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# WOMEN AS LAWYERS IN TORONTO

By LINDA SILVER DRANOFF\*

Our society takes women seriously only if they have impressive credentials, such as degrees from . . . law schools. I wanted to be taken seriously . . . so I needed the credentials.<sup>1</sup>

Few women in Toronto have these credentials; indeed, only about 3%<sup>2</sup> of the Metropolitan Toronto practising bar are women. There are, no doubt, numerous reasons for this low representation, but it seems reasonable to suppose that a career in law does not fulfil traditional social expectations.<sup>3</sup> Although the history and rationale<sup>4</sup> of these expectations are beyond the purview of this paper, they underlie everything that is said about women as lawyers. The scope of this study was limited to an evaluation of whether women lawyers are taken seriously by the legal profession, by the members of society who buy legal services, and by the women themselves.

Some members of the legal profession charge that women will give up the practise of law for marriage and motherhood,<sup>5</sup> that they approach law as a hobby,<sup>6</sup> and therefore there is a basis for treating women lawyers differently from male lawyers. On the other hand, some women charge the profession with discriminatory hiring practises, pay scales and limitations in choice of specialty.<sup>7</sup> A survey was conducted of women lawyers who practise in Toronto in an attempt to ascertain if and to what extent women lawyers are treated differently from male lawyers, and if there are valid reasons for this treatment in light of the way Toronto women lawyers practise law. How they combined being a woman with being a lawyer was of particular interest.

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<sup>1</sup> Quoted by D. Glancy, *Women in Law: The Dependable Ones* (1970), 21 Harvard Law School Bulletin No. 5, 23 at 30. This will be referred to as the Harvard Study.

<sup>2</sup> The figure of 3% was ascertained from the *Toronto Legal Directory* (J.C. Jones, Toronto: University of Toronto Press, 1971) and *The Canada Law List* (P. Egan, Toronto: Canada Law Book Ltd., 1971).

<sup>3</sup> This shows signs of change. Fifteen percent of this year's first year class at six Ontario law schools are women. F. Folk, *On Women in Law* (1971) Articling Newsletter (Toronto: Osgoode Hall Law School), 4 and 8.

<sup>4</sup> See generally, for example, C. Bird, *Born Female* (2d ed. New York: Simon and Schuster, 1971); G. Greer, *The Female Eunuch* (London: Paladin, 1970); Report of the Royal Commission, *The Status of Women in Canada* (Ottawa: Information Canada, 1970).

<sup>5</sup> Folk, *op. cit.*, reporting on the experience of female law students seeking positions under articles.

<sup>6</sup> C. Harvey, *Women in Law in Canada* (1970), 4 Man. Law J., 9 at 12.

<sup>7</sup> *Id.* at 10.

*Scope of the Survey*

A questionnaire was sent to the 152 women lawyers<sup>8</sup> in Metropolitan Toronto, and 33% returned completed forms.<sup>9</sup> According to accepted research principles such a response constitutes a valid sample. The respondents are representative<sup>10</sup> of most major Canadian law schools and practically every generation.

TABLE I SCOPE OF RESPONSES

Entered law school:	University			Year Totals	Age at entry:			
	Osgoode Hall	of Toronto	Other**		17-20	21-23	24-26	27-29
1916-20	1			1		1		
1921-25	1			1			1	
1926-30	3			3	2		1	
1931-35								
1936-40								
1941-45	3	1		4	1	3		
1946-50	3	1		4	1	3		
1951-55	4			4	1	3		
1956-60	4	1	2	7		6		1
1961-66	12	8	6	26	4	19	1	2
Total	31	11	8	50	9	35	3	3

\*\* "Other" law schools are Dalhousie, Queens, Ottawa, and Western Ontario.

## I THE ATTITUDE OF THE LEGAL PROFESSION

Women lawyers are not unanimous in their feelings about discrimination. Indeed, the feelings they reported do not always coincide with the facts they reveal about their working situations. Those who are vocal about their view that no discrimination exists feel that "prejudice" is "used as an excuse by

<sup>8</sup> The legal directories (note 2 *supra*) listed 135 women lawyers in active practise; the names of an additional 17 who are not now in practise were provided by the Alpha Mu Chapter of the Kappa Beta Pi Sorority. The survey appears to have reached the total number of women lawyers in Toronto, even though a number of them list themselves in professional directories only by initials. The female identity of 24 of these were ascertained but one cannot say with certainty that there are not an additional number of women lawyers whose identity has been hidden behind initials. Analogous figures also tend to prove the accuracy of the count of 152 lawyers. The law schools represented in the survey had graduated 158 women lawyers by 1969 (Harvey, *supra*, note 6 at 37). Furthermore, Ontario had admitted to the bar by 1970 a total of 308 women (Harvey, *id.* at 35) and Toronto usually houses half the Ontario lawyer population.

