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THE USE OF NON-DISCRIMINATORY LANGUAGE IN THE LAW

Mary Jane Mossman*

North York

The use of language is fundamental to law. This paper addresses three reasons why lawyers should use non-discriminatory (and especially non-sexist) language: to promote accuracy in legal writing and speech; to meet current standards of professional integrity and responsibility; and to be consistent with legal norms of equality and non-discrimination in Canadian law. The paper then examines ways of achieving non-discriminatory language in English and French in a number of concrete situations. The paper examines the "false generics" of "l'homme" and "man"; the problems of gender specific pronouns (a problem which has different implications in English and in French); and the use of a non-sexist vocabulary. Finally, it explores briefly the relationship between non-discriminatory language and other aspects of equality in the legal profession.

Le langage est fondamental en droit. Cet article traite de trois raisons pour lesquelles les avocats devraient utiliser un langage non discriminatoire (et particulièrement non sexist) : pour favoriser la précision dans le langage juridique écrit et parlé; pour être à la hauteur des standards courants d’intégrité et de responsabilité professionnelles; et pour être cohérent avec les normes juridiques d’égalité et de non-discrimination en droit canadien. Ensuite l’article examine des méthodes pour arriver à un langage non discriminatoire en anglais et en français dans plusieurs situations concrètes. Le texte porte sur les faux termes génériques «homme» et «man»; les problèmes concernant les pronoms particuliers à un genre (un problème qui a des implications différentes en anglais et en français); et l’emploi d’un vocabulaire non sexe. Enfin, il touche brièvement la relation entre le langage non discriminatoire et d’autres aspects de l’égalité dans la profession juridique.

Introduction: Non-Discriminatory Language and the Law

"Few would suggest that sexual or racial inequality exists because of language use. Nor would many argue that banishing sexist and racist labelling would in itself result in a just society. At the same time, it is clear that language not only reflects social structures but, more important, sometimes serves to perpetuate existing differences in power; thus, a serious concern with linguistic usage is fully warranted.”

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The relationship between law and language is more often assumed than examined. As Katherine de Jong suggested in her analysis of language in the context of sex equality guarantees in the Charter, “the law is not generally approached as a problem of language” even though law is made up of words: words which are written in constitutions, statutes, reported decisions and negotiated agreements, and words which are spoken in courts and tribunals and other professional settings by lawyers and adjudicators. In this sense, the use of language is fundamental to law.

In such a context, it is not surprising to find debates about language among lawyers as well as among linguists. Nor is it unusual to find lawyers expressing concerns about language: how legal language shapes reality, masks power and makes claims to neutrality. Thus, lawyers (as well as linguists) need to respond to the above quotation by reflecting on how to use non-discriminatory language.

This paper starts by accepting that language usage changes over time and in differing societal contexts. It also accepts the general agreement among linguists that language change is ongoing, and that previous ages have debated particular changes just as carefully as we now do. Indeed, as one expert on language change has noted, perhaps ironically, “contemporary language change is generally characterized as `vulgar, careless, or ungrammatical, or uneducated’ while change that took place in previous ages is considered quite respectable.” In this context, the paper assumes that changes in language which better reflect the purposes of law are clearly desirable.

This paper focuses primarily on non-discriminatory language in relation to gender, recognizing, however, that there are links between gender and other aspects of non-discrimination for members of the legal profession. It begins with a brief consideration of some of the reasons why lawyers need to write and speak using non-discriminatory language. Second, the paper reviews some recommendations for achieving non-discriminatory language, especially non-sexist language, in English and in French. Finally, the paper addresses more complex aspects of these language issues, including the problem of silence, in the legal context.

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4 Christine Boyle, Book Review (1985) 63 Can. Bar Rev. 427 at 430. As Professor Cathy Jones as also suggested:
I. Reasons for Using Non-Discriminatory Language

(1) Accuracy

One of the most important reasons for adopting non-discriminatory language is the goal of accuracy, a major goal of most legal writing and speaking. As Professor Christine Boyle has argued in relation to non-sexist language, the use of the word “man” to mean “human”, and the use of the pronoun “he” to refer to both “he and she” may create problems of ambiguity:

“[Such language is] ambiguous, an important aspect for lawyers (who have never as a group favoured elegance over clarity) since “he” is not always conventionally understood to mean “he or she” any more than “person” has been conventionally understood to mean male or female human being. This would be merely irritating if it were not for the real danger that use of male language has a limiting and perverting effect on intellectual inquiry.”

Thus, the goal of accuracy in legal writing and speaking may be frustrated by use of the pronoun “he” and the noun “man”; in both cases, it is necessary for the reader/listener to decide whether these words refer only to males or to both males and females.

The pronoun “he”, in particular, has been the subject of debate for several centuries. In a comprehensive review of the history of usage of the pronoun “he”, Bodine identified Kirby’s New English Grammar, published in 1746, as establishing the “rule” that the masculine pronoun included both masculine and feminine meanings. However, this usage was never fully accepted by other grammarians of the eighteenth century or later. In spite of this lively debate among linguists, the English Parliament enacted Lord Brougham’s Act in 1850, the Acts Interpretation Act, an Imperial statute which defined the legal meaning of words importing the masculine as including both masculine and feminine for most Canadian jurisdictions. Yet, as Dr Jocelynne Scutt has shown so clearly in the Australian context, such statutory principles of interpretation are routinely applied having regard to the context. Thus, as Scutt demonstrated, statutes

“No profession is more reliant on precision in language than law, and no profession is more important in shaping language use than teaching. To lawyers, scholars, teachers, librarians - those who help, who write, who teach, who study - language is extraordinarily important.”


5 Bodine “Androcentrism in Prescriptive Grammar: Singular ‘they’, Sex-Definite ‘he’, and ‘he or she’” (1975) 4:2 Language in Society 129; and citing Wilson, Arte of Rhetorique (1560); Poole, The English Accidence (1646); and Kirby, A New English Grammar (1746).

6 See, for example, Ward, An Essay on Grammar (1746); and Macaulay, Letters on Education (1790).

7 “Sexism in Legal Language” (1985) 59 Australian L.J. 163. Scutt’s excellent historical review was especially useful in writing this paper.

8 (1873), XI Macph. 784.

