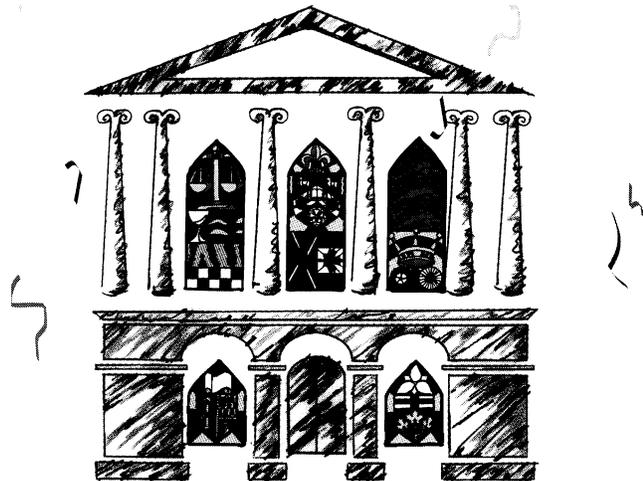




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The Law Society of du Haut-Canada
Upper Canada

Bicentennial Report and Recommendations on Equity Issues in the Legal Profession



*Report to
Bicentennial Convocation
May 1997*

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I. INTRODUCTION

1. It has been less than ten years since the Law Society of Upper Canada first formalized its commitment to equity issues facing the profession. As is the case for most institutions grappling with equality, the Law Society's first challenge came from a critical mass of women joining the profession in record numbers during the period 1975 - 1990.
2. At that time, women identified a range of issues and barriers affecting their ability to perform to their maximum potential in the workplace. Through the Law Society's research and consultation, hurdles faced by women lawyers were brought to the attention of the profession, thus opening the door for other equality-seeking groups to raise their own experiences of discrimination and harassment.
3. Men and women from all backgrounds and career stages came forward, identifying barriers they faced in entering and remaining in the profession. Aboriginal articling students spoke about the struggle to gain acceptance into mainstream legal fields. Lawyers of colour spoke about blatant examples of mistaken identity where clients, judges, and colleagues assumed they were not lawyers because they "didn't look the part". Gay and lesbian lawyers described job interview questions designed to elicit information about their health and sexual practices. Lawyers with disabilities spoke about watching themselves disappear as colleagues chose to exclude them from work because it was easier than accommodating their needs. Women explained their difficult choice to leave the profession because their firms couldn't provide them with a flexible workplace. Men spoke of the frustration they felt as they observed the different treatment accorded their colleagues, wives, and daughters.
4. Some of these lawyers came forward and participated in Law Society committees. Others spoke compellingly, in public and in private, about the shock they felt when confronted with treatment which could only be explained by prejudice and stereotypes harboured by even well-intentioned colleagues.
5. The stories varied but all shared a common theme: a desire to be treated with fairness, respect, and dignity. Many lawyers described the hurt and anger with which they were now scarred - that a profession that stands for truth and justice could perpetuate,



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through its preservation of the status quo, roadblocks to the full participation of all **members.**

6. These lawyers told the Law Society that it has a responsibility to eradicate discrimination within the profession, to govern equitably, and to ensure that all members can rely on their governing body to enforce codes of professional conduct that promote respect and dignity and to discipline infractions. For many benchers, these personal accounts of discrimination were enlightening, forging new alliances in support of Convocation's adoption of ground-breaking Rules of Professional Conduct.
7. In 1997, the Law Society celebrates its Bicentennial and the 100th anniversary of the admission of its first woman member. The spirit and courage of the many lawyers who have confronted inequality is a stalwart legacy to launch the Law Society into the future. This Report is a review of the considerable work accomplished by the Law Society over the past decade and includes recommendations to guide our equity mandate in the years ahead.



II. HISTORICAL OVERVIEW

HIGHLIGHTS OF THE WORK OF THE LAW SOCIETY: 1988 TO 1996

A. TWO STANDING COMMITTEES ARE CREATED

8. In October of 1988, the Law Society's Research and Planning Committee decided to establish a Women in the Legal Profession Subcommittee to consider emerging issues relating to women in the profession. In September of 1990, the Subcommittee became a standing Committee of Convocation. It was made responsible for "research and policy development in respect of issues relating to women in the legal profession".
9. The Women in the Legal Profession Committee was responsible for all of the research on gender issues and for some of the practical work relating to gender and equity issues undertaken by the Law Society during the period 1988 to 1996.
10. In October 1989, Convocation appointed a special committee to study and make recommendations as to whether the Law Society should establish a program to encourage and assist persons from minority groups that are under-represented in the legal profession in Ontario to become lawyers. *The Report of the Special Committee on Equity in Legal Education and Practice* was adopted by Convocation on March 28, 1991, and the following rule under *The Law Society Act* was added at that time setting out the general mandate of the Equity in Legal Education and Practice Committee ("the Equity Committee") :

The Equity in Legal Education and Practice Committee is responsible to Convocation for the formulation and implementation of policy on equity and legal education and practice.
11. The Equity Committee, mindful of the complementary work of the Women in the Legal Profession Committee, addressed discrimination on the basis of personal characteristics other than sex and family status. Membership included Law Society benchers, government representatives, the Delos Davis Guild, the Black



Law Students Association, the Aboriginal Articling Students' Support Council, the Law Deans, and others with an interest and commitment to equity in the legal profession.

12. In September 1996, in a general restructuring of committees to move to the policy governance model, the Women in the Legal Profession Committee and the Equity in Legal Education and Practice Committee were merged into and became a part of the new Admissions and Equity Committee whose mandate includes the "development of policies to promote equity in legal education and practice". To some equality-seeking representatives this had the appearance of a falling away from the Law Society's commitment to seek equity in the legal profession. The merger was supported by some benchers on the condition that a full-time staff person would be employed to deal with equity and gender issues.
13. At the same time the Treasurer appointed an Equity Advisory Committee to act as an expert resource to her on equity issues facing the profession.

B. STUDIES, REPORTS, AND SURVEYS

- (i) **The 1989 Study of Women in the Legal Profession**
14. In 1989 the Law Society examined the employment experience and demographic makeup of its membership. The examination resulted in a number of important findings:
 - During the period 1976 to 1988, there was a tremendous growth in the number of women entering the legal profession. By 1988, women comprised 20% of the legal profession, and 83% of those women were called to the Bar during the period 1978 to 1988.
 - Women in the legal profession were (on average) 7.2 years younger than men in the legal profession. The average age of women and men in the legal profession was 35 years and 42.2 years respectively.
 - Women were represented across an array of work settings (including private practice, government, private industry, and non-profit organizations). However, women were more likely than men to be found in work settings other than private practice.
 - Within private practice, fewer women than men were partners and, across all work settings, women were more likely than men to occupy lower positions in the power hierarchy.



15. The examination revealed differences between the career experiences of women and men in the legal profession. However, the examination provided only limited explanations for the differences. Moreover, given the recent entry of women into the legal profession; it was unclear whether or not the career experiences of women and men would ultimately differ or converge once women had spent more time in the legal profession. It was, therefore, concluded that any further examination of the legal profession should aim to explore the career experiences of women and men over time.

(ii) 1990/91 Transitions in the Ontario Legal Profession

a) Introduction

16. In 1990 the Law Society undertook a research project that had as its aim conducting a retrospective examination of the career experiences of women and men in the legal profession.
17. The result of the project was a Report released in 1991 entitled *Transitions in the Ontario Legal Profession ("Transitions")*.
18. The project involved a survey of a random sample of women and men called to the bar during the period 1975 to 1990. Survey questionnaires were sent to 2,358 members-1,597 members responded (a response rate of 68%).
19. The survey was designed to gather information about transitions (or movement) within the legal profession, more particularly, about movement within work settings, movement across work settings (including departures from private practice to other work settings), and departures from the legal profession. The survey was also designed to gather information about the reasons for movement within, and departures from, the legal profession.

b) Summary of the Main Findings of the Survey

20. The main findings of the report can be summarized as follows:
- A smaller proportion of women than men were starting their careers in private practice. Women who did start their careers in private practice were more likely than men to leave private practice.
 - Women were more likely than men to start their careers in government employment. Women who started their careers in government employment were more likely than men (who also started their careers in government employment) to remain employed by the government.