<sup>9</sup> In addition, two women wrote letters explaining why they would not complete the survey. Basically, they did not feel attention should be drawn to women lawyers as a separate group within the profession.

<sup>10</sup> One caveat may be necessary. It is not certain that a representative number of women who are not now practising were surveyed. Although the questionnaire reached 17 non-practising lawyers (11% of those eligible to practise), of whom 2 responded, it can only be suggested by analogy to U.S. statistics that the survey did reach most inactive lawyers — the Harvard Study included a non-practising group of 16% (Glancy, *supra*, note 1 at 25).

those who are not prepared to make the sacrifices or do not have the ability to succeed in law." Every one of the women who volunteered a written comment on this matter said that if a woman works hard and does a good job, she will be accepted. This advice to women entering male-dominated professions to "work hard" is apparently traditional, but while it is "good, rational advice . . . it just does not work. Women have worked hard. They have proved their ability many times over, but the truly important doors still remain closed to them."<sup>11</sup> Indeed, more women than men believe that merit can overcome prejudice. "Men sometimes find such women irritatingly naive," comments one observer.<sup>12</sup> Has this vocal segment actually been able to avoid discriminatory treatment? Or are they ignoring its existence? Perhaps they were the fortunate ones who knocked on open doors.

On the other hand, a number of the lawyers clearly perceived an anti-female bias. One respondent summed up what seems to be the prevailing attitude: "I had to prove I could do it against the presumption that I wasn't capable . . . This has now virtually disappeared as my confidence and the firm's confidence in me has increased — an uphill struggle though."

Before revealing the statistics of the survey responses, it would not be amiss to caution against excessive reliance on *specific* figures. Questions in written surveys which query attitudes produce only a general idea of trends.

A. *Hiring Practices*: A recent survey of Toronto law firms in the market for articling students revealed that 40% of the firms replying openly admitted to a prejudiced attitude toward women applicants.<sup>13</sup> However, only 26% of the women in our study reported biased treatment. Thirty-seven women (74%) said they had encountered no discrimination in locating an articling job, thirty (60%) had no unpleasant experiences in searching out a first job, and only three persons found prejudiced attitudes in seeking subsequent employment. Of the thirteen who did encounter discrimination in obtaining an articling job, eight said they had been led to these feelings by express statements and three indicated suspicious circumstances. Of the seventeen (34%) who did encounter discrimination in locating their first job, ten heard express statements to this effect and seven felt the circumstances were suspicious. Married women did not seem to meet any greater or lesser bias than single women.

A recent Canada-wide survey<sup>14</sup> of women lawyers conducted by Cameron Harvey reported a greater incidence of discrimination, 39% nationally and 43% of the survey's Ontario respondents revealed instances of discrimination. Harvey, in analyzing the survey responses, could find no particular factor separating the group who felt bias from those who did not.

Has there been any tendency for the situation to change as more women enter law? Only one of those who entered before 1940 could say she had *not* met with discrimination in hiring. The 1940-50 group were evenly split

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<sup>11</sup> B. Dinerman, *Sex Discrimination in the Legal Profession* (1969), 55 A.B.A.J. 951 at 954.

<sup>12</sup> Bird, *supra*, note 4 at 87.

<sup>13</sup> Folk, *supra*, note 3 at 4.

<sup>14</sup> See note 6.

between those who could point to such treatment and those who could not. No one who entered between 1951 and 1961 reported any problems in finding an articling job, although one or two had located first jobs with difficulty. Among those entering after 1962 (beginning practise in 1967) about one-third perceived discrimination. Noteworthy is that among the group of 1966 entrants who began practising this year more had trouble finding first jobs than did not. This rise in reported discrimination may be more closely related to the increasing number of lawyers graduating than to an increase in anti-woman bias.