9 See Re Edith Haynes (1904), 6 W.A.R. 209 (whole Ct.).
imposing duties or penalties have generally been applied to men and women, while those creating privileges or conferring benefits have more often been interpreted as applicable only to men, citing *Jex-Blake v. Senatus* of the *University of Edinburgh*⁸ (denying Sophia Jex-Blake and other women the opportunity to become doctors), a case denying women the right to be admitted as members of the legal profession in Australia,⁹ and the Canadian *Persons* case.¹⁰

Accuracy may also be frustrated by use of the word “man” to refer to both men and women. In Professor Karen Busby’s examples from legal theory, ambiguity results from the use of the generic “man”.¹¹ Thus, for example, Aristotle’s “just man” is a man (and not also a woman) because it is clear from his passage on “household justice” that Aristotle did not regard women as political actors. As well, by analyzing a passage about prostitution in the work of H.L.A. Hart, Busby concludes that the experience of women has been excluded, so that Hart’s “ordinary citizen” also seems to be a man. Finally, using the work of Carol Gilligan, Busby demonstrates how the “rational man” in Rawls’s “original position” is probably only a man and not also a woman. In all these cases, Busby’s attention to context reveals that the use of the word “man” and the pronoun “he” in the work of these legal theorists refers, in fact, to males. Yet, her analysis also demonstrates the continuing problem of ambiguity in the use of these words.

Those concerned about the need for accuracy in legal writing and speech also need to take account of the results of social science studies which demonstrate that both children and adults (of both sexes) routinely form mental pictures of males when they encounter the generic “man” and the pronoun “he”.¹² Among Canadian academics (including legal academics), research guidelines have been developed to ensure that academic research accurately reflects the experiences of both men and women.¹³ For legal academics, moreover, the goal of accuracy is undermined when standard student casebooks

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treat only (or mainly) legal problems experienced by men. According to Boyle, these law books must be identified more accurately; "in other words, `Men and the Law' is tolerable as an area of intellectual activity, but not if it is masquerading as `People and the Law'". Thus, the use of non-discriminatory language requires careful choices to prevent unintended over-inclusiveness. The objective, however, remains the same: the accurate expression of ideas in legal writing and speech.

(2) **Professional Integrity and Responsibility**

"A profession's language is part of its public representation. Correspondence, ... style manuals [or precedents], job descriptions, ... letters of recommendation, jargon, brochures, books, conference session titles - all communicate on behalf of the entire profession and help determine how it is perceived."15

This comment about a professional association concerned with language (the Modern Language Association in the U.S.A.) is equally apt to describe the need for the legal profession to adopt non-discriminatory language. The claim that the legal profession has such an obligation is sometimes characterized in terms of the demands of business; the recognition that women are both employees in traditionally male workplaces and also clients of such firms has created an impetus to adopt non-discriminatory language in order to deal equally with men and women:

"Modern business people recognize the fact that half of today's consumers are women. Some leaders of historically male-oriented companies are discovering more and more women in their ranks, both as employees and as clients. The need to deal equally with men and women brings into focus the need to adopt language usage that includes both sexes."16

Beyond the demands of business, however, the legal profession is subject to norms of acceptable conduct reflected in codes of professional conduct. The **Code of Professional Conduct** of the Canadian Bar Association, for example, provides:

"[A] lawyer should encourage public respect for and try to improve the administration of justice.... The lawyer's responsibilities are greater than those of a private citizen."17

In a survey of Canadian and American Codes, Chris Tennant18 identified three general provisions which have been used to enforce duties of non-

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15 Frank and Treichler, *supra* footnote 1 at 25.


19 267 Cal. Rptr. 293 (Cal. 1990). The Court heard testimony from three attorneys as well as a deputy clerk and a police detective, all female, that the judge had addressed them
discrimination in the legal profession (including the duty to use non-discriminatory language). These included the duty to act with integrity, the duty to uphold the administration of justice, and the duty of courtesy and good faith towards other lawyers. Tennant also documented a number of cases in the United States in which these duties were breached by the use of inappropriate, discriminatory language. In *Kennick v. Com'n on Judicial Performance*, the California Supreme Court held that conduct prejudicial to the administration of justice included addressing female attorneys as "sweetheart." Similarly, in *In re Jordan*, a female lawyer successfully took legal action against a judge after he told her in open court, "I will tell you what, little girl, you lose." More recently, New York lawyer Lawrence Clarke was fined a total of $1000 for five sexist comments about his opposing counsel, having referred to her repeatedly as "little lady", "little mouse", and "young girl". More generally, the court in *In re Vincenti* held that:

"Any kind of conduct of verbal oppression or intimidation that projects offensive and invidious discriminatory distinctions, be it based on race or colour, as in this case, or, in other contexts on gender, or ethnic or national background or handicap, is especially offensive."

In both Canada and the United States, several jurisdictions have recently introduced express provisions on non-discrimination to augment the more general Code provisions. Thus, both Québec and Ontario now have express non-discrimination provisions in their Codes, and Ontario's law society has recently proposed the adoption of a more detailed provision. As well, British Columbia has adopted an express non-discrimination provision. As Tennant has argued, more detailed provisions are useful in identifying clearly the conduct which is proscribed; his suggested provisions include the elimination of discriminatory gender harassment, defined as "being described in familiar terms as "sweetheart", "sweetie", or "baby"; there was also evidence that he had so addressed female defendants. See Tennant, *supra* footnote 18 at 511ff.

20 N.Y.L.J. March 2, 1983 (State of N.Y. Commission on Judicial Conduct); and see Tennant, *supra* footnote 18, at 519ff.


24 The new provision is proposed as a new Rule 28, in which discrimination is comprehensively defined to include sexual harassment as well as "vexatious comment or conduct". For details, see (1993), 1:9 Benchers Bulletin 1.

25 Lynn Smith, "Gender Equality - Professional and Ethical Issues" (Toronto: CBA Conference on Gender Equality - A Challenge for the Legal Profession, 1992) at 26ff. According to Smith, the Bencher evidenced some reluctance to adopt such an express non-discrimination provision, eventually agreeing to amend the *Professional Conduct Handbook* one hour prior to a press conference in the fall of 1992 at which the Gender Bias Committee was scheduled to release its report.

26 Tennant, *supra* footnote 18 at 519ff.

27 Smith, *supra* footnote 25 at 23.
terms, being subject to comments about personal appearance, being subject to remarks and conduct that degrade women, as well as being subject to verbal or physical advances.²⁶

Thus, professional integrity and responsibility provide further reasons why lawyers should use non-discriminatory language. As Dean Lynn Smith has suggested, moreover, the issue of "freedom of choice" in language usage must be understood in the context of late 20th century legal norms about non-discrimination:

"The freedom to harm others by discriminating against them has been restricted in the late 20th century in the same way that the freedom to harm others by selling them defective goods was restricted a bit earlier on. The offence that people feel when treated with disrespect based upon their gender, race, disability, sexual orientation, age, and the like, is not a matter of social nicety but carries the risk of seriously affecting the respect in which the legal profession and the justice system are held. (Emphasis added)²⁷

(3) Equality Guarantees in Law

The use of non-discriminatory language by Canadian lawyers is also consistent with the entrenchment of equality rights in the new constitution in 1985.²⁸ Although the Canadian equality guarantee is fairly recent, the jurisprudence has already demonstrated a "made in Canada" approach, one which now differs significantly from that in the United States²⁹ and contrasts with some approaches under European Community laws.³⁰ According to Dean

²⁸ The new constitution and the Charter of Rights and Freedoms was effective in 1982; the equality provision did not take effect, however, until 1985. Section 15 provides as follows:

(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

In addition, section 28 of the Charter provides:

Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.