- Across all work settings, women were more likely than men to occupy lower positions in the power hierarchy (even when year of call to the Bar was taken into account). This was manifested in two significant ways:
 - Women were less likely than men to participate actively in policy decision making. Women were more likely than men to act as advisors to decision makers or not to participate at all in decision making.
 - Women were less likely than men to supervise others. Women were more likely than men to be recipients of supervision.
- Work settings lacked a strong support system for members with family responsibilities. While many work settings offered maternity leaves, few offered child care benefits, part-time partnerships, paternity leaves, or job sharing.
- Women were bearing most of the responsibility for child care and home maintenance. While all respondents with family responsibilities reported difficulties balancing career and family responsibilities, women in particular reported difficulties.
- A sizeable proportion of respondents reported perceiving their work environment to be one of unequal opportunity, not only for women but also for other equality-seeking groups.
- A sizeable proportion of women reported having experienced sexual discrimination in their careers.

c) Recommendations

21. On the basis of the findings, recommendations for action to correct unjustifiable career differences between women and men were adopted by Convocation. These recommendations included adopting a Statement of Policy, and specific recommendations to deal with lifestyle and alternative career options, alternative work arrangements, parental responsibility policies, temporary absences from practice, discrimination, income, Law Society programs, personnel policies, and further study and research.
- (iii) **1992 Survey**
22. In 1992 a survey sponsored by the Law Society was conducted by the Black Law Students Association of Canada. The survey of black law students, articling students, and recently called lawyers found that fifty percent of respondents thought they were channelled into particular areas of practice or types of law. Fifty-nine percent of respondents to the 1992 survey believed that certain areas



of practice were effectively closed to black lawyers. The areas of law cited most often as not being open to black lawyers were corporate\commercial law and related areas of business law such as securities and taxation.

(iv) 1993\94 Survey

23. In response to complaints from Bar Admission students (including articling students) in 1992, the Law Society conducted a survey of these students in 1993 and 1994 concerning inappropriate comments made and questions asked at articling interviews. Students reported that they were asked questions and subjected to offensive remarks concerning age, sex, family status, parenting obligations, sexual orientation, and heritage and country of origin, among others.

C. THE LAW SOCIETY'S RESPONSE

24. At the same time as the Law Society was working toward raising awareness of equity issues in the legal profession, the Law Society began the long task of examining and altering the ways it governed the profession. The Law Society's goal was to remove those barriers to equal opportunities within the legal profession that lay within its jurisdiction to remove. As a result the following initiatives were introduced:

(i) Equity Audit

At the time that *Transitions* was released, all programs and services delivered by the Law Society were the responsibility of the standing Committees. The recommendations from *Transitions* also identified specific changes to programs and services to be considered by the relevant standing Committees. Each standing Committee of Convocation was asked to consider *Transitions* and identify further matters that required the attention of, and action by, the Committee. In effect, what the standing Committees were asked to do was to conduct an "equity audit" of the programs and services for which they were responsible.

(ii) Reduction in Annual Membership Fee for Members on Parental Leave

In 1992, Convocation approved a reduction in the annual (membership) fee for members on parental leave. Members on parental leave pay a 25% annual membership fee prorated for each month taken for the leave.



(iii) Adoption of Rule 27

In 1992, after extensive consultation with the profession, Convocation adopted a new Rule of Professional Conduct dealing with Sexual Harassment - Rule 27. After the Rule was adopted several educational bulletins were published to educate the profession about the Rule.

(iv) Sexual Harassment Policy

In 1992, Convocation approved "A Recommended Personnel Policy Regarding Employment-Related Sexual Harassment". The policy was distributed to the managing partners of all law firms in Ontario. A version of the policy for small firms was subsequently prepared. In 1996, work was begun on updating both policies. This work has yet to be completed.

(v) Establishment of the Joint Action Committee on Gender Equality

In 1993, the Law Society, in conjunction with other organizations, established the Joint Action Committee on Gender Equality in the Legal Profession, a Committee consisting of various professional legal organizations across Ontario. The mandate of the Committee was to co-ordinate the efforts of the participating organizations to resolve a number of the issues raised in *Transitions* and by the then ongoing Task Force on Equality and Diversity being undertaken by the Canadian Bar Association. During the period 1993 to 1996, the Law Society contributed funding to the Committee.

(vi) Adoption of Rule 28

In September 1994, after extensive consultation with the profession, Convocation passed Rule 28 on Non-Discrimination. **Appendix A** contains the text of Rule 28. Rule 28 acknowledges the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the *Ontario Human Rights Code*), marital status, family status, or disability with respect to professional employment of other lawyers, articling students, or any other person or in professional dealings with other members of the profession or any other person.

Following the introduction of Rule 28 the Equity Committee developed the following educational bulletins to assist members in understanding their obligations under the Rule as well as to assist them in implementing the spirit of Rule 28:

- 1) General Overview;
- 2) Recruitment and Hiring and Rule 28;
- 3) Employment within a Law Firm;
- 4) Rule 28 and Partnership and Relations with Other Members of the Profession; and
- 5) Rule 28 and Accommodation.



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(vii) Monitoring Data

In 1996, questions to gather information necessary to monitor the progress of equality-seeking groups in the legal profession were included in a new "membership information form" to be sent to all members.

(viii) Alternative Work Arrangements and Workplace Equity Policies

In 1996 and early 1997, draft recommended personnel policies regarding alternative work arrangements and workplace equity in law firms were prepared. The policies are adaptations of model policies prepared as part of the work of the Canadian Bar Association Task Force on Gender Equality in the Legal Profession. These policies have not yet been approved for dissemination.

(ix) Part-time Practice Option Adopted by LPIC

For 1997, the Lawyers' Professional Indemnity Company is offering members who practise law in private practice on a part-time basis a "part-time practice option". A member who qualifies for the option is eligible for a premium discount of 40% of the base premium. The standard program coverage applies.

(x) Gender Neutral Communications Policy

A gender neutral communications policy was adopted by Convocation in 1989 and applied by it thereafter. In 1990, the policy was sent to all members of the profession and they were encouraged to apply the policy in communications with their colleagues, clients, and members of the public. Through the application of its gender neutral communications policy the Law Society has continued to encourage the use of gender neutral language throughout the legal profession, in the Bar Admission Course, in CLE, and at law schools.

(xi) Law Schools

The Equity Committee liaised with the six Ontario law schools to assist in the development of appropriate policies for the full inclusion of equality-seeking groups in the Law Society's legal education process and in the profession itself. The Equity Committee met annually with all six Law Deans to discuss relevant issues.

(xii) Bar Admission Course

Materials in the Bar Admission Course are revised on an ongoing basis. As they are revised, materials incorporate language and pictorial representation that are gender neutral. Materials also incorporate information on sexual harassment and discrimination. Efforts are also made to ensure that instructors in the Course are representative of all members of the legal profession.



(xiii) Bar Admission Course Funding

The Law Society provides a wide range of funding in the form of awards, bursaries and loans to qualified students in the Bar Admission Course. The Equity Committee oversaw distribution of funds (\$10,000.00 annually) provided by Butterworths Canada Ltd. to each of the six law schools to award to an equity student to assist in financing his or her legal education. The criteria for eligibility include a combination of financial needs, good academic standing, and membership in any group enumerated in the *Human Rights Code*.

(xiv) Accommodation re Mandatory Attendance at the Bar Admission Course

Although mandatory attendance is a component of Phases 1 and 3 of the Bar Admission Course (the teaching term), the Law Society will accommodate qualified students in respect of the mandatory attendance requirement.

(xv) Statistics Re Articling Placements

The Law Society has been keeping statistics on what percentage of unplaced articling students are members of a visible minority group or aboriginal. These statistics demonstrate that both visible minorities and aboriginals are over-represented in the group without articles.

(xvi) Guidelines for Articling Interviews

Guidelines for articling interviews were prepared and distributed by the Law Society in 1993. These guidelines have now been supplanted by Law Society brochures dealing with Rule 28 (non-discrimination).

(xvii) Part-Time Articling

Part-time articling was introduced by the Law Society in 1992.