Does the resistance that some women encounter come from within the profession or from clients? Some lawyers suggest to women looking for positions that they would hire them but for their clients' objections to dealing with a woman. In response to the query: "How have your clients responded to the fact that you are a woman?" one woman indicated that her clients had been 100% indifferent and another said they were 'most pleased'. One reported the occasional comment she received that "a woman lawyer is more conscientious and concerned." The rest had had, as might be expected, a mixed reaction. Most had been accepted by at least 80% of their clients. Only seven encountered a flat rejection from a client; and of these, none had more than 5% of clients do so. Another seven noted that some clients expressed a preference for a male lawyer but were nevertheless willing to deal with a woman; most of the seven had had no more than 5% of their clients react this way, although one had 20% and one had 30% of their clients with such reservations. Six of those surveyed found some clients who would deal with them only if a male lawyer was also involved in the case; four of these encountered only 4 to 5% of clients with this stipulation, while one ran into this 10% and another 20% of the time. Of the seventeen lawyers who gave information on their male colleagues' reaction to client prejudice, half (eight) said their colleagues tried to convince the client of their merit. One male associate relieved the woman lawyer of the case, one told the client to go to another firm and seven did nothing.

It is difficult to evaluate the precise weight to be given to client resistance as a cause of discrimination. Women lawyers may be exposed to far fewer clients than are male lawyers,<sup>15</sup> as a result of the latter's anticipation of client prejudice. In fact, the lawyer who reported '100% indifference' to the fact that she was a woman also pointed out that "most of my work is referred through a department and I found no trouble . . ." In the experience of one respondent "most of the discrimination comes from within the profession rather than from clients."

**B. Choice of Firm:** The fifty lawyers surveyed reported an aggregate of 110 different working situations during the course of their careers. Of these 110, the largest proportion (32%) has been with 2-5 lawyer firms and another 21% with government. The high representation in 2-5 lawyer firms is not surprising, since the typical Toronto lawyer practises in a 2-5 man firm.<sup>16</sup>

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<sup>15</sup> This was a finding of the Harvard Study. Glancy, *op. cit.* at 27.

<sup>16</sup> H. Arthurs, J. Willms, L. Taman, *The Toronto Legal Profession: An Exploratory Survey* (1971), 21 U.T.L.J. 498 at 505. Note that 6% of the respondents to this survey were women.

About the same proportion of women as men are in private practise, suggesting that the ability to be independent is exclusive of sex. What is significant is that proportionately more women lawyers than the Toronto lawyer population at large are attracted to government and other non-private practise positions. The Arthurs, Willms, Taman study of the Toronto legal profession disclosed 11%<sup>17</sup> in non-private employment, whereas 28% of the women here surveyed in this study are presently in such positions. Of these, eleven or 22% are with the government: For nine of these, it has been their only job; five however later transferred to a 2-5 lawyer firm, one went to a 25+ firm and one to a corporation's legal department. None of those who began in government later opened their own office. The concentration of women lawyers in government positions is also true in the United States.<sup>18</sup>

There is no easy explanation why government attracts so many women lawyers. It is possible that there is less discrimination, or that women are drawn by the security a civil service appointment offers. Perhaps it is because the government tends to offer more unique opportunities such as research, and the possibility of influencing legislation. Women may have less competitive drive than men for financial reward and therefore are not deterred by government salary scales which, although generous at the outset, are limited in potential. Perhaps they could not find work elsewhere. One respondent volunteered the comment that "many of us would prefer working for firms but found no openings and so are presently in government, trust companies, etc."

TABLE II CHOICE OF FIRM

SIZE OF FIRM	Breakdown of Aggregate Number of Positions Held		Present Position		Comparative Survey of Toronto Legal Profession <sup>19</sup>				
	No.	%	No.	%	%				
Self	12	10.9	7	14	12				
2-5	35	32	13	26	38				
6-15	16	14.5	5	10	11				
16-25	7	6.4	3	6	12				
25+	12	10.9	5	10	16				
Government	NON P R I V A T E	23	11		11				
Corporate Legal			4	28		25.4	3	14	28
Teaching			1						
No response			3	6					
	<u>110</u>	<u>100%</u>	<u>47</u>	<u>100%</u>	<u>100%</u>				

<sup>17</sup> *Id.*<sup>18</sup> Bird, *supra*, note 4 at 74.<sup>19</sup> Arthurs *et al*, *supra*, note 6 at 505.