³¹ Smith, supra footnote 29 at 233, citing a number of decisions on sex equality in the Supreme Court of Canada. A brief list includes: Action Travail des Femmes v. C.N.R.
Lynn Smith, the Canadian approach takes into account "not only comparisons between persons and treatment, but also the comparative disadvantage experienced by particular groups in society [including women]." In this way, the constitutional equality guarantee has created expectations of equal treatment and opportunities on the part of women lawyers in Canada.

As in the United States, there have been numerous task force inquiries on gender bias in the law and the legal profession in Canada. The reports of these task forces have generally concluded that gender bias exists, and many of them have documented in great detail the forms of such bias. The recent report of the Law Society of British Columbia, for example, cited numerous examples of sexist comments, as well as harassing behaviour, designed to intimidate and undermine women lawyers. In addition to inappropriate forms of address (such as "honey" or "dear"), the report documented women's experiences of demeaning and humiliating sexual "jokes" at their expense; the report confirmed the validity of earlier statistics which found that 68.2% of women lawyers had observed or experienced "unwanted teasing, jokes or comments of a sexual nature" at least once in the two years prior to the survey. Such results correspond closely to the 1989 survey of 3000 female lawyers in 56 large firms in 13 of the largest U.S. cities conducted by the National Law Journal/West Publishing Company; this study reported that 60% of women responding said that they experienced unwanted sexual attention of some kind from superiors, colleagues and clients. Thus, even though the constitutional guarantees of equality in Canada may not directly proscribe such language in the legal profession, they may create norms and expectations about appropriate language (and behaviour) which challenge the inequality traditionally experienced by large numbers of women lawyers.


32 See Transitions (Toronto: Law Society of Upper Canada, 1991) for Ontario; and J. Brockman, "Identifying the Barriers: A Survey of Members of the Law Society of British Columbia" (Vancouver: Law Society of British Columbia Subcommittee on Women in the Legal Profession, 1991), and Law Society of British Columbia, Gender Equality in the Justice System (Vancouver: Gender Bias Committee, Law Society of British Columbia, 1992) 2 vols. Similar studies have been completed in Alberta and are underway in Nova Scotia and Manitoba. The Canadian Bar Association established a task force chaired by former Justice Bertha Wilson which reported in August 1993; see Task Force on Gender Equality in the Legal Profession, Touchstones for Change: Equality, Diversity and Accountability (Ottawa: Canadian Bar Association, 1993). As well, a report was released by a governmental task force (federal, provincial and territorial governments) earlier in 1993.

33 See Gender Equality in the Justice System, supra footnote 32 at 3-7, citing the Women in the Legal Profession Report (British Columbia) and the Transitions report (Ontario), supra footnote 32.

34 Gender Equality in the Justice System, supra footnote 32 at 3-7, footnote 8.

35 S. Martin, "Women in the Legal Profession - The Dynamics of Exclusion" (Toronto: CBA Conference on Gender Equality - A Challenge for the Legal Profession, 1992) at 27.
In this context, language which recognizes women as equal members of the legal profession is a necessary, but not sufficient, condition of achieving equality within the profession. As Dean Sheilah Martin has suggested, women have continued to be "excluded" within the profession even though they have achieved the right to become lawyers:

"Equality in the legal profession was not accorded to women by mere entry alone; nor has it been acquired by their hard work thereafter. There is still the exclusion of women from the full, fair and equal practice of law.... Describing women's current experience as one of effective exclusion may operate as a form of shock therapy to a profession badly in need of a jolt, by conveying the high personal and professional costs of exclusionary practices, and stressing what needs to be done...."\(^{35}\)

Beyond the issue of language and equality for women as members of the legal profession is the issue of legal language in statutes and other documents which may create inequality for women more generally. This problem was addressed some years ago in Canada in a now-famous exchange in the McGill Law Review between Marguerite Ritchie, a lawyer who claimed that the Interpretation Act failed to accord women equality with men, and Elmer Driedger, a drafter employed by the federal government.\(^{36}\)

Significantly, the real difference of opinion between Ritchie and Driedger was the capacity of the English language to change so as to reflect equality between men and women (especially in relation to male pronouns), and the willingness of drafters to implement this new understanding in legal language. As Ritchie argued, the problem is not one concerning "forgotten hieroglyphics left by people who are extinct" but rather with "living people, and living languages, where words change, die out, and are replaced by totally new ones."\(^{37}\)

Using the story of Alice in Wonderland, moreover, she suggested that the combined work of drafters and courts had left women aliens in their own country, a problem for both equality and justice. For Ritchie, the equality issue was clear: "Everyone who defends this system of using male terms to include women helps to cheat women."\(^{38}\) In this way, the existence of constitutional guarantees of equality offers another reason (in terms of equality norms) for the use of non-discriminatory language in the legal profession.

Thus, this part of the paper has suggested three reasons for the use of non-discriminatory language in the law: accuracy, professional integrity and responsibility, and legal guarantees of equality. The next section of the paper explores some measures which can be adopted to achieve non-discriminatory language in both English and French.


\(^{38}\) Ibid. at 536.

\(^{39}\) See supra footnote 1.

