



GENDER IN|JUSTICE

TRINITY COLLEGE / DUBLIN

Gender InJustice Feminising the Legal Professions?

IVANA BACIK / CATHRYN COSTELLO / EILEEN DREW

Trinity College Dublin Law School, 2003

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Dedication

To the early women pioneers who used their hard-acquired professional knowledge and placed their faith in the transformative potential of litigation, confrontation and agitation, this study is dedicated.

Contents

Preface	by President Mary McAleese	pg 9
	Introduction	pg 29
Chapter 1	Setting the Scene – From Pioneers to Presidents	pg 40
Chapter 2	Literature on Lawyers – A Comparative Perspective	pg 98
Chapter 3	Learning to Lawyer – Students' Views	pg 164
Chapter 4	Lawyers' Lives – Survey of Legal Professionals	pg 204
Chapter 5	Why Law? – Motivations, Aspirations and Expectations	pg 214
Chapter 6	Uneven Career Progress – Choice or Prejudice?	pg 226
Chapter 7	'Having it All' – Work/Life Balance	pg 242
Chapter 8	Short-Changed? – Gender Segregation and Pay Gap	pg 262
Chapter 9	'Good Girl' and 'Old Boys' – A Culture of Discrimination?	pg 276
Chapter 10	Improving Opportunities - Remedies, Redress and Enforcement	pg 304
Chapter 11	An Agenda for Action - Key Findings and Recommendations	pg 320
Appendix 1	Questionnaire for Legal Professionals	pg 345
Appendix 2	Women in Law Project - Law Student Survey	pg 380
Appendix 3	Letter to Solicitors' Firms on Partnership	pg 387
Appendix 4	Letter to Institutional Clients on Briefing Practices	pg 391
Appendix 5	Letter to Law School Deans on Staff and Curriculum	pg 395
Appendix 6	List of Professional Bodies Contacted	pg 398
Appendix 7	Reported Discrimination Cases Taken by Irish Lawyers	pg 404
	Bibliography	pg 410





UACHTARÁN NA hÉIREANN
PRESIDENT OF IRELAND

Preface by the President of Ireland, Mary McAleese

I am delighted to welcome the publication of this report and glad to see the issues and concerns it raises discussed and analysed in such depth. From my own personal experiences as a woman and a lawyer, I am familiar with many of these.

This study is timely. Perhaps the most dramatic change in the legal profession in the last decade or so has been the remarkable upsurge in women studying law and qualifying as lawyers. There are now unprecedented numbers of women in the judiciary and at senior levels both as solicitors and barristers. But while these encouraging achievements should be celebrated, there is no room for complacency. Self regulation of the profession is a privilege that brings with it certain responsibilities, notably a responsibility to ensure that sufficient accommodation is made for a significant proportion of the membership.

This report will play an important part in opening up space for future debate on these issues. As well as presenting current data on gender breakdown within the professions, and a comparative review of developments elsewhere, the report provides a compelling account of the personal histories of many women pioneers who qualified as lawyers at a time when this was a truly extraordinary thing for women to do. Their experiences, and the experiences of contemporary women recounted within, should not discourage a new generation from entering the law. If anything, they should inform and motivate younger women to rise to the challenge both of developing a successful legal career and of changing the legal professions from within.

This comprehensive and thought-provoking report should become essential reading for every woman - and man - working in the law.

Mary McAleese
President of Ireland



Frances Christian Kyle, first woman called to the Bar in Ireland, 1 November 1921.





Averil Deverell, first woman to practise as a barrister in Ireland.





Dr. Frances Moran, first woman law professor in Ireland; first woman Senior Counsel.





Table of Contents



Table of Contents and Chapter Sub-headings

Introduction

- | | | |
|-----|--------------------------------|-------|
| I. | Why a Study on ‘Women in Law’? | pg 29 |
| II. | Methodology | pg 35 |

