to more than 400 lawyers in legal associations, the government and law firms.

Alberta, Saskatchewan, Manitoba, Quebec and Nova Scotia have designated staff members who develop programs that promote equality and diversity. Individuals who act as ombudspersons to provide advice on issues of harassment and discrimination have also been appointed in British Columbia, Alberta, Saskatchewan and Manitoba. Most law societies have also developed model policies and guidelines to promote equality in the legal profession, including maternity and parental leave model policies and respectful workplace model policies.³⁶

162. The Barreau du Québec has adopted a proactive approach to support women in the legal profession by creating a committee to promote women's equality, intervening before governmental committees for women's rights, recognizing the contribution of women lawyers to the profession, hosting lunch and learn sessions on leadership and women, and publishing demographic information about women in the legal profession.
163. The following programs adopted by law societies are of particular interest because they are unique and have been proven useful.³⁷

Employment Equity Programs

164. The Nova Scotia Barristers' Society is the only law society in Canada to have adopted a commitment for employment equity for law firms. In 2001, the Nova Scotia Government adopted the *Policy on Employment Equity for Crown Law Agents* and put forward a plan to help ensure employment equity in law firms and address the historical under-representation of women, persons with disabilities, visible minorities and Aboriginal people, including Black and Mi'kmaq lawyers in Nova Scotia. Under the policy, law firms in Nova Scotia are eligible to perform legal work for the government³⁸ if they,
 - a. sign a Commitment for Employment Equity;
 - b. display the signed Commitment in a prominent place in the law firm;

³⁶ You may consult law society model policies at the following websites: Law Society of British Columbia http://www.lawsociety.bc.ca/practice_support/articles/practice_intro.html#practice; Law Society of Alberta <http://www.lawsocietyalberta.com/resources/modelEquityPolicies/equityPolicies.cfm>; Law Society of Saskatchewan: <http://www.lawsociety.sk.ca/Equity/intro.htm>; Law Society of Manitoba <http://www.lawsociety.mb.ca/equity.html> ; Nova Scotia Barristers' Society <http://www.nsbs.ns.ca/equity.html>.

³⁷ For an overview of initiatives adopted by law societies and legal associations, see *Promoting Dialogue Creating Change: Equity and Diversity in the Legal Profession* (Toronto: Law Society of Upper Canada, 2003).

³⁸ Where fees are \$5,000 per matter or \$5,000 per year, whichever is less.

- c. communicate their commitment to employment equity to current and prospective staff; and
 - d. comply with the *Nova Scotia Human Rights Act*.
165. Law firms of up to 11 lawyers are also required to report on the representation of women, persons with disabilities, visible minorities and Aboriginal people, including Indigenous Black and Mi'kmaq, within the firm.
166. In addition, law firms of 12 or more lawyers are required to,
- a. designate a senior partner as the firm's coordinator, responsible for ensuring the firm's compliance;
 - b. collect and record information on the representation and employment status of women, persons with disabilities, visible minorities and Aboriginal, including Indigenous Black and Mi'kmaq, within the firm and to collect and record information on measures taken by the firm to achieve employment equity goals; and
 - c. report such information annually.

Data Collection

167. The Nova Scotia Barristers' Society also compiles information about the demography of the profession through its Annual Member Report. Members can self-identify as a member of a visible minority, Aboriginal, disability and/or gay, lesbian, bisexual or transgender community, as applicable. In an attempt to gather information about lawyers' family responsibilities, the Nova Scotia Barrister's Society has added the following question to its Annual Member Report: "Do you have primary responsibility for the care of a child or adult dependent? What is the number of children or adult dependents?" The responses provide valuable information for the development of initiatives and programs that promote equality and diversity.
168. The Barreau du Québec is the only other law society that collects information about personal characteristics in addition to gender, such as race, Aboriginal heritage and disability. The Barreau du Québec has only recently begun implementing this program.

Exit Surveys

169. In 2004, the Law Society of Alberta began surveying lawyers moving to inactive³⁹ or retired status to initiate an ongoing, systematic method of monitoring the transition of lawyers to the inactive list and to identify and track the broad range of factors motivating their decisions. The survey keeps track of reasons behind a move to retired or inactive status and includes questions about gender, age, disability, sexual orientation, membership in a racialized community, year of call, type of work environment and area of law, factors that influenced the decision not to practise law, level of satisfaction, discrimination and questions about how to keep lawyers in the legal profession.
170. The Law Society of Alberta publishes the results of the survey, which include information and trends about the demographics of the profession, former and current employment, satisfaction with aspects of practicing law, reasons for moving to inactive status and returning to practise, the experience of discrimination, desired changes to the profession and suggestions for the Law Society. This information has identified barriers and assisted in the development of programs to promote equality within the profession.

Funding Programs for Self-Employed Lawyers on Maternity/Parental Leaves

171. The Barreau du Québec, followed by the Law Society of British Columbia, have responded to the lack of financial compensation for self-employed lawyers who take maternity/parental leave by adopting programs to provide access to funds or loans during their leaves.

Barreau du Québec

172. This funding program originated in Québec in 2003 when the Barreau approved a parental assistance program for self-employed lawyers. The program was adopted because of the lack of governmental financial support for self-employed workers. It was designed as a temporary program, until the government decided to provide financial assistance to self-employed individuals, including lawyers. The program was adopted in addition to the already existing Béb -Bonus program, which applies to all members of the

³⁹ Inactive members of the Law Society of Alberta are those lawyers who have not paid the annual practice fees or insurance dues required to practise law in Alberta, but who pay an inactive fee (\$130) each year to continue to receive information from the Law Society.

Barreau, men and women and covers half of the annual membership fee paid by the member, upon the birth or adoption of a child.

173. The parental assistance program for self-employed lawyers was made available to members not covered by any other public or private parental plan, such as Employment Insurance plans or parental benefits offered by an employer through formal policy or individual agreements. The program provided that, upon the birth or adoption of a child, the Barreau would give to the member an amount equivalent to the operating expenses incurred while his or her professional activities were temporarily suspended. The Barreau adopted the following three types of benefits:
- a. up to three months benefits for maternity leave;
 - b. up to 1 month benefit for parental leave;
 - c. up to 1 month benefit for adoption leave.
174. Qualifying lawyers were entitled to the lesser of the actual monthly operating expenses incurred, such as rent, telephone and staff, or \$1,500 per month. Maternity and parental/adoption benefits were cumulative and a woman lawyer taking both maternity and parental leave could receive up to \$6,000 for a period of four months. The program came into effect on January 1, 2005 and was funded by members' special mandatory contributions of \$30 per year.
175. Starting on January 1, 2006, the Québec provincial government adopted the Québec Parental Insurance plan, which replaced maternity and parental benefits paid under the federal Employment Insurance program.⁴⁰ All employers and salaried and self-employed workers in Québec contribute to the Québec Parental Insurance Plan. Self-employed workers pay their contribution when they file their income tax return, and it is calculated based on their company's net income.⁴¹

⁴⁰ In 2004, the government of Canada and the government of Quebec signed a final agreement by which the government of Quebec would take over maternity, parental and adoption benefits programs previously available through the federal employment insurance program.

⁴¹ The following premium rates applied for 2007: \$0.737 for every \$100 in business income for self-employed. The maximum insurable income for 2007 is \$59,000.

176. Since the adoption of the Québec Parental Insurance Plan, sole practitioners are eligible to receive benefits under a government plan and the Barreau du Québec's plan is now almost obsolete, as any benefits received under the governmental plan are deducted from benefits received from the Barreau.

Law Society of British Columbia

177. In 2007, the Law Society of British Columbia adopted a maternity leave benefit loan program for sole practitioners who have to take time away from practice in order to give birth. The program is a two-year pilot project, and will,
- a. be available to practising self-employed lawyers who are birth mothers and who have no access to other parental or maternity financial benefits;
 - b. provide a fixed sum of \$2,000 a month for four months (maximum \$8,000) to cover the overhead associated with operating a sole practice during the maternity leave period;
 - c. be funded by the Law Society.
178. The objective of the program is to make it easier for sole practitioners to take maternity leave and to return to practice afterwards by covering some of the overhead costs of maintaining an office during the period of leave. It is not intended as income replacement, but as benefits to cover fixed office expenses for an amount of time linked directly to the expected absence from work due to maternity. It does not cover the parental leave of a father or an adoptive parent.

Federal Government

179. On September 18, 2006, the federal government considered a recommendation from the Standing Committee on the Status of Women concerning the development of policy approaches and program models for providing maternity and parental benefits to self-employed workers. Unlike in Quebec, where in 2004 the federal government and the Quebec government signed a final agreement by which the Quebec government would take over maternity, parental and adoption benefits programs previously available through the federal employment insurance program, employment insurance benefits for maternity and parental leaves in other provinces remain federally legislated.

180. The Standing Committee on the Status of Women concluded that, recognizing the diversity of needs among the self-employed as well as the broad spectrum of views on how and whether governments should introduce new programs in this area, the government would not extend Employment Insurance maternity and parental benefit coverage to the self-employed.⁴²
181. In light of the report indicating that the federal government is unlikely to approve maternity and parental benefits for self-employed workers in the near future, the Working Group recommends that the Law Society adopt a program to provide such benefits to self-employed lawyers and lawyers in small firms, as described in this report under recommendation 4 – Funding for Leaves.

Practice Locums

182. Although not a gender specific project, the Law Society of British Columbia has been working on measures to help sole practitioners and small firm lawyers. It recognized that this type of practitioner is critical to the legal profession in British Columbia and that lawyers in small firms and in sole practices face unique challenges. In that province, nearly 35% of the private bar (In Ontario 32% of the private bar) works as sole practitioners and 23% (in Ontario 20% of the private bar) of the private bar work in firms of two to five lawyers. Outside of major urban centres, sole practitioners and small firm lawyers provide the majority of the legal services in the province.
183. The Law Society of British Columbia created a Small Firm Task Force that looked at several initiatives to assist sole practitioners and B.C.'s small firm lawyers in alleviating many of the pressures they face. The most relevant recommendation for women sole practitioners is the Practice Locum initiative. Many lawyers working on their own reported difficulties taking time off, even for brief vacations, because there is no one to provide essential services to their clients. This initiative is meant to provide effective backup for small firm practitioners as well as opportunities for lawyers who want to work on a part-time or occasional basis. The Task Force anticipates that the proposed program

⁴² Government Response to the Fifth Report of the Standing Committee on the Status of Women, *Interim Report on the Maternity and Parental Benefits Under Employment Insurance: the Exclusion of Self-Employed Workers*, presented to the House of Commons on September 18, 2006.

will include a mechanism for avoiding conflicts and an on-line registry of lawyers in need of locums and those wanting to provide the service.

184. David Freeman, writer of *The Locum Lawyer*⁴³, appears to be the only full-time locum lawyer working in British Columbia and Alberta and he has been practising as a locum lawyer for over six years. He is a member of the Small Firm Task Force and has provided insight on how to develop the initiative. He believes there is an urgent need to establish practice locums particularly for women sole practitioners who have little support when taking on parenting responsibilities. His services are in such high demand that he must often decline work.

Initiatives at Law Firms in Ontario

185. Results of consultations indicate that Ontario firms recognize the importance of retaining women and are trying to find best practices within their current business model to retain women. In addition to the *Retaining Women* research findings, our research has identified the following noteworthy initiatives implemented by Ontario law firms.
186. Large firms⁴⁴ were lead sponsors or participating sponsors⁴⁵ of the Catalyst series on flexibility in Canadian law firms, *Beyond a Reasonable Doubt*⁴⁶, a series about job flexibility and work-life balance. This shows that large firms are committed to change and have begun considering strategies to retain and advance women within their ranks. The series not only outlines the costs of losing associates, but also makes the case for flexibility and presents potential practices to increase such flexibility in law firms.
187. The newly established partnership initiative between the Joseph L. Rotman School of Management and the Faculty of Law at the University of Toronto, The Business Leadership for Women Lawyers, which is sponsored by Blakes, Cassels & Graydon LLP, McCarthy Tétrault LLP and Osler, Hoskin & Harcourt LLP is also an important

⁴³ http://www.cba.org/bc/cba_publications/bartalk_10_02/guest_freeman.aspx

⁴⁴ Fasken Martineau DuMoulin LLP, Gowling Lafleur Henderson LLP, McCarthy Tétrault LLP, Ogilvy Renault LLP, Osler, Hoskin & Harcourt LLP.

⁴⁵ Blake, Cassels & Graydon LLP, Borden Ladner Gervais LLP, Goodmans LLP, McMillan Binch LLP and Torys LLP.

⁴⁶ Catalyst, *Business Case*, *supra* note 23; Catalyst, *Beyond a Reasonable Doubt: Lawyers State Their Case on Job Flexibility* (Toronto: Catalyst Canada, 2006) [*Job Flexibility*] and Catalyst, *Creating Opportunities*, *supra* note 28.

initiative. The program is a three-day intensive program designed to help women lawyers build professional confidence and acquire relevant business skills in order to advance within their firms. The partnership builds upon a combined understanding of the legal profession and the business world, and offers women in law an exciting opportunity to develop and advance in their careers. The development of the program drew upon the considerable expertise of senior women in law firms.

188. In addition, Canadian law firms are adopting practices to retain women in private practice, include the following:
- a. emergency childcare for lawyer parents who need childcare on short notice;⁴⁷
 - b. equity and diversity committees;⁴⁸
 - c. a “Parents at Work” program, which supports lawyers who are parents through education and support in areas such as child development, family fitness, nutrition, work-life balance, stress management, education planning, family financial management, and assessing nannies and daycares;⁴⁹
 - d. mentoring programs;⁵⁰
 - e. flexible work arrangements;
 - f. events with family members;⁵¹
 - g. network focused on women’s needs;⁵²
 - h. sponsors and participants in leadership projects for women;⁵³

⁴⁷ A number of large firms have adopted the Kids + Company program. The Kids and Company is a progressive childcare provider that wants to be part of the parent’s world. It provides corporate employees with reliable, flexible and unique, quality child care solutions to suit the needs of each individual child, parent and employer, creating a healthy work-life balance.

⁴⁸ A number of law firms now have equity and diversity committees in place.

⁴⁹ Borden Ladner & Gervais was the instigator and first corporate sponsor of this program.

⁵⁰ A number of law firms have adopted formal mentoring initiatives. The *2006 LEXPERT Law Student and Associate Recruitment Guide* ranked the law firm Boughton Peterson Yang Anderson Law Corporation first in Canada for its mentoring initiatives. The category’s criteria included whether the firm has a formal mentoring program, whether associates receive useful feedback and mentoring from partners, whether promotion and recognition are based on merit, and whether partners are open with associates about the firm’s overall business.

⁵¹ Some firms hold family events during the year including picnics, kids Halloween party as well as seasonal parties. Some have programs whereby lawyers are encouraged to bring their children to the office on school professional development days and allow them to participate in children’s activities at the firm.

⁵² A number of firms have begun implementing women’s networks to provide support to women. The goals of the network are to create a better sense of community amongst women; to provide career path information and programs; to provide business development opportunities for women and their clients; to provide education programs for women and to provide opportunities for social interactions.

⁵³ Some firms participate in the The Judy Project, An Enlightened Leadership Forum for Executive Women, hosted by the University of Toronto’s Joseph L. Rotman School of Management. Each year, it supports 25 women in

- i. equity and diversity bulletins.

Initiatives in the Public Sector

189. The Gandalf Group report identified best practices in the public sector. Findings indicated that the government offers more flexibility in hours, work pattern and the ability to work from home. Hours are more predictable and benefits, including pensions benefits, are provided. A number of interview participants noted that the government actively seeks diversity in its employees and hires to ensure the maximum diversity.
190. The government also appears to impose fewer pressures to reach targets in work hours. A number of lawyers who choose to work for the government indicate that they often do so because of the quality and nature of the work. Flexibility and the willingness to accommodate employees is also seen as possible when working for the government.
190. Further, job performance is assessed primarily on the basis of the quality of the work performed, not on the revenue generated or clients attracted. It means that business development skills are different than those required in private practice.
191. Perhaps most important is the fact that there is a critical mass of women at decision-making levels in government legal departments and agencies. Women are both fully represented and heard at the most senior levels. It also means that accommodations are highly valued as part of the culture – not as a strategy for retention.
192. During its final consultation, the Law Society received submissions from women in government who wrote in their individual capacity, and not in their capacity as representatives of the government. They present a different perspective than the Gandalf Group findings. Those women say that “while the government offers flexible work hours and offers the ability to work from home, the work loads and expectations of women lawyers with children are the same as for women without children and men. As such, a woman lawyer with children in government who wants to advance her career puts in the extra hours before the children wake up (ie. at 5 am) or after they are in bed (after 9 pm).

leadership positions through a five-day program providing skills and tools needed to move on to strategic roles in Canadian businesses and organizations.

While she might have the option of a flexible day off every third Friday, the reality is she is unable to take it nine times out of ten because of work commitments. If she does take a flex day or takes her child to the dentist, she spends the night catching up on emails or work demands that have fallen behind as a result [...] The answer to both [the private and the public sector] appears to be the same - a true acknowledgement by management, partners and employers that women lawyers with children are worth retaining and promoting irrespective of the fact that they may not always be able to meet the same work demands as women and men without children.”

C - Foreign Jurisdictions – U.S.

193. The Working Group also considered women lawyers’ experiences in U.S. law firms, in part because Canadian law firms are competing with the U.S. legal market and lose a significant proportion of their talent to U.S. firms. Canadian firms also compete with U.S. firms for clients, which increasingly do business with law firms committed to diversity.⁵⁴
194. U.S. firms are gradually recognizing the professional and economic need for increased diversity and the retention and advancement of women. Client demands for diversity within law firms, the increase in diversity of lawyers entering the profession and the cost of losing talent are all factors that have contributed to this recognition. Organizations such as the National Association of Law Placement (“NALP”) and Vault publish annual directories of legal employers. These directories include information about the diversity of law firms’ lawyers based on race, disability, sexual orientation and gender, along with information about the firms’ recruitment efforts to increase diversity, policies to promote equality within the workplace, pro bono activities, public interest awards and initiatives, committees that promote diversity and other programs that may have a positive impact on diversity within the firm.⁵⁵ These programs and initiatives are used as marketing tools to

⁵⁴ For U.S. studies see: *Ending the Gauntlet – Removing Barriers to Women’s Success in the Law* (New York: Thomson West, 2006) [*Ending the Gauntlet*]; *Women Lawyers and Obstacles to Leadership* (Boston: Equality Commission, 2007) [*Obstacles to Leadership*]; *Creating Pathways to Success – Advancing and Retaining Women in Today’s Law Firms* (Washington: Women’s Bar Association of the District of Columbia Initiative on Advancement and Retention of Women, 2006) [*Pathways to Success*]; *Balanced Lives – Changing the Culture of Legal Practice* (Washington: Commission on Women in the Legal Profession – American Bar Association, 2001) [*Balanced Lives*].

⁵⁵ See *NALP Directory of Legal Employers* (Washington: NALP, published annually) and *Vault Guide to the Top 100 Law Firms* (New York; Vault, published annually).

attract students, lawyers and clients and play a significant role in influencing change within law firms.

195. In 1995, two Harvard law students designed a project aimed at discovering what it is like to be a woman at the top law firms in the U.S. They surveyed women at 57 law firms across the country and, based on the responses of 600 women lawyers, they published the book *Presumed Equal*, which sold over 1,000 copies. The *Presumed Equal* project identified general trends in the experiences of women at their law firms. Many law firms used the book as a source to learn about their own deficiencies and responded by implementing women's initiatives and diversity committees focused on recruitment, retention and promotion of women lawyers. The book created a dialogue within the legal profession and became a good resource for law students and lawyers seeking information about firms' culture. In 2006, the third edition of the book *Presumed Equal – What America's Top Women Lawyers Really Think About Their Firms*⁵⁶ presented the findings of 4000 responses by women lawyers. The book outlines women's perceptions of their firms in areas such as training and advancement, attitudes and atmosphere, flexible work arrangements, the impact of billable hours on work and family, diversity, business development, networking, mentoring and firm leadership. This book, like the NALP and Vault directories, serves as a marketing tool to attract students, lawyers and clients, and as a resource of best practices to create positive work environments for women.
196. For a number of years, law associations and law firms in the United States have been developing strategies and programs to retain women in private practice. Some of these programs are at the leading edge and are worthy of mention, as they have positively influenced the advancement and retention of women and may serve as models for the Law Society of Upper Canada.

Systemic Changes in Firms

197. A number of U.S. studies have provided a range of models for firms to assist them in creating environments in which women can be successful. The studies focus on changing the culture of the firm through firm leadership, creating rainmakers, assessing the law firm's needs, reinforcing a consistent message and increasing flexibility. Most studies are

⁵⁶ (Bloomington; AuthorHouse, 2006) [*Presumed Equal*].

based on the premise that modern law firm's success is measured by the rainmaking ability of lawyers, and to become rainmakers, women lawyers need access and control of the key business areas of the firm, including business development opportunities, high-quality client files, and meaningful mentoring relationships.⁵⁷

198. It is believed that positive systemic change within firms will empower women to take responsibility for their career choices and their professional development and advancement. The following provides an overview of models of best practices to create firm environments in which women can succeed and in which women feel empowered.

➤ *Firm Leadership*

199. Studies have shown that cultural change must start at the highest levels of the organization⁵⁸ and firm leaders must take an active role in improving opportunities for the retention and advancement of women.⁵⁹ In order to achieve active participation and buy-in, all partners should be educated on the business case for retaining women and increasing the diversity of the firm's pool of lawyers.

200. The business case for retaining women relies on the following factors:

- a. large corporate clients increasingly seek law firms that have equal gender balance and a diverse pool of lawyers at the partnership and associate levels;
- b. firms that successfully increase the number of women in leadership positions have a competitive advantage in recruiting top talent;

⁵⁷ The Women's Bar Association of the District of Columbia Initiative on the Advancement and Retention of Women studied the issue of advancement and retention of women by focusing on three questions: what are the barriers, what are firms doing to keep and promote women and what are new ideas and better ways to stem the departure of women from law practices. In consultation with leaders in law firms, the Women's Bar Association developed a roadmap to law firm's success in advancing and retaining women. The roadmap is centered around the following core principles, essential to the advancement of women: creating rainmakers, assessing the needs, reinforcing a consistent message and flexibility. See *Pathways to Success*, note 54.

⁵⁸ *Ending the Gauntlet*, note 54 at chapter 16.

⁵⁹ *Ending the Gauntlet*, *supra* note 54 at Chapter 16. See also *Walking the Talk Creating a Law Firm Culture Where Women Succeed* (Washington: American Bar Association, 2004) [*Walking the Talk*] in which the American Bar Association notes that there should be a commitment from management. Firms should develop a mission statement and communicate it, and develop a strategic plan with regard to gender exclusivity at the firm, including time frames, goals, objectives and measurements. Budgets should be allocated for implementation and accountability for executing the plan should be established. Law firms are encouraged to create diversity committees, which would include senior partners. Law firms could also create positions in this area, such as a diversity director or chief diversity officer.