(xviii) Law Society's Placement Service

The Law Society's placement service assists students in securing articling positions. Students disadvantaged by the process for reasons unrelated to competence are assisted to compete fairly in the articling recruitment process. An articling placement mentoring service is in place, as well as sessions on effective approaches to finding articling positions.

(xix) Sexual Harassment of Articling Students

In 1992, a Report dealing with the sexual harassment of articling students was released by the Law Society. The Report sets out a procedure for dealing with complaints from articling students against their articling principals.



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(xx) Approval of Articling Principals

The articling program was reformed in 1990 to require members to apply for approval from the Law Society to serve as articling principals.

(xxi) "Crossing the Bar" Exhibition

In March of 1993, the Law Society mounted the exhibition "Crossing the Bar", which focused on the history of women in the legal profession. The exhibition ran at the Law Society Museum from March 1993 to August 1993. In 1994, a proposal for a travelling version of the exhibition was approved. The travelling version of the exhibition is now available for display at locations around the province.

(xxii) Managing Partners Meeting

A Managing Partners Meeting on Workplace Equity was convened by the Law Society (with the assistance of the Joint Action Committee on Gender Equality) in September 1996. Senior executives of several major corporations gave presentations on their experience with equity programs implemented in their workplaces. Thirty-five of the largest law firms were asked to complete a survey of workplace equity policies and programs.

(xxiii) Assistance to National Committee on Accreditation Candidates

The Equity Committee liaised with groups primarily concerned with assisting foreign-trained lawyers to qualify in Ontario. In the past, the Committee has provided assistance to National Committee on Accreditation (NCA) candidates by making Osgoode Hall available to them for programs they have developed to assist with the NCA's challenge examinations.

(xxiv) Conferences

The Equity Committee has attempted to liaise with diverse groups in the profession. It made Osgoode Hall available to the Urban Alliance on Race Relations for a conference in March 1993. In June 1996, the "Reality Check" forum was held to allow members of equality-seeking groups to hear about Law Society Equity Committee initiatives as well as to provide feedback on further appropriate initiatives.

(xxv) New Practice Loan Program

Arising out of financial concerns expressed at the "Reality Check" forum, particularly by visible minority lawyers, the Law Society has developed a program with the Bank of Nova Scotia for lawyers to obtain start-up and practice loans at advantageous rates without collateral, and to receive assistance in preparing a business plan.



(xxvi) LSUC Employment Plan

The Equity Committee acted as overseer of the development of an equitable employment plan for the Law Society as employer.

(xxvii) Equity Advisory Committee

In December 1996, the Treasurer approved the establishment of an Equity Advisory Committee to the Treasurer to act as an expert resource to her on equity issues facing the profession.

(xxviii) Brief to CBA Committee

The Treasurer's Equity Advisory Committee and other members of the Law Society were mandated to present a brief to the CBA Inquiry into Racial Equality in the Legal Profession.

D. POLICY STATEMENTS ADOPTED BY CONVOCATION

25. The Law Society has, on three occasions over the period 1989 to 1996, expressed its commitment to advancing equity and diversity within the legal profession.
26. In 1991, when *Transitions* was released, Convocation adopted the following ***Statement of Policy***:
 - i) *The Law Society of Upper Canada is responsible for governing the legal profession in the public interest. Matters which relate to the professional careers of lawyers and their personal well-being inevitably affect the public interest: they are matters which have a direct impact upon the quality of legal services in Ontario. The Law Society has a responsibility to undertake research and to provide leadership in- these areas.*
 - ii) *In recent years, the legal profession has undergone significant change. Instances of such change are documented in the 1989 Law Society Report Women in the Legal Profession, and in other studies. Changes include:*
 - *trends towards larger law firms*
 - *increase of governmental regulation in society*
 - *increased number of lawyers in the public service*
 - *impact of technology*
 - *growth in numbers of the profession*
 - *growth of female membership in the legal profession*
 - *varied range of career opportunities for lawyers and the consequent diversity of experience represented within the profession*



*increase in single-parent families
increase in dual-career families
increase in the number of women who have children and who are also full-time members of the workforce.*

These changes affect individual lawyers, their employers, partners and clients.

- iii) The Law Society accepts the challenge to respond creatively to the changed realities of the profession.*
- iv) The Law Society welcomes wide discussion of the issues raised in the Transitions Report and encourages dialogue among members of the profession in the process of responding to change.*
- v) Where there is evidence of significant dissatisfaction with the practice of law among members of the profession, the Law Society has a responsibility, both to the public and to its members, to study the issue and to propose solutions.*
- vi) The Law Society has a responsibility to work towards the amelioration of conditions within the profession which lead to dissatisfaction with the practice of law.*
- vii) It is in the public interest that a career in law should be characterized by an appropriate balance between personal and professional life. Where the professional environment makes such balance difficult to achieve, appropriate measures are required to remedy the situation.*
- viii) The Law Society recognizes that the traditional private practice of law is only one among a diversity of careers that are now possible within the legal profession.*
- ix) The Law Society recognizes the importance of alternative work arrangements such as different types of partnership, part-time employment, job-sharing, flexible hours of work, secondments, sabbaticals and study leaves.*
- x) The Law Society recognizes the importance of parental responsibility policies such as maternity leave, paternity leave, and provisions for child care.*
- xi) The Law Society endorses the principles of the Human Rights Code, 1981, and accordingly affirms that every member of the Society has a right to equal treatment with respect to conditions of employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.*
- xii) The Law Society acknowledges that there are members of the profession, particularly women, who perceive themselves or their colleagues to be subject to discrimination. The findings of the Report lead the Law Society to conclude that*



discrimination (whether it be individual or systemic, intentional or unintentional) continues to exist within the profession.

- xiii) *Lawyers have a responsibility to take a lead in eliminating discrimination. The Law Society will intensify its efforts to eradicate discrimination in the profession.*
 - xiv) *The Law Society recognizes that sexual harassment is a demeaning practice that constitutes a profound affront to the dignity of persons forced to endure it.*
27. In April of 1995, Convocation adopted the following "Statement of Values":
- The Law Society of Upper Canada declares that the legal profession in Ontario is enormously enriched by, and values deeply, the full participation of men and women in our profession regardless of age, disability, race, religion, marital or family status or sexual orientation.*
28. In June of 1996, the Equity Committee reported to Convocation on the *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*. The Commission called upon the Law Society to establish a complaints office to receive complaints of racist conduct by lawyers and judges, to publish information about itself and the complaints process, and to establish guidelines to govern lawyers' conduct when they observe racist acts. The Equity Committee made three recommendations to Convocation in respect of the Report. All three recommendations were adopted, as follows:
- 1. *To approve in principle the Law Society's commitment to combatting racism and systemic discrimination.*
 - 2. *To refer to the Equity Committee the Recommendations in the Report of the Commission on Systemic Discrimination in the Ontario Criminal Justice System ("the Report") that apply to the Law Society for immediate and appropriate action, to be brought back to Convocation for further action by the Law Society.*
 - 3. *To inform the Government of Ontario, the Chief Justice of the Provincial Division and the Chief Justice of the General Division of the Law Society's decision...; and to offer to them the assistance and co-operation of the Law Society in participating in any initiatives with respect to the Committee's Report that affect the legal profession.*



III. BARRIERS AND OPPORTUNITIES WITHIN LAW

FOLLOW-UP TO TRANSITIONS

A. INTRODUCTION

29. Among the recommendations in *Transitions* was one calling for further research to be undertaken on the subject of transitions within the profession. The Canadian Bar Association in its Report *Touchstones for Change: Equality, Diversity and Accountability ("Touchstones")* made the same recommendation.
30. As a result, in 1996, the Law Society conducted a follow-up study of the over 1,500 Ontario lawyers who responded to the survey in 1990. The six year period was chosen to allow time for children to be born, and for significant career moves to take place. It is crucial in assessing arguments about the advancement of women to have data that follows individuals over their careers.
31. The response rate to the second study was almost 70% - extremely high given the length of the questionnaires, the fact that the sample consists of professionals who traditionally have low response rates, and the fact that a sizeable proportion of the sample no longer practises law.
32. The results of the study are reported in a document titled *Barriers and Opportunities Within Law: Women in a Changing Legal Profession ("Barriers and Opportunities")*.