Chapter 1 - Setting the Scene – From Pioneers to Presidents

- | | | |
|-------|---|-------|
| 1.1 | Women Under the Law | pg 40 |
| 1.1.1 | Brehon Law | pg 41 |
| 1.1.2 | Common Law | pg 41 |
| 1.1.3 | The Independence Movement and the Irish Free State | pg 43 |
| 1.1.4 | The Irish Constitution 1937 | pg 44 |
| 1.1.5 | European Community Law | pg 47 |
| 1.1.6 | The Structure of the Courts and the Legal Professions | pg 48 |
| 1.2 | Women Enter Law in Ireland | pg 51 |
| 1.2.1 | Women Gain Entry | pg 51 |
| 1.2.2 | Pioneers to Presidents – Landmarks for Women Lawyers | pg 54 |
| 1.3 | Women In Law in Ireland | pg 63 |
| 1.3.1 | Judges | pg 63 |
| | <i>Current Women Judges</i> | |
| | <i>Appointment of Judges</i> | |
| 1.3.2 | Barristers | pg 67 |
| | <i>Entry to the Bar</i> | |
| | <i>Dress Codes and Professional Culture</i> | |
| | <i>Patterns and Trends - Women at the Bar</i> | |
| | <i>Attrition Rates</i> | |
| | <i>Taking Silk</i> | |
| | <i>Professional Governing Bodies for the Bar: King’s Inns and Bar Council</i> | |
| 1.3.3 | Solicitors | pg 78 |
| | <i>Entry to the Solicitors’ Profession</i> | |
| | <i>Patterns and Trends - Women Solicitors</i> | |
| | <i>Making Partner</i> | |
| | <i>The Professional Governing Body for Solicitors: The Law Society</i> | |

1.3.4	Legal Academics <i>The Role of Legal Academia</i> <i>Patterns and Trends – Women Legal Academics</i> <i>Gender and the Law Curriculum</i> <i>Patterns and Trends – Women Law Students</i>	pg 84
1.4	Regulation, Redress and Remedies	pg 89
1.4.1	Self-Regulation of the Legal Professions	pg 89
1.4.2	External Regulation: Formal Mechanisms for Redress	pg 92
1.4.3	The New EC Gender Directive	pg 93
1.4.4	Reported Discrimination Cases Taken by Lawyers	pg 94
Chapter 2 – Literature on Lawyers – A Comparative Perspective		
2.1	Sources	pg 98
2.1.1	Feminist Studies on Women in the Professions	pg 99
2.1.2	Women in Law - A Discrete Area of Feminist Academic Inquiry Emerges	pg 101
2.1.3	Reports of Professional Bodies on ‘Women in Law’	pg 105
2.1.4	The Lessons and Limits of Anti-Discrimination Law	pg 114
2.2	Women in Law – Comparative Perspectives	pg 117
2.2.1	Women Gain Entry	pg 117
2.2.2	Judges <i>Current Women Judges</i> <i>Judicial Appointments Procedures</i> <i>Do Women Judges Make a Difference?</i>	pg 124
2.2.3	Practising Lawyers	pg 134
2.2.4	Legal Academia <i>The Role of Legal Academia</i> <i>Patterns and Trends – Women Legal Academics</i> <i>Patterns and Trends – Women Law Students</i> <i>Professional Training</i>	pg 135
2.3	Common Themes of Disadvantage	pg 141
2.3.1	Entering the Professions	pg 141
2.3.2	Career Prospects <i>Partnership</i> <i>Taking Silk</i> <i>Professional Mobility</i> <i>Employed Lawyers – Public Sector and In-House Counsel</i>	pg 143
2.3.3	Specialisation	pg 146

2.3.4	Income Differentials	pg 147
2.3.5	Sport and Privilege: Significance of Social Capital	pg 149
2.3.6	Long-hours Culture and the Dual Burden	pg 150
2.4	Common Themes of Denial	pg 152
2.4.1	The Trickle-Up Fallacy	pg 153
2.4.2	Choice or Prejudice? <i>The Nature of Choice</i> <i>The Nature of Prejudice and Discrimination</i>	pg 154
2.4.3	The Lawless Domain – The Absence of Law in the Professional Workplace <i>Self-regulation</i> <i>Law Formally Unavailable</i> <i>Law Informally Unavailable</i>	pg 156
Chapter 3 - Learning to Lawyer – Students’ Views		
3.1	Background to the Research on Students and Trainees	pg 164
3.2	Undergraduate Law Students	pg 164
3.3	Links with Legal Profession	pg 165
3.4	Motivation for Choosing to Study Law	pg 167
3.5	Career Aspirations	pg 178
3.6	Attitudes/Experiences	pg 179
3.7	Professional Training	pg 188
3.8	Becoming a Barrister – the King’s Inns Experience	pg 188
3.8.1	Motivations in Studying to be a Barrister	pg 189
3.8.2	Expectations about the Bar	pg 190
3.8.3	Experiences at King’s Inns	pg 190
3.9	Trainee Solicitors – the Blackhall Place Experience	pg 192
3.9.1	Motivations in Studying to be a Solicitor	pg 192
3.9.2	Expectations about being a Solicitor	pg 192
3.9.3	Experiences as a Legal Trainee	pg 193
3.9.4	Effect of Increased Numbers of Women Solicitors	pg 195
3.10	Steps to Improve Opportunities for Women in Law	pg 195
3.11	Conclusions	pg 199