The largest firms (with more than sixteen lawyers) have fewer women than men lawyers on their rosters. The large firms represent most of the major corporations and it was suggested by one respondent that women are not welcomed in the corporate boardroom. This may be because women do not look the part; they do not have "face validity".<sup>20</sup> Mabel Van Camp, recently appointed to the Ontario Supreme Court, suggested why a woman may find difficulty being accepted (and perhaps her comment applies particularly to the large firm) ". . . socially — on the golf course, going out to lunch — (it's) easier to take another man along."<sup>21</sup>

C. *Choice of Specialty*: Do women get pigeonholed into the more obviously 'mothering' aspects of lawyering? The view in 1927 that "some cases . . . involving the interests of women and children may be more sympathetically and successfully conducted by a woman"<sup>22</sup> is apparently still prevalent. Government lawyer Maureen Sabia was reported recently to have said that "women are very often encouraged to draft wills or work on real estate . . . you're told you can't go into court and battle it out because you're too weak."<sup>23</sup>

The survey responses do show that women lawyers are involved in many areas of the law. In response to a request to characterize their present practise of law, many checked off more than one area, thus making it impossible to ascertain precisely their specialty. But the figures do suggest the extent to which women lawyers are represented in certain fields. It was most interesting to observe the statistics for those areas in which women are reputedly pigeonholed. Real estate for example, is practised by 20 of the 50 surveyed, the highest proportion of women involved in any one specialty. Only three of these however, practise real estate because it is a personal preference or talent, and of the three only one practises real estate exclusively — the other two combine it with practise in other areas. The others report choosing a real estate practise for reasons other than personal preference: One, for example was offered a job in the area; another drifted in; two joined a family member in an established practise and three seemed to find the working hours most convenient. The second highest concentration is the fifteen women who report a general practise, followed by thirteen who spend time in wills and estates work. This is another area in which women are reputed to be well suited since they are supposed to "bring personal warmth to working with widows and orphans."<sup>24</sup> Only two of the thirteen however, chose it as a personal preference and they combine their estates work with practise in other areas. Surprising was the low representation of matrimonial work, assumed to be a favourite among women practitioners, and only mentioned by six lawyers. One in fact said that she refused matrimonial business, finding it "too exhausting".

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<sup>20</sup> Bird, *supra*, note 4 at 59.

<sup>21</sup> As reported in the Toronto *Globe and Mail*, November 12, 1971.

<sup>22</sup> R. Wigle, *Sisters in Law* (1927), 5 Can. Bar Rev. 419 at 420, quoting the Manchester Guardian Weekly, February 4, 1927.

<sup>23</sup> Toronto Daily *Star*, October 29, 1971.

<sup>24</sup> Bird, *supra*, note 4 at 74.

On the other hand six women engage in civil litigation, an area which is supposed to have the greatest anti-female bias. Each of the six was drawn to it as a personal preference. Litigation is apparently not a specialty which a woman drifts into out of uncertainty or convenience or financial remuneration, and certainly not because she had a job offer. Another six do corporate work and seven commercial. Like their male counterparts, few women are involved in either criminal or tax law. Women lawyers have found opportunities in a variety of other legal fields: Of those surveyed, three are in municipal employ, two in an administrative context, two in research, two in Family Court work, one in securities and one a judge.

The fifty respondents offered an aggregate of seventy-one reasons for their choice of specialty. "Personal preference/talent" was the reason given in 46.5% of the cases, 23.9% giving this as the only reason for their choice of specialty. "Job offer" was mentioned by 21%, while for two-thirds of these, the area in which the firm asked them to specialize coincided with their personal preference. Only three suggested a more attractive financial remuneration as a motivating force in choosing their specialty and these were drawn to general practise, Family Court and Municipal law. Eight picked their specialty for the convenience of their hours, five because a family member was in the area, and five were not sure why they chose as they did. Only two felt compelled to choose an area which they recognized as more acceptable for women, one of whom went into a corporate legal department, and one admitted candidly that she chose her specialty (government) because "it was the only job I could get."