- c. the cost of attrition is high and includes not only the costs to recruit and train lawyers, but also the costs to recruit and train their replacements.⁶⁰
201. For newly hired women, women's voices and perspectives are important in decision-making and it is critical to have women who are role models in management positions.⁶¹ Some firms reward leadership roles through the compensation and bonus process.
202. Some firms also try to increase partner accountability when they use supervision skills and best practices to retain and advance women. For example, practice groups are sometimes asked to develop and report on goals relating to the success of women lawyers. Other firms use questionnaires to measure and review individual partners' efforts to advance the careers of women and lawyers from equality-seeking communities.⁶²
- *Creating Rainmakers*
203. Access to business development opportunities, high-quality client files, fair compensation, meaningful networking opportunities and mentoring relationships with both women and male mentors are critical to the success of lawyers.⁶³
204. It is important for firms to analyze billing trends by individual lawyers and to identify which lawyers are handling the top clients. This allows firms to introduce women partners to important clients. By developing better client relationships with women lawyers, firms can increase the skills and enthusiasm of women to generate significant business. External relationship building through comprehensive women's networks is important to a woman's success in developing her business.
205. The American Bar Association, for example, established a Women's Rainmaking Committee, which offers programs on business development skills, as well as an

⁶⁰ *Pathways to Success, supra* note 54 at 27.

⁶¹ *Pathways to Success, supra* note 54.

⁶² *Pathways to Success, supra* note 54.

⁶³ *Pathways to Success, supra* note 54.

opportunity for women to develop national networks.⁶⁴ National and state bar associations are also developing the same types of programs.⁶⁵

206. A process to effectively assign files to provide associates with opportunities to work for a variety of partners and to practise leadership and managements skills, is also key. A structured files assignment system reduces randomness, permits less well-known associates to secure challenging work from significant partners and decreases the chances that women will be disadvantaged. It is also critical for law firms to monitor file assignments to ensure that women participate in teams responsible for high profile, interesting and complex cases.
207. Compensation gaps between men and women lawyers remain and to address this issue firms should collect data, commit to instituting measurable change if required and continually monitor results. Firms should devise systems that appropriately compensate the entire range of skills and talents that lawyers have, including excellence in lawyering, contribution to firm management, and participation in programs such as mentoring. The data collected should include comparisons of earnings, as well as an underlying analysis of performance records, evaluations, and the variety of criteria that may be used in a firm's compensation system.⁶⁶
208. Firms are creating women's initiatives designed to provide women with the tools they need to succeed. These initiatives focus on skill building, training opportunities and the development of business networks, and provide a safe environment for women to discuss issues of concern. Models range from panel discussions, retreats or even spa days for key clients.⁶⁷ A number of firms have created women's groups that promote the interests of women and provide mentoring to women associates.

⁶⁴ *Supra* note 54.

⁶⁵ *Ending the Gauntlet*, *supra* note 54 at 320.

⁶⁶ *Ending the Gauntlet*, *supra* note 54 at Chapter 20.

⁶⁷ *Ending the Gauntlet*, *supra* note 54 at Chapter 24. See also *Walking the Talk*, *supra* note 59, which indicates that firms should ensure that budgets are available to plan client-networking activities, produce and maintain media focused on women's activities, and undertake other initiatives that support women.

209. Women lawyers also need career guidance tailored to their needs but would also benefit from self assessments so that they can seek out their own opportunities. One firm demonstrates the importance of career development to associates and partners, by including within written job responsibilities the responsibility for career development of junior lawyers. By distributing these job descriptions to the junior lawyers, the firm created some partner accountability for promoting the growth through guidance. The American Bar Association also recognizes the value of outside coaches to help women with specific professional development issues and create professional development programs to help women prepare for partnership and leadership positions. Firms could establish programs that focus on the integration of new lawyers into the firm.⁶⁸
210. Studies note the importance of a meaningful mentoring relationship. Mentoring does not necessarily require intensive, one-on-one relationships and can be based on a team model. However, informal programs should not be encouraged, as they tend to result in the exclusion of women. A strong mentoring program should ensure that participants have access to resources to learn the mentoring skills. Ideally, a formal mentoring program would assign both a partner mentor and a senior associate mentor to each new lawyer.⁶⁹
211. Formal mentoring programs that have been effective include,
- a. mentoring groups where 8 to 10 women associates and 4 to 5 partners meet regularly and plan activities, allowing mentoring pairs to evolve;
 - b. making lists of available mentors;
 - c. encouraging partners to ask associates to shadow them;
 - d. creating formal mentoring programs that cover substantive skills and professional development, with clear expectations, thoughtful matches, accountability and specific goals and measurements;
 - e. providing training for mentors on creating a healthy mentoring relationship;
 - f. allowing associates to change mentors without repercussion.⁷⁰

⁶⁸ *Walking the Talk*, *supra* note 59 at 18.

⁶⁹ *Ending the Gauntlet*, *supra* note 54 at Chapter 21.

⁷⁰ *Pathways to Success*, *supra* note 54 at 13.

➤ *Assess Needs*

212. To be successful, initiatives should be tailored to the particular firm environment. Therefore, firms should begin by analyzing demographical information, paying particular attention to differences among practice groups, and determining where the various practice groups stand in relation to their peers. In addition to demographic measures such as gender, race and national origin, attention should be paid to other criteria such as recorded time in billable and non-billable hours, matters worked on, supervisors and, for lawyers who are leaving, the reason for leaving, the point in their careers at which they leave and where they go.⁷¹ Through surveys, focus groups, exit interviews and other methods, firms should assess the overall experience of women at the firm.

➤ *Flexibility*

213. Firms should recognize that flexibility is not an accommodation for a few lawyers with small children. To enable firms to recruit and retain good talent, workplace flexibility should be available to anyone who can make the business case that the firm would benefit from the lawyer's work on the proposed schedule and from the proposed location.

214. Although a failure to confront family responsibility issues disproportionately affects women lawyers, the issues are also important to men. Studies recommend that firms adopt balanced hours programs to allow them to work individually tailored full or reduced hours that are designed to meet the business needs of the firm while maintaining the lawyers' ability to work and develop professionally. Because the issue of balance is and will remain a matter of managing client and family expectations, it is important that the firm and the lawyer be able to maximize productivity through efficient work and team building.

215. It is important, to successfully implement flexible work arrangements, to train lawyers to effectively manage flexible work arrangements and promote these programs within the firm. Management and lawyers who have entered into flexible work arrangements should

⁷¹ The importance of compiling statistical information about the firm has been recognized by a number of studies. See also *Ending the Gauntlet*, *supra* note 54; *Walking the Talk*, *supra* note 59; Bar of San Francisco *No Glass Ceiling* initiative; Chicago Bar Association's Alliance for Women call for action initiative; the Dallas Diversity Task force commitment program and the Association of the Bar of the City of New York Statement of Diversity Goals.

know how to effectively implement such programs and assess their success. Management should learn that face time at the office is not necessarily indicative of good quality of work, skills and judgment. Firms should also provide programs tailored to help lawyers meet multiple commitments, such as emergency childcare.

216. Flexible arrangements should be based on individual needs, provide or compensate lawyers for equipment required to work from home, and strongly encourage men and women to use these policies. Reduced-hours policy should allow associates to be eligible for partnership and for firm management positions, and provide lawyers with similar professional development opportunities as other lawyers, clear management support and fair compensation. The true hallmark of a successful flexible schedule policy will be the willingness of men to utilize these opportunities.

217. A number of firms have part-time or alternative hours options. To be successful, these programs should,
 - a. be available to both associates and partners;
 - b. be available to anyone who demonstrates that working a different schedule would be beneficial to the firm;
 - c. be offered with proportional pay, benefits and bonuses;
 - d. ensure that lawyer's eligibility for partnership is assessed, negotiated and maintained (such as delayed schedule).⁷²

218. Studies have shown the economic value of part-time work or reduced hours in a law firm. In 2001, a survey of law firms showed that the average occupancy cost per lawyer in large U.S. firms was \$41,000 and the average malpractice premium per lawyer was \$4,000. If a part-time lawyer works 75% of the hours of a full-time lawyer, he is likely to continue paying full occupancy costs and malpractice insurance expenses. Therefore, he is paying \$10,000 in occupancy cost and \$1,000 in malpractice insurance expense more than he would if he had the opportunity to reduce his costs pro rata. The survey showed that if his average revenue is \$533,000 and he is working a 75% schedule, he is

⁷² *Pathways to Success*, *supra* note 54 at 12.

generating \$400,000 in revenue. The \$11,000 in so-called additional cost appears immaterial.⁷³

219. Flexible work arrangements may also be used as a marketing tool to attract talent. The *Working Mother* magazine, an authoritative source for career mothers, and Flex-Time Lawyers LLC⁷⁴, an American national consulting firm advising attorneys and legal employers on work-life balance and the retention and advancement of women, recently announced the list of the 2007 Working Mother and Flex-Time Lawyers Best Law firms for Women. The winning firms have successfully established work/life policies, including flexible time, childcare and women-focused mentoring, leadership and networking programs. By being placed on the list of notable firms for promoting work/life balance, the firms can use this as a marketing tool to attract good talent and clients committed to equality and diversity.

Commitment Pledges

220. Perhaps the most effective programs implemented in the United States to retain women and diverse pools of lawyers have been undertaken as collaborative programs between law associations and law firms. The programs vary in structure and content, but they generally encourage law firms to commit to change, by signing a commitment pledge with goals and targets regarding the implementation of programs in areas such as hiring, retention, promotion, leadership and diversity. Programs have focused on the promotion, advancement and retention of women, racialized lawyers and lawyers with disabilities in law firms.

⁷³ *Pathways to Success, ibid.* at 12. The source of the survey is Sandman, (2003) 88 Women Lawyers' Journal 16. However, one should also take into account secretarial costs, benefits, costs for technology, library, phone systems and others.

⁷⁴ Flex-Time Lawyers LLC® is a national consulting firm advising law firms, corporations and lawyers on work/life balance and the retention and promotion of women attorneys. Flex-Time Lawyers LLC functions in the following principal capacities:

- Providing consulting services on flexible and reduced schedules, work/life balance, business development, women's initiatives, re-entry and women's issues generally.
- Providing speakers at national conferences, events, law schools, corporations, law firms and retreats.
- Hosting a membership organization with chapters in New York and Philadelphia, offering networking opportunities, support, career guidance, education and information sharing to effect change.
- Serving as an ongoing resource, publishing articles and fielding inquiries from the press, lawyers and employers about work/life balance and women's issues in the law.

For more information, please see <http://www.flextimelawyers.com/>

221. The Bar Association of San Francisco began a *No Glass Ceiling* initiative in 2001 with the goal of increasing women's opportunities within the legal profession in the San Francisco Bay Area. In May 2002, a substantial number of firms were signatories and committed to having 25% women partners by the end of 2004, and to retaining equal numbers of men and women associates by the end of 2004, as well as to having at least one woman chair or managing partner by the end of 2005.⁷⁵
222. In July 2005 the initial results of the initiative's signatories were announced. They showed that 63% of responding firms reported having at least 25% women partners, (compared with only 22% two years prior) and 69% reported that women comprised at least 25% of management positions.⁷⁶
223. The next step in the initiative involved a modest upward adjustment in commitment for the San Francisco Bay area firms but also commitments to implement programs for women. In addition to committing to increasing the representation of women at the partnership level, signatory firms committed to the following goals:
- a. To develop and implement objective and unbiased criteria and procedures for evaluation and promotion to management positions, as illustrated in *Fair Measure: Toward Effective Attorney Evaluations*.⁷⁷
 - b. To commit to having at least a woman chairperson or managing partner, either firm wide or in a branch office, by January 1, 2010.
 - c. To achieve approximately equal retention rates for both men and women attorneys for 2007 and beyond.
 - d. To obtain feedback from employees on their assessment of gender issues in the workplace and to make senior management responsible for addressing unconscious stereotypes and perceptions of gender bias.
 - e. To broadcast the message that senior management of the organization embraces these commitments and to provide information to National Association for Law

⁷⁵ See "66 Firms Commit to No Glass Ceiling for Women," the Bar Association of San Francisco at <http://www.sfbar.org/about/noglassceiling/sixtysixnoglass.htm>. For further information about the No Glass Ceiling initiative, see: http://www.sfbar.org/diversity/no_glass_ceiling.aspx

⁷⁶ See "BASF's No Glass Ceiling Initiative Results in Huge Strides for Bay Area Women Attorneys," the Bar Association of San Francisco (July 12, 2005) at http://www.sfbar.org/about/releases/no-glass_ceiling_results.htm.

⁷⁷ *Fair Measure: Toward Effective Attorney Evaluations* (Washington: American Bar Association Commission on Women in the Profession, 1997).

Placement and The Bar Association of San Francisco regarding the number of women lawyers serving in management positions, and the number and gender of part-time partners.

- f. To offer formal or informal networking opportunities, client development activities and mentoring programs that include women lawyers at all levels, to help women establish their professional profiles and to develop client bases.
- g. To identify and promote opportunities to participate in challenging projects, organizational committees, practice groups and management training that include women at all levels to help enable women to assume significant management roles within their law firms or law departments.
- h. To embrace the concept of part-time partners and flexible work schedules, including making efforts to ensure that alternative schedules are an equitable and viable option.
- i. To establish billing procedures that do not have a negative impact based on gender.

224. The Chicago Bar Association's Alliance for Women announced in January of 2005 a Call to Action⁷⁸ for law firms and organizations to enhance leadership opportunities for women lawyers from the committee level through to partnership. With a target date of December 2007, the Call to Action created goals for the increase in representation of women at the partnership level, along with the following:

- a. to have women represented on every firm committee in numbers proportionate to the number of women partners;
- b. to increase the number of women practice group leaders;
- c. to revisit alternative work schedules to ensure they are equitable; and
- d. to improve any disparity in the rates in which men and women are retained, promoted, and laterally recruited.

225. In order to assist law firms in implementing programs to meet their commitments under the Call to Action program, the Alliance for Women developed a guide, *Best Practices*

⁷⁸ See <http://www.chicagobar.org/calltoaction/>.

for Ensuring Compliance with Commitment, that includes tips on what law firms should do to effectively implement the Call to Action.

226. The Chicago Bar Association Alliance for Women also developed a Women's Leadership Institute. The Chicago Bar Association Alliance for Women hosts a complimentary four-part seminar series focusing on the skills and tools needed for women lawyers to take on leadership roles in their law firms and organizations. Topics include communications, networking, self-promotion and creating positive visibility.

227. The Dallas Diversity Task Force followed the example of other organizations and adopted its own commitment program designed to promote hiring of racialized lawyers in Austin's 25 largest law firms. The Task Force published a report card that grades Austin law firms on their percentage of racialized lawyers. The Task Force goes beyond the analysis of raw numbers and examines initiatives undertaken by law firms to create a more diverse pool of lawyers. Initiatives such as diverse recruiting staff, written plan for diversity and diversity councils or committees are noted. The Task Force has not only produced a *Statement of Goals of Dallas Law Firms* but also a *Firm Efforts Checklist*, which lists efforts such as written strategic plan on diversity, monitoring and reviewing equal access for racialized lawyers to quality client work, marketing efforts, organizing formal and informal events, diversity councils or committees, broad outreach in recruitment processes, diversity in a firm's marketing and recruiting staff, retaining a diversity consultant to assess in the recruitment, retention, development and advancement of racialized lawyers.

228. The Association of the Bar of the City of New York has also implemented a Statement of Diversity Goals of New York Law Departments. Law firm signatories adopt goals in the areas of,
 - a. hiring and retention;
 - b. promotion;
 - c. leadership; and
 - d. diversity in outside counsel.

229. The signatories to the New York Statement of Diversity Goals pledge to create a diversity committee, undertake bi-annual diversity training programs, implement and maintain programs to promote the success of racialized lawyers, implement effective work life programs and programs for expanding diversity in recruitment, organize networks of affinity groups, and measure success by reporting aggregate diversity statistics.
230. In the context of its Statement of Diversity Principles and Signatories program, the New York City Bar has also created a series of Diversity Working Group sessions, addressing topics such as creating formal networks, workplace flexibility, diversity recruiting strategies, advancing and retaining racial and ethnic minorities, attorneys with disabilities, religious diversity in the workplace and finding a voice for racialized women at law firms.
231. Pledge or commitment programs have also been used to increase the participation of lawyers with disabilities in the profession. One example of such programs is the California State Bar Pledge Program, instituted in 1998. Through the Pledge Program a senior member of a firm or other segment of the legal community agrees on behalf of his or her organization to conform to the principles of the *American with Disabilities Act*⁷⁹ and endeavour to increase the participation of legal professionals with disabilities. The program is voluntary but incentives are provided through recognition by the state bar and positive publicity for the participating organizations.

U.S. Firms Best Practices

232. In addition to the best practices outlined above, the following practices have been adopted by law firms and reported in *Presumed Equal: What America's Top Women Lawyers Really Think About Their Firms*.⁸⁰

➤ *Affinity Groups*

233. Some law firms have created affinity groups to provide a setting in which diverse lawyers come together to discuss matters of common concern and to form professional and

⁷⁹ 42 U.S.C.S. 12101 (1990).

⁸⁰ *Presumed Equal*, *supra* note 56.

mentoring relationships. Affinity groups range from African-American affinity groups to women's forums.⁸¹

➤ *Newsletters*

234. Some firms provide information about diversity initiatives through newsletters and bulletins.⁸²

➤ *Creative Mentoring Initiatives*

235. The firm Sidley Austin Brown & Wood LLP received the 2005 Catalyst Award, which honours innovative approaches with proven results taken by companies to address the recruitment, development, and advancement of all managerial women, including women of colour. The firm's initiatives include Mentoring Circles, which allow women lawyers to share experiences across levels, practice areas, and office locations. In addition to being assigned a firm wide mentor, each incoming woman associate is assigned to a Mentoring Circle comprised of three to five women partners and eight to twelve women associates. Each Circle includes women from a cross-section of practice areas and levels at the firm.

➤ *Leadership Initiatives*

236. The firm Sidley Austin Brown & Wood LLP created a Women and Leadership Series, which provides women associates access to clients. Programs in the series are tailored to the needs and interests of women in each particular region or office site, and presentations are conducted by one or more prominent woman speaker.

➤ *Networking*

237. Sidley Austin Brown & Wood LLP established a series of women's networking opportunities, such as women only cocktail parties and receptions are held several times a

⁸¹ Jenner & Block LLP: The firm's attorneys have formed five Affinity Groups, including the African-American Affinity Group, the Women's Forum, the Jenner & Block Asian Forum, the Jenner & Block Lesbian, Gay, Bisexual and Transgender ("LGBT") Forum and Hispanic Lawyers.

⁸² Jenner & Block LLP: The firm communicates diversity initiatives through its bulletin *Equal Time*. The firm's diversity newsletter, includes stories about accomplishments of its diverse lawyers; legal view points from diverse lawyers and/or clients; the *pro bono* community service the firm may be providing on matters relating to women, minorities or LGBT communities; and other issues of interest.

year, as are “Maternity Lunches”, which provide an opportunity for women lawyers to discuss maternity policy, ask questions and share experiences.

238. The efforts of the firm Bingham McCutchen LLP are also noteworthy. Retreats are organized for lawyers of equality-seeking communities. The San Francisco office hosted a retreat for lesbian, gay, bisexual and transgender lawyers. For example, its New York office hosted over 100 lawyers from across the firm at its first Attorneys of Color Retreat.

➤ *Internships*

239. In 1986, Bingham McCutchen LLP and the Connecticut Asian Pacific American Bar Association co-founded the Boston Lawyers Group, a consortium of Boston law firms and other area legal employers, which supports the recruitment, retention and advancement of lawyers of colour, particularly within large law firms. In collaboration with the Boston Lawyers Group, the firm sponsors an annual summer internship program for urban college students from diverse backgrounds who are interested in attending law school. The program includes attorney-student mentoring, interaction with summer associates, and seminars about legal work done at major law firms

D - Best Practices for Soles and Smalls

240. Practice locums have become quite common in the legal profession in foreign common law jurisdictions, as they provide flexibility both for the firm and the locum and it is believed that many lawyers move to locum assignments as a way of achieving better work/life balance.⁸³ It is also believed that lawyers choose to work as practice locums because they enjoy the constant challenge and change, the exposure to different firms and work practices, the freedom from office politics, the opportunity to add value, the constant high work levels, the ability to set their own salary level, and the control over their working life.
241. For example, the Law Society of New South Wales in Australia has established a practice locum service, which provides the best available match for a firm’s needs, taking into consideration a locum’s experience and areas of expertise. The services are available to

⁸³ *Locums are go!* September 1, 2005 Law Gazette.

firms and locum solicitors from Sydney and rural New South Wales at a minimal administration fee of \$22 per day for the first five days and \$11 per day thereafter. The locum's hourly rate is negotiated directly by the firm with the locum.

242. The *Solicitor Sole Practitioners Group*⁸⁴ is a group that operates as part of the Law Society of England and Wales. The Group has a National Executive Committee of representatives from regional areas in England and Wales. Its main goal is to encourage the formation of local groups to provide sole practitioners with mutual support and opportunities to network amongst their own. The Group has published a *Risk Management for Sole Practitioners – Protecting your Practice in Emergencies*,⁸⁵ which provides information about employing a locum.
243. The Group has been in existence since 1993 and currently has 4500 members. The membership ranges from sole practitioners working from home or in offices without staff, to those who work in more than one office and with several assistants. The range of work covers specialist niche practices and general practices. Members include those whose main source of income comes from practice locum work and those who have very small practices earning fees lower than £15,000 (approximately \$35,000 Canadian) per year.
244. In January 2002, as a reaction to private legal recruitment firms, which offered expensive services through placement fees, the Birmingham Law Society of England created a legal recruitment business, Recruitment Solutions. Based in the heart of the region's legal community, Recruitment Solutions is focused on placing qualified lawyers, legal executives, and paralegals within exceptional legal jobs with members of Birmingham Law Society.
245. A significant portion of Recruitment Solutions' business is sourcing locum candidates for firms. According to Recruitment Solutions, the high demand for locum lawyers reflects a growing trend in practice to use locum resources to cover holidays or maternity leave, but

⁸⁴ www.spg.uk.com

⁸⁵ (London: Law Society of England and Wales, 2001).

also to cover other short/medium term projects or where firms have been unable to identify suitable permanent recruits.

246. The U.S. have also seen a growth in contract lawyering, as indicated by Deborah Arron and Deborah Guyol in *The Complete Guide to Contract Lawyering*⁸⁶. They note the influence of women on law practice management and the fact that the collective of women entering the profession has had to develop a practice model that allows time for the family, parental leaves, part-time and flexible schedules. Arron and Guyol note that in the United States, women are well represented in the ranks of contract lawyers, in part because contract work allows many lawyers to practice their profession in a way that is more compatible with their personalities, preferences and lifestyle concerns. The book provides insights, tips and checklists about topics such as marketing the services and finding work, staying in business, setting the rates, striking a deal, concluding a contract, ending the relationship, ethical considerations.

E – Conclusion

247. A review of best practices in Ontario and in other jurisdictions has assisted the Working Group in developing its recommendations. The following conclusions can be drawn from this review:
- a. the experiences and realities of women in larger firms is significantly different than those of women in smaller firms and sole practices, therefore, recommendations to address challenges faced by women in large and medium firms are different than those designed to address the needs of women in small firms and sole practices respectively;
 - b. law societies, legal associations and law firms all have a role to play in adopting strategies for the advancement and retention of women in private practice;
 - c. because of the unique challenges faced by women lawyers who are members of Aboriginal, Francophone and/or equality-seeking communities and their historic under-representation in the legal profession, systemic mechanisms, such as an advisory group, should be created to provide advice to the Law Society and monitor and assist in the implementation of recommendations;

⁸⁶ (Seattle: Decision Books, 2004).