Chapter 4 -Lawyers' Lives – Survey of Legal Professionals

4.1 Demographic Profile	pg 205
4.1.1 Gender of Respondents	pg 205
4.1.2 Age of Respondents	pg 205
4.1.3 Marital Status	pg 206
4.1.4 Family Status	pg 206
4.1.5 Postponed Parenting?	pg 207
4.2 Educational Attainment	pg 208
4.2.1 Secondary Education	pg 208
4.2.2 Tertiary Education	pg 208
4.3 Fees/Support	pg 210

Chapter 5 - Why Law? – Motivations, Aspirations and Expectations

5.1 Factors Motivating Respondents to Choose a Legal Career	pg 214
5.2 Role of Mentoring	pg 220
5.3 Respondents' Previous Links with Legal Profession	pg 221
5.4 Level of Satisfaction with Current Work/Professional Situation	pg 222

Chapter 6 - Uneven Career Progress – Choice or Prejudice?

6.1 Entry to Legal Professions	pg 226
6.1.1 Decade Entered Legal Profession as Barrister/Solicitor	pg 226
6.1.2 Decade When Called to Bar	pg 227
6.1.3 Decade When Called to Inner Bar	pg 227
6.1.4 Decade When Entered Onto Roll	pg 228
6.2 Career Moves	pg 228
6.2.1 Years in Profession (Post-Qualification)	pg 229
6.2.2 Promotions/Career Moves	pg 230
6.2.3 Reasons for Not Being Promoted	pg 231
6.3 Factors Affecting Women's Chances of Being Promoted	pg 233
6.3.1 " <i>Good Old Fashioned Prejudice</i> " or " <i>Old Boys Club</i> "	pg 233
6.3.2 Childcare/Family Reasons for Gender Discrimination in Promotion	pg 234
6.3.3 Differences Between Organisations	pg 234
6.3.4 Merit-Based Criteria for Promotion	pg 235

- 6.3.5 Failure to Progress as Choice? pg 236
- 6.4 Working Hours: ‘Long Hours Culture’ pg 237

Chapter 7 -‘Having it All’ – Work/Life Balance

- 7.1 Working Patterns of Spouses/Life Partners pg 242
- 7.1.1 Partners in Law pg 243
- 7.2 Caring Responsibilities pg 244
- 7.2.1 Current Childcare Arrangements pg 244
- 7.2.2 Other Caring Responsibilities pg 245
- 7.3 Leave Arrangements -
“I don’t know why we employ women, they go off and have babies” pg 245
- 7.3.1 Reasons for Not Taking Leave pg 246
- 7.3.2 Difficulty with Taking Maternity Leave –
“I ended up taking calls in the delivery room” pg 247
- 7.4 Flexible Working –
“For a guy, you have to prove you’re critically ill to get it” pg 247
- 7.4.1 Flexible Working Time Arrangements pg 248
- 7.4.2 Difficulties in Availing of Flexible Working Arrangements pg 248
- 7.4.3 Time Out from Career for Other Reasons pg 250
- 7.4.4 Impact on Career – *“If a man did it you’d think he was a slacker”* pg 250
- 7.4.5 Cover for Those Taking Leave pg 252
- 7.5 Problems with Achieving Work/Life Balance in Law –
“you can’t have it all” pg 253
- 7.6 Improving Work/Life Balance pg 255
- 7.6.1 Importance of Comprehensive Policies pg 255
- 7.6.2 Importance of Reduced/Flexible Work pg 256
- 7.6.3 Importance of Provision of Locum/Substitute pg 256
- 7.6.4 Provision of a Workplace Creche pg 257
- 7.6.5 Other Measures to Improve Work/Life Balance pg 257
- 7.7 ‘Struggling with Juggling’ pg 259

Chapter 8 - Short-Changed? – Gender Segregation and Pay Gap

- 8.1 Gender Segregation in Legal Work Specialisation pg 262
- 8.1.1 Involvement in Legal Areas pg 262

8.1.2	Gendered Division of Legal Work	pg 263
8.1.3	Type of Work Given/Access to Promotion	pg 264
8.2	Income and Fees	pg 265
8.2.1	Impact of Age and Gender on Earnings	pg 266
8.2.2	Who Pays Solicitors' Fees?	pg 267
8.2.3	Who Pays Barristers' Fees?	pg 267
8.3	Pensions	pg 267
8.4	Briefing Practices – How Barristers Get Work	pg 268
8.4.1	Survey of Barristers' Institutional Clients	pg 268
8.4.2	Briefing Practices of Public Sector Institutions	pg 269
8.4.3	The Director of Public Prosecutions	pg 270
8.4.4	Briefing Policies in the Private Sector	pg 271
8.4.5	Can Briefing Practices be Changed?	pg 272

Chapter 9 - 'Good Girl' and 'Old Boys' – A Culture of Discrimination?