\(^{40}\) (New York: Lippincott, 1980). See also R. Maggio, The Dictionary of Bias-Free
II. Achieving Non-Discriminatory Language in Law

The resources for ensuring non-discriminatory language in law now include a large number of general linguistic guides. Among others in the United States are Frank and Treichler, Language, Gender and Professional Writing,39 Miller and Swift, The Handbook of Nonsexist Writing,40 D. Baron, Grammar and Gender,41 R. Lakoff, Language and Women's Place,42 and Thorne, Kramarae, and Henley, eds., Language, Gender and Society.43 In Canada, there are similar guides in many universities and other workplaces,44 and an excellent guide for non-discriminatory language in English and French, Talking Gender: A Guide to Nonsexist Communication edited by Professor Ruth King.45

This part of the paper offers suggestions for achieving non-discriminatory language in law, using these resources generally with particular reference to Talking Gender; this guide is especially useful for Canadian lawyers because it offers suggestions for non-discriminatory language in both English and French. In offering these suggestions, moreover, it seems appropriate to repeat the advice (and reassurance) previously offered to linguists in the area of nonsexist communication:

"[It is] unrealistic to assume that writers with good intentions will spontaneously use nonsexist language effectively. Good intentions are no substitute for craft. Like all first-rate writing, nonsexist writing requires skill placed in the service of an educated eye. But we needn't exaggerate the degree of skill required. A practiced pen is needed; genius is not."46

(1) "False Generics: L'Homme and Man"

As discussed above, use of the word "man" in English47 and the word "l'homme" in French often create ambiguity because they are not always generic. However, it is important to understand that it is the morpheme "man" and the morpheme "l'homme" which are sexist. Linguists define "morphemes" as:

43 Supra footnote 12.
44 See, for example, the Council of Ontario Universities Committee on the Status of Women, Employment Equity for Women: A University Handbook (Toronto: Council of Ontario Universities, 1988) which contains a section on non-sexist language and imagery; and Ontario Women’s Directorate, Words that count Women In, 2nd ed (Toronto: Ontario Women’s Directorate, 1993).
45 Supra footnote 12.
46 M. Shear, "Solving the Great Pronoun Problem: Twelve Ways to Avoid the Sexist Singular" (1981) 13:1 Perspectives 17 at 19; as quoted in Frank and Treichler, supra footnote 1 at 137-138.
48 King, ed., supra footnote 12 at 10. Thus, words like "manuscript" and "mandate" present no problems because they do not include the morpheme "man", but rather are
"... the individual units of meaning that make up words. Not every syllable is a morpheme. ... ‘Chairman’,... contains ... two separate meaningful elements: ‘chair’, related to the verb ‘to chair’, and ‘man’, meaning ‘adult human male’. ‘Human’ contains two syllables but cannot be segmented into two morphemes because the sequence ‘hu’ is not an individual unit of meaning; ‘human’, referring to the species as a whole, consists of one morpheme."

On this basis, there are some simple rules to avoid discriminatory language caused by the false generics “l’homme” and “man”. For example:

a) Instead of “man”, “men” and “mankind”, use “person/people”, “human being(s)”, and “humanity”.

In French, instead of “les hommes”, use “les êtres humains”, “les hommes et les femmes”, or “les gens”.

Examples: REPLACE

- “Men must care for the environment”
  “People must care for the environment”

- “L’inégalité parmi les hommes”
  “L’inégalité parmi les hommes et les femmes”

b) Instead of “no man”, use “no one”; instead of “fellow man”, use “people”, “citizens”, “friends”, or “human beings”.

In French, instead of “l’homme”, use “la personne”; recast sentences to use an indefinite pronoun (“quiconque”) or both masculine and feminine forms.

Examples: REPLACE

- “To boldly go where no man has gone”
  “To boldly go where no one has gone”

- “les droits de l’homme”
  “les droits de la personne”

- “One should have concern for one’s fellow man”
  “One should have concern for other people”

- “Ceux qui s’intéressent”
  “Ceux et celles qui s’intéressent”

composed from Latin roots: “manuscript” comes from “manus” or “hand” and “scribere” which means “to write”. Because the syllable “hu” is not a morpheme, linguists do not consider “human” to contain the morpheme “man”; see King, ibid.

c) Occupational titles can be altered to remove “man”.

In French, feminine equivalents of male job titles can be formed, or male and female alternatives without “homme” can be used.\textsuperscript{49}

In English, the morpheme “man” can be replaced.

<table>
<thead>
<tr>
<th>Examples: REPLACE</th>
<th>freshman</th>
<th>first-year student</th>
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<tbody>
<tr>
<td></td>
<td>garbageman</td>
<td>garbage collector</td>
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<tr>
<td></td>
<td>groundsman</td>
<td>groundskeeper</td>
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<td></td>
<td>fireman</td>
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<td>barman</td>
<td>bartender</td>
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<td>cameraman</td>
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<td></td>
<td>craftsman</td>
<td>craftsperson</td>
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<tr>
<td></td>
<td>mailman</td>
<td>letter carrier</td>
</tr>
</tbody>
</table>

REPLACE homme d’affaires femme d’affaires

REPLACE homme politique politicien or politicienne

REPLACE man-made manufactured, synthetic

manpower staff, human resources

grantsmanship grant-getting ability

workmanship craftwork, work, artisanship

In the context of problems about the generic “man” and “l’homme”, it is important to remember that sometimes it is appropriate for people to be men and women. As Conrad Teitell has explained:

“It’s all right to call a man a man and a woman a woman. Women (not people) are pregnant. Men (not people) are sperm donors. And you can call a male baseball player a second baseman. But if a woman plays that position, she’s a second baseman.”\textsuperscript{50}

Teitell also stressed that it is necessary to be consistent; thus, if he is a “spokesman”, she is a “spokeswoman” and not a “spokesperson”; however, they may both be “spokespersons”. However, others have disagreed with the use of “spokesman” and “spokeswoman” (on the same basis as “chairman” and “chairwoman”); as well, use of the word “person” is fraught with difficulties since, as Frank and Treichler explain, the word “person” was legally defined for many years as referring only to males. In this way, the use of the word “person” at 419-20. According to Conrad Teitell, “Sex Lex” (Feb 1990) Trial 73, it is also useful to substitute “er” for “man”, so that “workman” becomes “worker”, etc. Part II of Teitell’s article appears in (Mar 1990) Trial 25; subsequent references specifically identify Part II. For a full discussion of job titles in French (and some differences in usage in Québec and in France), see post at footnote 71ff. and accompanying text.

\textsuperscript{50} Ibid. at 74.

\textsuperscript{51} Correspondence on file from Ruth King; see also Frank and Treichler, \textit{supra} footnote 1 at 195, and J. Scutt, \textit{supra} footnote 7.
itself carries meanings of male exclusivity for lawyers, meanings which may still create a sense of inequality for some women.\textsuperscript{51} The use of "chair" overcomes these problems, but an alternative word such as "representative" may be needed for "spokesperson".