#### D. Income

TABLE III INCOME RANGE FROM THE PRACTISE OF LAW

Number of years in practise	Under \$7,500	\$7,501 - \$10,000	\$10,001 - \$15,000	\$15,001 - \$20,000	\$20,001 - \$30,000	\$30,000 and up
Up to 2 years	2	2	11	1		
2-4 years			6	3		
5-10 years			3	2	1	1
11-15 years		1		1		1
16-20 years					3	
21-30 years					1	1
31 years and over	1		1	1	1	
Number of years not indicated		2				
	<u>3</u>	<u>5</u>	<u>21</u>	<u>8</u>	<u>6</u>	<u>3</u>

(No response: 2; not presently in practise: 2)

Since comparable figures for male lawyers were not available, evaluation of the income statistics in Table III is not possible. One may point out however that generally speaking in Canada a woman's higher level of education "is not reflected in her earnings".<sup>25</sup> Suggestive too, are the findings of

<sup>25</sup> Royal Commission, *supra*, note 4 at 61.

several United States surveys, which compared income figures for male lawyers. In White's thorough and authoritative study of female law graduates in the United States, he proved conclusively that men lawyers there were paid substantially more than women for the 1965-66 period under study.<sup>26</sup> White isolated a number of possible reasons in an attempt to evaluate the discrimination factor and concluded that "the male-female income differential is caused principally by discrimination against women . . . our statistics rule out or render unlikely the other most plausible explanations."<sup>27</sup> The Harvard Study found that initially, men and women receive the same salaries. However, in a survey group made up of graduates from the same year, fewer than 12% of the women were earning more than \$20,000 compared with 57% of the men.<sup>28</sup>

## II WOMEN LAWYERS AS PROFESSIONALS

A. *Education Pattern*: Most women began their legal education before reaching the age of 23 (Table I), having proceeded directly through the educational process. Thirty-five women (70%) went directly to law school, fifteen women took time off, many for one year, two for two years, four for three years and two for four years. The tendency to delay entry to law school is not a recent trend; the proportion of those who take time out to those who proceed directly seems to have remained constant throughout the years. The most popular jobs during this hiatus were in library science, teaching, social work, secretarial work and nursing. Explanations for the delay ranged from lack of funds (four responses) to uncertainty about career goals (seven responses). We can only speculate that the reason for this "uncertainty" was their apprehension that a woman may not be accepted as a lawyer.

Once ensconced in law school, women do not appear to have any higher turnover and dropout rates than do men,<sup>29</sup> and they do well scholastically. Fifty-eight percent of those surveyed characterized their standing as in the top third of their class, 32% in the middle third and 10% in the bottom third. This percentage roughly approximates the Arthurs, Willms, Taman study of the Toronto legal profession.<sup>30</sup>

B. *Marriage, Motherhood, and Lawyering*: Thirty-two wives and twenty-two mothers were represented in the survey responses. They have combined their law careers with marriage and motherhood in different ways.

Nine women have shared home and professional life with a lawyer-husband, and all but one of these wife and husband lawyer teams have children. This life style has allowed them to carry out their dual responsibilities with flexibility. One respondent reported that her arrangement with her husband provides that she is available at all times "for all children's activities,

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<sup>26</sup> J. White, *Women in the Law* (1967), 65 Mich. L. Rev. 1051 at 1055.

<sup>27</sup> *Id.* at 1084.

<sup>28</sup> Glancy, *supra*, note 1 at 27.

<sup>29</sup> Dinerman, *supra*, note 11 at 953.

<sup>30</sup> Arthurs *et al*, *supra*, note 16, at 504 (and Table 11).

doctor's appointments, lessons and emergencies." It has been suggested that this kind of professional partnership is the best solution to "the woman's problem of combining career with family and getting the best from both worlds. . . ."<sup>31</sup>

Another ten are or were married to lawyers but do not practise with them and of this group, one-half are mothers. The husbands of the remaining thirteen in the sample are 'professionals' and include three dentists, three university professors, one stockbroker, engineer, businessman, civil servant and teacher. Being married to a lawyer or other professional often means that the female lawyer has a husband with sufficiently flexible working hours to be able to assist her in coping with emergencies.

Limitation of family size is another means women lawyers seem to have chosen to deal with their dual responsibilities. Of the thirty-two women who have ever been married, ten (31%) remained childless, nine (28%) had only one child, eight (25%) had two children, four (13%) had three children and one (3%) had six children. When we add to this the eighteen single women in the study who did not report marrying and child-bearing, 56% of our total sample of women lawyers are revealed as childless and 74% have no more than one child. This seems a rather high proportion in relation to the female population at large and possibly indicates that many women still believe that it is children *or* a career that is acceptable and possible in our society, rather than children *and* a career. In fact a study of Harvard Law graduates revealed that women lawyers are more likely than male lawyers<sup>32</sup> to remain single or if they do marry, remain childless.