B. SUMMARY OF FINDINGS

(i) Overview

33. Women continue to confront major barriers in their advancement in the legal profession. While the results of the 1996 study reveal considerable improvement in the mobility of women in the Ontario Bar from that found in 1991, they also highlight sizeable gaps that remain between men and women in attainment of partnership, ownership of law practices, input into policy decision making in the workplace, autonomy in work, responsibility for supervising others, and earnings. For both men and women, quality of life, balance between career and family, and workplace flexibility and support remain important issues.



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(ii) Professional Positions

34. The vast majority of people who responded to the survey - men (98.5%) and women (84%) - hold full-time positions as lawyers. In the group, men were more likely than women to be partners (men 33%; women 17%) and sole practitioners (men 19%; women 13%).
35. Women, on the other hand, were more likely to be government lawyers (women 19%; men 11%) and law firm employees\associates (women 14%; men 8%).

(iii) Areas of Law Practised

36. There were a number of gender differences in the fields of law practice. Men were more likely to be engaged in private practice (10% versus 2.9% for women); real estate (16% versus 10% for women); and civil litigation (20% versus 12% for women). Women were found in greater numbers in family law (15% versus 5% for men); administrative law (6% versus 2.1% for men) and other (17% versus 11% for men).

(iv) Ethnicity

37. Ethnic variability was extremely low among lawyers called to the bar between 1975 and 1990. Ninety-two percent of the men and 90% of the women were "Caucasian, European".

(v) Hours Billed and Docketed

38. Contrary to popular belief, the survey revealed no statistically significant differences between men and women in private practice when it came to number of hours spent on law-related matters, number of hours docketed, or number of hours billed. Men spent an average of 9.6 hours per weekday on law-related matters, women 9.4 hours. On weekend days the average was 3.2 hours for men, 3.1 hours for women. The majority of lawyers of both sexes docketed between 1001 and 1999 hours in 1995 (75% of men, 70% of women). Approximately 22% of both male and female lawyers docketed 2000 or more hours in 1995. The majority of lawyers of both sexes also billed between 1000- 2000 hours in 1995 (83% of men, 78% of women). Six percent of both men and women billed 2000 hours or more during 1995.

(vi) Earnings

39. Overall, earning levels have increased since 1990 - not surprising given the increased level of experience of the respondents. However, women continued to be under represented in the higher income categories and over represented in the lower income brackets.



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(vi) Professional Responsibilities

40. In terms of professional responsibilities, considerable career advancement was experienced by the survey group between 1990 and 1996. The six added years of experience moved the group into career positions offering greater opportunities for policy decision making, authority, supervisory roles, autonomy, hierarchical classification, and ownership.
41. Yet, despite these increases, women had not been rewarded with professional responsibilities similar to their male colleagues. Women had lower decision making authority even when compared to men with similar levels of experience. Men were less likely to be supervised and more likely to supervise others than were women.
42. Women remained less likely to own businesses, to hold management positions, or to work in capacities involving autonomy, authority, or decision making power.

(vii) Goals and Aspirations

43. Fundamentally, women and men want the same things from a career in law. For women the three most important job factors sought were intellectual stimulation, balance between career and family, and control over hours of work. For men the three most important job factors were intellectual stimulation, independence, and balance between career and family.

(viii) Job Satisfaction

44. High levels of job satisfaction by both genders were reported for the nature of work done and working relationship with colleagues. Lower job satisfaction scores were given by both genders for such things as parental leave arrangements, balancing work with one's personal life, administrative matters, and employment benefits. Women were more likely than men to disagree that promotions are based primarily on one's ability and opportunities for promotion are excellent. The survey also found that female lawyers were more likely than men to search for new jobs and more likely to leave their existing job if a good position became available elsewhere.

(ix) Sexual Discrimination

45. The results of the 1996 survey suggest that women experience sexual discrimination in the workplace more often than do male lawyers. The findings also indicate that women show a greater awareness of discrimination against others.
46. In the 1996 survey, respondents were presented with a list and asked "Generally, have you found that the sex of a lawyer affects opportunities in any of the following ways?...[Do you see] preferences in favour of men, women or neither?" Although both sexes were likely to see a preference in favour of men for almost every measure, female lawyers were 2 to 3 times more likely to see a preference in favour of men. 19



(x) Family

47. One of the most striking differences between men and women in the survey was marital status. Men (89%) were much more likely than women (78%) to be married or living with a significant other. As well, male lawyers were less likely to be divorced (5% versus 10% of women), or to have never cohabited or married (5% versus 11% of women). Men were more likely to have children and to have larger families.

(xi) Household Responsibilities

48. The results demonstrated that women had a greater share of responsibility for cooking, cleaning, and managing the household. Women also had primary responsibility for child care including: staying home with a sick child, finding a babysitter, arranging for child care, and leaving work for a sick child's needs.

(xii) The Impact of Children on Work

49. Respondents were asked if they experienced discrimination at work as a result of having children. The experiences of men and women were considerably different:

<u>Discrimination</u>	<u>Men</u>	<u>Women</u>
loss of seniority	0.3%	14%
delay in getting promotion	1%	22%
pressure to return to work during parental leave	2.6%	29%
loss of clients	4.2%	15%
loss of income	20%	40%
work interferes with family life	58%	71%

(xiii) Workplace Supports and Benefits

50. There were very large differences between the benefits available to those engaged in private practice compared with those engaged in non-private practice.
51. On average, lawyers in non-private practice received superior health care benefits - dental plans, sick leave and long term disability - compared to those in private practice. There was little difference in terms of medical insurance availability.
52. Private practitioners were more likely to have the options of flexible work hours and part-time partnerships. However, lawyers in non-private practice were more likely to have job sharing and pension plans. Part-time work was almost equally available to both.



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53. Generally, child care and daycare facilities remained the most rare of workplace supports. In 1996, there was a slight increase in employers offering child care benefits (3.1% versus 1.7% in 1990), and only 4.2% of firms offered daycare facilities.

{xiv) Changing Jobs

54. Consistent with the 1990 survey, women tended to change jobs more often than men, relative to their years of experience. Forty percent of women compared to 29% of the male respondents have had two jobs since 1990, while 13% of women versus 10% of men held three different jobs during the six years of the survey. This can be explained in part by the fact that the women in the survey were younger and were more junior in their careers than men in the sample. Women also tended to move laterally rather than upward when they found new work.

(xv) Leaving the Bar

55. More women than men in the survey group had left the practice of law. As well, fewer women were likely to enter law practice after bar admission, and were more likely to leave the profession after subsequent jobs. For example, in a second job 11% of female lawyers versus 7% of men chose to cease practising. In job three, those numbers jump to 16% and 10% respectively.

(xvi) Balancing Career and Family

56. Many respondents identified the difficulties with balancing career and family as a pressing issue facing lawyers. Three themes emerged:
- the lack of recognition for family commitments;
 - the lack of workplace support to accommodate lawyers with family responsibilities;
 - strategies adopted by lawyers to meet the challenge of balancing demanding careers and key responsibilities beyond work.
57. As well, concern was raised over the lack of available part-time employment, part-time partnerships, predictable hours, job sharing, and flexibility in hours generally. Women, and to some extent men, also noted having experienced discrimination because of family commitment and responsibilities.



IV. THE CASE FOR CHANGE

A. INTRODUCTION

58. *Barriers and Opportunities* once again confirms the existence of systemic discrimination and inequality within the legal profession. Aside from the legal and ethical obligations to eradicate discrimination recognized by the Law Society there are manifest benefits to equity and diversity.
59. Cost-benefits analyses of effective and properly implemented diversity and equity programs have demonstrated that the benefits to the workplace have far outweighed the costs. These benefits include increased employee morale and job satisfaction; decreased turnover and the decreased loss of high-potential employees; decreased absenteeism; increased productivity; increased ability to work together; enhanced organization reputation with prospective employees and clients; increased customer satisfaction; loyalty, retention and growth; and increased long-run profitability and financial health. ¹

B. FLEXIBILITY IN THEWORKPLACE

60. In *Barriers and Opportunities* both women and men pointed to the need to develop a workplace culture that accepts individuals who wish to develop a balance between their career and family\personal lives. This means a culture that accepts a definition of a full-time work week that is reasonable in the light of family responsibilities, accepts sabbaticals, part-time work ("*lawyers who want or need to work part-time because of family commitments have a very tough time gaining acceptance*") and acknowledges that long hours do not necessarily mean high productivity ("*workaholism is a much admired phenomenon and although management may preach the need to achieve a balanced life, it does not practise what it preaches and continues to reward those who work long hours (irrespective sometimes of relative productivity) and indeed _continues to expect it*"). The benefits of increased flexibility in the workplace to lawyers with disabilities are also obvious.