As well, it has been suggested more recently that the word "woman" also has exclusive meanings, representing primarily white and mainstream women, and excluding others.\textsuperscript{52} In the face of difficulties like these, Frank and Treichler recommend discussion and negotiation among those involved in the language usage; they also suggest that "when members of a group specify how they wish to be designated, take their arguments seriously and, if possible, respect their preferences."\textsuperscript{53}

\textbf{(2) Pronouns}

The pattern of pronouns in different languages varies greatly. In English, the first person may be both singular and plural ("I" and "we"), while the second person is the same for both singular and plural ("you"). In neither of these is there any gender differentiation. In the third person in English, however, pronouns are gendered in the singular ("he" or "she"), but undifferentiated by gender in the plural ("they"). By contrast, French has two pronouns in the second person ("tu" and "vous"), and also differentiates by gender in both singular and plural in the third person ("il" and "elle" and "ils" and "elles"). There are other languages which do not distinguish by gender in the third person or which may have additional pronouns to those used in English and French. Thus, as King has asserted:

"... the English pronominal system is far from being the only possible pattern.... No language is unalterable. Indeed, the pronominal systems of a given language may well change over time. English once commonly used the second-person singular forms 'thou/thee/thine', though these are now to be found only in particular dialects or in restricted (usually religious) contexts."\textsuperscript{54}

The issue of pronouns in French is linked to the broader issue of French as a gendered language; that is, every noun in French is marked as masculine or feminine (not necessarily linked to biological sex). In this context, the search for non-discriminatory language in relation to pronouns is necessarily part of the broader problem. As with English, there is a long tradition of resistance to

\textsuperscript{52} Alice Walker has suggested, for example, that women of colour are not necessarily included in the designation of "Women's Studies". As well, Frank and Treichler explain that while white women may object to being known by reference to their husbands' names (eg. Mrs. John Joseph), African-American women, whose history denied them the legal right to that designation, may prefer to be known by their husbands' names. "What signifies bondage to one woman may mark freedom to another." See Frank and Treichler, \textit{supra} footnote 1 at 196.

\textsuperscript{53} \textit{Ibid.} at 198.

\textsuperscript{54} King, ed., \textit{supra} footnote 12 at 17.

\textsuperscript{55} \textit{Ibid.} at 29; it should be noted that the authors of this opinion are writing from a Canadian perspective. Moreover, the issue of the preservation of the French language in
language change in French. However, “it is generally acknowledged that, in the area of nonsexist language, Québec has shown a more progressive and informed attitude than has France.” Over several decades, Québec linguists, dictionary makers and translators have focused on the problem of sexist language; in 1986, the Office de la langue française du Québec published a document proposing criteria for the acceptance of new words in French to recognize (particularly) feminine job titles. This general willingness to sanction the evolution of French words to avoid sexist language is also helpful in finding solutions to the pronoun problem in French.

Some suggestions to overcome the “false generic” pronoun problem in English and French follow.

a) Replace “he” in English with “he or she”; and in writing with “he/she”.

In French, replace “il” with “il ou elle”; “ils” can be replaced with “ils ou elles”.

In French, the masculine and feminine forms of numerous pronouns can be used together: “tous et toutes”, “chacun et chacune”, “ceux et celles”, “aucun et aucune”, “nul et nulle”, “pas un et pas une”, “certains et certaines”, and “quelques-uns et quelques-unes”.

Examples:

- REPLACE A person should choose the candidate who impresses him
- A person should choose the candidate who impresses him or her
- He (a coach) needs to address members’ needs
- He or she needs to address members’ needs

- REPLACE Les actionnaires sont convoqués à une assemblée où ils devront voter
- Les actionnaires sont convoqués à une assemblée où il et elles devront voter

- REPLACE Ceux qui s’intéressent à la musique
- Ceux et celles qui s’intéressent à la musique

Québec is both serious and controversial within Canada.

56 According to Frank and Treichler, supra footnote 1 at 161, it is preferable not to use, even in writing, “s/he”; the authors suggest that it is not appropriate because it has no possessive or accusative case equivalents and because it cannot be pronounced. King, ed., supra footnote 12 at 18 suggests that advocates of “s/he” give aesthetic and political reasons for adopting it, and point out that it saves space in print.

57 According to King, ed., ibid. at 43:

“In speech, we have heard ‘il...elle’ (with a pause between the two pronouns), but most of the native speakers we have polled reject this usage as bizarre and favour ‘il ou elle’. As in English, the order of the pronouns may be reversed: ‘elle ou il’. There is some debate regarding the acceptability of ‘il et elle’ and ‘ils et elles’.

58 According to King, ed., ibid., “quelqu’un” is the accepted singular form; “quelqu’une” exists only as a rarely used literary term.

59 According to King, ed., ibid. at 19, it is important to be careful when including oneself. Since the experience of white people in North America is not universal, it is
b) *In English, re-write the sentence in the plural*

*For French solutions, see (a) above*

Examples:  

- REPLACE A novelist should write about what he has experienced
- Novelists should write about what they have experienced

In French:

- Si un écrivain a des expériences, il doit les aborder
- Les écrivains doivent aborder leurs expériences

In French (from (a)):

- If a student has problems, he can take another course
- One can take another course if problems arise

- Si un étudiant a des problèmes, il peut suivre un autre cours
- On peut suivre un autre cours s’il y a des problèmes

- The anthropologist should take care that his work is not androcentric
- As an anthropologist, you (or I or we) should take care that your (or my or our) work is not androcentric

- En tant que biologiste il a le droit...
- En tant que biologistes vous avez le droit

In French (from (a)):

- Anyonemay participate if helikes
- Anyone may participate if they like

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Inappropriate for them, by contrast with native people, to use "we" and "our" when discussing the experiences of First Nations people.

See Frank and Treichler, supra footnote 1 at 156; and King, ed., supra footnote 12 at 18. More colourfully, Teitell, supra footnote 49 at 73, states:

"Some gender-neutralists advocate using "they" as a singular, maintaining that it’s preferable to make an error of number (using a plural instead of a singular) to one of gender (using “he” when the real meaning is “he or she”). I won’t accept that tortured solution. It’s contrary to the Gender Convention. But everyone should decide this on her or his - or their - own."

61 See the Ritchie-Driedger debate, supra footnote 36.

62 Thornton, supra footnote 49 at 418.
This issue also has particular consequences for legal drafting. According to Thornton, the plural pronouns “should not be used to refer to singular nouns” in statutory language because “such usage while of undoubted antiquity is generally accepted as ungrammatical and it may contribute to ambiguity.”

e) In English and French, restructure the sentence to eliminate the use of the pronoun.

Examples: REPLACE The student with a disability may feel more at ease if he explores the campus prior to the first day
The student with a disability may feel more at ease through exploration of the campus before the first day

REPLACE La personne choisie occupera un poste de directeur
La personne choisie assumera la direction

f) In English, use the appropriate gender pronouns when the context suggests that either men or women are intended.

This guideline preserves the gender of subjects when it is appropriate to do so. Thus, when all the members of a union are women, it is appropriate to use feminine pronouns in the constitution and the collective agreement. This guideline also applies in French, although it is important to note that French grammar requires that even if only one man is also a member of the union, the members must be referred to collectively in the masculine.