The data suggests that the women try to plan their pregnancies to minimize conflict with their professional life. Information on thirty-nine pregnancies was received; sixteen or 41% of the pregnancies occurred before they began their law practise. This is a recent trend. Women who entered law after 1956 were more likely to have started their families before beginning to practise law than were women graduates of previous generations. Women who entered law before 1950 were just as likely to *eventually* marry and bear children as recent graduates, but they usually delayed having a family until their law practise was established.

A large proportion (59%) of lawyer-mothers had one or more children while in practise. The potential disruption to law offices that this is said to produce concerns many lawyers who do the firm's hiring. Women lawyers of all ages are asked at articling and permanent job interviews when they intend to marry or, if already married, when they plan to have their children. The assumption seems to be that they will not continue to work after their children are born.<sup>33</sup>

<sup>31</sup> E. Coxhead, *Women in the Professions* (London: Longmans Green, 1961) at 30-31.

<sup>32</sup> Glancy, *supra*, note 1, at 24. 63% of the women in the sample were married compared to 81% of the men; 69% of the married women had children as compared to 82% of the married men.

<sup>33</sup> This was reported by our respondents as well as by articulated students surveyed by Folk, *supra*, note 3 at 4. See also, for the U.S. situation, a report in the *Toronto Globe and Mail*, October 29, 1971.

The facts suggest, however, that this concern is ill-founded. Only 27% of the twenty-two mothers surveyed suspended their law practises for any appreciable period of time in connection with child-bearing and rearing. Most (73%) returned to their practise within a reasonable period of time after their children were born. For women with an active law practise, the average length of time away from the office for child bearing was approximately fifteen weeks (six weeks before birth and nine weeks after). And for those women who took time off to rear their child, the average time away from law was one year.

With thirty-nine pregnancies reported (Table IV), twenty-three children were born while the women were in active practise. In 34.7% of these cases the woman worked until up to two weeks before the baby was due to be born; in 52% of the pregnancies, no more than five weeks was spent away from the office before delivery. In almost 42% of the pregnancies, the woman returned to practise within four weeks after delivery. Another 37.5% returned within two to six months. Of the remaining 20% (six women), three let three years pass before resuming practise, one waited six years and another seven years. One respondent indicated a seventeen-year hiatus in which to raise a large family. Two of the respondents are presently not practising, one having children over 10 years old and one who remains "a partner on an indefinite leave of absence."

Today, women are more likely than ever before to continue practising with children under six, although there were always a fair number who did so in past years. The survey reveals that 50% of the pre-1960 graduates were likely to practise while their children were small. However, among the post-1960 graduates this percentage has risen dramatically to 83%.

TABLE IV THE EXTENT TO WHICH LAWYERS IN PRACTISE SUSPEND ACTIVITIES IN CONNECTION WITH THEIR PREGNANCIES

<u>Practised until:</u>		<u>Resumed practise after delivery:</u>	
Due date	1	1 week after	3
1 week before	6	2 weeks after	1
2 weeks before	1	3-4 weeks after	6
4-5 weeks before	4	8-12 weeks after	4
8 weeks before	7	14-20 weeks after	3
10-12 weeks before	2	24-36 weeks after	2
16-20 weeks before	2	3 years after	3
Suspended practise		6 and more years after	3
before conception	1		

On the basis of this evidence, there seems to be little justification for male lawyers' concern that a woman lawyer will be lost to the profession for an unduly long period of time because of the exigencies of her female function. Most continue to work. In 1927 it was accurate to say that "approximately half the number who are qualified give up the active practise for

matrimony,"<sup>34</sup> but that certainly is not true today. Now, not only do women combine matrimony with a law practise, but 44% of the women in the study combine their practise with a family. The average length of time "lost" to law because of child-bearing is fifteen weeks per pregnancy which, spread over the average working life of forty years, amounts to one and one-third weeks per year. It is interesting to note that the birth of a baby can affect a male lawyer's occupation pattern as well: The Harvard study revealed that 3% of the male graduates surveyed left their first jobs because of the birth of a baby.<sup>35</sup> While the men's motivation may have been to increase their income due to increased family responsibilities, rather than to remain at home to care for a child, the effect on the law firm is the same: It loses a lawyer.