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61. Removing barriers that affect lawyers because of personal characteristics unrelated to competence can create improvement for all. For example, *Touchstones* identified the "billable hours" method of billing as a barrier for women. Now the "billable hours" method of billing has come under criticism from the Canadian Bar Association's Task Force on Systems of Civil Justice. It has identified that as a billing method it rewards time spent that does not always result in services determined by clients' needs. As a result, the Task Force recommended that lawyers use a variety of billing methods in determining fees for legal services, with an emphasis on the value and timeliness of the results achieved, rather than time spent.
62. This is just one example of how developing a workplace culture that helps and promotes equity can create improvement for all and increase client service.

C. CHANGE IN CLIENT BASE

63. The nature of the Ontario population is changing. Between 1986 and 1991 the total estimated visible minority population in Canada had increased by 58% to approximately 2.5 million or 9% of Canada's total population. By 2006, visible minorities are expected to make up one-sixth of Canada's total population. ² People want to be represented by lawyers who understand their cultural needs and beliefs.
64. In addition, women's representation among managers, senior managers and corporate counsel is increasing. As noted by the Royal Bank "alienating women isn't just bad behaviour. It's bad business...Whether running businesses, working in them, investing in them or buying from them, women are a powerful economic force on the Canadian landscape that no business should ignore."³ As women gain an increasingly powerful role in Canada's economy they are seeking professional representation from firms who similarly have women in positions of power with whom they can work.
65. Finally, diversity is becoming an important issue for many large corporations and other institutions, including governments. These institutions are in turn expecting the firms they deal with to acknowledge and value diversity.



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D. DECREASED PRODUCTIVITY AND LOYALTY

66. Individuals who face or witness others experiencing harassment and discrimination (whether overt or subtle) will not be able to function to their fullest potential. Their levels of motivation and loyalty will be lower than if they were in an environment where all were being treated fairly and equitably.
67. Individuals who work in an environment where diversity is valued and life style options are available are more likely to remain loyal to and productive in that environment.

E. HIGHER TURNOVER

68. People who experience barriers leave their jobs (*"I know that my firm would not accommodate my [family] needs. I resigned."*). There is a cost attached to losing experienced lawyers - at a minimum the time, effort, and money spent on training them.
69. In many instances, law firms are losing the brightest and the best of their lawyers. Consider how long this lawyer will stay with her firm or her motivation level if she does stay - *"I have worked very hard in the last ten years, achieving very high billings, higher than those of my male colleagues of the same year of call, yet find that I am not compensated as well as they are."*



V. RECOMMENDATIONS

70. Through its policy statements the Law Society has already made a commitment to the goals of eliminating discriminatory practices and achieving equity and diversity within the legal profession. Despite this commitment, all the information received to date indicates that members of our profession continue regularly to face barriers because of personal characteristics unrelated to competence.
71. In considering what recommendations to make, we have assessed the Law Society's role and responsibility in the advancement of equity and diversity. As the governor of the profession in the public interest, the Law Society occupies a variety of roles including that of policy maker, resource to the public and the profession, regulator, and educator. It is also an employer.
72. The recommendations that follow seek to provide a coherent approach to advancing new policies and enhancing the implementation of existing policies directed at advancing the goals of equity and diversity within the legal profession.
73. The recommendations are grouped under the following categories:
 - Policy Development
 - Advancement of Equity and Diversity Policies
 - Governance
 - Education
 - Regulation
 - Employment\Contracting for Legal Services

A. POLICY DEVELOPMENT

Recommendation 1: Policy Making by Convocation

The Law Society should ensure that the policies it adopts:

- (a) actively promote the achievement of equity and diversity within the profession; and**
- (b) do not have a discriminatory impact.**



74. The Law Society has already endorsed the principles of the Ontario Human Rights Code and committed itself to eradicating discrimination in the profession. This recommendation directs Convocation to ensure that it does not, through its own policies, discriminate. Formal analysis of the potential impact of any proposed policy must be undertaken in order to determine whether or not it is discriminatory and the extent to which it promotes the achievement of equity and diversity.

Recommendation 2: Study and Research

To facilitate the development of policies, programs, and services that further the achievement of equity and diversity within the profession, the Law Society should continue to conduct research on the changing demographics of the profession and the impact on the profession of barriers experienced by members of our profession for reasons unrelated to competence.

75. The Law Society has already agreed that it has a responsibility to undertake research and to provide leadership in these areas.
76. *Barriers and Opportunities* survey results indicate that in many areas - for example, attainment of partnership, ownership of law practices, input in policy decision making in the workplace, autonomy in work, responsibility for supervising others, earnings - women have not kept pace with men. However, it is not clear why these gaps exist, nor if current initiatives are effective. Further, discrimination may occur for more than one reason. The Law Society has not yet undertaken the initiatives necessary to get a clear picture of discrimination on the basis of anything other than sex/family status. Therefore, further research needs to be conducted.
77. The feasibility of one essential step is already being examined - maintaining up-to-date demographic statistics of the Law Society's membership. If such statistics were collected they could be analyzed to determine if any patterns or longitudinal trends exist that may indicate that some groups within the legal profession are experiencing barriers to movement within and between law firms and other legal workplaces for reasons unrelated to competence. These statistics would highlight areas of concern for all members of the legal profession.⁴



Recommendation 3: Equity and Diversity Audit of the Law Society Programs and Services

The Law Society should evaluate its programs and services on an ongoing basis to ensure that they operate so as to promote the achievement of equity and diversity within the legal profession.

78. After the release of *Transitions* an "equity audit" was conducted by each standing committee of Convocation. However, due to a lack of staff, time, resources, and expertise, the results of these audits were never formulated in a useful format. These evaluations and reviews should be done on a regular and consistent basis. Programs and services change over time.

Recommendation 4: Monitoring and Evaluation of Equity and Diversity Initiatives

The Law Society should formally monitor and evaluate the effectiveness of current and future equity and diversity initiatives.

79. Achieving diversity is not simple. We need to increase our understanding of what works and why. In order to do this we must provide for the ongoing monitoring and evaluation of all initiatives. This requires time and resources. However, it ultimately saves both as it prevents the wasting of resources on ineffective initiatives.

8. ADVANCEMENT OF EQUITY AND DIVERSITY POLICIES

Recommendation 5: Resource for the Profession

In order to support the profession in its pursuit of equity and diversity goals, the Law Society should, in co-operation with other organizations, develop and maintain the tools to function as a resource to the profession on the issue of diversity and equity.

80. The Law Society has accepted that it has a responsibility to take a lead in eliminating systemic discrimination and racism in the profession.
81. The Law Society has also agreed that it has a responsibility to provide leadership with respect to the issues raised in *Transitions*. The same issues are raised in the follow-up to *Transitions - Barriers and Opportunities*.



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82. In fulfilling its leadership obligations the Law Society must do more than mandate and regulate. It must assist, encourage, and lead by example.
83. Diversity will serve to enrich our profession as a whole. The Law Society must assist our members in understanding why this is so and how it can be achieved.
84. Attached to this Report as **Appendix "B"** are examples of the kind of initiatives that may assist in achieving diversity and equity within the legal profession. Other organizations in the legal profession have demonstrated a real commitment to this goal. The Law Society should form partnerships with these organizations to ensure that the initiatives listed (and others like them) are either undertaken or, where already in place, are supported and encouraged.

Recommendation 6: Institutional Resources

In order to facilitate and further the advancement of equity and diversity goals, the Law Society must dedicate appropriate human and financial resources specifically to those goals.