9.1	Experience of Discrimination	pg 276
9.2	Source of Discrimination	pg 278
9.3	Nature of Discrimination	pg 279
9.3.1	Practice on Circuit	
9.3.2	Discrimination a Fact of Life – For Men too	pg 279
9.3.3	Multiple Forms of Discrimination	pg 280
9.3.4	Discrimination as a Thing of the Past	pg 280
9.4	Particular Forms of Discrimination	pg 281
9.4.1	Inappropriate Comments – “ <i>Good Girl</i> ”	pg 281
9.4.2	Inappropriate Tasks	pg 282
9.4.3	Family Responsibilities – “ <i>On the 'mommy track'</i> ”	pg 282
9.4.4	Exclusion from Social Events/Functions/Networking	pg 283
9.4.5	Sexist Culture in the Workplace	pg 283
9.4.6	Harassment or Bullying	pg 285
9.4.7	Client Bias	pg 286
9.5	Experience of Gender as an Advantage	pg 286
9.5.1	Advantage in Certain types of Law	pg 287

9.5.2	Advantage with Gardai or Judges	pg 287
9.5.3	‘Feminine’ Attributes	pg 287
9.5.4	Women are More Focused	pg 288
9.5.5	Positive Discrimination	pg 288
9.5.6	Being Male as an Advantage	pg 289
9.6	Experience of Discrimination Against Women	pg 289
9.6.1	Discrimination Against Women in Court Work	pg 290
9.6.2	Judges’ Attitudes to Women – <i>“You’re far too pretty to be taking this action”</i>	pg 292
9.7	Obstacles to Women’s Career Advancement – “Children”	pg 293
9.7.1	Family Issues	pg 293
9.7.2	The “ <i>Old Boys Network</i> ”	pg 294
9.7.3	Women’s Lack of Confidence	pg 295
9.7.4	Denial of Obstacles – “ <i>Are There Any?</i> ”	pg 295
9.8	Sport as a Source of Discrimination – “<i>Golf Without a Doubt</i>”	pg 296
9.9	Non-Gender Discrimination	pg 298
9.9.1	Age	pg 299
9.9.2	Family/Marital Status	pg 300
9.9.3	Religion	pg 301
9.9.4	Other Grounds	pg 301
Chapter 10 - Improving Opportunities - Remedies, Redress and Enforcement		
10.1	Experience of Complaints Procedures/Remedies	pg 304
10.1.1	Problems with Complaints Procedures	pg 304
10.2	Legal Proceedings	pg 305
10.3	Formal Structures for Securing Redress	
10.3.1	Specific Structures Within the Professional Bodies to Deal with Gender	pg 306
10.3.2	Opposition to Specific Structures	pg 306
10.3.3	Support for Specific Structures	pg 307
10.3.4	Appropriate Mechanism for Securing Legal Redress	pg 308
10.3.5	Formal Legal Institutions	pg 308
10.4	Improving the Position of Women in the Law	pg 309

10.4.1 Greater Facilitation of Work/Life Balance	pg 310
10.4.2 Change in the ‘Long Hours’ Culture	pg 311
10.4.3 More Women on Councils of Professional Bodies	pg 311
10.4.4 Guidelines or Codes of Conduct on Gender Issues	pg 312
10.4.5 Promotion of Suitable Role Models/Mentor Programmes	pg 313
10.4.6 Women Lawyers’ Groups and Networking on Gender Issues	pg 313
10.4.7 Changes in Appointments/Promotions/Distribution of Work	pg 314
10.4.8 Other Measures to Improve the Position of Women in the Law	pg 315
10.5 Passage of Time – the ‘Trickle-Up Effect’ or ‘Pipeline Fallacy’	pg 315

Chapter 11 - An Agenda for Action - Key Findings and Recommendations

11.1 Key Findings	pg 320
11.2 Recommendations	pg 331

Tables and Figures

Chapter 1 - Setting the Scene – From Pioneers to Presidents

Table 1.1	Landmark Developments for Women in Law in Ireland	pg 60
Table 1.2	Women Called to the Bar in Selected Early Years	pg 62
Table 1.3	Women Admitted as Solicitors in Selected Early Years	pg 63
Table 1.4	Women Judges	pg 63
Table 1.5	Applicants for Judicial Appointment between 10 April and 31 December 2002	pg 67
Table 1.6	Appointments to Judicial Office between 10 April and 31 December 2002	pg 67
Table 1.7	Persons Called to the Bar	pg 71
Table 1.8	Members of the Law Library	pg 72
Table 1.9	Drop-Out Rates for Selected Years between 1980-1991	pg 75
Table 1.10	Gender Breakdown of Members who left between 1997-2003	pg 75
Table 1.11	Solicitors by Year of Admittance	pg 79
Table 1.12	Solicitors Holding a Practising Certificate	pg 80
Table 1.13	Proportion of Women Partners in 13 Large Firms	pg 83
Table 1.14	Full-Time Academic Staff in University Law Schools	pg 86
Table 1.15	Breakdown of Women Lecturers and Professors in University Law Schools	pg 86
Table 1.16	Women as a Percentage of Full-Time Undergraduate Enrolments in Law	pg 88