Traditionally, women have been expected to be solely responsible for household management. Many women lawyers still seem to live according to this assumption. Among those surveyed a number have ordered their lives in the traditional pattern that expects a working woman to give personal and adequate attention to both her home and career roles. About 25% of the group fits this description. Six families have a cleaning woman once every week or two. In three families, the woman lawyer has the sole responsibility for cleaning; in five, she does all the laundry; in six, all the cooking; and in three, all the child-care. One respondent noted that she had tried to keep the house herself but regretted that she eventually had to hire a housekeeper. She seemed to feel that she was shirking her womanly responsibilities by doing so, and yet this was a woman lawyer earning in excess of \$25,000 annually and working long hours. She could well afford a helper, and could justify it in terms of her working hours, and yet apparently still felt guilty. Nine families however, do have full-time housekeepers. What is surprising is that all of them do not, considering a lawyer's income. The salaries paid out for housekeeping ranged from \$40 to \$75 a week, the average being \$61.25.

One might think that shared responsibility for household management between husband and wife would be one logical means of relieving a married woman lawyer from some of the drain on her energy that household care involves, yet few families opt for this solution. In no family did the husband undertake sole responsibility for any particular housekeeping duty, but one woman indicated that her husband shared household cleaning tasks, two helped with cooking and two shared child-care duties. These families also had part-time help. Three families said that duties are shared among wife, husband and housekeeper.

Thus women have blended marriage, motherhood and law in a variety of ways. Some marry but have no children, or a small family. Those who do have children either do so before they begin to practise, suspend practise to raise them through the pre-school years or, in the majority of cases today, they return to work almost immediately after the child is born and have child-care assistance at home. Only one in the study put her child into a full-day nursery for the pre-school years. Those who maintain their practise are more likely to be in partnership with their husbands. In any event, it seems clear that the

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<sup>34</sup> Wigle, *supra*, note 23 at 420.

<sup>35</sup> Glancy, *supra*, note 1 at 29.

nature of a lawyer's life and income may make it easier for a woman lawyer to manage. Where her husband does not see his role as encompassing household assistance, at least a woman lawyer is in a position to hire outside help.

C. *A Hobby?* Women lawyers take their work seriously. Forty-six percent work more than forty-five hours a week, including 8% who spend more than sixty hours a week on their practise. Another 42% devote thirty-five to forty-five hours a week to the practise of law. Three of those with young children (6%) have a part-time practise. Twenty-nine women take work home, spending from one to five hours a week. All the women, whatever their marital and motherhood status, average about the same working hours, although those who are mothers carry on somewhat more of their practise from home.

Women lawyers have a job mobility rate of 40%. Fifty percent of those surveyed have had just one job during the course of their careers while 40% have had two or more positions (ten did not answer the question). Women lawyers are not significantly more mobile than the Toronto legal profession as a whole. In the Arthurs, Wilms, Taman study, 42% of the lawyers had had more than one position during their careers and 56% had been in only one work situation (2% did not answer the question).<sup>36</sup> Both survey groups indicated an average of two positions for each respondent. White's American study found that women lawyers had higher job mobility, but offered no explanation for this.<sup>37</sup> The Harvard study however, showed women to be less mobile than men. Over 55% of the women in the Harvard sample had made no more than one change in employment compared to 39% of the men.<sup>38</sup>

The facts revealed by this survey clearly show that women lawyers in Toronto take their career responsibilities seriously and have what are considered stable work habits.

### CONCLUSION

Women express a variety of feelings about their role as lawyers. Some are pessimistic. Maureen Sabia, a lawyer for the Ontario Law Reform Commission is reported to have said ". . . I'm afraid I'm not . . . optimistic . . . for equality of women in my lifetime — perhaps in my children's or grandchildren's";<sup>39</sup> Judy La Marsh, one of Toronto's more famous women law graduates has felt this discrimination so acutely that she admits to recently becoming defensive about being a woman. She is discouraged about the future role of women and regrets her view that their position will slip backward.<sup>40</sup>

On the other hand, some women express hopefulness. One survey respondent commented that she thought the discrimination she had experienced through the years was due to the paucity of women lawyers. "The people in charge of hiring had had no experience with a woman lawyer and were hesitant to say 'take a chance'. I think this attitude has changed." But

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<sup>36</sup> Arthurs *et al*, *supra*, note 16 at 505.

<sup>37</sup> White, *supra*, note 27 at 1092.

<sup>38</sup> Glancy, *supra*, note 1 at 28.