85. The organizational vehicles that the Law Society has had in place to achieve equity and diversity in the legal profession have been two standing committees - The Women in the Legal Profession Committee and the Equity in Legal Education and Practice Committee. These Committees were made up of volunteers from the profession, interested organizations, law schools representatives, and benchers. No staff was ever dedicated exclusively to support the work of these Committees except on a project-specific basis. As projects were thought of some resources were made available. Whether projects were brought forward, developed and followed through on very much depended on the composition of the Committees at any particular time and the availability of staff or contract personnel to provide assistance.
86. As a result, some action has been taken, but not consistently. The action that has been taken has been slow in coming, uneven in its implementation and has not been evaluated for its effectiveness. For example: *Transitions* recommended that the Law Society develop model policies in the following areas - alternative work arrangements; parental responsibilities; discrimination and harassment. A sexual harassment policy was approved in 1992. It has not been updated since then. An alternative work arrangement policy and a general equity policy have just been developed. No formal mechanism exists for evaluating how effective these policies are in assisting employers with improving their workplace practices.



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87. The requalification policy was adopted in 1994. Its details have yet to be finalized. We have developed no formal mechanism for monitoring the success of our guidelines for articling interviews, our procedure for handling the harassment of articling students, or our mentoring programs. As a result, we do not know if and how these initiatives need to be changed. While equity audits were conducted by standing committees the results were never amalgamated into a useful report. Therefore, positive actions were not taken.
88. Organizations, including law societies from other jurisdictions such as British Columbia and Alberta, have come to realize that unless resources are dedicated to the issue of diversity and equity, few positive results occur.⁵ The Law Society needs to ensure that adequate time, funding and resources, including individuals with relevant expertise, are dedicated to these complex issues.
89. One way to do this would be to hire a full-time equity\diversity advisor. A full-time equity\diversity advisor could provide information, direction and guidance to individuals, law firms and other legal workplaces. In addition, information, direction, and guidance would be provided to the benchers and to the Law Society itself in its policy-making capacity. The equity/diversity advisor would ensure that the Law Society's diversity programs and processes are organized, kept on track, and functioning in a manner that ensures effectiveness.
90. Organizations have found that greater membership involvement in diversity programs increases the program's effectiveness.⁶ Furthermore, the program must be seen to be supported from the top or it will become marginalized and under-resourced. Therefore, the equity\diversity advisor must be regarded as a senior position with direct reporting access to the Chief Executive Officer. Further, that person should sit on the Treasurer's Equity Advisory Committee.
91. Contrary to the hopes of many, human rights law is not well known. Staff of the Law Society are expected to handle the following situations, which require some human rights expertise:
- General inquiries (about the Rule 28 Bulletins, the membership form, or other LSUC equity initiatives).
 - Practice advisory work: advice to lawyers who want to avoid complaints, or who want advice on dealing with situations in which discrimination is alleged.
 - Referrals under the Lawyer Referral Service, with questions from people who want a referral by a category allowed under current policy, from people who want a referral by a category not allowed under current policy, and from lawyers who want to know the rationale behind current policy.



- The discipline process, which involves general inquiries concerning behaviour that might constitute a breach of one of the Rules, and the investigation of specific complaints of breach of a Rule.
 - Inquiries from Bar Admission students who think they have experienced discrimination, either in the administration of the Bar Admission Course, or in articles or job searches.
92. Law Society staff need job-related training to deal with the human rights issues that they are likely to encounter. An educational/training strategy is currently being developed by the Treasurer's Equity Advisory Committee. The Law Society must commit itself to dedicating sufficient resources to implement this strategy and others like it.
93. The Law Society should ensure that it develops a five-year business plan, based on the recommendations contained in this Report and that it puts in place a budget to ensure that the business plan is carried out.

C. GOVERNANCE

Recommendation 7: Participation in the Governance of the Profession

In furtherance of its commitment that governance of the profession encompass a wide and diverse representation of groups within the profession:

- (a) Convocation should review the process for appointment to committees, task forces, and working groups to ensure that it is formalized to include measures that remove barriers to participation that would affect participants on the basis of personal characteristics noted in Rule 28; and
- (b) Convocation should review the demands on benchers to determine what steps can and should be taken to promote the participation of diverse groups (including equality-seeking groups) in the governance of the legal profession.

94. The Law Society currently does not have a systematic process for appointing members to committees, task forces, or working groups. As a result, there is no mechanism for ensuring that these appointments are representative. The time



demands on benchers are enormous, making it difficult for the many who are not financially supported by their firms or employers to serve as benchers. We must examine both whether all the work that benchers currently do must be done by benchers and whether or not it would be appropriate to pay benchers for some, all or any of their duties.

D. EDUCATION

Recommendation 8: Bar Admissions

The Law Society should continue to ensure that Bar Admissions:

- (a) includes material designed to increase the profession's understanding of diversity\equity issues;**
- (b) encourages the participation of equality-seeking groups in its design, development, and presentation;**
- (c) uses material that is gender neutral;**
- (d) uses audio visual material that includes the faces and voices of equality-seeking groups;**
- (e) is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28.**

95. Some significant steps have already been undertaken to ensure that in its administration of Bar Admissions (including the Bar Admission Course and procedures for the admission of transfer candidates from other provinces) the Law Society lives up to its commitment to eliminate systemic discrimination. These initiatives should be continued and expanded.

Recommendation 9: Articling

The Law Society should continue its efforts to ensure that its articling requirements do not have a disproportionately negative impact on the basis of personal characteristics noted in Rule 28.

96. The Law Society has taken steps to improve the administration of the articling program to avoid discriminatory effects. However, a disproportionate number of aboriginal and minority group students cannot find appropriate articling positions.



Once positions are found, women and minorities encounter problems not experienced by Caucasian males. Efforts to address these problems must be continued and expanded.

Recommendation 10: Continuing Legal Education

The Law Society, as part of its initiative to develop affordable, accessible, and relevant continuing legal education programming should ensure that this programming:

- (a) includes material designed to increase the profession's understanding of diversity/equity issues;**
- (b) encourages the participation of equality-seeking groups in its design, development, presentation, and attendance;**
- (c) uses material that is gender neutral;**
- (d) uses audio visual material that includes the faces and voices of equality-seeking groups;**
- (e) is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28.**

- 97. The Law Society has already committed itself to developing (in conjunction with other organizations) affordable, accessible and relevant continuing legal education programs. This initiative is important for members of equality-seeking groups.
- 98. Encouraging the participation of equality-seeking groups in the design and presentation of whatever educational programming is developed will serve to reinforce the message that these groups do have a respected and valued place in our profession.

E. REGULATION

Recommendation 11: Rules of Professional Conduct

The Law Society should ensure that it is effectively meeting its responsibilities as a regulator to eliminate discriminatory practices within the legal profession.



99. *Barriers and Opportunities* highlights that problems with discrimination and harassment still exist and do not appear to be abating. Currently the Law Society has two Rules of Professional Conduct designed to prohibit discriminatory practices - Rules 27 (Sexual Harassment) and Rule 28 (Discrimination). However, statistics demonstrate that Rules 27 and 28 are being used rarely and when they are used the prosecutions are few and difficult.
100. The current rules, therefore, do not appear to be addressing the problems of discrimination and harassment experienced by members of the legal profession. We do not know to what extent this is due to factors within or beyond the Law Society's control. As a first step the current administration of the Rules must be examined to see if there is room for improvement. At a minimum, the Law Society plans to provide ongoing training in dealing with discrimination and harassment complaints to the officers who receive the complaints, the investigators who investigate the complaints, the prosecutors who prosecute the complaints, and the benchers who hear the complaints.
101. Rules 27 and 28 represent a response to the problems of discrimination and harassment that is complaint-driven. As such they place a huge burden on the complainant. Experience in other forums confirms that in any complaint-driven process the number of complaints are small compared to the extent that harassment and discrimination occur.
102. The Law Society should also, in conjunction with other organizations, help to develop, train, and monitor a "Safe Counsel" program for the victims of harassment and discrimination. Such a program would provide the complainant with access to a volunteer roster of counsel who are independent of the Law Society and who have been provided with the training necessary to assist complainants in assessing their options.

Recommendation 12: Accreditation of Foreign-Trained Lawyers

The Law Society should facilitate the participation of minority groups in the legal profession by liaising with other groups to ensure that the accreditation requirements for foreign-trained lawyers or Quebec non-common law trained lawyers to practise in Ontario do not represent an unreasonable barrier.