- d. in the context of large and medium size firms, systemic cultural change is necessary and firms will require leadership and commitment from managing partners to implement practices such as the following:
 - i. the collection and analysis of law firms' demographics to allow law firms to develop strategies based on the firm's needs;
 - ii. the adoption and acceptance of flexible work arrangements;
 - iii. programs to assist women in becoming rainmakers and to provide gender-based networking, leadership skills development opportunities and strong mentoring programs;
- e. women in small firms and sole practices are particularly vulnerable because they do not have the financial or human resources to take extended leaves. Therefore, they require the following programs:
 - i. access to funding to cover some of the expenses of leaves of absences;
 - ii. access to practice locums and guidelines to assist them in retaining locum lawyers to maintain their practice while on leave;
 - iii. access to networking opportunities.
- f. a number of initiatives designed to assist women would also benefit male lawyers.

VI – DELOITTE & TOUCHE'S INITIATIVE

248. This report does not present an extensive review of programs and initiatives in other professions. However, the U.S. Deloitte & Touche initiative⁸⁷ deserves mention. The structure and culture of the accounting profession, like the legal profession, includes large firms and the expectation of high billable hours and long work hours. Also, the success of the "Initiative for the Retention and Advancement of Women", launched in 1992, was considered by the Working Group when developing strategies for the legal profession. Deloitte was the first major accounting and consulting firm to focus on this issue, admitting it had a problem, addressing it openly, and pledging to share results. Going public placed a tremendous amount of pressure on Deloitte, and on its senior partners, to remedy the problem it had in retaining women.

⁸⁷ Deloitte & Touche's Women's Initiative is described in detail in Rosabeth Moss Kanter and Jane Roessner, "Deloitte & Touche (B): Changing the Workplace" (2003) Harvard Business School.

249. A Task Force on the Retention and Advancement of Women was created in 1992 to coordinate Deloitte's Women's Initiative. The Women's Initiative was lead by a well-respected and outspoken member of the firm, Ellen Gabriel, a leading audit partner. The Task Force began its work by studying why women were leaving the firm. First, it examined Deloitte's personnel records for the previous three years to find out how many men and women had been hired at each level, how many women had been promoted and the turnover rate for men and women. The data showed that although men and women left the firm in almost equal numbers at the entry level, at higher levels, women were leaving at an increasing rate. The firm retained Catalyst to conduct confidential interviews with about 40 high-potential women who had left Deloitte in the previous year. Catalyst found that over 70% of the women who had left were still employed full-time the next year, 20% were working part-time at other firms and fewer than 10% were at home with small children. Catalyst also held focus groups with about 500 people throughout Deloitte, both men and women.⁸⁸
250. Deloitte's initiative also included the appointment of an external advisory group, the "Council on the Advancement of Women", to meet quarterly and monitor the firm's performance and goals with respect to the advancement and retention of women. The Council included extremely influential individuals in the business community.
251. Following the initial needs analysis, three areas were identified as significant barriers to retaining and advancing women at Deloitte: a male-dominated work environment, a perception of fewer opportunities for career advancement for women, and the difficulties faced by employees to manage their professional and family lives.
252. In order to address the first issue, Deloitte held a two-day "Men and Women as Colleagues" workshop focusing on behavioural change. The objective of the workshop was to raise awareness of gender dynamics in the firm. Deloitte's CEO showed his leadership and support for the initiative by attending the first workshop. The board of directors, the Management Committee and the managing partners all attended the

⁸⁸ See Rosabeth Moss Kanter and Jane Roessner, "Deloitte & Touche (A): A Hole in the Pipeline" (2003) Harvard Business School.

workshop before the employees were asked to sign up. This was followed by all of Deloitte's partners, directors, senior managers and managers. All 5000 management professionals attended the workshop within one year. The workshop included difficult discussions, videos and case studies, on the differences in perception between men and women in the workplace.

253. The lessons of the workshop were gradually integrated into the day-to-day practice of the firm as Deloitte moved on to make operational changes, which consisted of three strategies. The first was to ensure that any operational changes were driven from the management. Secondly, the firm decided to declare its commitment internally and externally. The third principle was to build an accountability structure.
254. The Task Force required each office to complete an annual plan for the Women's Initiative, based on benchmarks such as number of women, gender gap, promotion of women, promotion of women partners, and flexible work arrangements. Offices had to complete assessments about their achievements, and set goals for the coming year, including actions it planned to take to achieve each of the goals.
255. At Deloitte, getting good assignments is key to career advancement, although there was no clearly defined assignment process. The Task Force decided to audit assignments and, as a result, made operational changes. Deloitte required annual assignments reviews and office managing partners were asked to analyze all of the service lines in their office, list the top assignments, who worked on each one and the number of men and women in the office.
256. Flexible work arrangements had been available on paper for years. However, employees did not take advantage of these policies, largely because they perceived flexible work arrangements as career limiting. Two principles were adopted to ensure that the culture at Deloitte accepted such arrangements as important: they were temporary and opting for flexible work would not hinder a person's advancement.

257. All firm policies were reviewed for gender bias. Some policies, such as the “no nepotism” policy, were found to have a negative impact on women. When co-employees entered into significant relationships, one employee was asked to leave, more often the woman. The policy was modified to a “no supervision” rule where professionals could not supervise someone with whom they had a significant relationship.
258. As a result of the Women’s Initiative, the firm also established an accountability process, where the Task Force would compare results of change in offices to one another, compare them to benchmarks established by the firm, and provide reports to management that were used in evaluations and tied to compensation.
259. By 1995, 23% of senior managers were women, the percentage of women admitted to partnership rose from 8% in 1991 to 21% in 1995, the turnover rate for female senior managers dropped from 26% in 1992 to 15% in 1995.
260. Six years after the initiative was launched, flexible work arrangements were perceived as good programs. In 1998, more than 700 people out of 28,000 were on formal flexible work arrangements, including some male partners.
261. By 1998, people at Deloitte were of the view that the culture had completely changed. The clients saw the results of the Women’s Initiative as an added value. Because of it, the turnover rate was lower and the employees were more experienced. Deloitte uses the Women’s Initiative to market the firm to clients, and has developed networking opportunities for women, such as the women’s Executive Lunch.
262. As a result of this initiative, Deloitte has been recognized publicly as a leading firm, by prestigious organizations such as Fortune magazine. The success of Deloitte’s Women’s Initiative is largely based on the following factors:
- a. the initiative was driven by the senior management;
 - b. the task force had prepared the firm for change by laying a foundation of data and making the business case;
 - c. the commitment was made internally and announced publicly;

- d. the key to creating cultural change was to create a dialogue throughout the firm, in this case through mandatory interactive workshops;
- e. a flexible system of accountability was established throughout the organization;
- f. work/life balance was promoted not only for women, but for men and women.⁸⁹

VII – FINAL CONSULTATION

263. On February 21, 2008, Convocation approved a province-wide consultation to seek comments from the profession on the report and proposed recommendations.
264. The following provides an outline of the communication strategy and general findings of the final consultation. A more detailed Final Consultation Report is available on the Law Society website at www.lsuc.on.ca or by contacting the Equity Initiatives Department at the Law Society. Specific findings about the recommendations are presented under each recommendation. Written submissions received are also available on request.

A - Communication Strategy

265. The Law Society developed a communication strategy and promoted the final consultation through the following methods:
- a. the report, executive summary (in French and English) and consultation questions were posted on the public website, inviting comments;
 - b. advertisements in French and English about the final consultation were placed in the Ontario Reports;
 - c. an overview of the project appeared in the Ontario Lawyers' Gazette;
 - d. a press release was issued on February 22, 2008 highlighting details of the initiative;
 - e. discussion groups and face-to-face meetings were organized in collaboration with the presidents and librarians of regional law associations and regional benchers;
 - f. an email account for electronic comments was created;
 - g. the responses were collected and compiled for a report to Convocation in May.

⁸⁹ See Douglas M. McCracken, "Winning the Talent War for Women: Sometimes It Takes a Revolution" (2000) Harvard Business Review 3.

266. The project was featured and/or articles are expected to appear in the following:
- a. Ontario Lawyers Gazette;
 - b. The Globe & Mail;
 - c. CBC Radio;
 - d. Lawyers Weekly;
 - e. Law Times;
 - f. Macleans;
 - g. Precedent; and
 - h. Toronto Star

B - The Consultation Methodology

267. The province-wide consultation was held between March and May 2008. During that period, the Law Society held meetings in Toronto, Ottawa, Sudbury, Oakville, Kingston, Windsor, Thunder Bay, Orillia, Ajax and London with lawyers, including law firm managing partners and presidents of legal associations. Approximately 900 lawyers and students attended the meetings and the Law Society received more than 55 written submissions from individuals and organizations, including the following:
- a. Ontario Bar Association ("OBA");
 - b. the County and District Law President's Association ("CDLPA");
 - c. the County of Carleton Law Association ("CCLA");
 - d. the Thunder Bay Law Association;
 - e. the Advisory Committee on Women at Justice;
 - f. the Ontario Crown Attorney's Association; and
 - g. the Advocates' Society.
268. The Law Society is grateful to the legal profession for engaging in this process by taking the time to attend meetings and/or by sending written submissions. The consultation process proved to be overwhelmingly positive.
269. The following provides an outline of the meetings, their location and date, the number of attendees and which benchers were in attendance. While the Law Society met on request

with some law firms, it is also arranging additional meetings with firms that have expressed an interest in discussing the project further.

Location	Date	Number of participants (approximate)	Benchers and support staff in attendance
CDLPA Executive Committee – At the Law Society	March 6, 2008	9	Bonnie Warkentin (Co-Chair) Janet Minor Josée Bouchard (Equity Advisor)
Advocates' Society Executive Committee	March 19, 2008	27	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Janet Minor Josée Bouchard (Equity Advisor)
Equity Advisory Group	March 26, 2008	13	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Janet Minor Josée Bouchard (Equity Advisor)
Women's Law Association of Ontario – Board of Directors	April 3, 2008	10	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Josée Bouchard (Equity Advisor)
Feminist Legal Analysis Committee of the OBA	April 9, 2008	7	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Josée Bouchard (Equity Advisor)
Kingston	April 14, 2008	13	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Josée Bouchard (Equity Advisor)
Ottawa	April 15, 2008	60	Bonnie Warkentin

			(Co-Chair) Laurie Pawlitz (Co-Chair) Thomas Conway Bradley Wright Josée Bouchard (Equity Advisor)
OBA Executive Committee	April 17, 2008	18	Bonnie Warkentin (Co-Chair) Laurie Pawlitz (Co-Chair) Josée Bouchard (Equity Advisor)
London	April 18, 2008	17	Bonnie Warkentin (Co-Chair) Laurie Pawlitz (Co-Chair) James Caskey Heather Ross Judith Potter Josée Bouchard (Equity Advisor)
Ajax Central East Region Advocacy Conference	April 19, 2008	20	Laurie Pawlitz (Co-Chair) Janet Minor Douglas Lewis Josée Bouchard (Equity Advisor)
Sudbury	April 21, 2008	9	Bonnie Warkentin (Co-Chair) Laurie Pawlitz (Co-Chair) Susan Hare Carol Hartman Josée Bouchard (Equity Advisor)
Oakville	April 22, 2008	8	Bonnie Warkentin (Co-Chair) Laurie Pawlitz (Co-Chair) Paul Henderson Alan Silverstein Josée Bouchard (Equity Advisor)
Toronto Town Hall April 23, 2008	April 23, 2008	165	Treasurer MacKenzie Bonnie Warkentin (Co-Chair) Laurie Pawlitz (Co-

			Chair) Janet Minor Derry Millar Josée Bouchard (Equity Advisor)
Meeting with GTA Managing Partners	April 23, 2008	23	Treasurer MacKenzie Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co- Chair) Janet Minor Josée Bouchard (Equity Advisor)
Toronto Town Hall	April 24, 2008	200	Treasurer MacKenzie Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co- Chair) Janet Minor Derry Millar Mary Louise Dickson Paul Schabas Josée Bouchard (Equity Advisor)
Orillia	April 25, 2008	8	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co- Chair) Douglas Lewis Josée Bouchard (Equity Advisor)
South West Region Women's Law Association	April 25 – 26, 2008	20	Heather Ross Judith Potter
McCarthy Tetrault LLP National Board of Managing Partners	April 28, 2008	10	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co- Chair) Josée Bouchard (Equity Advisor)
McCarthy Tetrault, town hall	April 28, 2008	40	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co- Chair) Josée Bouchard (Equity Advisor)
Meeting with GTA Managing Partners	April 29, 2008	19	Treasurer MacKenzie Bonnie Warkentin

			(Co-Chair) Laurie Pawlitza (Co-Chair) Janet Minor Josée Bouchard (Equity Advisor)
Blake Cassels & Graydon LLP	April 29, 2008	90	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Josée Bouchard (Equity Advisor)
Fraser Milner Casgrain LLP Diversity Committee	April 29, 2008	8 lawyers and 1 baby	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Josée Bouchard (Equity Advisor)
Ontario government and crown attorneys	April 30, 2008	6	Janet Minor Josée Bouchard (Equity Advisor)
Thunder Bay	May 1, 2008	18	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Ross Murray Josée Bouchard (Equity Advisor)
Ontario government and crown attorneys	May 6, 2008	7	Janet Minor
Windsor Essex Law Association	May 8, 2008	15	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair)
CDLPA plenary	May 8, 2008	60	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair)

C – General Consultation Findings

270. As mentioned above, the final consultation attracted a broad spectrum of lawyers, men and women, from all types of practice settings and firm sizes, the government, in-house counsel and articling and law students. Participants included both men and women who are associates, partners and managing partners of various levels of experience and practising in a wide range of areas.

271. The experiences and views of lawyers varied by region. The interest of the legal profession in talking about this issue and developing effective strategies is extremely high and it is clear that the project is timely. This section of the report provides a general overview of the views of lawyers about the project. Comments that are specific to each recommendation are presented in the next section of the report.
272. Comments and submissions were very positive and supportive of the proposed recommendations, and a number of women lawyers noted that they felt inspired by the project. Some said that they would have likely made different career choices had the recommendations been in place when they were making these choices. However, some participants noted that the recommendations do not go far enough. Those lawyers generally agreed that the recommendations are an excellent first step and that the Law Society should identify further initiatives once the recommendations have been implemented.
273. There was general agreement that the Law Society should be a leader in working to enhance the retention of women in private practice. Numerous law firms, legal organizations and lawyers commended the Law Society for studying the issue of retaining women in private practice and, in particular, for proposing practical solutions. Associations such as CDLPA, the Advisory Committee on Women at Justice and EAG wrote to indicate their general support for the findings and endorsement of the recommendations. The Ontario Crown Attorney's Association generally agreed with the recommendations and concluded that they are a first step in the right direction.
274. The acceptance by the profession of part-time and flexible work arrangements are seen as important to achieve the reality of balance between professional and personal lives, and to provide flexibility for women who wish to reintegrate private practice after extended leaves of absences.
275. The EAG noted the importance of creating awareness and programs to address the unique situation of racialized women in private practice. It is anticipated that the Women's

Equity Advisory Group, created as a result of the recommendations, will assist to identify the unique needs of racialized women and to develop initiatives to address those needs.

276. EAG also indicated that it would like to be involved in the implementation stage of the project. The EAG is an advisory group consisting of expert lawyers and organizations in the area of equality rights. It includes representation from the Advocates' Society, the Arab Canadian Lawyers' Association, ARCH – Disability Law Centre, the Association des juristes d'expression française de l'Ontario, the Canadian Association of Black Lawyers, the Hispanic Ontario Lawyers Association, the Nishnawbe-Aski Legal Services, the South Asian Bar Association and the Women's Law Association of Ontario. The expertise of EAG will be a great asset to the implementation of the recommendations and to assist in developing networking opportunities for women.
277. Other associations also suggested that the Law Society meet on a regular basis with representatives of organizations such as the Advocates' Society, the OBA and the CBA to ensure a coordinated and efficient effort to establishing and carrying out programs designed to educate and provide mentoring to women in the practice of law. Such collaboration would also be an asset to the effective implementation of the recommendations.
278. The increasing influence of technology in lawyers' professional and personal lives was noted in written submissions and at consultation meetings. Although some lawyers noted that technology increases the expectation that lawyers should be available 24/7, most lawyers emphasized the positive impact that technology has on their work. For example, a number of lawyers indicated that technology has provided greater flexibility to work from home through remote access, and through access to emails and phone messages. This has allowed women lawyers to work flexible hours, sharing their time at work between the office and home. Some noted that colleagues had initial negative reactions to this change, but soon found that such arrangements can increase productivity and be conducive to high performance.

279. Some lawyers noted that the cost of technology can be prohibitive and most often disproportionately affects those in sole practice and small firms. In some areas of law, technology has become a necessary component of the practice and has resulted in high financial costs. For example, a real estate practice requires access to on-line registry systems that can be expensive and require extensive training. This issue could be discussed in the implementation stage of the project.
280. In a number of regions, criminal defence lawyers noted the uniqueness of their challenges. The difficulties they face to sustain viable practices along with the nature of their practices, which often requires them to be available on short notice or at times when institutions have visiting hours, would make it difficult for women in criminal defence sole practices to take advantage of the parental funding program and locum arrangements. Representatives of the Criminal Lawyers' Association suggested that the Law Society consult more fully with them to try and address their challenges. This is an area that, we suggest, the Law Society study further.
281. In-house counsel also noted that the recommendations do not address their needs. Although it was not within the mandate of the Working Group to develop recommendations to address the needs of in-house counsel, this is an area that the Law Society may wish to study further.
282. Meetings with lawyers in small and medium size firms provided interesting information about alternate law firm models. For example, law firms that have adopted a team approach seem to be more conducive to the type of work environment in which women wish to work. It is anticipated that the Justicia Think Tank will provide an opportunity to exchange information about successful alternate firm models and identify best-practices in this area.
283. Lawyers in firms of 6 to 25 lawyers noted that the recommendations should also address their needs. This point was also noted in written submissions by associations such as the CCLA, which stated that “the recommendation may assist in alleviating some of the challenges faced by those in smaller and large firms, they leave out those who are facing

many of the same challenges in their firms of 6 to 25.” The Justicia Think Tank was designed for firms of 25 or more, and the two larger firms in each region while the parental leave program is available for lawyers in firms of 5 lawyers or less. The Working Group notes, however, that other recommendations are meant to address the needs of women in private practice in general and would include women lawyers in firms of 6 to 25 lawyers. The on-line Women's Resource Centre and the Women's Leadership and Professional Development Institute are examples of such initiatives. Also, firms of 6 to 25 that wish to participate in the Think Tank will be welcome to do so.

284. It became apparent that firms of over 100 lawyers, firms between 25 and 100 lawyers and firms of 6 to 25 lawyers have quite different needs given the varying stages of development they have on the issues raised by women. It is anticipated that the Think Tank may well break into working groups depending upon the focus of each group's needs.
285. Some lawyers and associations were of the view that there are proposed programs that do not have to be gender specific, and that the Law Society and law firms should take into account the generational differences in the way lawyers manage their work and life experiences. The Advocates' Society noted, for example, that even though the report focuses on the parental leave period, it might be helpful to address current and future trends and to recognize that many of the law school graduates who have recently entered or will continue to enter the profession have anticipated that they will have two income families. The need to address child bearing and child rearing should increasingly apply to men and women.
286. The Law Society also met with the Managing Partners of firms of over 25 lawyers in the GTA region. The Managing Partners were overwhelmingly aware that they are losing women in disproportionate numbers, and are committed to trying to find solutions to retain them in their firms. They are generally very supportive of the recommendations and a number of firms have specifically indicated their intention to commit to the Justicia Think Tank. A number of firms have initiated processes and programs to support the

recruitment, retention and career advancement of women. The Law Society commends those firms and hopes that they will participate in this project and share best practices.

287. In conclusion, the final consultation confirmed that the legal profession is supportive of the proposed recommendations and the recommendations have remained substantially unchanged since they were first introduced to Convocation in February 2008. Comments on each specific recommendation are presented below.

VIII - CONSIDERATIONS UNDERLYING THE WORKING GROUP'S RECOMMENDATIONS

A - Nature of the Recommendations

288. The Working Group considered the Gandalf Group's findings, reviewed literature about challenges faced by women in the legal profession, more particularly private practice, and identified best practices in the legal profession in Ontario, in Canada and in foreign jurisdictions. It also considered Deloitte & Touche's Women's Initiative, which is a practical example of a successful initiative for the advancement of women in a professional firm. Finally, the Working Group reviewed the findings of the final consultation. Lawyers participated in large numbers in the final consultation and showed its strong support for the proposed recommendations. Therefore, the recommendations have not been substantially modified.
289. The recommendations are divided into the following five categories:
- a. Recommendations for large (100 lawyers or more) and medium (between 5 and 100 lawyers) firms;
 - b. Direct support and resources;
 - c. Recommendations for small firms (5 lawyers or fewer) and sole practices;
 - d. Recommendation to work with law schools;
 - e. Recommendations to create opportunities for women from Aboriginal, Francophone and/or equality seeking communities;
 - f. Recommendation to assess the effectiveness of programs and identify further strategies.

B – Recommendations for Large and Medium Size Firms

Recommendation 1 – Justicia Think Tank - Law Firm Commitment To Women’s Advancement

290. **That the Law Society implement a three-year pilot project (the “Justicia Think Tank”) 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, as described in this report and in the Law Firm Commitment at TAB 2.**

Rationale

291. The Justicia Think Tank proposes a collaborative effort between large and medium law firms, which employ a significant proportion of women lawyers currently practising in private practice, and the Law Society. The proposed pilot project focuses on four main areas that have been identified in other jurisdictions as key to assisting women in their advancement:
- a. tracking demographic information within firms;
 - b. providing and effectively implementing maternity/parental leave, including ramp down and ramp up processes, and flexible work arrangements;
 - c. encouraging networking and business development; and
 - d. mentoring and the presence of women in leadership roles.
292. The success of initiatives in other jurisdictions has demonstrated that tracking demographic information about women within firms is key to the development and successful implementation of initiatives to retain women. To be successful, initiatives need to be tailored to the particular firm environment. Therefore, to identify areas where firms have been more or less successful in retaining and advancing women, firms should begin by analyzing demographic information, paying attention to differences among practice groups and determining where the groups stand in relation to their peers.⁹⁰ This approach was successfully used by the accounting firm of Deloitte & Touche, which began its women’s initiative by studying the firm’s demographics and reasons for movement and exits.

⁹⁰ See *Pathways to Success*, *supra* note 54 and *Ending the Gauntlet*, *supra* note 54.

293. Gathering demographic information about the firm is also a good business practice, as clients turn more and more to diverse firms where there is gender balance at all levels.⁹¹ The U.S. legal market attaches high importance to diversity, and a representative pool of associates and partners is often used as marketing tools for clients and as recruitment tools for lawyers. A commitment to diversity has become critical for Canadian law firms that wish to maintain their competitiveness with their U.S. counterparts.⁹²
294. The second step in the Justicia Think Tank is to work with law firms to identify best practices in maternity/parental leave programs and flexible work arrangements, and to effectively implement such programs. Firms and associates should understand and work together to create maternity/parental leave programs and flexible work arrangements that make good business sense, are flexible and are reviewed on a regular basis. The recognition of the value of flexible work arrangements and the increased perception that entering into those types of arrangements will not negatively impact on one's career but will allow for increased work satisfaction and productivity while maintaining a lawyers' profitability are critical to retaining talent.⁹³
295. Networking and business development activities that take into account the differing approaches between men and women and the experiences of women from Aboriginal, Francophone and/or equality seeking communities, have been identified as key to career development.⁹⁴ Some firms in Canada and the U.S. have begun adapting their programs to focus on the needs of women, and some best practices have emerged. Examples include the creation of affinity groups to provide a setting in which diverse lawyers come together to discuss matters of common concern and form professional relationships.