Chapter 2 - Literature on Lawyers – A Comparative Perspective

Table 2.1	Landmarks for Women in Law in Selected Countries	pg 122
Table 2.2	Comparative Percentages of Women in the Judiciary	pg 124
Table 2.3	Percentage of Women Lawyers in Selected Countries	pg 134
Table 2.4	Percentage of Women Legal Academics in Selected Countries	pg 136
Table 2.5	Percentage of Women Law Students in Selected Countries	pg 137

Chapter 3 - Learning to Lawyer – Students' Views

Table 3.1	Student Respondents	pg 164
Table 3.2	Entry Method to Third Level	pg 165
Table 3.3	Links with the Legal Profession	pg 166
Figure 3.1	<i>Intellectual Challenge</i>	pg 167
Figure 3.2	<i>Employment Prospects</i>	pg 168
Figure 3.3	<i>Points Level</i>	pg 169
Figure 3.4	<i>Family Pressure</i>	pg 170
Figure 3.5	<i>Potential Earnings</i>	pg 171
Figure 3.6	<i>Having Relatives in the Profession</i>	pg 172
Figure 3.7	<i>Desire to Work Independently</i>	pg 173
Figure 3.8	<i>Desire to Work in Teams</i>	pg 174
Figure 3.9	<i>Prestige/Status</i>	pg 175
Figure 3.10	<i>Advocacy</i>	pg 176
Figure 3.11	<i>Public Service</i>	pg 177
Table 3.4	Career Aspirations – 15 years ahead	pg 178
Figure 3.12a	<i>Male Occupations Sought 15 years ahead</i>	pg 179
Figure 3.12b	<i>Female Occupations Sought 15 years ahead</i>	pg 179
Figure 3.13	<i>Men and Women Treated Equally in Dept/Course</i>	pg 180
Figure 3.14	<i>Wo/Men Not Equal in Getting Top Jobs</i>	pg 181
Figure 3.15	<i>Legal Culture Suits Men Better than Women</i>	pg 182
Figure 3.16	<i>For a Woman to Get to the Top She Has to Behave Like a Man</i>	pg 183
Figure 3.17	<i>Women are Primarily Responsible for the Home</i>	pg 184
Figure 3.18	<i>Female Students Participate Less in Lectures/Seminars</i>	pg 185
Figure 3.19	<i>Male Students Tend to do Better in Essays/Exams</i>	pg 186
Figure 3.20	<i>Women's Work Performance is More Closely Scrutinised</i>	pg 187
Figure 3.21	<i>Women Shouldn't Act Female/Feminist</i>	pg 188

Chapter 4 - Lawyers' Lives – Survey of Legal Professionals

Table 4.1	Gender Representation among the Respondents	pg 204
Table 4.2	Age Profile of Respondents	pg 205
Table 4.3	Marital Status of Respondents	pg 206
Table 4.4	Total number of Children Among Respondents	pg 207
Table 4.5	Secondary School Type Attended	pg 208
Table 4.6	Type of Degree	pg 209
Table 4.7	Class of Degree	pg 209
Table 4.8	Decade of Graduation	pg 210
Table 4.9	Postgraduate Qualification	pg 210

Table 4.10	Source of Fee Support	pg 211
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Chapter 5 - Why Law? – Motivations, Aspirations and Expectations

Figure 5.1	Academic Achievement/Intellectual Challenge	pg 214
Figure 5.2	Nature and Variety of Work	pg 215
Figure 5.3	Salary/Earning Potential	pg 215
Figure 5.4	Job Security	pg 216
Figure 5.5	Work/Life Balance	pg 216
Figure 5.6	Personal Contact	pg 217
Figure 5.7	Desire to Work Independently	pg 217
Figure 5.8	Desire to Work as a Team	pg 218
Figure 5.9	Prestige/Status	pg 218
Figure 5.10	Advocacy	pg 219
Figure 5.11	Public Service/Making a Difference	pg 219
Figure 5.12	Lack of Progress in Previous Career	pg 220

Table 5.1	Role Model/Mentor of Respondents	pg 220
Table 5.2	Links with Legal Profession	pg 221
Table 5.3	Levels of Satisfaction	pg 222

Chapter 6 - Uneven Career Progress – Choice or Prejudice?