It is also important not to confuse this guideline with the use of the “generic she” in English, a usage adopted by feminist linguists to demonstrate the oppressiveness of the generic “he”. For example, Deborah Cameron has explained her use of “she” as “sex-indefinite referents”:

“If there are any men reading who feel uneasy about being excluded, or not addressed, they may care to consider that many women get this feeling within minutes of opening the vast majority of books, and to reflect on the effect it has.”

(3) A Nonsexist Vocabulary

The use of non-discriminatory language requires careful attention to the meanings of words, in terms of both dictionary and more colloquial meanings. Frank and Treichler include a discussion of the evolution of meanings for words describing “disability”, for example, describing the innovative use of language

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61 Ibid. at 227ff.
63 Supra footnote 1 at 203-205.
64 Ibid. at 227ff.
in this context in recent years. They also note the "false universals" which may affect accuracy in writing about race. Non-discriminatory language for these situations, as for nonsexist writing, requires both attention to existing vocabulary and also innovative practices. Thus, while the primary focus here is nonsexist writing, it is important to reinforce the warning offered by Frank and Treichler that "these issues [gender, race, and disability et cetera] intersect, illuminating once again the social and cultural complexity of language and its defiance of the quick fix."

A full discussion of nonsexist vocabulary is a large task, one that has been attempted by numerous authors and agencies in different contexts. Thus, this section of the paper explains some of the issues and suggests some words which may be used in nonsexist writing in relation to two contexts: one is job titles and forms of address, an issue for both English and French. The other problem considered here concerns words and word groups which need to be avoided to achieve non-discriminatory writing.

a) **Use job titles in English and French which are nonsexist.**

**English**

This recommendation is somewhat more difficult in practice than in theory. In English, the task is accomplished by using gender-neutral terms in most cases. Gender-neutral terms are achieved by:

i) *Removing the compound “man”*

Example: REPLACE fireman firefighter
policeman police officer

Note: The use of “person” is not generally recommended; in some cases, it is merely coy, while in others, it is a euphemism for “women”, eg. “chairman” for a man and “chairperson” for a woman.

ii) *Replacing the “weakening” suffix*

Example: REPLACE authoress author
sculptress sculptor
poetess poet
songstress singer
jockette jockey

Note: The word “actress” seems to be in transition in this context; women now refer to themselves often as “actors”. According to King, the word “jock” should apply to both men and women (replacing the word “jockette”) and “hacker” for computer workers (replacing the word “hackette”).

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65 Ibid. at 140.
67 See discussion in King, ed., *supra* footnote 12 at 28.
66 Ibid. at 29.
69 *Supra* footnote 49 (Part II) at 25.
70 Ibid.
Teitell also recommends "suffragist", not "suffragette"; and "usher" for both men and women; he is comfortable, however, for dancers at Radio City to be Rockettes.69

iii) **Refrain from using “woman” as an adjective**

Example: REPLACE woman lawyer lawyer

woman doctor doctor

As Teitell suggests, “don’t identify the sex of an individual when stating her or his profession. The key here is parallel treatment. Don’t say ‘woman lawyer’ unless you’d say ‘man lawyer’”.70

*French*

Because the French language has grammatical gender (all nouns are marked as masculine or feminine), the search for nonsexist alternatives in French has led researchers (at least in Québec) “to the recognition of, indeed the creation of, gender-marked feminine forms.” In the evolution of feminine forms, it has also been suggested that there have been some "aberrations" such as “Madame la juge” (the noun is “le juge”) or “Madame la directeur” (the noun is “le directeur”).71

In Québec, the preference seems to be the use of a feminine article along with the masculine form of noun in some cases, or with a “femininized noun” in others; however, the practices in Québec differ in a number of ways from those in France, so great care is needed. This overview presents examples used in Québec.

i) **Using a feminine article**

Example: un membre une membre

un notaire une notaire

un ministre une ministre

un chef une chef

un témoin une témoin

un médecin une médecin

un conseil une conseil

(as in “une conseil juridique”)  

In such cases, it is never appropriate to use the adjective “femme”.

ii) **Some special cases**

In Québec, L’Office de la langue française has authorized the use of “feminine” forms of male job titles, along with the feminine article. Not all of these forms are recognized in France, however; these examples have been borrowed from a much fuller discussion in *Talking Gender*.

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71 King, ed., *supra* footnote 12 at 29.

72 According to King, ed., *ibid.* at 36, the “euse” ending remains controversial. Historically, the “euse” ending was considered lower class, in relation to the masculine
Example: un chercheur, une chercheuse; un professeur, une professeure; un conférencier, une conférencière; un conseiller, une conseillère; un policier, une policière; un consultant, une consultante; un président, une présidente; un doyen, une doyenne.

b) Use forms of address/reference in English and French which are nonsexist.

The basic objective of nonsexist forms of address and reference is parallel dignity and respect for men and women. Thus, the use of titles which do not accord women the same autonomy as men (e.g., the title “Mrs” which denotes a woman’s relationship to a man, while there is no equivalent male title for a man’s relationship to a woman), and references which do not accord women the same dignity as men (e.g., women being described in terms of their appearance and men in terms of their accomplishments) are regarded as sexist.

Research by sociolinguists suggests that “terms of address [and reference] encode information about the existing social relationship between addresser and addressee.” More particularly, the use of asymmetrical or unequal terms of address or reference can be used to emphasize a difference in status between speakers. In French, moreover, research has demonstrated how the use of second person pronouns is determined by social factors, with “tu” being used for social subordinates (as well as intimates) and “vous” for superiors; on the other hand, the symmetrical use of “tu” expresses
solidarity...." In general terms, however, women receive the forms of address associated with subordinate status, while men receive the more formal address reserved for those of superior status. As Professor Susan Ehrlich has noted:

“In North American culture, unacquainted persons in large urban centres will normally treat each other with silence. This convention is strikingly violated by men who whistle, stare, and direct comments at women who are strangers to them. Once again, women and men are treated differently, and women receive the familiarity reserved for low-status groups.”

The following suggestions implement the basic objective of nonsexist writing: the same dignity and respect for men and women.

i) General rules about “Mr/Monsieur”, “Mrs/Madame” and “Miss/Mademoiselle” (and “Ms”)

<table>
<thead>
<tr>
<th>Language</th>
<th>English</th>
<th>French</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Mr”78</td>
<td>“Ms”79</td>
<td>“Ms”</td>
</tr>
<tr>
<td>“Monsieur”</td>
<td>“Madame”</td>
<td></td>
</tr>
</tbody>
</table>

Exceptions: Only where the woman has expressed another preference:

- English: “Mrs” or “Miss”
- French: “Mademoiselle”

Note: It is also important not to assume the surname of a married woman to be the same as her husband’s. Women in Québec, for example, have legally retained their surname upon marriage since 1979 unless they make a special application to change it. In common law jurisdictions in Canada, women may legally keep their birth names on marriage. (Note: For non-discriminatory usage, it is appropriate to use “birth name” rather than “maiden name” or “Christian name”.)