⁹¹ As noted in *Lexpert* magazine's "Diversity: The Future of Bay Street?", (March 2005), "given the *de facto* integration of the Canadian and U.S. economies, and the importance of U.S./Canada work to major Canadian firms, what increasingly matters is what U.S. in-house counsel think. It is likely that the expectation of U.S. clients will assume greater importance in the Canadian legal market."

⁹² One article, published in 2006 in *The Globe and Mail*, noted students' reliance on law firms' diversity commitment when choosing their positions at law firms, stating that a firm's culture that is open to their religious practices, their race, gender and other experiences is attractive to them. Beppi Crosariol, "Summer jobs: Superapplicants only, please" *The Globe and Mail* (22 November, 2006).

⁹³ See Catalyst, *Job Flexibility*, *supra* note 46; *Retaining Women*, *supra* note 21; Kay, *Women's Careers*, *supra* note 20; *Ending the Gauntlet*, *supra* note 54; *Pathways to Success*, *supra* note 54.

⁹⁴ *Retaining Women*, *supra* note 21; Kay, *Women's Careers*, *supra* note 20; *Ending the Gauntlet*, *supra* note 54; *Pathways to Success*, *supra* note 54.

296. Effective mentoring programs and the presence of women in leadership positions have also been identified as key to women’s advancement in private practice and as effective ways of empowering women associates. Studies have shown that strong mentoring relationships enable women to succeed on the partnership track. Placing women in firm leadership positions not only has a positive impact on those women, but also assists in developing role models and influencing the culture shift within a firm. Law firms should also take into account the heightened vulnerability that some women may face because of their under-representation within firms. Programs should be tailored to allow them to fully participate in meaningful mentoring relationships and in leadership positions.

Description of Justicia Think Tank

297. The Justicia Think Tank is a three-year project, which will proceed as follows:
- a. firms of more than 25 lawyers, and the two largest firms in each region⁹⁵, will be invited to participate;
 - b. firms of 6 to 25 lawyers that wish to participate will be welcome to join;
 - c. Participating Law Firms will be asked to be signatories of the “Law Firm Commitment” presented at **TAB 2**;
 - d. the Law Society will create a “Managing Partners Network Group” of Participating Law Firms to meet as described in the Law Firm Commitment;
 - e. the Law Society will create a “Gender Diversity Officer Working Group” of Participating Law Firms to liaise with the Law Society;
 - f. the Law Society will coordinate at least two summit meetings of the Managing Partners Network Group in each calendar year;
 - g. the Law Society will coordinate regular meetings of the Gender Diversity Officers Working Group;
 - h. the Participating Law Firms will adopt programs as presented in the Law Firm Commitment;
 - i. the Law Society and the Participating Law Firms will assess the success of the three-year project upon completion, determine how to communicate best practices to the legal profession, and identify next steps.

⁹⁵ The Law Society regions are: City of Toronto, Northwest Region, Northeast Region, East Region, Central East Region, Central West Region, Central South Region, Southwest Region.

298. The advisory group of women lawyers from Aboriginal, Francophone and equality seeking communities created under recommendation 7 will provide advice to the Law Society throughout the development and implementation phases.

Objectives of the Justicia Think Tank

299. The objectives of the Justicia Think Tank are to,
- a. create a group of large and medium firms that commit to principles (hereafter “Participating Law Firms”) which promote the retention and advancement of women;
 - b. design, in collaboration with Participating Law Firms, programs they will adopt within their firms;
 - c. identify best practices, by relying on the Participating Law Firms’ own experiences and initiatives;
 - d. develop a strategy to communicate best practices to the profession as a whole and engage a broader group of law firms to implement these best practices.

Firm Selection

300. The breakdown of firms in Ontario is as follows:

Firm Size (per number of lawyers)	Number of Firms
1-5	7,895
6-10	254
11-25	143
26-50	29
51-100	10
101-200	13
201+	7

301. There are about 60 firms in Ontario with more than 25 lawyers. The Law Society will encourage those firms, along with the two largest firms in each region of Ontario, to participate in the three-year pilot project. As mentioned above, firms of 6 to 25 will be welcome to participate. Upon completion of the pilot project, best practices will be rolled

out to the legal profession and to firms that have not participated in the project. They will be encouraged to adopt the successful programs developed during the pilot project.

Role of the Law Society

302. The Law Society's role in the Justicia Think Tank is as follows:

- a. to coordinate the Justicia Think Tank and provide expertise and advice;
- b. to invite and encourage firms to become signatories;
- c. to coordinate and encourage Participating Law Firms to share information about the effectiveness of the programs, with a goal of developing best practices and sharing the information with the legal profession;
- d. to assess the effectiveness of the Justicia Think Tank and identify next steps with Participating Law Firms.

Findings of Final Consultation on the Justicia Think Tank

303. Most law firms and associations that participated in the consultation indicated that they are supportive of the Justicia Think Tank for medium and large firms. Some firms sent written submissions indicating that they commend the Law Society for taking an active role in trying to address the issue of the retention of women in private practice and that they will participate in the Justicia Think Tank. A number of medium and large firms have also expressed their interest in participating directly either to the Treasurer, the Co-Chairs or to the Equity Advisor.

304. A number of representatives from firms of 6 to 25 lawyers, in Toronto and in regions, indicated that they wish to participate in the Justicia Think Tank. Lawyers in regions noted the unique and distinct business reality of regional firms. As a result, the Law Society will welcome the participation in the Justicia Think Tank of firms of 6 to 25 lawyers.

305. Some, including the OBA and the Advocates' Society, noted that the issues for lawyers in firms of 100 or more in the GTA are likely to be different than the issues for lawyers in the largest firms in regions that often have between 10 and 15 lawyers. The resources available are different and the Justicia Think Tank will have to take that into account. It is

anticipated that firms in the Justicia Think Tank will develop programs based on their own culture and workforce.

306. Although it is critical that private practice address the issue of parental leaves, participants noted that law firms should address the billable hour business model along with the way partnership and compensation decisions are made before real change will happen. Although it is easy to look at tangible elements, such as maternity leave, the Law Society should take on a more holistic approach and consider whether there are alternative ways of doing business. Some, including the Advocates' Society, noted that lawyers in private practice provide client-driven services. In the age of computers and globalization, the provision of services in some areas of the law requires around the clock attention to clients, and business models would have to change to fully address the issue of retention. It is anticipated that partnership and compensation decision making processes, and alternative business models will be included in the discussions of the Justicia Think Tank, or in the next step of the project.
307. Most firms were supportive of the proposal to gather gender based demographic information, but were resistant to the proposal of gathering demographic information based on other grounds such as race, disability, creed and sexual orientation. They generally voiced privacy concerns and they worried that asking such questions would be disrespectful to lawyers. As a result, the Justicia commitment pledge was modified so that participating law firms agree to maintain demographic information about gender, and use the Think Tank to discuss whether they wish to also gather other demographic data.
308. Many firms already have strategies and programs in place to enhance the retention of women, and they are continuously building on those programs. The initiatives encompass leadership and business development programs for women as well as policies and programs to support family obligations and work-life balance. We hope that these firms will share information about their best practices by participating in the Justicia Think Tank. We expect that, through their participation in the Justicia Think Tank, they will also build on initiatives in place and develop further programs based on the needs of their lawyers and the culture of their firm.

309. Some firms also indicated that they would like to have some control, when joining the Justicia Think Tank, over the timing of the implementation of their programs. This would ensure that their programs meet the needs of their lawyers and that they have the full support of associates and partners. It is anticipated that the pledge could be slightly adapted based on consultations with interested firms.

Resource Implications

310. It is anticipated that the Justicia Think Tank will require the following resources:
- a. 0.3 of a full-time equivalent staff position per year will be required to implement the project, beginning in 2009. The mandate of the Equity Initiatives Department is to develop the resources to promote equality and diversity in the profession. Therefore, staff members are already working with law firms and the profession and have the expertise to develop resources, such as model policies and guidelines for law firms. Should this recommendation be adopted, the Justicia Think Tank would be a priority for the Equity Initiatives Department, and necessary staff members would be allocated to coordinate the project.
 - b. Between \$10,000 and \$15,000 per year to coordinate Justicia's Managing Partners Network Group and Justicia's Gender Diversity Working Group. Convocation has allocated \$70,000 in 2008 to implement the Retention of Women in Private Practice recommendations, which will cover the expenses to coordinate the groups' activities in 2008. A budget of \$15,000 will be required for this purpose in 2009 and 2010.
 - c. It is estimated that \$20,000 will be required in 2011 to assess the effectiveness of the project.

C – Direct Support and Resources

Recommendation 2 – Direct Support for Women

311. **That the Law Society, in collaboration with legal associations where appropriate, provide direct support to women through programs such as a leadership and professional development institute and on-line resources, as described in this report.**

312. Studies have identified a number of direct support programs that would be of great value to women. Those programs are designed to provide networking opportunities and on-line resources to women and to gather information about why women and men move from their work environments. As a first step in the implementation of recommendation 2, the Working Group proposes the following initiatives:

- a. Women's Leadership and Professional Development Institute;
- b. On-line women's resource centre;
- c. Gathering information about changes of status.

Women's Leadership and Professional Development Institute

313. Professional and business programs designed for women lawyers, opportunities to allow women lawyers to network with each other, the recognition of women role models in the profession and access to programs tailored to the experiences of women have all been identified as important opportunities to assist in the advancement and retention of women in private practice.⁹⁶ Such programming should be designed to also address the needs of women from Aboriginal, Francophone and/or equality-seeking communities.

314. In response to their members, legal associations have held professional development and networking programs focused on the promotion of women in the legal profession. For example, the Advocates' Society held a Networking Conference for Women in Litigation in 2005 entitled "Skirting the Issues", which led to the Advocates' Society's commitment to creating additional support, mentoring and networking opportunities for women advocates. The Feminist Legal Analysis Committee of the Ontario Bar Association regularly holds networking events for women and publishes a newsletter about women and the law. The Women's Law Association of Ontario holds "lunch and learn" clinics, cocktail and dinner events, golf social events and breakfast networking meetings to provide networking opportunities for women. The Association also recognizes the contributions of women lawyers by awarding students and giving out the president's award to role models and student's awards. The County and District Law Associations

⁹⁶ See *Retaining Women*, *supra* note 21; Kay, *Women's Careers*, *supra* note 20; *Ending the Gauntlet*, *supra* note 54 and *Pathways to Success*, *supra* note 54.

also actively promote networking opportunities for lawyers in regions. Associations such as the Canadian Association of Black Lawyers, the AJEFO and the Indigenous Bar Association regularly deliver professional and business development and networking programs for their members catering to the unique needs of lawyers from diverse communities.

315. The Business Leadership for Women Lawyers, developed by the Rotman School of Management and the Faculty of Law of the University of Toronto is a model that could be followed.
316. The Working Group proposes that the Law Society partner with community organizations and associations, where appropriate, to create a Women Leadership and Professional Development Institute. The Law Society will coordinate workshops and seminars on leadership and business development skills, and recognize the contributions of women, and their diversity, in the legal profession for participants in a cost effective manner. The Institute would provide training in the skills and tools needed for women in private practice to take on leadership roles in their firms. This initiative could provide an opportunity to celebrate women and to recognize the contributions of firms that have adopted successful programs and initiatives to retain women.
317. Participants in the final consultation also indicated that they hope that the Law Society will work with regional associations to develop programs based on the needs of regional bars. They also hope that programs will be delivered in regions.

On-line Women's Resource Centre

318. The Working Group also proposes that the Law Society develop an on-line Women's Resource Centre. The Law Society already has an extensive website, including professional development resources and resources in the area of equity and diversity. The Women's Resource Centre could include practice management tips for women, model policies and guidelines, information about networking opportunities, coaching, mentoring and other resources helpful to women lawyers. The Working Group also proposes that the

on-line resource centre include tools and resources to assist women who are sole practitioners and in small firms (see recommendation 5).

319. Once established, the Law Society may wish to consider the feasibility of including more interactive on-line opportunities, such as regularly timed e-mails to women lawyers and list serves of women lawyers to connect them with one another. This would allow women to form relationships for mentoring, provide advice and exchange information about such things as relocating to a new city, lateral transfers, going on and returning from leave.
320. Examples of such initiatives for women are found in the U.S. Concerned by the rates at which women opt out of the legal profession, the lack of representation of women in the highest courts and echelons of the legal community, and the role of gender in the progression of many women's legal careers, a group of female law students from Boalt Hall (UC Berkeley), Cornell, Georgetown, Harvard, NYU, Stanford, UCLA, UT Austin, the University of Chicago, the University of Michigan, the University of Virginia, and Yale came together and created Ms. JD in March 2006. Serving women in law school and the legal profession, Ms. JD is an on-line community that provides a forum for dialogue and networking among women lawyers and aspiring lawyers.⁹⁷ The website offers networking opportunities, forums for discussions and on-line resources for women.⁹⁸
321. Studies revealed that women in firms often do not know where to go to learn how to prepare for a temporary leave such as maternity leave.⁹⁹ In *Retaining Women*, Ontario women lawyers indicated that they would benefit from coaching services on career development, including coaching on ramping down and ramping up their practice, and ensuring that they remain on the partnership track while also taking parental leaves. Some firms have begun offering such programs, while others have not identified this as a key initiative or have indicated that they do not have the resources to implement such services. The Working Group proposes that the Law Society promote coaching opportunities by working with legal associations and law firms to identify, coordinate and

⁹⁷ For further information about the Ms JD website: <http://ms-jd.org/home>.

⁹⁸ Also see websites in New Zealand and the ABA. See <http://www.lawyers.org.nz/wcg/> and <http://www.abanet.org/women/>.

⁹⁹ *Retaining Women*, *supra* note 21.

promote the resources available for those in need. The Law Society would play a coordinating and catalyst role in this initiative. It is not suggested that the Law Society would offer direct coaching services to women. As the success of other initiatives demonstrates, law firms should create coaching programs based on the needs and culture of their firms, taking into account the diversity of the pool of lawyers, women and men, and resource implications.

Change of Status Survey

322. It is recommended that the Law Society of Upper Canada develop and conduct a voluntary survey of members when they inform the Law Society that they are changing their status. The voluntary survey would keep track of reasons behind a status move and include questions about gender, age, disability, sexual orientation, membership in a racialized community, year of call, type of work environment and area of law, factors that influence the decision to change work environment or to leave the practice of law, level of satisfaction and questions about how to keep lawyers in the legal profession. The survey would allow the Law Society to identify information and trends about the demographic of the profession, former and current employment, satisfaction with aspects of practising law, reasons for leaving private practice and returning to practice and desired changes to the profession.
323. The Working Group also notes the vulnerability and unique challenges of women lawyers who are members of Aboriginal, Francophone and/or equality-seeking communities. Those women may not wish to complete a change of status survey conducted by the Law Society, because of fear of identification or discrimination. Therefore, the Working Group proposes that the Law Society work with the Discrimination and Harassment Counsel to also post the survey on the Counsel's website with an invitation for those who participate to speak with the DHC if they so wish. The DHC would report findings to the Equity and Aboriginal Issues Committee on a regular basis.
324. The Law Society annually processes approximately 7,000 adjusted billing requests related to changes of status. Therefore, not only would staff in membership services have an additional responsibility to inform lawyers about the survey when they request a status

change, but resources would have to be allocated to the analysis of responses to the survey. It is anticipated that reports of findings would be done on an annual basis and presented to the Equity and Aboriginal Issues Committee.

Final Consultation Findings

325. Written submissions and comments made by participants in the final consultation meetings showed overwhelming support for this recommendation and indicated that this is a recommendation that would benefit women in firms of all sizes and in sole practice, women returning to practice and women in other practice settings.
326. Most participants noted the value of mentoring. Associations such as the CCLA and the OBA noted that mentoring and professional development programs directed to women are “critical to allow the development of professional confidence in women [...] While informal support networks may be in place in smaller centers, 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 Thunder Bay Law Association recognized that although there are informal support networks in place in the region, there is a need for a more formal support network. It was generally felt that associations in small centers that fostered contact and learning environments would be of benefit to women practitioners.
327. Regional and GTA legal associations were in favour of working with the Law Society to develop structured mentoring programs. For example, the Feminist Legal Analysis Committee of the OBA and the CCLA noted the success of their mentoring programs as being the most powerful tool for helping young lawyers while the Advocates’ Society suggested that the Law Society meet regularly with associations to ensure a coordinated approach with education and mentoring. Some suggested that associations create mentoring committees and that structured mentoring programs be established. Mentoring circles were noted as a successful model of mentoring. Some associations such as the CCLA have begun offering such programs, for example by hosting breakfast or dinner meetings with experienced and newly called lawyers, which have proven very successful.

On-line mentoring relationships were also suggested. Mentoring programs were seen as valuable to connect women lawyers with women role models, but also to provide them with access to experienced men and women lawyers. The Advocates' Society also suggested that education and mentoring to women be provided based on practice areas, noting that the requirements to carry on a litigation practice differs from the requirement to carry on a solicitor's practice.

328. Resources to welcome women back into the profession and to assist in ramping up a practice were also mentioned as important and could be included in the on-line Women's Resource Centre and as a component of the Women's Leadership and Professional Development Institute. Some lawyers suggested that the Law Society could include as part of the in its on-line Women's Resource Centre information to assist lawyers who return from an extended leave.
329. A number of lawyers, including members of the EAG, noted the value of including as part of the on-line resources, resources to assist with family responsibilities. Examples of such resources could include availability of childcare services in various regions of the province. Also important is the idea of providing resources that could be effectively implemented in regions, for example regional continuing legal education programs and networking opportunities. The idea of developing networking opportunities was also seen as critical, particularly in regions where isolation can be an important factor in the departure of women from private practice.
330. The proposal to develop a Women's Leadership and Professional Development Institute was well received. CDLPA, the Advisory Committee of the Department of Justice, the OBA and the CCLA support this recommendation. The OBA supports the recommendations but notes that programs must be affordable and practical. Lawyers also encouraged the Law Society to provide its programming in regions. Some lawyers suggested that the Law Society fund the Institute through sponsors in order to make attendance fees more affordable and others proposed that fees be waived entirely. It was noted that practice management workshops and workshops on the business of law should be designed to meet the needs of the audience and, as noted by the OBA, be accessible to

women from all types of law firms across the province. For example, women lawyers in Toronto face unique and different challenges than women lawyers in regions. Challenges also differ from one region to another. Participants also encouraged the Law Society to develop joint programs with law schools and often noted the lack of training about the business of law at the law school level.

331. A number of women lawyers also noted the importance of workshops on the business of law. Women indicated that they practice differently than men and gender based professional development programs would be beneficial to them. Managing partners were generally of the view that the newly established partnership initiative between the Joseph L. Rotman School of Management and the Faculty of Law at the University of Toronto is a strong model that could be adopted by the Law Society.¹⁰⁰
332. There appeared to be widespread support for the development of on-line resources and for a change of status survey.

Resource Implications

333. It is estimated that the implementation of recommendation 2 would have the following resource implications:
- a. The implementation of this recommendation would require 0.3 of a full-time equivalent position in 2009, 2010 and 2011.
 - b. An operating budget of between \$20,000 and \$35,000 to coordinate the activities of the Institute. The Institute would be revenue generating and expenses would be recovered through external funding or attendance fees. Contributions from law firms and associations may also be considered.
 - c. The resources posted on the Women's Resource Centre will largely be developed through the Justicia Think Tank. It is anticipated that the Women's Resource Centre will be implemented in incremental phases so that no additional staff positions will be required.

¹⁰⁰ In particular, the law firms Blakes, Cassels & Graydon LLP, McCarthy Tétrault LLP, and Osler, Hoskin & Harcourt LLP are program sponsors who have provided financial support and industry expertise for the development of the program.

- d. An estimated \$10,000, already covered by the Equity Initiatives Department's research budget, will be required to design the change of status survey. It is anticipated that the survey will be developed using the Survey Monkey software, which is already used by the Law Society. In 2009, \$15,000 will be required for data analysis, which would be covered in the 2009 Equity Initiatives Department's research budget. Once a reporting template has been developed, the annual analysis of data will be assumed by the Equity Initiatives Department. Conducting the change of status survey will have minimal impact on membership services, as staff in that area will have to alert licensees to fill out the on-line survey when they request a status change.

D – Recommendations for Small Firms and Sole Practitioners

Recommendation 3– Practice Locums

334. **That the Law Society develop a five-year pilot project to promote and support practice locums, as described in this report.**
335. The *Retaining Women* consultation concluded that, in addition to the financial challenges faced by women in small firms and sole practices, particularly when they have family responsibilities, women face challenges in finding lawyers who are available and can competently maintain their practice during leaves of absence, or assist them with some of the work on a temporary basis. Such concerns have also been raised in the report of the Law Society of Upper Canada's *Sole and Small Report*.¹⁰¹
336. The Law Society of British Columbia has recently approved the development of a program to promote and support practice locums. The recommendation was presented in response to the comments of its members, specifically sole and small firm lawyers, indicating that they encountered difficulties when they attempted to take time off from the practise of law because there is no one available to provide essential services to their clients in the interim. An effective system of practice locums would provide valuable backup to many sole and small firm lawyers, permit lawyers to reduce their time

¹⁰¹ *Supra* note 21.

commitment to the practice of law, and provide work opportunities for other lawyers, whether senior or junior, who prefer to work on a part-time or occasional basis.¹⁰²

337. The practice locum project would include the following features:
- a. an on-line registry, developed in collaboration with legal associations if appropriate, of locum lawyers, specifying information such as the lawyer's qualifications, system for remuneration and expenses, location, availability, timing and practice area and references/discipline history;
 - b. guides and checklists on how to make a locum arrangement operate effectively, including how to deal with client conflicts;
 - c. sample locum agreements including non-compete clauses;
 - d. other resources as required.
338. The Working Group concluded that the development and support of a practice locum project would benefit women, and men, in at least two ways:
- a. it would allow women and men to take leaves of absence or to have flexible work schedules while having the opportunity to rely on competent lawyers to maintain their practice on a temporary basis;
 - b. it would also allow women and men to undertake practice locum work when they wish to have flexible careers.
339. Successful practice locum programs have been in place, and the value of such programs has been recognized, in foreign jurisdictions such as the U.S., the U.K. and New South Wales. These programs were instituted as a result of demand by lawyers within those jurisdictions.

Final Consultation

340. This recommendation was met with great enthusiasm and lawyers noted that it is timely. For example, the Feminist Legal Association of the Ontario Bar Association considered that a locum program, combined with mentoring and coaching, is key to the retention and advancement of women in private practice. Associations such as the OBA, the CCLA,

¹⁰² *Report of the Small Firm Task Force* (Vancouver: Law Society of British Columbia, 2007) [*Law Society of British Columbia Small Firm Report*].

CDLPA, the Assistant Crown Attorney's Association and the Thunder Bay Law Association indicated through written submissions that they support the recommendation. This program would allow lawyers to make a smooth transition 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.