Table 6.1	Entry to Legal Profession	pg 226
Table 6.2	Called to Bar	pg 227
Table 6.3	Called to Inner Bar	pg 227
Table 6.4	Entry Onto the Roll	pg 228
Table 6.5	Career Moves	pg 228
Table 6.6	Years in Profession	pg 229
Table 6.7	Years at Current Level	pg 230
Table 6.8	Promotions/Career Moves	pg 231
Table 6.9	Most Important Reason for Not Being Promoted	pg 232
Table 6.10	Women's Chances of Being Promoted	pg 233
Table 6.11	Average Weekly Hours Worked	pg 237

Chapter 7 - 'Having it All' – Work/Life Balance

Table 7.1	Working Patterns of Spouses/Life Partners	pg 243
Table 7.2	Partners in Law	pg 244
Table 7.3	Current Childcare Arrangements	pg 244
Table 7.4	Other Caring Responsibilities	pg 245
Table 7.5	Availability and Take Up of Leave Arrangements	pg 246
Table 7.6	Flexible Working Arrangements	pg 248
Table 7.7	Difficulties in Availing of Flexible Working	pg 249
Table 7.8	Time Out from Career	pg 250
Table 7.9	Impact on Career of Leave/Flexible Working	pg 250
Table 7.10	During Leave/Time Out Locum/Colleague Assigned	pg 253
Table 7.11	Work Dealt with On Leave	pg 253
Table 7.12	Comprehensive Gender Equality Policies	pg 256
Table 7.13	Reduced/Flexible Work	pg 256

Table 7.14	Importance of Locum/Substitute	pg 257
Table 7.15	Workplace Crèche	pg 257

Chapter 8 - Short-Changed? – Gender Segregation and Pay Gap

Table 8.1	Involvement in Legal Areas	pg 263
Table 8.2	Income Levels of Respondents	pg 265
Table 8.3	Gender, Age and Earnings among Legal Professionals	pg 266
Table 8.4	Pension Arrangement	pg 268
Table 8.5	Type of Pension	pg 268

Chapter 9 - ‘Good Girl’ and ‘Old Boys’ – A Culture of Discrimination?

Table 9.1	Experience of Discrimination	pg 278
Table 9.2	Source of Discrimination	pg 279
Table 9.3	Gender Makes a Difference in Career/Profession/Job	pg 281
Table 9.4	Gender an Advantage	pg 286
Table 9.5	Discrimination Against Women	pg 290
Table 9.6	Women Addressed Differently	pg 290
Table 9.7	Terms of Endearment Used	pg 291
Table 9.8	Comments on Appearance	pg 291
Table 9.9	Different Reaction to Arguments	pg 291
Table 9.10	Sport Played or Followed	pg 297
Table 9.11	Sport Helpful in Furthering a Legal Career	pg 297
Table 9.12	Non-Gender Discrimination	pg 299

Chapter 10 - Improving Opportunities - Remedies, Redress and Enforcement

Table 10.1	Greater Facilitation of Work/Life Balance	pg 310
Table 10.2	Change in the ‘Long Hours’ Culture	pg 311
Table 10.3	More Women on Councils of Professional Bodies	pg 312
Table 10.4	Guidelines or Codes of Conduct on Gender Issues	pg 312
Table 10.5	Promotion of Suitable Role Models/Mentor Programmes	pg 313
Table 10.6	Women Lawyers’ Groups and Networking on Gender Issues	pg 314

Introduction

I. Why a Study on 'Women in Law'?

This study had several objectives. First, clearly the legal professions in Ireland have become dramatically more feminised over the last few decades. As educators, we see classes where women students are the clear majority, making up over 60 per cent of current law students in many institutions. These changes are in themselves noteworthy, and one aim of the study was simply to document momentous changes in a clearly quantifiable way.

The feminisation of legal education is occurring in the context of an increasingly visible role for women in the public sphere in Ireland. On the most recent UN Gender-related Development Index, Ireland ranks sixteenth out of a total of 144 countries; women make up 28 per cent of managers and 49 per cent of professional and technical workers, but the ratio of female income to male earned income is 0.4, and Ireland also has a very low percentage of women in national parliament. The Irish rate is amongst the lowest in Europe, at 14 per cent; very far off the UN target of 30 per cent.¹ This compares with Sweden, where women make up 45 per cent of parliamentarians; Denmark, with 38 per cent, and Finland with 37 per cent. However, the Irish percentage is the same as that in the US.