103. Law Society statistics show that foreign-trained lawyers have a more difficult time obtaining accreditation than other Bar Admissions candidates. Professional



associations of foreign-trained lawyers have repeatedly advised the Law Society that they believe the Society has a role and an obligation in ensuring that they have fair access to the profession.

104. The Law Society has recently received a report on the accreditation procedures used by the National Committee on Accreditation. Proposals for improving these procedures are included in that report.

Recommendation 13: Requalification

In implementing its requalification policy the Law Society should continue to develop a process that is fair and equitable to all members of the profession.

105. *Barriers and Opportunities* confirms that women are more likely than men to leave the practice of law for periods of time, eg. when their children are young.
106. In 1994, Convocation approved a requalification policy designed to require members who have not used their legal skills for more than five years to requalify before they can resume practice. That policy is not yet finalized, particularly the requalification requirements component.
107. In finalizing the policy the Law Society must ensure that it does not have a disproportionately negative impact on people who leave the profession temporarily to care for their children or families (mostly women).

Recommendation 14: Fees

The Law Society should examine the impact of and the barriers presented by its current annual fee structure and consider options for revising its fee structure, if warranted.

108. The Law Society has instituted a graduated fee structure for lawyers who are on parental leave, are unemployed, or not in the private practice of law. The Law Society has no reduced fee option for lawyers who practise part-time. *Barriers and Opportunities* confirms that women are more likely to practise part-time than men. Further research may show us that this is also an issue for people with disabilities. The Law Society's current annual fees represent a very onerous burden for the part-time practitioner. LPIC has put in place a part-time premium option. The Law Society should consider doing the same.



109. Members who cease to pay their annual fees have their membership in the Law Society suspended. *Barriers and Opportunities* confirms that women are more likely to leave the practice of law than men. In doing so, they may still wish to maintain their membership in the Law Society, but be unable to pay even the adjusted annual fees. A non-practising member costs the Law Society very little to govern. Other provinces have developed a fee structure whereby lawyers can maintain their membership (on an altered basis) in their Law Society for a nominal fee. The Law Society of Upper Canada should consider doing the same.

F. EMPLOYMENT\CONTRACTING FOR LEGAL SERVICES

Recommendation 15: Law Society as Employer

The Law Society should continue to set and monitor equity standards for its own staff that will make it a model for the profession as an employer.

- I 10. Convocation, in setting the Executive Limitations for its Chief Executive Officer, has directed the CEO not to operate without a workplace equity policy for staff that conforms to the *Ontario Human Rights Code* and thereby recognizes that every person has the right to equal opportunity without discrimination in matters relating to employment.
111. Convocation must ensure that the Chief Executive Officer is held accountable, not only for developing a workplace equity policy, but also for ensuring that this policy is monitored and effective. The Chief Executive Officer should be required to report regularly to Convocation on this issue.

Recommendation 16: Law Society as a Contractor for Legal Services

The Law Society should:

- (a) **develop guidelines for hiring outside counsel to ensure that work is fairly allocated among members of the legal profession; and**
- (b) **examine whether or not it should develop a contract compliance program that would have the effect of requiring the firms and organizations with which it does business to have in place practices that meet diversity and equity requirements.**



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112. The Law Society contracts for legal services on a regular basis. Equality-seeking groups should be fairly represented in the group of individuals it hires for this work.
113. Contract compliance programs provide a business incentive for firms to address the diversity and equity practices within their own organizations. Recently, the Federal Department of Justice instituted such a program. Its experience and the experience of other organizations with such a program should be examined to determine if such a program would be appropriate for the Law Society and could be effectively developed and monitored.



VI. SUMMARY OF RECOMMENDATIONS

Recommendation 1: Policy Making by Convocation

The Law Society should ensure that the policies it adopts:

- (a) actively promote the achievement of equity and diversity within the profession; and
- (b) do not have a discriminatory impact.

Recommendation 2: Study and Research

To facilitate the development of policies, programs, and services that further the achievement of equity and diversity within the profession, the Law Society should continue to conduct research on the changing demographics of the profession and the impact on the profession of barriers experienced by members of our profession for reasons unrelated to competence.

Recommendation 3: Equity and Diversity Audit of the Law Society Programs and Services

The Law Society should evaluate its programs and services on an ongoing basis to ensure that they operate so as to promote the achievement of equity and diversity within the legal profession.

Recommendation 4: Monitoring and Evaluation of Equity and Diversity Initiatives

The Law Society should formally monitor and evaluate the effectiveness of current and future equity and diversity initiatives.

Recommendation 5: Resource for the Profession

In order to support the profession in its pursuit of equity and diversity goals, the Law Society should, in co-operation with other organizations, develop and maintain the tools to function as a resource to the profession on the issue of diversity and equity.

Recommendation 6: Institutional Resources

In order to facilitate and further the advancement of equity and diversity goals, the Law Society must dedicate appropriate human and financial resources specifically to those goals.



Recommendation 7: Participation in the Governance of the Profession

In furtherance of its commitment that governance of the profession encompass a wide and diverse representation of groups within the profession:

- (a) Convocation should review the process for appointment to committees, task forces, and working groups to ensure that it is formalized to include measures that remove barriers to participation that would affect participants on the basis of personal characteristics noted in Rule 28; and
- (b) Convocation should review the demands on benchers to determine what steps can and should be taken to promote the participation of diverse groups (including equality-seeking groups) in the governance of the profession.

Recommendation 8: Bar Admissions

The Law Society should continue to ensure that Bar Admissions:

- (a) includes material designed to increase the profession's understanding of diversity\equity issues;
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- (c) uses material that is gender neutral;
- (d) uses audio visual material that includes the faces and voices of equality-seeking groups;
- (e) is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28.

Recommendation 9: Articling

The Law Society should continue its efforts to ensure that its articling requirements do not have a disproportionately negative impact on the basis of personal characteristics noted in Rule 28.

Recommendation 10: Continuing Legal Education

The Law Society, as part of its initiative to develop affordable, accessible, and relevant continuing legal education programming should ensure that this programming:

- (a) includes material designed to increase the profession's understanding of diversity\equity issues;
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- (c) uses material that is gender neutral;



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Recommendation 11: Rules of Professional Conduct

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The Law Society should facilitate the participation of minority groups in the legal profession by liaising with other groups to ensure that the accreditation requirements for foreign-trained lawyers or Quebec non-common law trained lawyers to practise in Ontario do not represent an unreasonable barrier.

Recommendation 13: Requalification

In implementing its requalification policy the Law Society should continue to develop a process that is fair and equitable to all members of the profession.

Recommendation 14: Fees

The Law Society should examine the impact of and the barriers presented by its current annual fee structure and consider options for revising its fee structure, if warranted.

Recommendation 15: Law Society as Employer

The Law Society should continue to set and monitor equity standards for its own staff that will make it a model for the profession as an employer.

Recommendation 16: Law Society as a Contractor for Legal Services

The Law Society should:

- (a) develop guidelines for hiring outside counsel to ensure that work is fairly allocated among members of the legal profession; and
- (b) examine whether or not it should develop a contract compliance program that would have the effect of requiring the firms and organizations with which it does business to have in place practices that meet diversity and equity requirements.



Discrimination

The lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and specifically to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other members of the profession or any other person.

COMMENTARY

The Law Society of Upper Canada acknowledges the diversity of the community of Ontario in which its members serve and expects members to respect the dignity and worth of all persons and to treat all persons equally without discrimination. Members must ensure that no one is denied services or receives inferior service on the basis of the grounds noted in the Rule. Members must ensure that their employment practices do not offend the Rule. Discrimination in employment or in the provision of services not only fails to meet professional standards, it also violates the Ontario Human Rights Code and related equity legislation. Human rights law in Ontario includes as discrimination, conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of the prohibited grounds. The Ontario Human Rights Code requires that the affected individuals or groups must be accommodated unless to do so would cause undue hardship. Ontario human rights law excepts from discrimination special programs designed to relieve disadvantage for individuals or groups identified on the basis of the grounds noted in the Code.

The Rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario. [New - September 1994]



ENVIRONMENTAL SCAN - WHAT WE CAN LEARN FROM OTHERS

- Other organizations, law firms, and other legal work places (eg. governments) should be looked at to see what they have been doing with respect to diversity. The measures used by these organizations to overcome barriers should be communicated to and shared with the profession in a manner that guarantees individual confidentiality and work place anonymity if that is desired.
- A consultation should be held with law firms and other legal work places to determine if they have conducted organizational assessments - i.e. reviewed their written employment policies and their unwritten employment policies, policy-making processes, partnership criteria, supervisory structures, compensation schemes, benefit packages, mentoring policies, assignment of work policies, and so on - to determine if barriers exist for their staff and/or lawyers. If they have conducted organizational assessments, general information in terms of barriers, measures implemented to address these barriers and their success should be shared with other members of the Law Society in a manner that guarantees individual confidentiality and workplace anonymity if that is desired.

STANDARD SETTING FOR THE PROFESSION

- If law firms and other legal workplaces have not conducted organizational assessments, information should be provided on the positive impact of doing an assessment and provide encouragement, assistance, and/or other resources to ensure that organizational assessments within individual law firms and other legal workplaces take place. While information on what other law firms have done is beneficial, every workplace is different and has different needs that must be addressed.
- Assistance should be made available to any law firm or legal workplace interested in eliminating barriers. The Law Society should continue to develop and distribute bulletins relating to Rules 27 and 28. Other information that should be made available would consist of general information on the impact of discrimination and harassment on individuals, law firms and legal work places; and information on how to conduct an organizational assessment and how to eliminate barriers.



LEARNING PARTNERSHIPS

- The Canadian Bar Association has commenced an initiative to develop and conduct diversity training programs for the legal profession through a "train the trainers" session. This program should be encouraged and supported. The purpose of the program is to develop a roster of individuals who are able to provide diversity training in various locations. Ongoing training should outline the current demographics of the legal profession, barriers lawyers are experiencing, impact of these barriers on organizations (eg. law firms), the responsibilities of individuals to ensure that barriers do not exist and/or are addressed and steps which can be taken to address existing barriers.

MODEL POLICIES, PROGRAMS AND PRACTICES

- Model programs and policies should continue to be developed and distributed to all law firms and legal workplaces relating to assisting individuals in balancing their professional and personal responsibilities, including but not limited to: maternity leave (eg. paid, unpaid); parental leave (paid and unpaid); alternative work arrangements such as flexible work hours, job sharing, part-time work, part-time partnership; predictable hours; and child and elder care benefits and facilities.
- Policies with respect to harassment, discrimination, alternative work arrangements, workplace equity, and family responsibilities should continue to be developed, updated, and distributed.
- Model programs and policies relating to ensuring equal access to continuing legal education benefits; professional association memberships; mentoring; assignment of files and so on, should continue to be developed, updated, and distributed.
- Organizations have found that structured mentoring programs are crucial for removing barriers. They ensure that all staff have equal access to information (which might otherwise be communicated through informal means); have an understanding of the workplace and its policies and programs; have equal access to firm decision making; and have an equal opportunity to talk about issues and concerns. Structured mentoring programs ensure that all individuals receive similar mentoring. Information should be provided on how important structured mentoring programs can be to address many issues, including discrimination.
- A structured mentoring program for lawyers who might not otherwise have mentors available should be established so that it can be accessed by those members of the profession who desire it.



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- The Law Society should continue to be involved in raising the awareness of the profession around diversity issues. This involvement should include continuing to conduct managing partners' forums, meeting with student committees in firms, and conducting visible minority forums.
- Formal and/or informal networking groups that provide members of the legal profession a safe forum in which to meet and discuss issues should be developed. This would help reduce the stress and isolation of practitioners practising in an environment that does not meet their needs. It would also assist in the development of effective and applicable recommendations for barrier removal.

CAREER PLANNING

- Even though many lawyers become responsible for business decisions and managing diverse work forces, they do not receive "business" or "managerial" training. General business and managerial training should be developed and provided. It should also provide participants with the skills and information necessary to manage a diverse work force. This training should be in addition to the "start-up workshop" provided by the Law Society for members thinking of running their own practice.
- Information should be provided in order to create a greater awareness of potential career avenues for graduates of law school and the diversity of careers outside the traditional legal practice.
- Law firms and other legal workplaces should be encouraged to place an increased emphasis on efficiency, teamwork, quality of work, and relative productivity rather than long working hours and high billable hours. The contributions of lawyers who work reduced hours should be recognized. The Law Society should assist in encouraging the development of billing methods other than the billable hours method of billing. It should investigate developing alternate ways of compensating for the work it gives to lawyers and encouraging LPIC to do the same.



ENDNOTES

1. Loden, Marilyn. 1996. *Implementing Diversity*. Chicago: Irwin Professional Publishing; Moyer, Cleta. 1995. "Diversity Management. The bottom-line impact of an equitable employment system." *Human Resources Professional*, November: 21-22; Poole, Phebe-Jane, Ph.D. 1997. *Diversity. A Business Advantage*. Ajax: Poole Publishing Company; Poole, Phebe-Jane, Ph.D. 1994. *The Employment Equity Advantage. A Practical Guide*. North York: CCH Canadian Limited; Taylor, Christine. 1995a. *Building a Business Case for Valuing Ethnocultural Diversity*. Ottawa: The Conference Board of Canada; Taylor, Christine. 1995b. "Building a Business Case for Diversity." *Canadian Business Review*, Spring: 12-14; Thomas, R. Roosevelt, Jr. 1996. *Redefining Diversity*. New York: American Management Association; Thomas, R. Roosevelt Jr. *Beyond Race and Gender. Unleashing the Power of Your Total Work Force by Managing Diversity*. New York: American Management Association; Wilson, Trevor. 1996. *Diversity at Work. The Business Case for Equity*. Toronto: John Wiley & Sons; White, Lynda and Julie O'Mara. 1995. "Closing the Gender Gap: The Royal Bank Experience". *The Royal Bank. The Diversity Factor*. Fall: 4(1).
2. Taylor, Christine. 1995a. *Building a Business Case/or Valuing Ethnocultural Diversity*. Ottawa: The Conference Board of Canada.
3. October 1996(2) edition of the Royal Bank's Making Differences Work. Some additional facts:
 - Four in 10 businesses in Canada are now owned and operated by women. That number is higher in the 25 to 34 year-old age group, accounting for 44% of the total number of firms in this category.
 - Women-owned businesses in Canada provide today more jobs than the Canadian Business top 100 companies.
 - Women are opening businesses at three times the rate of men.
 - Women-led businesses in Canada are creating jobs at four times the average rate.
 - By the year 2000, it is estimated that one-half of all small businesses will be owned by women.
4. Other areas of research that have been suggested are:
 - organizational assessments of the Law Society, law firms, and other legal workplaces (i.e. examination of written policies, unwritten practices, programs, and services) need to be conducted to determine actual barriers;
 - studying the mobility ladders of male and female lawyers and exploring the extent of mobility between firms, within and across sectors of law practice, and the factors that contribute to success in obtaining partnerships within law firms;
 - analyses of earnings to study whether the earnings gap between men and women observed in the 1990 survey has widened or whether there is evidence of a convergence in earnings;
 - more complex multivariate analyses to explore the question of how years of experience, billings, clientele, and areas of law practised (among other factors) might explain (partially or fully) the observed gap in earnings between men and women;



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- the diversity of careers outside the traditional legal practice;
 - the different forms of mentoring that currently take place and the impact that gender and membership in a minority group plays in how individuals are mentored;
 - the continuation of the longitudinal study that the Law Society began with *Transitions in the Ontario Legal Profession* (1991) and has been continued with the 1996 *Barriers and Opportunities Report*. The longitudinal study should take into consideration the results from organizational and other studies obtained during the research outlined above.
5. Poole, Phebe-Jane, Ph.D. 1997 *Diversity. A Business Advantage*. Ajax: Poole Publishing Company;
Poole, Phebe-Jane, Ph.D. 1994. *The Employment Equity Advantage. A Practical Guide*. North York: CCH Canadian Limited.
 6. Poole, Phebe-Jane, Ph.D. 1997. *Diversity. A Business Advantage*. Ajax.: Poole Publishing Company;
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