341. Some women lawyers also saw great benefits in becoming a locum. They believe that contract lawyering would provide them with opportunities to work part-time or on flexible schedules, to work from other locations such as the cottage and/or to gradually return to the practice of law. It was also suggested that retired lawyers would likely be interested in working as contract lawyers. A number of participants in the consultation meetings talked about their positive experiences, in regions and in Toronto, with practice locums either working as contract lawyers or retaining contract lawyers to replace them while on leave.
342. Most of the questions and comments about the practice locum program related to its implementation, such as how to address issues of conflict, insurance and liability issues and issues of competency of the lawyers offering their services on contract. Those issues would all be addressed during the implementation stage of the project.
343. Some regional lawyers noted that clients might be reluctant at first to embrace this concept. However, those who had worked as contract lawyers all indicated that such programs work and provide flexibility to lawyers who do not wish to practise full-time. Some women lawyers noted that they had been successfully working as contract lawyers from their house and their clients' attitudes in accepting contract lawyers have changed over the years. Clients are now more accepting of that type of arrangement, especially in cases of planned parental leave where women have had a chance to introduce the contract lawyer to the clients. Women who work as contract lawyers appear to have the flexibility to take leaves of absences, including parental leaves.

344. Because of the small number of lawyers in some regions, some noted the difficulties that may be faced with developing pools of contract lawyers in those regions. Bilingual French/English lawyers also noted the difficulty in finding bilingual lawyers to replace them. They suggested that the Law Society consider retaining a pool of lawyers, and cover their legal service fees, to act as contract lawyers for regional sole practices and small firms, particularly in the initial stages of the implementation of the locum project.
345. Although the recommendation was generally very well received, some lawyers warned that a practice locum might not be effective for all practice areas. Some areas of law are so specialized, such as Aboriginal law, and it would be difficult to temporarily transfer such practices.
346. The Advocates' Society suggested that the Law Society move quickly to establish a website related to the practice locum recommendation, which would allow the Working group to determine the level of interest and how to best implement the recommendation at a practical level.

Resource Implications

347. It is anticipated that 0.3 of a full-time equivalent position would be dedicated to this pilot project. Much of the time would be spent communicating and liaising with the regional associations in an effort to find lawyers interested in serving as locums in that region. There will be some minimal resource implications on the Communications Department, as the program will have to be communicated to the legal profession.

Recommendation 4 – Funding for Leaves

348. **That That the Law Society implement a three year Parental Leave Benefit Pilot Program, effective in 2009, as follows:**
- a. **benefits are available to lawyers in firms of five lawyers or less, including sole practitioners, who have no access to other maternity/parental/adoption financial benefit programs under public or private plans;**
 - b. **provide a fixed sum of \$3,000 a month for three months (maximum \$9,000 per leave per family unit) to cover among other things expenses associated**

with maintaining their practice during a maternity, parental or adoption leave.

Goal of Recommendation

349. The goal of the recommendation is to enable lawyers in small firms who have no other maternity/parental/adoption benefits to take a leave by providing financial assistance to cover some of the expenses of maintaining an office during the period of leave.
350. Women in sole practices and in small firms consistently raise two main issues, the hardship of trying to maintain an income during a leave of absence, and maintaining their practice during a leave.¹⁰³ The decision to have a child usually means serious sacrifices with respect to their capacity to practise law and the lack of maternity leave benefits is usually noted as an important barrier to remaining in sole or small practices.

Mandate of Law Society and Power to Implement Funding Program

351. The mandate of the Law Society of Upper Canada is to regulate the legal profession in the interest of the public. The purpose of a parental leave benefits program is to reduce the financial hardship of lawyers, women and men, in small firms and sole practices. It is not intended as income replacement, but rather to help defray some of the costs of overhead during the leave from practice.
352. In adopting such a program, the Law Society would be assisting lawyers, women and men, to remain in small firms and sole practices, including practices in the non-urban areas. This, it is believed, would contribute to alleviating the shortage of legal services. This program may also encourage practitioners, and perhaps a more diverse pool of practitioners, to join small firms or to set up sole practices, where they might otherwise be discouraged from doing so because of the financial considerations of family responsibilities and leaves.
353. The Working Group is of the view that a funding program as described in recommendation 4 is consistent with the Ontario *Human Rights Code* (the “Code”).¹⁰⁴

¹⁰³ *Retaining Women*, *supra* note 21.

¹⁰⁴ *Supra* note 27.

Section 14(1) of the Code allows for “the implementation of special programs designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights”.¹⁰⁵

354. The Working Group proposes to limit the program to women and men in firms of up to five lawyers because studies have shown the vulnerability of lawyers in small firms. Fifty two percent of lawyers in private practice in Ontario and 94% of all firms in the province are firms of 5 lawyers or fewer. Difficulty in financing practices is a challenge unique to those lawyers and is linked to the nature of their client base.¹⁰⁶ Those lawyers report greater difficulty in securing financing and lines of credit from financial institutions. Rising overheads and general market pressures to reduce fees that affect all lawyers have a greater impact on those lawyers because of the narrower margins of financial viability they face.

Other Jurisdictions

355. Research findings show that access to funding sources for maternity and parental leaves is key to the viability of women in small firms and sole practices. The Barreau du Quebec approved a funding program, and the Law Society of British Columbia followed the Barreau’s lead by approving a loans program for such leaves. The program adopted by the Barreau du Québec was implemented in January 2005 and has received 66 requests for funding (53 requests were received in the first year, when governmental funding was not available). Only six requests have been refused.¹⁰⁷ Eight men have requested funding under either parental or adoption leaves. The Barreau’s program was managed by asking lawyers to apply by filling out a form and signing an affidavit (**TAB 3**).

¹⁰⁵ The Ontario Court of Appeal in *Ontario (Human Rights Commission) v. Ontario (Ministry of Health)* (1994), 19 O.R. (3d) 387 (C.A.) noted that the purpose of section 14(1) is to protect affirmative action programs and to promote substantive equality. The purpose of the proposed Law Society funding program is to provide some financial assistance to lawyers in small and sole practices who have no other benefits for maternity/parental/adoption benefits, to assist them with financial hardship when taking leaves of absences to fulfill parental responsibilities.

¹⁰⁶ See *Sole and Small Report*, *supra* note 21.

¹⁰⁷ The decisions to refuse requests were based on the following factors: that the individuals were not members in good standing of the Barreau du Quebec, that they did not incur operating costs in the context of professional activities or they did not benefit from financial revenue at least equal to the benefits offered under the program. In the case of parental or adoption benefits, the lawyer had to temporarily stop working, which was not always the case.

Why Propose Funding for Maternity, Parental and Adoption?

356. The Working Group proposes that the parental leave program include funding to an equal level to men and women who wish to take a leave due to the birth of a child or to the adoption of a child. Case law has clearly indicated that benefits must be extended to both parental and adoptive leaves, but that benefits can be of a different level and higher for maternity leave than for parental/adoption leave. This does not preclude an organization from providing benefits for both maternity and parental/adoption leaves at an equal level. Therefore, the Working Group's recommendation to provide parental leave benefits to both natural and adoptive parents at an equal level is consistent with legal obligations.¹⁰⁸

Arguments in Favour of Creating the Fund

357. The Working Group is of the view that the arguments in favour of creating the proposed funding program outweigh the arguments against its creation. Maternity leave benefits were instituted in Canada when women began entering the labour market in large numbers. This phenomenon increased awareness of loss of income they suffered when their work was interrupted as a result of pregnancy. The purpose of such benefits was to provide women with economic and social security on a temporary basis while at the same time helping them to return to the labour market and ensure continued employability and reintegration into the labour market. The purpose of providing adoption and parental benefits is to enable parents to care for their children. The status of adoptive parents carries with it all the rights and obligations of a natural parent.¹⁰⁹

358. The Working Group's proposal compared the position of women and men partners in small firms or sole practitioners with the position of employees in firms who would be eligible to receive public maternity benefits. Employees in Ontario that meet the minimum hours requirement of employment under the *Employment Insurance Act* (the "E.I.A.")¹¹⁰ are covered by the E.I.A.. The entitlement to pregnancy benefits is typically for a period of 15 weeks at a weekly maximum for employment insurance benefits set at around \$ 425. If a woman who is an employee in a firm takes a maternity leave and has no top up, that person would receive a maximum of \$6, 375 in maternity benefits. This is

¹⁰⁸ *Schacter v. Canada*, [1992] 2 S.C.R. 679.

¹⁰⁹ See *Reference re Employment Insurance Act (Can.)*, ss. 22 and 23, [2005] 2 S.C.R. 669.

¹¹⁰ 1996, R.S.C. c. 23.

lower than the proposed scheme recommended by the Working Group, which would entitle women and men to a maximum of \$9,000 in parental leave benefits. However, it should be noted that associates in law firms are not responsible to pay overhead costs, while sole practitioners and women and men in small firms are faced with those expenses even while on parental leave.

359. In any event, the proposed benefits represent an amount that is less than the benefit entitlement under the *E.I.A.* In addition to pregnancy benefits, the *E.I.A.* allows, under certain circumstances¹¹¹, access to parental benefits for a maximum of 35 weeks. The Working Group is of the view that, even if it is not to the same level as federal parental benefits, providing \$3,000 per month for three months in parental benefits is a reasonable compensation and allows lawyers to have a financial safety net to take time off for parental responsibilities.

Arguments Against Creating the Fund

360. Some may argue that the establishment of a funding program for maternity/parental/adoption leaves does not fall within the mandate of the Law Society and would be more appropriately dealt with through other sources of funding, either public funding sources or the CBA.
361. The creation of programs to assist lawyers to remain in the profession or to support other organizations through licensee fees is not new or unique. For example, the Law Society provides funding to the amount of between \$200,000 and \$250,000 per year to the Ontario Lawyers' Assistance Program ("OLAP"), a program to promote a lifestyle of balance and well being for all lawyers and to prevent problems through early intervention. OLAP provides effective and timely assistance, based on the principles of confidentiality and voluntary access, to members of the legal profession and their families dealing with issues such as addictions, stress/burnout, work and family pressures

¹¹¹ Parental benefits are available for a maximum of 35 weeks. They may be claimed by one of the parents or they may be shared by both. Where the benefits are divided between both parents, only one has to serve the two week waiting period. *E.I.A.* sections 14(1.1)(b) and 23(4) & (5). For an outline of the benefits available under the *E.I.A.* consult the Law Society of Upper Canada Model Policy *Pregnancy and Parental Leaves and Benefits for Professional Legal Staff and Equity Partners* at http://www.lsuc.on.ca/media/pregnancy_leaves_policy.pdf

and mental or physical health. Assistance is provided through one-on-one peer support, assessment, referrals to services, counseling, links with related services, education, and information.¹¹² The program is well regarded by the profession and has provided important assistance to lawyers who struggle to remain in practice.

362. The Law Society also supports a number of worthwhile organizations through grants or contributions. Because the support provided to these organization is important and sometimes essential to the viability of the organizations, the Working Group is of the view that such support must continue. However, that type of support indicates that it is within the mandate of the Law Society to distribute its funds to promote the activities of organizations that support the profession. It would appear illogical to argue that Law Society should not use its funds to also assist new parents, men and women, in small firms and sole practices.

363. For example, the Law Society supports the following organizations:

- a. the County and Districts Law Presidents' Association through annual grants of more than \$200,000;
- b. the Advocates Society through grants of about \$50,000 to assist with professional development programs;
- c. Pro Bono Law Ontario through a rent subsidy;
- d. the Ontario justice Education Network through office accommodation;
- e. The Osgoode Society for Canadian Legal History;
- f. The Law Foundation of Ontario;
- g. The Law Society Foundation;
- h. The Federation of Law Societies of Canada;
- i. Canadina Legal Information Institute;
- j. LibraryCo Inc.;
- k. Legal Aid Ontario.

¹¹² Approximately \$575,000 of the Law Society budget is dedicated to OLAP, the County and District Law Presidents Association, the Advocates' Society and Pro Bono Law Ontario.

Other Models Considered

364. The Working Group also considered the following models to assist sole practitioners and/or lawyers in small firms: a loan program for maternity/parental leave, a voluntary op-in insurance plan managed by the Law Society and the Law Society acting as a guarantor for loans provided to those on maternity/parental/adoption leave. The estimated resources required to structure and administer such programs would be extremely onerous and therefore, the Working Group does not recommend any of these options.
365. The Working Group also considered the possibility of working with the Canadian Bar Association (“CBA”) to include maternity leaves in its disability insurance plan. When developing its program, the Law Society of British Columbia also considered whether the Canadian Bar Association through the CBA (BC) Benevolent Society would be a more appropriate organization to administer a maternity leave program. Ultimately, the Law Society of British Columbia and the CBA arrived at the conclusion that it would not be appropriate for the CBA to administer the maternity benefit for two reasons. The CBA Benevolent Society program was established to provide assistance to lawyers who have suffered an illness or injury from any cause including alcohol, drugs, stress and physical injury, and to provide assistance to the families and others affected by such lawyers’ illness or injury. The Law Society of British Columbia felt that the purpose of the CBA Benevolent Society program was different than the purpose of a maternity benefit program. It was also felt that having the proposed maternity benefits program administered by the CBA Benevolent Society sent the wrong message, as pregnancy and childbearing should not be regarded as a crisis, illness or injury.¹¹³
366. The CBA Benevolent Society is a British Columbia specific program that is not in place in Ontario. However, the Working Group was also of the view that the Canadian Bar Insurance Association would not be an appropriate organization to manage the proposed program, for similar reasons as those raised by the Law Society of British Columbia. The CBIA offers insurance plans such as income replacement disability, accident and critical

¹¹³ The Canadian Bar Insurance Association offers an income replacement plan for lawyers with disabilities, defined, in part, as: “...due to an accident or injury for which you are under the regular care of a physician, you are not gainfully employed and the sickness or injury prevents you from engaging in the regular duties of your occupation.”

illness. The Working Group was of the view that it would not be appropriate to work with the CBIA to consider expanding disability plans to include maternity.

Final Consultation Findings

367. There is very strong support for the parental funding program. The vast majority of lawyers who participated in meetings in regions and in Toronto voiced their support for the program and written submissions are generally in favour of this recommendation. Several lawyers otherwise supportive of the program, expressed concern that the amount of the benefits should be higher or that the benefit period should be provided for a longer period. Associations such as CDLPA, the Ontario Crown Attorney's Association and a large majority of the CCLA members indicated their support for the leave. The Advocates' Society found the recommendation laudable, noting that it should be recognized that the difficulties faced by women with children in sole practice and small firms are not limited in time to the first three months after their child is born. The OBA received mixed reactions, with members indicating that the proposal is useful and should be carried out because it will alleviate a genuine problem in the profession. The proposal was also seen by some as a good start but the benefits could be higher, should be set up to also assist employees of small firms who often do not receive top up and should also include benefits for those who wish to take a leave because of bereavement, separation or to care for older members of the family.
368. A number of lawyers indicated that, although they support the program, the amount of the benefit, along with the length of time of three months, are insufficient. The amount that was most often quoted as appropriate was \$5,000 per month for three months. Some also commented that lawyers are typically called to the bar with tremendous debt loads, which would have an impact on the viability of their practice and the usefulness of the program.
369. The program as presently structured requires that lawyers must show that they are not working in order to be eligible for benefits. Some lawyers indicated that those on parental leave often have to maintain some degree of supervision of their practice, which would make them ineligible for the benefits. It was suggested that the Law Society allow for some flexibility in administering this program. There were also suggestions about

splitting the month into weeks or allowing lawyers to continue to undertake some professional activities to maintain their practice during a leave. These issues have merits and ought to be considered prior to implementation.

370. Some lawyers also noted that those trying to care for aging or ailing parents or children with long term illnesses ought also be eligible for the benefit. There were also suggestions, but very few, that the parental benefit should not be limited to firms of 5 or fewer.
371. A number of lawyers noted that the Law Society should review its fees to make it easier for women to take a parental leave of absence or to work part-time. Some were of the view that the twenty-five percent fee category does not provide enough relief to lawyers on parental leave. Also, the lack of part-time fee category appears to have adverse impacts on women who are trying to gradually re-enter private practice. It was suggested that the Law Society seriously consider revisiting the fee structure for part-time work and for parental leaves.

Resource Implications

372. The Working Group retained the services of the actuarial firm Eckler Ltd. to project the potential usage of the program based on the current available demographic profile of the profession. The Eckler report, *Law Society of Upper Canada Maternity, Parental and Adoptive Leave* is presented at **TAB 4**. It provides a breakdown of estimates of the potential cost for a parental leave benefit program for lawyers in small firms and sole practices. The costs were determined assuming a monthly benefit of \$1000 payable for 1 month. This projection allows the Law Society to multiply the costs provided by a pre-determined factor to estimate the cost for a higher benefit amount for a longer or shorter benefit period.
373. The Eckler report presents two scenarios. The first scenario relies on assumptions that women lawyers fertility rate is at 100% of Ontario fertility rate, a 5% increase in the number of women in the profession based on estimates in 2002 to 2006, a 100% take-up rate of the benefits for women and a 20% take-up rate for men. The second scenario is

based on assumptions based on perceived trends in the legal profession and assumes an 80% of Ontario fertility rates for women lawyers, a 3% per year increase in number of women, a 40% take-up rate for women in the first year of implementation (this percentage increases over time) and a 15% take-up rate for men.

374. The Eckler report, presented at **TAB 4**, indicates estimated costs as follows:

	2009	2010	2011
Scenario 1 ¹¹⁴	\$506,700	\$523,800	\$540,000
Scenario 2 ¹¹⁵	\$243,000	\$261,000	\$303,300

375. The estimated costs per member are as follow:

	2009	2010	2011
Scenario 1	\$15	\$15	\$15
Scenario 2	\$5	\$6	\$8

376. The Working Group considered the costs for the Law Society or for Law PRO to administer the program. It is estimated that one staff member either at the Law Society or at Law PRO would be required to administer the fund. This is consistent with the experience of the Barreau du Québec, which also assigned one staff member to administer its parental leave benefit program.

Overall Resource Implications

377. It is estimated that this program would cost at the most, in 2009, \$580,000, including the costs to administer the program (estimated at \$70,000). In 2010, the program would cost at the most an estimated \$590,000, and in 2011, an estimated \$610,000.

Recommendation 5- Direct Resources

378. **That the Law Society provide access, in collaboration with legal associations where appropriate, to resources for women in sole practices and small firms through**

¹¹⁴ The assumption is at 100% of Ontario fertility rate, 5% per year increase in number of females, 0.8% per year increase in number of males, 100% take up of benefits for females and 20% take up for males.

¹¹⁵ The assumption is at 80% of Ontario fertility rates as the base for females and 100% for spouses of males, 3% per year increase in number of females and .8% per year in number of males, a take up rate for females of 50% for 2009, 60% for 2010 and 80% for 2011 and a take up rate of 15% for males.

programs such as on-line resources and practice management and career development advice, as described in this report.

379. Studies have indicated that the Law Society and legal associations have a role to play in providing direct resources to women in sole practices and in small firms. As a first step in the implementation of this recommendation, the Working Group proposes that the following resources be developed:
- a. on-line resources for women in sole practices and small firms;
 - b. practice management advice;
 - c. direct supports.

On-line Women's Resource Centre

380. The *Sole and Small Report*¹¹⁶ noted the isolation felt by small firm lawyers and sole practitioners especially in non-urban regions and recommended the design of a matching program, including a list-serve of target group lawyers to connect them with one another. Such initiatives have also been developed by regional legal associations and specialized associations that have created list-serves for its members.
381. The Working Group proposes that the Women's Resource Centre include not only resources for women in large and medium firms, but also resources to address the needs of women in small firms and sole practices. The resources could include regional lists of available childcare service providers, lists of regional networks and CLE events for women and resources to assist in setting up a business. The Law Society would also work with regional legal associations, women's organizations and organizations that promote equality and diversity in the legal profession to determine how to develop effective on-line resources for women in sole practices and small firms.

Access to Practice Management and Career Development Advice

382. Women in the *Retaining Women* consultation noted that they faced challenges because of lack of advice on career development and practice management focused on their needs. Those needs were particularly acute for women who wished to have, or had, children.

¹¹⁶ *Supra* note 21.

This initiative could also be developed in collaboration with legal associations and associations, which could also provide practice management advice.

383. The Law Society provides, through its Practice Management Helpline, assistance in interpreting the *Rules of Professional Conduct*. Experienced counsel is available to provide insight on the *Rules*, Law Society legislation and by-laws as well as ethical and practice management issues that lawyers may be facing. The Practice Management Helpline could expand its services to provide resources or refer women to resources designed for women in sole practices and small firms. The current Practice Mentorship Initiative is also available to connect lawyers with experienced practitioners in relevant areas of law to help deal with complex substantive legal issues or specific procedural issues outside of the Law Society's advisory mandate. This program can already cater to the needs of women in sole practices and small firms.
384. In order to draw on external resources, the Law Society could also work with regional legal associations, such as the County and District Law Associations, and associations focused on promoting equity and diversity, such as the Women's Law Association of Ontario, to enhance its career and practice management advice services to women in sole practices and small firms.

Direct Support

385. In addition to the recommendations mentioned above, the Working Group proposes that the Law Society continue to provide direct resources to women in small firms and in sole practice, such as career, client and business development workshops and guidelines on effective marketing tips, career development options, and business development skills for women.

Resource Implications

386. It is anticipated that 0.2 of a full-time equivalent position will be required to implement this recommendation. This recommendation would be implemented in incremental phases.

E-Working with Law Schools

Recommendation 6– Beginning at Law School

387. **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.**
388. Law schools in the U.S. and in Canada have begun offering programs to inform law students, in some cases gender specific programs for women law students, about the realities of the practice of law. In the U.S., the University of Maryland School of Law, for example, created a Women, Leadership and Equality Program. This program was designed to develop leadership skills in lawyers, both men and women, who are aware of the barriers to women assuming leadership in society and who will actively promote women in leadership roles. The Program consists of three components:
- a. course offerings in women and leadership;
 - b. a fellowship program where students in their third year may do intensive field placements in organizations that advance women in society; and
 - c. a research component that fosters research on women and leadership across substantive areas of the law.
389. In Ontario, the Faculty of Law of the University of Toronto launched in 2006-2007 an innovative research course for upper-year students on the key elements of legal practice that make it difficult for legal employers to retain women and lawyers from Francophone, Aboriginal and equality-seeking communities. Three members of the profession worked closely with students to explore how to best overcome the barriers that equality-seeking groups encounter in the legal profession. The course was structured to conclude with a Summit that provided an opportunity for members of the profession to explore these barriers, focusing on issues of recruitment, retention, work and family responsibilities, discrimination, workload, billing, client assignments and culture, to name a few. Leading academics, lawyers, judges and others were invited to explore models for reform, subject these ideas to rigorous scrutiny and try to continue the dialogue about how to move forward as a profession. The Summit also provided an opportunity for law students to

present their research papers at a series of noon-hour round tables. The initiative was very well attended and participants found it a valuable learning and networking opportunity for students and members of the profession and the judiciary.

390. Other Ontario law schools have also begun implementing those types of programs.

Final Consultation Findings

391. There was general support for this recommendation. A number of lawyers commented that they were unprepared to take on the business of law, and that they had little information about the realities of practising law after law school. Some lawyers noted that it is important for the Law Society to increase its presence at the law schools.

Resource Implications

392. It is anticipated that this recommendation would be implemented in incremental phases so that additional resources would not be required. It is also expected that this recommendation would require the collaboration of law schools to be successful.