<sup>39</sup> As reported in the *Toronto Daily Star*, October 29, 1971.

<sup>40</sup> J. LaMarsh, *Memoirs of a Bird in a Gilded Cage* (Pocket Books, 1969) at 322.

have they? Judy La Marsh went through law in 1949 and found at that time that the best firms were closed to herself and fellow women graduates. She tells of her experience in 1968 when, after having been a federal Member of Parliament and Cabinet Minister, she looked for a position with a Toronto law firm, and although the younger members of the firm were enthusiastic, the senior partners apparently could not accept a woman in their firm, even one with Miss La Marsh's credentials. How did she feel?

"I suppose I thought after the intervening 20 years . . . that such a dodo-like attitude was extinct. But it is all-too-true that the dodos still exist in Toronto law."<sup>41</sup>

Has militance been considered by Toronto women? Although the Women's Equal Employment Opportunities Act prohibits classification of jobs by sex, and has been Ontario law since December 1, 1970, no woman lawyer has invoked it. As Felicia Folk points out<sup>42</sup> such labour statutes are more amenable to industrial employment. She suggests moreover, that since the legal profession is self-governing, it is incumbent upon the profession to deal with whatever problem does exist.

In the United States, militance by women lawyers (and some men) is growing.<sup>43</sup> In the last two years, many U.S. law schools have been forced to abandon anti-female bias in admission policies, under threat of de-accreditation by the Association of American Law Schools. Some prestigious law firms in major U.S. cities have been barred from holding recruiting interviews on campuses because of hiring practices and "slurring remarks to and about the women they interviewed". Legal proceedings have been instituted under federal and state Equal Employment Opportunities Acts.

At the same time as pessimism, hopefulness and militance may have their advocates, there are many who simply deny that a woman in law is treated differently. A number of women who responded to the survey said that their sex was irrelevant, that they 'do not think like women when practising law.' Since discrimination is based on such deep-seated myths concerning women's intellect, motivation, and emotional stability,<sup>44</sup> women who themselves accept the mythology about female frailty must *have* to deny their femaleness when they are acting as lawyers, in order to take themselves seriously as lawyers. Moreover, such denial of their womanhood may help some women resolve their anxiety about success, which is considered a more acceptable male ambition. It has been documented that women show three to four times more anxiety about success than do men, because they fear that it will destroy their identities as women.<sup>45</sup> Another explanation for this attitude may be that some women are so grateful for being allowed an opportunity to work in a male-dominated field that they do not feel justified in expecting equal treatment. Or perhaps

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<sup>41</sup> *Id.* at 292.

<sup>42</sup> Folk, *supra*, note 3.

<sup>43</sup> As reported in the *Toronto Globe and Mail*, October 29, 1971.

<sup>44</sup> See Dinerman, *supra*, note 11 for a suggestive analysis and refutation of this myth as it applies to women lawyers.

<sup>45</sup> Glancy, *supra*, note 1, at 31 referring to Dr. M. Horner, *Why Women Fail* (1969), *Psychology Today* (November issue).

their perceptions are correct in relation to themselves, and some women have not encountered bias.

Some male lawyers may also display anxiety about successful women. In the words of one woman, "A well-dressed, acquainted and endowed woman applicant arouses immediate suspicion although this is just what firms pray for in a man."<sup>46</sup>

Indeed, why is law regarded by many men and women as an inherently masculine field? The answer may lie in the adversarial nature of the legal system, something which most people feel requires an aggressive personality in order to be successful. A lawyer needs to have "mental alertness, unusual self-confidence, a logical mind, and a non-retiring personality."<sup>47</sup> These qualities tend to be associated with masculinity, while the female is expected to have intuition, tact and sensitivity (qualities which are undoubtedly also required in the practise of law by both men and women.) It is unfortunate that people often assert such simplistic dichotomies between male and female traits.

This study suggests that the traditional excuses for differentiating between female and male lawyers are not valid. Attitudes which question a woman's temperamental and practical suitability for law are rooted in social mythology. One hopes that the legal profession will come to view femaleness as neither a handicap nor an advantage, but simply a personal attribute unrelated to fitness as a lawyer.

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<sup>46</sup> Armstrong, *Women in the Law* (1951), Harvard Law School Record, December 6 and 13 at 2, as cited in Dinerman, *supra*, note 11 at 952.

<sup>47</sup> Dinerman, *supra*, note 11 at 953.