Second, the process of historiography is itself an important one. We were anxious that women's experiences, particularly those of the early pioneers, be documented and their contribution acknowledged. We were also motivated to provide a qualitative overview of the experiences of women lawyers currently in practice. In Ireland, in contrast with many other jurisdictions, there is scant literature on women in the legal professions or in the other professions. In terms of professions other than law, Pat Barker and Kathy Monks examined the accountancy profession in 1996.² There have been a number of studies on academe in Ireland.³

¹ *UN Human Development Report 2003* (Geneva, United Nations, 2003); see also Ward, Eilis and Galligan, Yvonne, 'Time to Make a Bold Leap Forward on Gender Equality', *Irish Times*, 18 July, 2003.

² Monks, Kathy and Barker, Pat, *The Glass Ceiling: cracked but not broken? Evidence from a study of chartered accountants* (Research Paper, DCU Business School, 1996).

³ Smyth, Ailbhe, *Breaking the Circle: the position of women academics* (Dublin, EEC Action Programme on the Promotion of Equal Opportunities for Women, National Advisory Group, 1984); Egan, Orla, 'Overview of Equal Opportunities in Third Level Education in Ireland' in Egan, Orla (ed) *Equality of Opportunity in Third Level Education in Ireland*, Proceedings of Forum held in November 1993 (Cork, National Unit on Equal Opportunities at Third Level, 1994); Egan, Orla (ed), *Women Staff in Irish Colleges*, Proceedings of Conference held in University College Galway, 22 and 23 September 1995 (Dublin, Higher Education Equality Unit, 1996); Drew, Eileen, *Best Practice Models for the Career Advancement of Women in Academe - Report to the Equality Committee*, (unpublished report, Trinity College Dublin, October 2002).

A number of sectoral equality audits have been carried out, including one by one of the authors on An Post.⁴ In addition, the Equality Authority is currently carrying out equality audits of Aer Rianta, Waterford Crystal, University College Dublin, Dublin City University, Dublin Port, Exchange House and Galway City Partnership.⁵

In terms of the legal profession itself, Mary Redmond has recently published the first full account of the emergence of women in the solicitors' profession in Ireland.⁶ In 1993, Alpha Connelly and Betty Hilliard published an overview of the position of Irish women lawyers, accompanied by excerpts from a series of interviews they had conducted with individual women working in law.⁷ They relied, for some information about women lawyers, on a study into the legal professions produced in 1990 by the Fair Trade Commission.⁸ There is also reference to the exclusion of women from the legal professions in an earlier work by Daire Hogan.⁹ Women working in law in Ireland, North and South, came together for the first time at a conference in Dublin on 11 November 2000.¹⁰ At the time of the conference, Carol Coulter wrote a lengthy discussion on the position of women in the legal professions in the *Irish Times*, quoting from some high-profile women solicitors and barristers, and concluding that:

‘..the law is now becoming a predominantly female profession, with about 60 per cent of those studying law being women. The large Dublin solicitors firms, in particular, are adapting to meet this...However, this has not fully permeated into the smaller and rural firms and at the bar, where everyone is self-employed, the pressures of having a family will continue to bear more heavily on women.’¹¹

Following this conference, the Irish Women Lawyers' Association (IWLA) was formed

⁴ Drew, Eileen, *Equal Review of An Post* (full review as yet unpublished); see *Equality Review Survey, Executive Summary* (Dublin, An Post, 2003).

⁵ Barry, Eilis, *Different Hierarchies – Enforcing Equality Law*, in Costello, Cathryn and Barry, Eilis (eds) *Equality in Diversity: The New Equality Directives* (Dublin, ICEL, 2003), Chapter 18.

⁶ Redmond, Mary, ‘The Emergence of Women in the Solicitors' Profession in Ireland’ in Hall, Eamonn and Hogan, Daire (eds), *The Law Society of Ireland 1852-2002 - Portrait of a Profession* (Dublin: Four Courts Press, 2002).

⁷ Connelly, Alpha and Hilliard, Betty, ‘The Legal Profession’ in Connelly, Alpha (ed), *Gender and the Law in Ireland* (Dublin, Oak Tree Press, 1993), 212 et seq.

⁸ Fair Trade Commission, *Report of Study into Restrictive Practices in the Legal Profession* (Dublin, 1990).

⁹ Hogan, Daire, *The Legal Profession in Ireland 1789-1922* (Dublin, Incorporated Law Society of Ireland, 1986), 37 and 146-7.

¹⁰ The conference was headlined ‘Women in Law 1919-2000; From Pioneers to Presidents’. Speakers included President Mary McAleese, Cherie Booth QC and Helena Kennedy QC. For a report of the conference, see *Irish Times*, 13 November 2000, front page, 12.