F- Women from Aboriginal, Francophone and/or Equality-Seeking Communities

Recommendation 7– Creation of Advisory Group

393. **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.**

394. In 2005, the Equity and Aboriginal Issues Committee adopted an Equality Template to be applied by the Law Society, including benchers and staff, to the development of policies and programs. The template defines the terms “equality” and “diversity” and recognizes the uniqueness of the Aboriginal and Francophone communities. The Template guides Law Society benchers and staff in considering equality principles when developing policies, projects and initiatives.

395. The Equality Template assists in identifying the potential impact, positive or negative, of policies and initiatives on Aboriginal, Francophone and equality-seeking communities.

The instrument is also useful to determine whether there are alternative ways to proceed that would alleviate negative impacts on Aboriginal, Francophone and equality-seeking communities and promote equality.

396. The Working Group recognizes that women in private practice are not a homogeneous group of lawyers, and that they live different realities and experiences and may be more vulnerable due to their membership in Aboriginal, Francophone and/or equality-seeking communities. The Working Group is of the view that the Law Society's Equality Template should not only guide the recommendations in this project, but be applied to the implementation of recommendations.
397. The Working Group has used an approach to its work that "[...] takes into account the historical, social and political context and recognizes the unique experience of the individual based on the intersection of all relevant groups."¹¹⁷ The Working Group hopes that the recommendations will influence the profession, more specifically those in private practice, to acknowledge the complexity of how women experience private practice, recognize that the experience of women in private practice may be unique and take into account the social and historical context of the groups.
398. Fundamental to this approach is the notion that grounds such as race and sex are interconnected, or that race, sex and disability are interconnected and they do not exist as disaggregated identities.¹¹⁸ For example, a woman who belongs to a particular religion may be treated differently than a man of the same religion or a woman of a different religion. Women lawyers of racialized groups who have disabilities may be treated differently and have different experiences than women who are not racialized or do not have disabilities. The Working Group is of the view that women lawyers' membership in historically under-represented communities, their different experiences and the context in which they practise must be taken into account when developing strategies.

¹¹⁷ This approach has been called an intersectional approach. *An Intersectional Approach to Discrimination – Addressing Multiple Grounds in Human Rights Claims* (Toronto: Ontario Human Rights Commission, 2001) at 3.

¹¹⁸ Devon W. Carbado and Mitu Gulati, "The Fifth Black Woman" (2000-2001) 11 *Journal of Contemporary Legal Issues* 701.

399. Women from Aboriginal, Francophone and/or equality-seeking communities often face significant and unique challenges in private practice in large and medium size firms. Understanding the nature of the challenges is essential to creating solutions to address them. Input from women who are also members of these communities will contribute to this understanding. Some progress has been accomplished through other consultations and studies, although they were conducted for purposes unrelated to this initiative.
400. Specific focus on issues and challenges experienced by women who are members of Aboriginal, Francophone and/or equality-seeking communities is required. Therefore, it is recommended that the Law Society include the perspective of those women lawyers throughout the implementation phase of the project, by creating an advisory group of women lawyers from Aboriginal, Francophone and/or equality-seeking communities. The advisory group's role will be to provide expert advice in the implementation of the recommendations in this report. It is anticipated that the group would meet three times a year via teleconference call and network via email.

Final Consultation Findings

401. Those who commented on this recommendation voiced their support for the proposal.

Resource Implications

402. It is anticipated that the group would meet three times a year via teleconference call and network via email. The resource implications to implement this recommendation are minimal.

Recommendation 8– Networking

403. **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.**
404. Research findings emphasize the importance of networking opportunities when entering and advancing in the legal profession and in private practice. Activities and programs offered by legal associations such as the Canadian Association of Black Lawyers, the

AJEFO, the South Asian Bar Association, SOGIC of the OBA, ARCH Disability Law Centre and the Indigenous Bar Association have been critical to assist students and lawyers in the profession. The Working Group recommends that the Equity and Aboriginal Issues Committee facilitate, in collaboration with legal associations, the development of networks and strategies focused on the needs of women from Aboriginal, Francophone and/or equality-seeking communities.

Final Consultation Findings

405. Those who commented on this recommendation voiced their support for the proposal.

Resource Implications

406. Resources required to implement this recommendation are dependent on the decisions of the Equity and Aboriginal Issues Committee.

G- Assessment

Recommendation 9 Review Programs and Next Steps

407. **That, after a period of three years of implementation of programs, and after a period of five years of implementation of the Practice Locum program, the Law Society assess the effectiveness of each program and identify further strategies for the retention and advancement of women in private practice.**

408. The Working Group is of the view that the effectiveness of programs implemented in the context of this project should be assessed after a period of implementation as specified in recommendation 9 to identify gaps and develop further strategies that may assist women in private practice. The Working Group recognizes that cultural and systemic change takes time. However, it believes that regular reviews of its programs will allow the Law Society to monitor their effectiveness and adapt the programs based on needs.

Resource Implications

409. The resource implications related to the evaluation of programs will be assessed and presented to the Finance Committee, if appropriate, once methodology is identified.

VIII – OVERALL RESOURCE IMPLICATIONS

410. Approximately \$70,000 in funding will be available for the implementation of the Retention of Women Working Group recommendations in 2008. Demand on this funding and other Law Society resources required to implement the recommendations are summarized below.
411. It is anticipated that in subsequent years, 1.0 of a full-time equivalent position per year will be required, beginning in 2009, to continue to effectively implement the initiative.

RECOMMENDATION	STAFFING	PROGRAM EXPENSE	OTHER
1 Justicia project	0.3 of a full-time staff equivalent (beginning in 2009)	<p>\$15,000 for 2008 expenses to coordinate meetings will be covered by funds already approved by Convocation (Convocation already approved \$70,000 for implementation of project)</p> <p>\$15,000 per annum in 2009 and 2010 to coordinate meetings.</p> <p>\$20,000 in 2011 to assess effectiveness of project.</p>	
2 Direct support	0.3 of a full-time equivalent position (beginning in 2009)	<p>\$30,000 per annum to implement the Institute. It is anticipated that this would be offset by course revenues.</p> <p>Design of change of status survey estimated at up to \$25,000 per annum, funded from existing budget in Equity Initiatives Department.</p>	Incremental resource requirements may accumulate
3 Practice locums	0.3 of a full-time equivalent position (beginning in 2009)	Not expected to be material	
4 Parental leave	One additional staff member included in funding (see next	\$600,000 per annum in 2009, 2010, and 2011. Thereafter to be	

RECOMMENDATION	STAFFING	PROGRAM EXPENSE	OTHER
	column).	determined.	
5 Direct resources	0.1 of full- time equivalent position (beginning in 2009)	Not expected to be material.	Incremental resource requirements may accumulate
6 Law school initiative	Not expected to be material.	Not expected to be material	Incremental resource requirements may accumulate
7 Advisory group	Nominal	Nominal	Teleconference three times a year.
8 Networking	Methodology to be determined.	To be determined	
9 Review	Methodology to be determined.	To be determined	
Total 2008	No additional position required	No additional funding required	
Total 2009 - 2011	1.0 of full-time equivalent per year	\$600,000 per year	

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More than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment and Success of Women Attorneys in Law Firms (Boston: Women's Bar Association of Massachusetts Employment Issues Committee, 2007).

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THE CHALLENGES FACED BY WOMEN

A - The Legal Profession in Canada

1. Gender-based challenges faced by women in the legal profession, more specifically in private practice, are well documented. The following provides an overview of some of the findings that indicate significant differences in the experiences of women and men in the legal profession, and show that systemic and cultural norms within the profession have not changed to the extent necessary to be fully inclusive of women's realities. The following studies were reviewed:
 - a. Catalyst Canada, *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance*;¹¹⁹
 - b. Catalyst Canada, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility*;¹²⁰
 - c. Catalyst Canada, *Beyond a Reasonable Doubt: Lawyers State Their Case on Job Flexibility*;¹²¹
 - d. Fiona Kay, *Turning Points and Transitions: Women's Careers in the Legal Profession – A Longitudinal Survey of Ontario Lawyers 1990-2002*;¹²²
 - e. Jean McKenzie Leiper, *Bar Codes – Women in the Legal Profession*;¹²³
 - f. Law Society of Alberta, *Final Report on Equity and Diversity in Alberta's Legal Profession*;¹²⁴

¹¹⁹ *Creating Opportunities*, supra note 28. Catalyst surveyed 1,439 lawyers from law firms across Canada to explore lawyers' experiences in managing their work and personal responsibilities, perceptions of the law firm environment and attitudes towards the use of flexible work arrangements.

¹²⁰ *Business Case*, supra note 23.

¹²¹ *Job Flexibility*, supra note 46.

¹²² *Women's Careers*, supra note 20. In 2004, Professor Fiona Kay concluded a twelve-year longitudinal study in which she surveyed more than 1,500 Ontario lawyers called to the bar between 1975 and 1990, about half women and half men. The survey was first conducted in 1990. In 1996, Professor Kay surveyed the same cohort of participants. The third wave of the longitudinal study was conducted in 2002, with a third survey with the same participants.

¹²³ (Toronto: UBC Press, 2006) at 183. Jean McKenzie Leiper published the results of a qualitative study in which she interviewed 110 women practising law throughout the province of Ontario to determine whether the experiences of women signaled broad changes in the culture of the legal profession in the past thirty years. Participants were asked about their careers and how they had taken shape in light of their family and community interests.

¹²⁴ Merrill Cooper, Joan Brockman, and Irene Hoffart, *Final Report on Equity and Diversity in Alberta's Legal Profession* (Calgary: Law Society of Alberta, 2004) [*Law Society of Alberta Equity Report*]. In 2003, the Law Society of Alberta published its *Final Report on Equity and Diversity in Alberta's Legal Profession*. The objectives of the study were to determine if and how changes have occurred since a 1991 study on gender bias; to collect baseline data on the nature and extent of bias in the profession on grounds of discrimination including gender, race,

- g. Law Society of Alberta, *Final Report on the Survey of Lawyers Moving to Retired and Inactive Status*;¹²⁵
- h. Canadian Bar Association entitled *Racial Equality in the Canadian Legal Profession*;¹²⁶
- i. *Students and Lawyers with Disabilities – Increasing Access to the Legal Profession*.¹²⁷

Maintaining Family Life While in Private Practice

2. Both men and women identify time spent with their family as the aspect of their lives that gives them the most satisfaction, a demanding law career often conflicts with family life and is the most common reason for leaving law practice. The most immediate issues for women in private practice result from childbirth and parenting responsibilities. Studies show that women in the legal profession still take on significantly more of the responsibilities related to childcare than their male counterparts, with men spending 13 hours per week compared to women spending 35 hours per week on childcare.¹²⁸ This is true even though women with very young children, adult children and no children work the same mean number of hours as men within the profession.¹²⁹

3. Findings also indicate that women lawyers, especially women associates, disproportionately feel the challenge of managing work with pursuing family responsibilities.¹³⁰ Men partners' perceptions and experiences of work-life balance are often different, sometimes dramatically, from those of women partners, women associates and men associates, and the gap in satisfaction levels between men and women lawyers is most pronounced between men partners and women associates. Generally speaking, men partners report higher levels of overall satisfaction with the work environments of their firms, regardless of variables such as practice group, region, firm

ethnicity, religion, disability, and sexual orientation; and to collect information about lawyers who move to the inactive list and their reasons motivating their decisions.

¹²⁵ (Calgary: Law Society of Alberta, 2004) [*Retired and Inactive Status Survey*].

¹²⁶ (Ottawa: Canadian Bar Association, 1998) at 78-79 [*CBA Racial Equality Report*].

¹²⁷ (Toronto: Law Society of Upper Canada, 2005). See also *Lawyers with Disabilities: Identifying Barriers to Equality* (Vancouver: Law Society of British Columbia, 2001) and *Lawyers with Disabilities: Overcoming Barriers to Equality* (Vancouver: Law Society of British Columbia, 2004).

¹²⁸ *Women's Careers*, supra note 20.

¹²⁹ Women with school-age children work slightly reduced full-time hours. Kay, *Women's Careers*, supra note 20 at 57.

¹³⁰ *Creating Opportunities*, supra note 28.

size or age. It is noteworthy that in *Creating Opportunities*, forty-two percent of men lawyers with children report they have spouses who do not work outside the home, in comparison to ten percent of women lawyers with children. Of men lawyers with children and a spouse who does not work outside the home (76 percent of whom are partners), 49 percent express difficulty managing the demands of work and family life. In comparison, 74 percent of women lawyers with children and a spouse employed full-time (48 percent of whom are partners) express difficulty managing the demands of work and family life.¹³¹ Studies also indicate that women often postpone parenthood in favour of career advancement and are the subject of negative reactions by partners and managers when they announce their pregnancies.¹³²

4. Women are leaving the profession, and more particularly private practice, earlier in their careers and in greater numbers than men due in large part to billable hour demands, lack of flexibility, lack of accommodation for childcare, stressful practices, unavailability of part-time partnerships, part-time employment, predictable hours, job sharing and flexibility in hours, lack of networking opportunities and role models in the upper echelons of law.¹³³
5. Although benefits offered by employers have improved over the years, there appears to be a decline in the part-time work, flexible hours, job sharing, or part-time partnerships opportunities in private practice. The availability of paternity and maternity leave has remained stable, but women take the majority of parental leaves.¹³⁴ Lawyers in non-private practice generally receive superior benefits than those in private practice, such as medical insurance, dental plans, sick leave, long-term disability income support, pension plans, leaves of absences and sabbaticals, job sharing and part-time work arrangements available in their work place.

¹³¹ *Creating Opportunities*, *supra* note 28 at 10.

¹³² Jean McKenzie Leiper, *Women in the Legal Profession - Bar Codes* (Vancouver; UBC Press, 2006).

¹³³ See *Creating Opportunities*, *supra* note 28; *Business Case*, *supra* note 23; and *Job Flexibility*, *supra* note 46. See also Jean McKenzie Leiper, "Women Lawyers Caught in the Time Crunch" (1998) 13 (2) *Canadian Journal of Law and Society* 117.

¹³⁴ *Women's Careers*, *supra* note 20 at 109.

6. Lawyers' satisfaction with their ability to manage work and maintain their family responsibilities varies according to the size of their firms. While more men associates are satisfied in large firms, fewer women associates are satisfied in that setting. As firm size increases, fewer men and women partners are satisfied with their ability to manage work and their family responsibilities.¹³⁵
7. Results of studies undertaken by other law societies in Canada reveal similar challenges. In Alberta, for example, about half of the lawyers leave practice either permanently or temporarily, due to dissatisfaction with the practice of law, dissatisfaction with their place of employment and/or the pursuit of more personally rewarding opportunities elsewhere.¹³⁶ Women lawyers who are employed as law firm associates are more likely to move to inactive status if they have children. Many women with children report that they have deliberately chosen to work for the government in order to access maternity leave benefits, accommodate their parenting responsibilities, and achieve better work-life balance. Lawyers who have moved to inactive status say that they were extremely dissatisfied with the hours of work and billing expectations associated with private practice. It was generally agreed that the legal profession, and private practice in particular, is inhospitable to women with children.

Work Environment

8. Studies also show that women's career paths in the legal profession differ significantly from men's career paths. For example, women are more likely than men to enter the legal profession in governmental positions or in work settings outside of private practice.¹³⁷ This may be the case in part because of benefits and fewer work hours. Although the vast majority of lawyers work on a full-time basis, women are more likely to work part-

¹³⁵ *Creating Opportunities*, *supra* note 28 at 10. In the Catalyst analysis, large firms are firms with more than 301 lawyers, mid-size firms have between 151 and 300 lawyers and small firms have 150 lawyers or less. Twenty-five percent of women associates in large firms are satisfied with their ability to manage work and personal/family responsibilities, in comparison to 38 percent of men associates. More women in mid-size firms are satisfied (53 percent) in comparison to women partners in large firms (39 percent).

¹³⁶ *Retired and Inactive Status Survey*, *supra* note 125. See also *Law Society of Alberta Equity Report*, *supra* note 124.

¹³⁷ *Women's Careers*, *supra* note 20, at 64-65. See also F.M. Kay, C. Masuch and P. Curry, *Diversity and Change: The Contemporary Legal Profession in Ontario* (Toronto: Law Society of Upper Canada, 2004) [*Contemporary Legal Profession*].

time.¹³⁸ Initial jobs tend to be full-time, and part-time jobs increase in frequency among women as they move through their careers.¹³⁹

9. Approximately one in four Canadian lawyers employed in law firms report having used a flexible work arrangement, but about six times as many women lawyers reported using some kind of part-time flexible work arrangements compared to their male counterparts.¹⁴⁰ Most lawyers still perceive full-time or part-time flexible work arrangements to be career limiting,¹⁴¹ and they believe that those who enter into flexible work arrangements could never become partners as the flexible work arrangement limits their professional development.¹⁴²

Job Interruptions

10. There are gender differences in the number of job interruptions and types of activities between professional positions. Generally lawyers move between professional positions without interruptions. However, interruptions are more likely to occur for women and women are more likely than men to report child care as a primary activity during work interruptions, while men are more likely to travel or to undertake education and professional development activities that impact positively on their career advancement.

¹⁴³

Partnership

11. Although the majority of lawyers work in the private practice of law, men are more likely than women to be made partners, while women are considerably more likely than men to

¹³⁸ By the third position held, 15% of women and 4% of men worked part-time. By their 4th and 5th positions, 17% of women and 3% of men, and 26% of women and 2% of men respectively worked part-time.

¹³⁹ *Women's Careers*, *supra* note 20 at 63.

¹⁴⁰ Telecommuting means that individuals work some or all of their 40 hours off-site, often at home. Flextime means that while the number of hours worked and billing requirements remain constant, the individual decides when he/she comes into the office and when work is actually done.

¹⁴¹ Other types of flexible arrangements include a "compressed work week" where individuals work their expected hours in a smaller block of longer days in a week, or in a smaller block of longer weeks in a month. There are also "part-time flexible" work arrangements, such as "job sharing", where at least two or more lawyers share the responsibilities of one full-time lawyer, and "reduced work schedule" or "part-time" where lawyers work fewer hours or fewer days.

¹⁴² For the purpose of the report, a flexible work arrangement was defined as "explicit conditions of employment involving adjustments of hours, scope and/or place of work for a sustained period of time (mutually agreed upon) between associates and the firm and between partners and the firm or the firm's management committee". See *Job Flexibility*, *supra* note 46, Executive Summary.

¹⁴³ *Women's Careers*, *supra* note 20 at 67.

leave the practice of law.¹⁴⁴ There are significant differences not only between the percentage of men and women who are partners, but also in the types of partnership arrangements they occupy.¹⁴⁵ In Professor Kay's study, the lawyers who continued to practise were well along in their careers, with between 12 and 27 years experience in the profession when they were surveyed.¹⁴⁶ By then, it would have been expected that most would have attained partnership status. However, men were much more likely than women to be partners (78% of men and 65% of women), men were more often senior partners (71% of men and 51% of women) and women were more likely to be junior partners and to hold alternative types of partnerships such as salaried or part-time partners (18% of men and 40% of women).¹⁴⁷

12. In 2003, *Lexpert* magazine noted, "The inescapable reality is that women are the child bearers and still the primary caregivers on the home front. Also inescapable are the demands of practice in large firms."¹⁴⁸ The article notes that the average percentage of women equity partners in a select number of major Canadian firms is 20%. Reasons given for such a low percentage include firms' expectation of high billable hours and lack of work life balance at the partnership level.

Women from Aboriginal, Francophone and/or Equality-Seeking Communities

13. Women from Aboriginal, Francophone and/or equality-seeking communities often face greater challenges due to their membership in those communities. Racialized and Aboriginal lawyers face significant challenges when entering private practice and they are more likely than non-racialized lawyers to leave the practice of law because of an

¹⁴⁴ In second jobs, 10% of women were not practising law compared with 8% of men and in third jobs, 11% of women were no longer practising law, compared with 9% of men. By the fourth position, 18% of women and 16% of men were not practising law.

¹⁴⁵ *Women's Careers*, *supra* note 20 at 37.

¹⁴⁶ See also Fiona M. Kay and John Hagan, "Changing Opportunities for Partnership for Men and Women Lawyers during the Transformation of the Modern Law Firm" (1995) 32 *Osgoode Hall Law Journal* 413. Fiona Kay also looked at gender disparities in the Quebec legal profession in "Crossroads to Innovation and Diversity: The Careers of Women Lawyers in Quebec" (2002) 47 *McGill L.J.* 699. The Honourable Wendy Baker discusses the structure of the workplace in the legal profession from the perspective of a woman who has practised law for fifteen years and who is a member of the Supreme Court of British Columbia. See "Structure of the Workplace or, Should We Continue to Knock the Corners Off the Square Pegs or Can We Change the Shape of the Holes?" (1995) 33 *Alta. L. Rev.* 821.

¹⁴⁷ *Women's Careers*, *supra* note 20 at 106. Law Society statistics indicate that 82% of partners are men compared to 18% of women.

¹⁴⁸ *Carpe Diem*, (2003) *Lexpert* 68 at 70.

inability to find a job.¹⁴⁹ Changes are warranted in law firms, including ensuring that marketing initiatives are consistent with equality principles, reviewing recruitment criteria, developing and publicizing criteria for the evaluation of legal work, consistently applying and reviewing performance appraisal processes, ensuring that law firm internal complaints procedures and policies provide effective remedies and conducting exit interviews to assist in identifying patterns of direct or systemic discrimination.¹⁵⁰

14. Lawyers with disabilities also face barriers entering and remaining in the legal profession, more particularly in private practice.¹⁵¹ They are more likely than lawyers without disabilities to leave private practice because of illness or injury and involuntary loss of employment, inability to find a job practising law, discrimination and lack of credit for work.
15. Women who are members of equality-seeking communities face heightened vulnerabilities in the profession. For example, lawyers with disabilities report facing challenges in private practice because of attitudes and assumptions that disabilities hinder the ability to practise, and because of issues of accessibility. Aboriginal women say they suffer considerable sexist oppression and harassment and that they have to do more networking and be more visible in the legal profession to advance. Racialized women state that they experience discrimination on the basis of race, most often in combination with gender, and most of the participants felt that it had affected their careers. They also note the dearth of racialized women lawyers as partners in major law firms.

B - Sole Practice and Small Firms – Unique Challenges

16. Women in small firms¹⁵² and sole practices face challenges that are unique to the firm size and the nature of sole practice. Women in sole practice consistently raise two significant issues, the hardship of trying to maintain an income during a leave of absence,

¹⁴⁹ See *Law Society of Alberta Equity Report*, *supra* note 124. See *CBA Racial Equality Report*, *supra* note 119.

¹⁵⁰ *Addressing Discriminatory Barriers Facing Aboriginal Law Students* (Vancouver: Law Society of British Columbia, 2000).

¹⁵¹ *Students and Lawyers with Disabilities – Increasing Access to the Legal Profession* (Toronto: Law Society of Upper Canada, 2005). See also *Lawyers with Disabilities: Identifying Barriers to Equality* (Vancouver: Law Society of British Columbia, 2001) and *Lawyers with Disabilities: Overcoming Barriers to Equality* (Vancouver: Law Society of British Columbia, 2004).

¹⁵² We refer here to small firms as firms of five lawyers or less.

and the difficulties in maintaining their practice during a leave.¹⁵³ Women also note that they have little access to business and client development and networking opportunities. Many women opt for sole practice after leaving large or medium firms, but they find that they are not trained for, and had not planned to be, sole practitioners.