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77 In King, ed., *ibid.* at 47. For a full discussion of this issue in relation to a number of European languages, see M. K. Adler, *Sex Differences in Human Speech* (Hamburg: Helmut Buske Verlag, 1978) at 110ff.

78 According to Teitell, *supra* footnote 49 at 74, an early American lexicographer recommended getting rid of these titles, or, “if we must have them, let us be consistent and give one to the unmarried man. I venture to suggest Mush, abbreviated to Mh.” As Teitell noted, “Mush” has not entered the language, but “Ms” has. He is in agreement with the general rules expressed here: “If you know the woman’s preference, call her Miss, Mrs., or Ms, as she wishes. If you don’t know, use Ms.”

79 It is not appropriate to use “Ms” with “Mrs.” or “Miss” in brackets after the name. See King, ed., *supra* footnote 12 at 53. Note that the general rule of using “Ms” may not apply universally. As indicated *supra* footnote 52, some African-American women may wish to be called “Mrs.” because of their historic denial of the right to this title under slavery. This “exception” also underlines the need for inquiry as to women’s wishes in this matter. See Frank and Treichler, *supra* footnote 1 at 196.

80 This is recommended by King, ed., *ibid.* at 53; but not by Teitell, *ibid.* at 74 because he thinks that “often the letter recipient is not concerned.”
ii) Use parallel titles for men and women

Example: For two individuals, both with doctorates or professorial rank:

Dr Cameron and Dr. Wong  
(not Dr Cameron and Ms Wong)

Professeur Poulin et Professeure Wu  
(not Professeur Poulin et Mme Wu)

iii) Use the following kinds of salutations for persons whose individual names are unknown:

<table>
<thead>
<tr>
<th>English</th>
<th>French</th>
</tr>
</thead>
<tbody>
<tr>
<td>To Whom it May Concern</td>
<td>A qui de droit</td>
</tr>
<tr>
<td>Dear committee</td>
<td>Chers/Chères membres du comité</td>
</tr>
<tr>
<td>Dear colleague</td>
<td>Cher/Chère collègue</td>
</tr>
<tr>
<td>Dear registrar</td>
<td>Monsieur le Registraire/Madame la Registraire</td>
</tr>
<tr>
<td>Dear Chair/President</td>
<td>Monsieur le Directeur/Madame la Directrice</td>
</tr>
<tr>
<td>Dear Madam or Sir</td>
<td>Madame/Monsieur</td>
</tr>
</tbody>
</table>

Note: Increasingly, it is accepted to use no salutation at all, or to use another form of correspondence such as a memo instead of a letter. When writing to a person whose name (but not sex) is known, use a salutation such as “Dear C.A Phillips”.

iv) Use parallel descriptions of men and women

Example:

REPLACE Virginia Woolf and Proust  
Woolf and Proust

REPLACE Le juge Lamer et Madame L’Heureux-Dubé  
Les juges Lamer et L’Heureux-Dubé

REPLACE The brilliant linguist, Noam, and his attractive wife, Carol Chomsky  
The linguists, Carol Chomsky and Noam Chomsky

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81 As Teitell has suggested, after addressing a letter to the Martin Marietta Corporation, avoid the salutation, and get right down to business: “I’m writing about a rocket that I recently purchased.” He also dislikes “Dear sir or madam”; and has suggested the avoidance of “Ladies and gentlemen” and “Dear Friends” as well. He also suggests the elimination of “Esq.”, especially on one’s own letterhead or card. See Teitell, ibid. at 74.

82 King, ed., supra footnote 12 at 54.

83 Supra footnote 44 at 26-27. An excellent, quite lengthy, list for use in statutory drafting is found in Thornton, supra footnote 49 at 419-420.
c) *Choosing a Nonsexist Vocabulary*

Most guidelines for nonsexist language contain lists of words which are best avoided because their meanings have become, apparently irredeemably, sexist. Thus, for example, the Ontario Women's Directorate has suggested complete avoidance of words such as “henpecked”, “mama’s boy”, “plain Jane”, and “sissy”; and there is general agreement that the word “lady” should be used only if men are also referred to as “gentlemen”. In addition, the Directorate has suggested the use of inclusive words instead of stereotyped words, such as the following examples:\(^{83}\)

<table>
<thead>
<tr>
<th>REPLACE</th>
<th>Stereotyped</th>
<th>Inclusive</th>
</tr>
</thead>
<tbody>
<tr>
<td>bad guy</td>
<td>villain, rogue</td>
<td></td>
</tr>
<tr>
<td>bag lady</td>
<td>street person</td>
<td></td>
</tr>
<tr>
<td>bag man (political)</td>
<td>go-between, fixer</td>
<td></td>
</tr>
<tr>
<td>con man</td>
<td>con artist</td>
<td></td>
</tr>
<tr>
<td>mother hen</td>
<td>busybody, fussbudget</td>
<td></td>
</tr>
<tr>
<td>old maid</td>
<td>single woman (or avoid)</td>
<td></td>
</tr>
<tr>
<td>old wives’ tale</td>
<td>myth, folktale</td>
<td></td>
</tr>
<tr>
<td>spinster</td>
<td>single woman</td>
<td></td>
</tr>
<tr>
<td>tomboy</td>
<td>rough and tumble child</td>
<td></td>
</tr>
<tr>
<td>yes man</td>
<td>toady, hanger-on, sycophant</td>
<td></td>
</tr>
</tbody>
</table>

In addition, nonsexist language guidelines often offer cautions about the ways in which words may take on differing meanings when used in relation to women, by contrast to men. Frank and Treichler quote a statement by Marlo Thomas in 1980 on the different and gendered meanings of the adjective “ruthless”: “A man has to be Joe McCarthy to be called ruthless. All a woman has to do is put you on hold.”\(^{84}\) Similarly, the Ontario Women’s Directorate expressed concerns about the subtle language differences chosen to accompany the award of high school prizes: in relation to the boy, the teacher said, “This fine young man is an inspiration to his classmates”, while in relation to the girl, the teacher’s words were, “She is a spunky little lady, a joy to us all.”\(^{85}\)

Thus, the achievement of nonsexist language requires great care and thoughtfulness in both the choice of words and the ways they are used in referring to women and men. Yet, the essential vitality of language is (perhaps ironically) evident in the work of feminist linguists who have made special efforts to “restore” words which have acquired demeaning or stereotypical meanings about women. For example, Mary Daly has tried to restore the word “hag”, while others have focused on words like “witch”\(^{86}\)