17. The *Report of the Sole Practitioner and Small Firm Task Force*¹⁵⁴ points to the difficulties faced by women sole practitioners or women who are partners or associates in small firms. The study includes in the target group lawyers in sole practices and small firms of five or fewer lawyers. Twenty-one percent of respondents in the target group were women compared with 33% of the non-target group. The report provides the following findings:
- a. Within the target group, women are more likely to be associates or employees of small firms (33%), and less likely to be partners in those firms (13%).
 - b. Although women enter the legal profession in greater numbers each year, they are under-represented in the target group and are over-represented as associates or employees and under-represented as partners.
 - c. All other factors being equal, men are likely to earn more than women.
 - d. In the focus groups with lawyers from equality-seeking communities, women reported more serious concerns over low income than did men.
 - e. Gender differences were perceived by the women participants to be fundamental in shaping perceptions related to managing work and life. Women discussed specific drawbacks of the practice context and the many disadvantages that women face in practising law. Women all agreed that practising law in a sole practice or small firm environment imposed very serious restrictions on the viability of having children.¹⁵⁵
 - f. Participants noted the lack of maternity leave benefits. All participants conceded that the decision to have a child meant serious sacrifices with respect to their capacity to practise law.

¹⁵³ *Retaining Women*, *supra* note 20.

¹⁵⁴ *Sole and Small Report*, *supra* note 20.

¹⁵⁵ *Sole Practitioners and Employees/Associates from Equality-Seeking Communities: Benefits, Drawbacks, Financial Challenges and the Future of Practising in the Small Firm Environment* (Toronto: The Strategic Communications, October 6, 2004) at 8 [*Equality-Seeking Communities – Small Firm Environment*].

- g. Women focus group participants discussed issues of sexual harassment and condescension toward women within the legal profession and reported that sexual harassment is pervasive.
18. This situation is not unique to Ontario. Following its Benchers' Retreat in June 2005, the Law Society of British Columbia created a Small Firm Task Force to consult with sole and small firm practitioners and to make recommendations to benchers on how the Law Society of British Columbia might take meaningful steps to strengthen and support sole and small firm practice. Although the Task Force did not undertake a study about the challenges faced specifically by women in small firms and sole practices, the challenges and recommendations identified by the Task Force are relevant to women's experiences.¹⁵⁶ More particularly, many sole and small firm lawyers reported that it is difficult if not impossible to take time off from the practice of law because there is no one available to provide essential services to their clients in the interim. This concern is particularly acute for women who are more likely to take, or to want to take, maternity and/or parental leaves.

C – U.S. Experience

19. Women in other common law jurisdictions appear to face similar challenges to Canadian women lawyers in private practice. Research and the development of best practices to retain women in private practice have been underway in the United States for decades and are relevant to the Law Society initiative.
20. As in Canada, both men and women rank the conflict between family and work life as one of the most significant barriers to success in private practice in the U.S. While those with children report the highest levels of conflict, men and women without children also find it difficult to balance their professional and personal life.¹⁵⁷

¹⁵⁶ See *Report of the Small Firm Task Force* (Vancouver: Law Society of British Columbia, 2007) [*Law Society of British Columbia Small Firm Report*].

¹⁵⁷ Catalyst, *Women in Law – Making the Case* (New York: Catalyst, 2001). See also *Ending the Gauntlet*, *supra* note 54; *Obstacles to Leadership*, *supra* note 54; *Pathways to Success*, *supra* note 54; *Balanced Lives*, *supra* note 54. A U.S. Catalyst's 2001 study of 1400 lawyers found that 70% of both men and women report work/life conflict. A third of male respondents, and almost half of female respondents identify work/life balance as one of their top three reasons for choosing their employer.

21. One of the most comprehensive studies to describe the challenges faced by women in private practice, and one that outlines findings from various other studies, is Lauren Stiller Rikleen's *Ending the Gauntlet – Removing Barriers to Women's Success in the Law*.¹⁵⁸ She describes the experiences of women in law firms in the United States and provides insights into the systemic practices that law firms should address to increase women's chances of advancement and retention. The following components of law firms' practices increase the difficulties faced by women in private practice:
- a. The single most important managerial activity in a professional service firm is good client files. However, assignment of files processes are generally "steeped in mystery and riddled with discretion", which tends to disadvantage women.¹⁵⁹
 - b. The increase in billable hour demands, combined with technology's expanded opportunities for instant communications and faster results is an impediment to women's advancement in large firms. Women with family responsibilities find it difficult to put in 70 to 80 hour weeks and the billable hour system does not value efficiency in work habits.¹⁶⁰
 - c. The emphasis on creating rainmakers, lawyers with high ability to attract clients, and the failure to promote team work in business development efforts means that women are often disadvantaged by not inheriting work and are often excluded from client development processes.¹⁶¹
 - d. Firms establish their own compensation systems, which are often not transparent.¹⁶²
 - e. Because success in a law firm depends largely on a combination of challenging assignments and exposure to clients, the key to a lawyer's success is often due to the help of a strong mentor. Women are often excluded from informal mentoring relationships. Therefore, formal mentoring programs are encouraged, and mentors should be encouraged to not only protect the mentee, but actively promote women lawyers to clients and partners.¹⁶³

¹⁵⁸ *Ending the Gauntlet*, *supra* note 54.

¹⁵⁹ *Ibid.* at chapter 3.

¹⁶⁰ *Ibid* at chapter 4.

¹⁶¹ *Ibid* at chapter 5.

¹⁶² *Ibid* at chapter 6.

¹⁶³ *Ibid* at chapter 7.

- f. Law firms generally have great difficulty implementing effective reduced hours policies, when they exist. The law firm culture has made it difficult to allow parents to reduce their full-time commitment to the practice of law and still remain valued lawyers. This has had a particularly detrimental impact on women, resulting in decisions to leave the practice of law. Most law firms use the existence of their written reduced hours policies as recruitment tools to demonstrate a commitment to family. However, statistics reveal that most lawyers are worried about adverse career repercussions to take advantage of them. Women often believe that their status as a part-time lawyer would affect their advancement to partnership.¹⁶⁴
- g. Partnership evaluation processes and criteria are often subjective and many women are frustrated with vague criteria and little meaningful feedback. Women in Rikleem's study indicated that the importance of business development as a key element of partnership consideration is a source of great frustration for them. Lawyers are told to work hard and bill a lot of hours. However, embedded in the firm's subjective evaluation process is the potential of being a rainmaker and women do not receive adequate business development training to effectively fulfill that role.¹⁶⁵
- h. Women are often not well represented at the firms' management level including at the Managing Partner level, the executive committee level, in substantive law groups, and in firms' multiple locations and branch offices.¹⁶⁶
- i. The perception that flexible hours policies are an accommodation for women, as opposed to a focused effort by the firm to retain talent, manifests itself in a casual approach to the success of reduced hours arrangements.¹⁶⁷

¹⁶⁴ *More than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment and Success of Women Attorneys in Law Firms* (Boston: Women's Bar Association of Massachusetts Employment Issues Committee, 2007).

¹⁶⁵ *Ending the Gauntlet*, *supra* note 54 at chapter 10.

¹⁶⁶ *Ibid* at chapter 13.

¹⁶⁷ *Ibid* at 261.



The Law Society of
Upper Canada | Barreau
du Haut-Canada

JUSTICIA THINK TANK – PROPOSED LAW FIRM COMMITMENT

Statement of Diversity Principles

1. The Law Society of Upper Canada and the law firm signatories (“Participating Law Firms”) hereto acknowledge the challenges faced by the legal profession in general and law firms in particular in the retention and advancement of women.
2. To this end, we commit to the following principles and pledge to participate in the Law Society Justicia Think Tank for the retention and advancement of women and encourage other law firms in the Province of Ontario to do the same.
3. We also recognize that women in the Participating Law Firms are diverse by virtue of, but not limited to, ethnicity, ancestry, place of origin, colour, citizenship, race, religion or creed, disability, sexual orientation, marital status, age and/or family status. We will take into account this diversity when implementing this initiative.

Participating Law Firms Commitment

4. Each Participating Law Firm commits to participate in this project for three years.
5. The Participating Law Firm managing partners (“Managing Partners Network Group”) will attend a minimum of two summit meetings of the Justicia Think Tank in each calendar year. It is anticipated that summit meetings will last between 1 and 2 hours.
6. Each Participating Law Firm will nominate a partner and/or a director of students, associates and/or partners who has the expertise and knowledge of issues related to diversity and the advancement of women in the firm, to have operational responsibility for the Justicia Think Tank (“Gender Diversity Officer”).

7. The Gender Diversity Officers will attend such regular meetings as are required to advance understanding of issues affecting women and develop best practices and programming and will serve as a liaison between the Law Society and the Participating Law Firm (“the Gender Diversity Officers Working Group”). Consideration will be given to the needs of women from Aboriginal, Francophone and/or equality-seeking communities.
8. The Participating Law Firms will develop a system to maintain statistical data about gender in the composition of the firm. Participating Law Firms will record their individual firm gender statistics on such matrices as articling student composition, articling student hire back, advancement into income and equity partnership, number of women in management roles, attrition rates from the associate and partner ranks and such other criteria as may be agreed to. The firms will also consider whether they wish to maintaining statistical data about membership in Aboriginal, Francophone and/or equality-seeking communities.
9. By the end of 2011, Participating Law Firms will commit to having effective written policies, based on their organization’s needs and culture, with respect to maternity, parental and adoption leave, flexible work arrangements, and to revise existing policies, if any, with respect to partnership admission, and consider the impact of flexible work or maternity leave arrangements on partnership admission.
10. Participating Law Firms will monitor and measure their own experiences with the programs and, on a voluntary basis, share these with the Law Society and Participating Law Firms in order to develop best practices that can be shared with the profession.

The Law Society of Upper Canada’s Role

11. The Law Society of Upper Canada will,
 - a. coordinate the Justicia Think Tank and provide expertise, advice and administrative support for the project;

- b. coordinate a Managing Partners Network Group, organize at least two Justicia summit meetings¹⁶⁸ in each calendar year and provide administrative support to the Managing Partners Network Group;
 - c. coordinate regular meetings of the Gender Diversity Officers Working Group with the objective of advancing understanding of issues affecting women, developing best practices and programming, serving as a forum for information sharing between participating firms and the Law Society, and providing administrative support to the Gender Diversity Officers Working Group;
 - d. coordinate teleconference meetings of an advisory group of women from Aboriginal, Francophone and/or equality seeking communities,
 - e. provide advice and expertise to assist Participating Law Firms in the implementation of programs.
12. The following are the types of activities that the Law Society will undertake,
- a. develop guidelines and templates on recording demographic data;
 - b. collect and disseminate to the Participating Law Firms examples of flexible work arrangements policies and seek input with respect to best practices with a view of developing an Ontario Flexible Work Arrangements Policy;
 - c. provide the Participating Law Firms with models of networking and business development activities tailored for women lawyers and clients, to identify best practices with respect to business development training for women;
 - d. provide the Participating Law Firms with models of mentoring and leadership skills development models for women.
 - e. promote best practices in the legal profession as a whole;
 - f. assess the effectiveness of the project and identify next steps with Participating Law Firms and in the legal profession.

¹⁶⁸ It is anticipated that the summit meetings will last between 1 to 2 hours.

Project Description

13. The three-year project with Participating Law Firms will begin in 2008 with the commitment of firms to participate in the project. It will run until end of 2011, followed by an assessment period and identification of next steps.

14. The first step of the project, to be conducted during the first half of 2008, will involve a period of networking with firms to encourage them to commit to the project. This period will also allow the firms to designate Gender Diversity Officers. The Law Society will coordinate the first summit meeting of Managing Partners during 2008, and will schedule regular meetings of the Diversity Gender Officers Working Group.

15. The second step of the project is a three-year period, between 2009 and end of 2011, during which Participating Law Firms will develop and implement programs, with the collaboration and assistance of the Law Society. The programs will focus on the following four core areas: tracking demographics; parental leave program and flexible work arrangements; networking and business development; and mentoring and leadership development skills for women. The development and implementation of each program will be staggered to ensure that Participating Law Firms have established the appropriate resources to optimize the effectiveness of the programs. The Law Society will coordinate at least two Managing Partners' summit meetings in each calendar year and regular Gender Diversity Officers Working Group meetings.

16. The third step of the project will include the following:
 - a. an assessment of the programs to identify best practices and develop model policies and guidelines;
 - b. communication of best practices to the legal profession as a whole;
 - c. identification of other law firms that may wish to implement best practices; and
 - d. establishment of next steps with Participating Law Firms.

Step 1 – Selection of Firms - 2008

17. The Law Society will invite all firms with over 25 lawyers, and the two largest firms in each region, to participate in the three-year project. The Law Society will also welcome firms of 6 to 25 that wish to participate.
18. Participating Law Firms will designate a Gender Diversity Officer to act as liaison in the Justicia Think Tank.
19. The Law Society will organize the first Managing Partners summit meeting in 2008. The Law Society will schedule regular meetings of the Gender Diversity Officers Working Group.

Step 2 – Programs

20. During the three-year period the Justicia Think Tank will focus on the following four core areas: tracking gender demographics, parental leave program and flexible work arrangements, networking and business development, and mentoring and leadership skills development for women. The Law Society will organize at least two Justicia Think Tank summit meetings in each calendar year and will organize regular Gender Diversity Officers Working Group meetings.

Programs Mid – 2009

Launch of Tracking Demographics and Flexible Work Arrangements Programs

21. In 2009, the Justicia Think Tank will focus on the development of the two following programs with Participating Law Firms: tracking gender demographics and parental leave program and flexible work arrangements. Participating Law Firms will develop the following programs based on their firm needs and culture and work with the Law Society to develop best practices.

➤ *Demographic Framework*

22. The Law Society and the Participating Law Firms will develop a template to track gender demographics, which may guide Participating Law Firms in developing their tracking methodology. The template will include gender demographics about articling student composition, articling student hire back, advancement into income and equity

partnership, numbers of women in management roles in the firm, attrition rates from the associate and partner ranks and such other criteria as may be agreed to.

23. Participating Law Firms will begin tracking gender demographic information once the system is in place and before 2010. Results will be kept confidential to each law firm, and the Law Society will not monitor or request that the Participating Law Firms report demographics. However, Participating Law Firms may agree to share some or all of their data or to share general trends.
- *Parental Leave Program and Flexible Work Arrangements*
24. Beginning in mid-2008, the Law Society, with the collaboration of the Participating Law Firms, will focus on the collection of examples of parental leave program and flexible work arrangements policies in Canadian and US law firms, with a goal to creating a draft Ontario Flexible Work Arrangements Model Policy. This stage includes gathering information and seeking input with respect to best practices on creating and monitoring flexible work arrangements that are suitable for individual lawyers and his or her practice group.
25. Participating Law Firms will review their existing written policies relating to maternity, parental and adoption leave, flexible work arrangements, accommodations and partnership admission to consider incorporating the impact of flexible work arrangements or maternity leave arrangements on partnership admission. Participating Law Firms will consider developing, with the assistance of the Law Society if required, their own written policies relating to those topics.
26. Participating Law Firms will begin working with their teams and their practice groups to support such arrangements, to ensure that there is full acceptance and understanding throughout the firm of the benefits of these arrangements and to ensure that there is transparency about how the flexible work arrangements are constructed and granted. Participating Law Firms will monitor the effectiveness of flexible work arrangements.

Programs 2010

Launch of Networking and Business Development Initiative

27. In 2010, the Participating Law Firms will continue to build on existing programs by examining the current allocation of their business development resources and networking opportunities, taking into account allocation by gender, to better understand the focus and allocation of resources.
28. The Law Society, in collaboration with Participating Law Firms, will share information about business development and networking opportunities specifically tailored for women lawyers and women clients. They will undertake a review of best practices with respect to business development training for women.
29. Participating Law Firms will develop a strategic business development plan and allocate appropriate resources to implement effective business development opportunities and networking opportunities focused on women lawyers' needs and women clients.

Programs 2011 –

Launch of Mentoring and Leadership Skills Development for Women

30. In 2011, the Law Society, with the collaboration of the Participating Law Firms, will identify various models of mentoring and leadership skills development programs.
31. Participating Law Firms will, through consultation, identify what women in their firms need and want regarding mentoring and leadership development opportunities, and identify the resources to support those programs. Participating Law Firms will consider whether women lawyers are well represented throughout the firm, as group leaders, committee members, including executive and compensation committee members, and other positions of leadership. The Participating Law Firms will identify gaps and develop strategies to enhance women's participation in the leadership of the firm.
32. Participating Law Firms will consider the various models and begin to implement, as a pilot, forms of mentoring for women, which will include but not be limited to substantive legal mentoring of women; individual and peer-to-peer group career mentoring of women as well as supportive programs.

Step 3 – Promotion of Best Practices and Next Steps

33. In 2012, the Law Society will coordinate meetings with Participating Law Firms Managing Partners and Gender Diversity Officers to share information about the success of their programs and work with the Law Society to identify best practices on tracking demographics, flexible work arrangements, networking and business development programs and mentoring and leadership development programs. Model policies and guidelines will be developed, if appropriate, for each program.
34. The Law Society, with the assistance of Participating Law Firms, will share and promote the best practices and model policies and guidelines to the profession as a whole, with a goal of creating a broad-based commitment from the profession.
35. The Law Society will identify law firms that wish to adopt a project to roll out the programs designed in this project.
36. The Law Society will work with Participating Law Firms to identify next steps.

Timelines

Programmes	2008	2009	2010	2011	2012
Launch	Firms commit. Firms designate a Gender Diversity Officer.				
Tracking Demographics		Law Society and firm develop template. Firms develop tracking system.	Firm implement tracking	Firm implement tracking	
Flexible Work Arrangements		Law Society collects examples. Firms review their policies. Firms consider adopting policies. Firms begin implementation.	Firms continue implementation	Firms continue implementation	
Networking and Business Development			Firms examine allocation of resources. Law Society provides information about models. Firms implement.	Firms continue implementation.	
Mentoring and Women in Leadership Roles				Law Society provides models. Firms consult to assess need. Firms begin implementing.	
Completion and Next Steps					Meeting of firms – sharing information.

					<p>Promotion of best-practices to legal profession.</p> <p>Roll out to other firms. Identification of next steps.</p> <p>Assessment of program</p>
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Parental Assistance Program for Self-employed Workers

The text that follows is a summary of the rules governing the maternity and paternity assistance program for lawyers who are member of the Barreau du Québec, which were approved by the general meeting of members of the Barreau du Québec on May 31, 2003. The complete text of the rules is available on the internet site of the Barreau du Québec or on request to member services.

In the event of discrepancy between the text that follows and the rules, the rules govern.

Objectives of the Program

The Program is for lawyers who have no financial support, as listed in the eligibility criteria, when a child is born to them or adopted by them. Its purpose is to cover a portion of the operating costs incurred for running an office during a certain period while professional activities are suspended because of the birth or adoption of a child.

Eligibility

The Program is not intended to replace existing public or private assistance programs. As well, in order to receive benefits under the program, members must not be covered by:

1. an employment insurance plan or any other government program of the same nature;
2. a partnership contract;
3. a policy at the firm or organization where they practice;
4. an individual agreement with the firm or organization where they practice;
5. any other form of income replacement, except for any support received from family members or a spouse's family members.

Three Types of Benefits

The program provides three types of benefits.

Maternity (maximum 3 months)

These benefits are intended for:

- lawyers who give birth to a child after January 1, 2005;
- lawyers who are pregnant and, on medical advice, have to cease professional activities prior to delivery, where delivery occurs after January 1, 2005;
- lawyers whose pregnancy is interrupted after the 19th week of pregnancy, where the interruption occurs after January 1, 2005.

Parental (maximum 1 month)

These benefits are intended for members who become parents after January 1, 2005. If both parents are members of the Barreau, either parent may claim benefits.

Adoption (maximum 1 month)

These benefits are intended for members who adopt a child after January 1, 2005. If both parents are members of the Barreau, either parent may claim benefits.

In all cases, the member must cease professional activities for the period for which benefits are requested, the objective of the Program being to cover a portion of the operating costs incurred during a certain period while professional activities are suspended because of the birth or adoption of a child.

Combining Benefits

It is possible for a lawyer to combine maternity benefits and parental benefits. In all cases, benefits will be paid for a maximum of four months for any birth. Accordingly, if both parents are members of the Barreau, only one may claim parental benefits. Parental benefits may be paid before the end of the maternity benefit period.

For the purpose of the Program, the birth of more than one child as a result of a single pregnancy and the adoption of more than one child at the same time will be considered to be a single birth and a single adoption.

Benefit Amount

The amount of the benefits offered by the Barreau du Québec is:

- \$1,500 per month in the event that operating expenses, calculated on a monthly basis, are equal to or greater than \$1,500;
- or
- the actual amount of the operating expenses, calculated on a monthly basis, if they are less than \$1,500 per month.

For the purposes of the Program, operating expenses are expenses eligible for tax deduction as expenses incurred in the course of operating a business (e.g. rent, telephone, electricity, etc.).

Benefits will be paid by cheque, in monthly instalments, where the lawyer meets all of the requirements and submits the necessary documents required for consideration of his/her application.

The Barreau du Québec reserves the right to require additional supporting documentation for the consideration of any application.

For tax purposes, the benefits paid under the Program are considered to be taxable income. No information slip will be issued by the Barreau du Québec.

Deadline

In order for benefits to be paid under the Program, the application must be filed within 12 months of the birth or adoption of the child or interruption of the pregnancy.

Information

To view the rules governing the Program and the documents required for making an application, visit our internet site or contact member services at (514) 954-3442 or 1-800-361-8495 ext. 3442.

Parental Assistance Program for Self-employed Workers

APPLICATION FOR BENEFITS AND AFFIDAVIT

I, the undersigned _____, domiciled and residing at _____, request that the Barreau du Québec pay me the benefits to which I am entitled under the Parental Assistance Program for Self-employed Workers (the “Program”), and for the purpose of this application I solemnly affirm as follows:

1) I have reviewed the provisions of the Program as adopted by the members at the general meeting on May 31, 2003.

2) I request that I be paid the following benefits: (check the appropriate box(es))

Maternity benefits (max. 3 months)

> Indicate the months or fractions of months (0.5) _____ months

• Child’s date of birth

_____/_____/_____

Year Month Day

OR

• Date on which professional activities ceased before birth on medical advice

_____/_____/_____
Year Month Day

OR

• Date of interruption of pregnancy (after 19 weeks)

_____/_____/_____
Year Month Day

Parental benefits (max. 1 month)^[1]

> Indicate the months or fractions of months (0.5) _____ months

• Child’s date of birth

_____/_____/_____
Year Month Day

Adoption benefits (max. 1 month)

> Indicate the months or fractions of months (0.5) _____ months

• Date on which child was adopted

_____/_____/_____
Year Month Day

3) I declare: (check the appropriate box(es))

a) that I am not receiving any financial support identified in the rules of the Program;

OR

that I am receiving financial support in an amount less than the amount of the benefits allowed, in the total amount of:

\$ _____

b) that I have monthly operating expenses in an amount at least equal to the benefits provided under the Program;

OR

that I have monthly operating expenses in an amount less than the amount of the benefits under the Program, in the total amount of:

\$ _____

c) that my professional activities have ceased or will cease for the period of the benefits.

4) I agree to inform the Barreau du Québec of any event, such as return to work, that might change the period of the benefits requested.

5) In support of my application, I am providing the documents required:
(check the appropriate box(es))

certificate or declaration of the birth of the child (original or certified copy)

judgment ordering placement or foreign adoption judgment or immigration visa issued to Canada Customs [*sic*] (original or certified copy)

medical certificate in the event of cessation of professional activities before delivery or in the event that of interruption of pregnancy (original or certified copy)

^[1] If the application relates to two members, each member must complete a form

In witness whereof, I have signed at _____, this _____

Signature (_____) Member No.

Solemnly affirmed before me at _____ on _____

Commissioner for oaths for the district of _____

(Version : 2004-12-21)

November 2007

LAW SOCIETY OF UPPER CANADA MATERNITY, PARENTAL AND ADOPTIVE LEAVE

PREPARED & SUBMITTED BY:

Wafaa Babcock, FSA FCIA



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Section 1. **INTRODUCTION**

This report is being prepared for the Law Society of Upper Canada (“LSUC”). LSUC would like to explore the cost of providing an income for Sole Practitioners or Partners in practices containing a maximum of five practitioners, who take a leave of absence at the time of the birth or adoption of a child. We have been asked to prepare estimates of the potential cost of such a benefit, using demographic membership data supplied by LSUC. As requested, the estimated costs are separated into three pieces: a “maternity” benefit cost which applies only to the female membership who give birth, a “parental” benefit cost which represents the estimated cost of leave for either a female or male parent at the time of a birth of a child, and an “adoption” benefit cost which estimates the cost of providing benefits for leave to a male or female member at the time they adopt a child.

The costs were determined assuming a monthly benefit of \$1,000 and payable for 1 month only. This would allow LSUC to multiply the costs provided by a factor to estimate the cost for a higher benefit amount or a longer benefit period.

For your convenience, we have also included Appendix B of the report which includes estimates of the cost to the members of LSUC who are full paying members.

LSUC provided us with data for the years 2002 to 2006 inclusive of the number of males and females of their Sole Practitioners or Partners in practices containing five or less practitioners. We will refer to these members of LSUC as the “Included Members”. Using the historical data, we were able to estimate the expected increases in the number of Included Members for the upcoming years and to provide estimated costs of benefits in the future.

It is the opinion of LSUC that fertility rates for the Included Members are likely to be lower than the general population. We have thus been requested to prepare only scenarios of fertility rates that are at 100% or a smaller percentage of the average Ontario fertility rates used.

We prepared two main scenarios. The first scenario was based on the general data available to us regarding historical member growth, average fertility rates, expected take up rate of benefits for the general population. The second scenario was based on input from LSUC with regards to their expectation of future events given that the benefits are for Sole Practitioners and Partners of small firms. The second scenario thus assumes lower fertility

rates, smaller increases in number of female Included Members, and lower take up rate of benefits for both males and females.

This report has concentrated on the possible costs for these benefits and has not discussed the actual design of the program. In addition to the more obvious questions of who is eligible to receive benefits, for how long and for how much, many other items will need to be considered in the design.

The remainder of the report deals with the cost of providing maternity, parental and adoptive leave benefits.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W Babcock'.

Wafaa Babcock, FSA FCIA
Principal

Section 2. DATA

The historic demographic data comprised a five year historic profile (2002 to 2006 inclusive) of LSUC members who were Sole Practitioners or Partners in practices containing five or less practitioners (“Included Members”), split by sex and current age. The historic data is set out in Appendix A of this report.

We understand that the data for each year is as at the end of each year and thus the 2006 data is the most recent credible data available. The data provided for each year was the number of Included Members by age and sex.

The following is information on the most recent year (2006) data we were provided.

Male

Age	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60 +	Total
#	1	57	254	479	762	888	1183	1423	1919	6966

Female

Age	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60 +	Total
#	0	51	150	269	373	385	340	214	142	1924

The Included Members have grown at an average rate of approximately 1.7% per year over the period 2002 to 2006. There is a significant difference between the growth rates of the male and female Included Members. The male membership has grown at an average rate of approximately 0.8% per year over this period whereas the female membership has grown at an average rate of approximately 5% per year over the same period.

Using the year by year movement of the Included Members by age, we were able to infer what the net new entrants to the group were for each age and calendar year¹. This analysis was completed on both the male and female membership. Taking the average across all five years, we calculated the average distribution of net new entrants to be as follows:

Male

Age	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60 +	All
%	1%	48%	95%	48%	38%	11%	-12%	-17%	-112%	100%

Female

Age	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60 +	All
%	0%	24%	27%	36%	8%	11%	3%	-2%	-7%	100%

We then projected the demographic profile of the Included Members for several years in the future under different scenarios, using the overall growth rate for females and for males distributed according to the historical average, as a base case.

¹ For example, we “aged” the 2002 data by one year, and compared the resulting projected profile to the actual 2003 profile. The difference for each age was the net new entrant for that age/year. Although the results are grouped into 5-year age bands for presentation, the calculations were done on a seriatim basis.

Section 3. **BENEFIT STRUCTURE**

For the purpose of this calculation, we used a maternity/parental/adoption leave benefit of \$1,000 per month for a period of one month of leave. The results can be scaled linearly for a higher benefit level, or for a longer benefit period.

For example, if a \$2,000 benefit per month is desirable for a period of 3 months, then the cost provided can be multiplied by 2 and then multiplied by 3. A cost of \$50,000 applicable to a \$1,000 per month benefit for a period of one month would then become \$300,000 ($50,000 \times 2 \times 3 = \$300,000$).

In order to keep the calculations as simple as possible and to facilitate linear scaling of the results, we have ignored the impact of discounting and mortality. The impact of discounting and mortality for periods shorter than one year is expected to be very small.

For purposes of the projections, we assumed that the level of benefits will be flat and thus have not accounted for any benefit changes in the future.

Major changes have been implemented in the maternity, parental and adoption benefits available under the Employment Insurance (EI) program over the past few years. These changes, including increasing the period of time for leave and introducing parental benefits has influenced the experience for the length of time that women have taken off work on the birth of a child and the number of men taking a leave due to the birth or adoption of a child.

The amount of benefit and the period of benefit established by LSUC may differ depending on whether a maternity benefit and/or a parental benefit are offered. As provided in the Employment Insurance (EI) program, LSUC may decide to provide a longer benefit period for maternity benefits and a shorter period for parental benefits (which would be available to both males and females of the Included Members). So, for example, a maternity benefit for three months can be provided as well as a parental benefit for one month. This will result in a female practitioner taking a maximum of four months of benefits and a male practitioner taking a maximum of one month of benefits.

Section 4. **MATERNITY BENEFITS**

For the determination of costs for maternity benefit, we used the number of females by five year age groups, as per Section 2 of the report, allowing for future growth, and applied benefit utilization rates.

Benefit Utilization Rates

Statistics Canada tabulates annual fertility rates of Canadian women by 5-year age bands and by province. The most recent year for which experience is available is 2004. We looked for other sources of fertility rates that might be more applicable to LSUC members, but were unable to obtain any further detail. Since the fertility rates in total for Canada were similar to those of Ontario, but the Ontario rates contain a higher average age of the mother at the time of the birth of a child, we have used the Ontario rates as the more applicable rates.

The average Canadian and Ontario fertility rates per 1000 by age band in 2004 were:

Age	20-24	25-29	30-34	35-39	40-44	45-49	Total
Canada	51	97.4	95.8	40.1	6.9	0.3	10.5
Ontario	42.9	92.5	101.5	44.4	8.1	0.4	10.7

Scenarios of Fertility rate and membership growth

Since the fertility rates used are not those of LSUC, it is important to understand what the cost would be under different utilization rate scenarios (i.e. different fertility rates). In addition, we have considered the impact of combining the fertility rates as outlined above with possible growth rates of the members who are considered Included Members as well as the take-up rate of benefits expected.

We prepared two main scenarios as discussed earlier in the introduction. Within each scenario, we have provided three fertility rates. They are 100% of average Ontario fertility rates, 80% of average Ontario fertility rates and 50% of average Ontario fertility rates. We have projected costs in each case for 2008, 2009, 2010 and 2011.

Results

SCENARIO 1

For this Scenario, we have used general data, and the historical information provided by LSUC to establish the base case scenario. We have also provided the various fertility rates, and using the following assumptions:

- 100% of Ontario fertility rates as the base;
- 5% per year increase in number of females (as per average annual increases occurring for the years 2002 to 2006);
- distribution of new entrants as provided in the data for 2002 to 2006;
- 100% take-up rate of the benefits for females.

The following table sets out the estimated cost of providing a benefit of \$1,000 for one month for maternity benefits.

Estimated \$ Cost of Benefit of \$1,000 p.m. for 1 Month – Female Members						
Scenario	Cohort Growth	Fertility Rate	2008	2009	2010	2011
1) Base	5% annual growth, base case distribution	100% of Ontario average	36,100	37,900	40,000	41,600
2)	5% annual growth, base case distribution	80% of Ontario average	28,900	30,300	32,000	33,300
3)	5% annual growth, base case distribution	50% of Ontario average	18,000	18,900	20,000	20,800

The results in the above table may be scaled if a higher benefit and/or longer benefit period is desired. For example, for a monthly benefit of \$2,000 per month for 3 months, the estimated cost in 2008 under the base scenario would be 6 times \$36,100 or \$216,600.

SCENARIO 2

As requested by LSUC we have adjusted the assumptions to provide the following assumptions.

- 80% of Ontario fertility rates as the base for females;
- 3% per year increase in number of females;
- distribution of new entrants as provided by data provided for 2002 to 2006;
- 40% for 2008, 50% for 2009 , 60% for 2010 and 80% for 2011 take-up rate of the benefits for females;

The following table sets out the estimated cost of providing a benefit of \$1,000 for one month for maternity benefits.

Estimated \$ Cost of Benefit of \$1,000 p.m. for 1 Month – Female Members						
Scenario	Cohort Growth	Fertility Rate	2008	2009	2010	2011
1) Base	3% annual growth, base case distribution	80% of Ontario average	10,700	13,100	15,500	20,100
2)	3% annual growth, base case distribution	100% of Ontario average	13,400	16,400	19,400	25,200
3)	3% annual growth, base case distribution	50% of Ontario average	6,700	8,200	9,700	12,600

Section 5. **PARENTAL BENEFITS**

Benefit Utilization Rates

The parental benefits are made up of two sections – the first section applies to the benefits for females and the second section applies to the benefits for males, where benefits are provided for taking leave due to the birth of a child. The cost related to females taking leave under parental benefits is the same as for maternity benefits as we have assumed the same utilization for females of parental leave as that for maternity leave. In this section, we have repeated the results for the maternity benefits so that if only parental benefits are provided, or if parental benefits provide a different benefit period or amount from those of maternity benefits, the costs for benefits to females can be added to the cost of benefits to the males.

We have assumed independence amongst members of LSUC. No adjustment has been made to account for members who may be married to one another or may otherwise be responsible in the upbringing of a child.

Information regarding the number or percentage of fathers taking time off from work for the birth or adoption of a child was obtained from Statistics Canada. This information was provided in a report titled “Navigating family transitions: evidence from the General Social Survey”. Another source was a release from statistics Canada regarding a 2006 EI Coverage Survey. Employment Insurance (EI) was amended in 2000, increasing parental leave benefits from 10 to 35 weeks, effectively increasing the total maternity and parental paid leave time from six months to one year. Since this revision, the proportion of fathers who took leave following the arrival of a child has increased with the most recent statistics with findings that 20% of such males applied for EI benefits.

For the male calculations, we assumed that males are three years older than their respective spouses (a typical assumption used in pension valuations). For benefit utilization rates, we applied the same fertility rates as for maternity benefits to the ages of the spouses, and then assumed that a percentage of males (20% in assumption 1 and 15% in assumption 2) would take parental benefits upon the birth of a child.

The base case distribution for the male calculations assumed an increase in Included Members of 0.8% per year as per Section 2. Unlike the Maternity benefit, we used the same growth rates for males under both Scenario 1 and Scenario 2.

Results

SCENARIO 1

For this Scenario, we have provided the various fertility rates, and using the following assumptions:

- 100% of Ontario fertility rates as the base;
- 5% per year increase in number of females (as per average annual increases occurring for the years 2002 to 2006);
- 0.8% per year increase in number of males (as per average annual increases occurring for the years 2002 to 2006);
- distribution of new entrants as provided by data provided for 2002 to 2006;
- 100% take-up rate of the benefits for females;
- 20% take-up of the benefits for males.

Parental Benefits – Females only – Scenario 1

The following table sets out the estimated cost of providing a benefit of \$1,000 for one month for parental benefits for female members only.

Estimated \$ Cost of Benefit of \$1,000 p.m. for 1 Month – Female Members						
Scenario	Cohort Growth	Fertility Rate	2008	2009	2010	2011
1) Base	5% annual growth, base case distribution	100% of Ontario average	36,100	37,900	40,000	41,600
2)	5% annual growth, base case distribution	80% of Ontario average	28,900	30,300	32,000	33,300
3)	5% annual growth, base case distribution	50% of Ontario average	18,000	18,900	20,000	20,800

Parental Benefits – Males only – Scenario 1

The following table sets out the estimated cost of providing a benefit of \$1,000 for one month for parental benefits for male members only.

Estimated \$ Cost of Benefit of \$1,000 p.m. for 1 Month – Male Members only						
Scenario	Cohort Growth	Fertility Rate	2008	2009	2010	2011
1) Base	.8% annual growth, base case distribution	100% of Ontario average	18,100	17,700	17,500	17,600
2)	.8% annual growth, base case distribution	80% of Ontario average	14,500	14,100	14,000	14,100
3)	.8% annual growth, base case distribution	50% of Ontario average	9,100	8,800	8,700	8,800

SCENARIO 2

As requested by LSUC we have adjusted the assumptions to provide the following assumptions while providing different fertility rates.

- 80% of Ontario fertility rates as the base for females and 100% of Ontario fertility rates as a base for spouses of males;
- 3% per year increase in number of females;
- 0.8% per year increase in number of males (as per average annual increases occurring for the years 2002 to 2006);
- distribution of new entrants as provided by data provided for 2002 to 2006.
- 40% for 2008, 50% for 2009, 60% for 2010 and 80% for 2011 take-up rate of the benefits for females;
- 15% take-up of the benefits for males.

Parental Benefits - Females only – Scenario 2

The following table sets out the estimated cost of providing a benefit of \$1,000 for one month for parental benefits for female members only.

Estimated \$ Cost of Benefit of \$1,000 p.m. for 1 Month – Female Members						
Scenario	Cohort Growth	Fertility Rate	2008	2009	2010	2011
1) Base	3% annual growth, base case distribution	80% of Ontario average	10,700	13,100	15,500	20,100
2)	3% annual growth, base case distribution	100% of Ontario average	13,400	16,400	19,400	25,200
3)	3% annual growth, base case distribution	50% of Ontario average	6,700	8,200	9,700	12,600

Parental Benefits – Males only – Scenario 2

The following table sets out the estimated cost of providing a benefit of \$1,000 for one month for parental benefits for male members only.

Estimated \$ Cost of Benefit of \$1,000 p.m. for 1 Month – Male Members only						
Scenario	Cohort Growth	Fertility Rate	2008	2009	2010	2011
1)Base	.8% annual growth, base case distribution	100% of Ontario average	13,600	13,200	13,100	13,200
2)	.8% annual growth, base case distribution	80% of Ontario average	10,900	10,600	10,500	10,600
3)	.8% annual growth, base case distribution	50% of Ontario average	6,800	6,600	6,600	6,600

Section 6. **ADOPTION BENEFITS**

Benefit Utilization Rates

The adoption information available is very limited. International adoption statistics for 2005 were released by Citizenship and Immigration Canada (CIC) in August of 2006. International adoptions are split by province for years 2003 to 2005. In 2005 there were 679 such adoptions in Ontario. The statistics also show that the international adoptions to Canada have been stable for the past 11 years, running between 1,800 and 2,200 a year. We were unable to obtain any significant information regarding adoption of children born within Canada.

From 2000 to 2002, adoption benefits under the Employment Insurance (EI) program have been at around 1.3% of the benefits payable for parental benefits. We have thus applied the 1.3% to the costs of parental benefits, recognizing that in any event the costs for this program are expected to be small.

Results

Scenario 1 – Females and Males

The following table sets out the estimated cost of providing a benefit of \$1,000 for one month for adoption benefits for both male and female members.

Estimated \$ Cost of Benefit of \$1,000 p.m. for 1 Month – Female & Male Members						
Scenario	Cohort Growth	Fertility Rate	2008	2009	2010	2011
1)Base	base case distribution	100% of Ontario average	700	700	700	800
2)	base case distribution	80% of Ontario average	600	600	600	600
3)	base case distribution	50% of Ontario average	400	400	400	400

Scenario 2 – Females and Males

The following table sets out the estimated cost of providing a benefit of \$1,000 for one month for adoption benefits for both male and female members.

Estimated \$ Cost of Benefit of \$1,000 p.m. for 1 Month – Female & Male Members						
Scenario	Cohort Growth	Fertility Rate	2008	2009	2010	2011
1) Base	Base case distribution	80%/100% of Ontario average for females/males	300	300	400	400
2)	Base case distribution	100% of Ontario average	300	400	400	500
3)	Base case distribution	50% of Ontario average	200	200	200	300

Section 7. **ADDITIONAL COMMENTS**

The costs provided in the tables assume that individuals will be taking the leave for the period for which the benefits are offered. Depending on the length of the leave provided and the size of the benefit, for purposes of maternity and parental leave, the assumptions used in the report, as far as utilization may not be realized. And if they do take such leave, it may not be for the full period of the leave. Similarly for adoptions, full participation in the program is not likely and such participation will be impacted by the length of the leave paid for and the amount paid during the leave.

Another issue is regarding fertility rates. The above statistics of fertility rates used for purposes of the calculations are for the population in general and therefore the experience of LSUC may differ significantly. (Scenario 2 uses as a base that female Included Members are expected to have 80% of the fertility rates of the average Ontario population). As requested by LSUC, we did not present any calculations using higher than average fertility rates although such a result may be possible especially when applied to the spouses of the male Included Members.

In addition, male participation in parental benefits has increased dramatically over the past 5-6 years and may continue to increase in the future. Again these statistics are based on the population at large and may differ from LSUC actual experience should these benefits be provided. Very little information is available on adoption leave but due to the size of the numbers, we expect that the cost for adoptive leave to continue to be small.

We recommend that LSUC track their own maternity, parental, and adoptive leave participation for comparison to the assumptions used in this report. A review of the plan's experience should be undertaken from time to time to assess the appropriateness of the assumptions used and to make revisions to these assumptions as necessary.

We assume that the size of the benefit may influence the percentages of new mothers and fathers taking such leave and thus a review of the number taking leave should be made after the program goes into effect.

Based on the data provided and the assumptions made in this report, the results, in my opinion are reasonable.

Appendix A. **HISTORICAL DATA**

Historic Profile of Female LSUC Included Members										
	2002		2003		2004		2005		2006	
	#	%								
20-24	1	0.1%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
25-29	27	1.7%	41	2.5%	37	2.1%	47	2.6%	51	2.6%
30-34	124	7.9%	122	7.4%	121	6.9%	136	7.4%	150	7.8%
35-39	265	16.9%	267	16.2%	282	16.2%	279	15.3%	269	14.0%
40-44	387	24.7%	376	22.8%	365	20.9%	360	19.7%	373	19.4%
45-49	321	20.5%	331	20.1%	356	20.4%	373	20.4%	385	20.0%
50-54	238	15.2%	267	16.2%	301	17.3%	317	17.3%	340	17.7%
55-59	126	8.1%	153	9.3%	180	10.3%	196	10.7%	214	11.1%
60 +	75	4.9%	91	5.5%	103	5.9%	120	6.6%	142	7.4%
Total	1,564	100%	1,648	100%	1,745	100%	1,828	100%	1,924	100%

Historic Profile of Male LSUC Included Members										
	2002		2003		2004		2005		2006	
	#	%								
20-24	0	0.0%	0	0.0%	1	0.0%	2	0.0%	1	0.0%
25-29	38	0.6%	52	0.8%	59	0.9%	61	0.9%	57	0.8%
30-34	250	3.7%	240	3.5%	245	3.5%	243	3.5%	254	3.7%
35-39	622	9.2%	584	8.6%	564	8.2%	500	7.3%	479	6.9%
40-44	830	12.3%	833	12.3%	789	11.4%	782	11.4%	762	10.9%
45-49	1,104	16.4%	1,028	15.1%	985	14.2%	905	13.1%	888	12.8%
50-54	1,399	20.8%	1,354	19.9%	1,320	19.1%	1,236	18.0%	1,183	17.0%
55-59	1,229	18.2%	1,291	19.0%	1,400	20.2%	1,427	20.8%	1,423	20.4%
60 +	1,269	18.8%	1,410	20.8%	1,558	22.5%	1,722	25.0%	1,919	27.5%
Total	6,741	100%	6,792	100%	6,921	100%	6,878	100%	6,966	100%

Appendix B. **COST PER ACTIVE MEMBER**

The Tables below provide a cost per active member of LSUC under various scenarios, as requested.

In order to determine the cost per active member, we determined the total cost of the program under the various scenarios and divided by the total number of full paying members.

If LSUC decides to implement this program, it will probably take some time for approvals and implementation of the program. We have thus excluded 2007 in the calculations. For simplicity, we have used only the base scenario for the assumptions under scenario 1 and 2 from the report, which are the scenarios providing the base case distribution of member growth, fertility rates, and take-up rate.

For the total number of full paying members, we used the 2007 number of full paying members provided by LSUC of 32,000 in 2007 increased by 1,200 per year to reflect membership increases for the years 2008 to 2011.

COST PER ACTIVE MEMBER

The following provides the cost per active member. Thus, for example if a female Included Member gives birth, and the benefits are \$2,000 per month for maternity benefit payable for three months and \$1,000 for parental benefits payable for one month (males and females), she would receive \$2,000 for three months for maternity benefits and then \$1,000 for one month for parental benefits.

Scenario 1

Using the assumptions above for the base in Scenario 1, the following are the estimated cost per member based on \$1,000 benefit for one month only.

Estimated cost Per Full Paying Member				
Scenario 1	2008	2009	2010	2011
a) Maternity Benefits – Females only	\$1.09	\$1.10	\$1.12	\$1.13
b) Parental Benefits – Males only	\$0.54	\$0.51	\$0.49	\$0.48
c) Parental Benefits – Males & Females	\$1.63	\$1.61	\$1.61	\$1.61
d) Adoption Benefits – Males & Females	\$0.02	\$0.02	\$0.02	\$0.02

If for example the Maternity benefit is set at \$2,000 for three months, then the per member cost in 2008 would be \$6.54 ($\$1.09 \times 2 \times 3$)

Scenario 2

Using the assumptions above for the base in Scenario 2, the following are the estimated cost per member based on \$1,000 benefit for one month only. Please note that for maternity benefits under this scenario, the costs are expected to increase as more females take the benefit in the following years.

Estimated cost Per Full Paying Member				
Scenario 2	2008 Total Cost	2009 Total Cost	2010 Total Cost	2011 Total Cost
a) Maternity Benefits – Females only	\$0.32	\$0.38	\$0.44	\$0.55
b) Parental Benefits – Males only	\$0.41	\$0.38	\$0.37	\$0.36
c) Parental Benefits – Males & Females	\$0.73	\$0.76	\$0.81	\$0.91
d) Adoption Benefits – Males & Females	\$0.01	\$0.01	\$0.01	\$0.01