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83. Frank and Treichler, *supra* footnote 1 at 213.
84. Frank and Treichler, *supra* footnote 1 at 213.
and even "spinster"; according to Claudine Hermann, language empowerment requires women to become "voleuses de langue".86

A similar goal led to the publication of *A Feminist Dictionary* by Kramarae and Treichler, a work which offers alternative authority for "women’s definitions of themselves."87 For feminist linguists, even the idea of "nonsexist language" represents the power of more familiar, sexist texts, traditions and social arrangements. For such linguists, the idea of "nonsexist guidelines" thus represents a capitulation; without the power and centrality of language which is "sexist", there would be no need for nonsexist guidelines. This perspective is similar to the way that "hyphenated groups" feel themselves marginalized as, for example, "Mexican-Americans" or "Italian Canadians"; someone else is at the Centre and can define these groups as Others. Thus, for feminist linguists, the preferred goal is to put women more clearly at the centre of discourse, thus "radically shift[ing] our perspective on the production and authorization of discourse."88

These suggestions for achieving nondiscriminatory language in relation to gender represent only a sampling of the myriad of suggestions which have been made by others. As is evident, moreover, there is a necessity to approach the task as part of a process of understanding, and therefore confronting, the ways in which language may be used to denigrate, or at least to fail to dignify, some people because of gender or other factors. As Frank and Treichler asserted in relation to linguists:

"... symbolic behaviour has significant practical and theoretical consequences in the real world and ... these are often negative for women. *The use of nonsexist language is, therefore, at this point in history, the only linguistic choice that enables us, individually and collectively, to be responsible members of our profession.*" (Emphasis added)89

**Conclusion: Beyond Just Words**

The use of nondiscriminatory language is not an isolated issue for the legal profession. Nondiscriminatory language use is linked to other professional concerns, including, for example, positions of leadership for women as lawyers. Canadians often take pride in the fact that three women have been appointed to the Supreme Court of Canada, that a woman has become Prime Minister, and that the Canadian Bar Association has twice elected women as President.90

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88 Frank and Treichler, *ibid.* at 65.

89 *Ibid.* at 278.

90 The women members of the Supreme Court of Canada are Justice Claire L’Heureux-Dubé, Justice Beverley McLachlin, and Justice Bertha Wilson (now retired); the Rt. Hon. Kim Campbell became Prime Minister in 1993; and Paule Gauthier and Cecilia Johnstone were elected President of the CBA in 1992 and 1993 respectively. *Talking Gender, supra*
These recent accomplishments are important, but not yet sufficient. One has only to reverse the gender and realize that women have never had access to power as lawyers to the same extent as men: it is almost impossible to imagine "only" three men ever on the Supreme Court of Canada, "only" one male Prime Minister in history, or "only" two male Presidents of the Canadian Bar Association. As the quotation at the beginning of this paper suggests, the issue of language is connected to issues of power.

The issue of nondiscriminatory language use also relates to the power of visual images. As Talking Gender suggests, "images, more than language, tell us who we are and who we should aspire to be."91 Using an example of slides used to teach architecture students about the inside of an office building (in which all the men are executives and all the women are support staff), the authors suggest that the slides send a message about the relative position of women and men in society:

"Unlike written language, which requires the reader's conscious attention, images can exercise their effect passively. You do not have to concentrate on an image to be affected by it. And while many people are becoming critical 'consumers' of language, fewer realize how images and the image business work."92

The issue of nondiscriminatory language is also related to differences in speech patterns for men and women, and the way these differences affect relative access to the power of speech. As Lynn Hecht Schafran has reported, language patterns frequently used by women ("characterized by questioning intonations, hedges, and overly polite forms") may be less authoritative in courtrooms.93 Indeed, there is recent scholarship about the patterns of speech

footnote 12 at 74ff. provides an excellent overview of institutional and individual changes in Canada in terms of nondiscriminatory language relating to gender.

91 King, ed., supra footnote 12 at 56.

92 Ibid. The authors review several problems with the biased presentation of visual images and offer excellent checklists for those involved in the publication of visual images, including editors, designers, photographers, illustrators, etc. See at 66ff.

93 L. H. Schafran, "How Stereotypes about Women Influence Judges" (1985) 24:1 Judges J. 12. Although it might appear that an easy solution would be for women to learn male speech patterns, there is some difference of opinion about the utility of doing so. For example, Mary Ellen Griffith is not optimistic:

"Explaining that rising intonations are learned, or can be credible, will have no effect on the irrational processes by which everything female is devalued whether it reflects women's behaviour or not. If men used questioning intonations and hedges, abrupt speech would be said to be less credible. The point is that in our culture anything that marks a speaker out as female becomes ... proof of inferiority."


For an excellent overview of these issues, see also D. Spender, Man Made Language (New York: Routledge and Kegan Paul, 1980) at 33ff.

94 Professor N. C. Mendoza-Denton, "The Anita Hill/Clarence Thomas Cross-
in the Anita Hill/Clarence Thomas hearings which suggests significant differences between Hill and Thomas in terms of "wait time" between the end of their responses to questions and the beginning of the next question from a member of the U.S. Senate Committee. In general terms, the research showed that the gap length for Hill was shorter than for Thomas. As well, Thomas gave more monosyllabic answers than Hill, a result which indicates that "Thomas faced an environment favouring an effortless explanation ... much more often than Hill did." In such a context, Hill not only had more difficulty making her position understood but she also faced more interruptive speech patterns than did Thomas. The problems experienced by battered women in court proceedings provide another example of the ways in which women's speech often remains "unheard" by lawyers and judges.

Thus, the issue of nondiscriminatory language in law needs to be understood in the context of power: power which is revealed in the relative access of women and men to leadership positions in law, in the subtle use of pictures which devalue women in legal and other publications, and in the patterns of speech of members of the legal profession which may undermine women's voices and fail to understand their experiences of harm. Moreover, the issue of nonsexist language is also connected to other aspects of nondiscriminatory language use: the need to use words so as to avoid biases about race, class, sexual orientation, ability, etc., and to encourage innovation and inclusiveness for people in these groups, some of whom are women. In these cases as well, the issue of nondiscriminatory language use is an issue about power. For members of the legal profession especially, the use of nondiscriminatory language is a necessary part of achieving nondiscriminatory goals in the law. As the authors of Talking Gender explain:

"[Nonsexist language] policies highlight the way in which language reflects and contributes to social inequalities. And it is only through raising awareness of these inequalities that social change can be effected."