¹¹ Coulter, Carol, ‘Not All Roses for Sisters in Law’, *Irish Times*, 7 November 2000, 17.

in June 2002, affiliated to the European Women Lawyers' Association (EWLA).¹² Despite these recent developments, there is little awareness of gender as an issue within the Irish legal professions, particularly when compared to other common law countries; another reason for conducting this study.

Furthermore, as feminist scholars, we were aware that women's entry to the world of work in general is not unproblematic. Professions in particular have an institutional culture that may resist change. Accordingly, we wanted to track the progress of women in law, and see whether workplace and institutional structures had changed in the light of increased women's participation.

Equally, we were aware that, as Hagan and Kay have put it:

'There may be no setting more significant than the legal profession for observing the advances and setbacks that women today are experiencing in a changing world that structures work and family roles. Lawyers are often powerful players in the organisation of social, economic and political life, and women, often acting as lawyers, are now participants in these arenas of public and private influence. Yet there is serious doubt whether this participation is translating into opportunities for women to contribute all they can in and through the legal profession.'¹³

We then had to ask the important question, is the progression of women lawyers inevitable? Is it simply a matter of time before we see women dominate the judiciary, the ranks of senior counsel, partnership in firms, and top legal positions in public service? Certainly, many colleagues (mostly men) suggested to us that this would be the case.¹⁴ We responded that if this were already true, we would be delighted to write a report on 'The Remarkable and Successful Feminisation of the Irish Legal Professions' and spend the rest of our careers promoting the Irish model to the world! In this respect however, we had our suspicions. A common finding in several international studies was that there exists a reluctance to acknowledge gender difficulties in legal practice. For example, the 2001 American Bar Association (ABA) report noted that difficulties were compounded 'by lack of consensus that there are in fact serious problems. ... Yet a wide array of research finds that women's opportunities are limited by [various] factors.'¹⁵ We suspected that a similar comment might be made about Ireland.

¹² See www.iwla.ie for more information.

¹³ Hagan, John and Kay, Fiona, *Gender in Practice: A Study of Lawyers' Lives* (New York, Oxford University Press, 1995), 3.

¹⁴ We refer to this proposition as the 'trickle up effect' in the body of this Report: for a discussion of this concept, see Sommerlad, Hilary, 'The Myth of Feminisation: Women and Cultural Change in the Legal Profession' (1994) *International Journal of the Legal Profession*, 31-53 at 34.

¹⁵ American Bar Association, Commission On Women in the Profession, *The Unfinished Agenda: A report on the status of women in the legal profession* (2001), 6. The barriers identified were gender stereotypes, absence of support networks for women lawyers, workplace structures, sexual harassment, and more generally gender bias in the justice system.

Indeed, in preparing the groundwork for this project, through discussion meetings and preliminary focus groups, we encountered a similar hesitancy in identifying any form of overt discrimination. However, many problem areas were reported and many more subtly discriminatory practices criticised by respondents to the survey, and participants in the focus groups. This study aims to encourage discourse about these problems and practices from the level of anecdote, and seeks to gather sound qualitative and quantitative data. The report should form part of an educative process, in which the collective nature of the barriers facing women, and the necessity for collective solutions thereto, are highlighted. As such, we agree with Baroness Helena Kennedy QC that, ‘women have gone through the stage when they did the adjusting; now it is time for the institutions to change.’¹⁶

As academics with an interest in gender equality law and policy, we were also interested in studying women lawyers in order to reveal the impact and the limits of anti-discrimination law in self-regulated professions. As many lawyers are self-employed, the limits of legal redress in this context will also form an important part of the study. Thus, it was hoped that the study would have implications for equality law and policy generally. Hence we have drawn not only on other studies on women lawyers, but also on cutting edge developments in equality legislation and policy-making.

Clearly, the position of women in the law has implications beyond the professions, and wider implications generally for society. Lawyers, both women and men, constitute a privileged group, for whom knowledge of rights and entitlements should be second nature:

‘Women who are lawyers are a privileged group among women. If they are not perceived and treated with equality by the justice system, then it is every woman’s credibility that is questioned by the system. If female lawyers are not believed, then there is little hope a female rape victim is going to be either. How an institution treats its female members and employees is a reliable indicator of general instructional attitudes toward equality.’¹⁷

Lawyers wield power in society in that ‘[t]here is necessarily a close relationship between any system of law and the experts who operate it.’¹⁸ Securing gender equality in the practising legal professions is a prerequisite for ensuring gender equality in the third arm of government – the judiciary. It has implications for the development of law through litigation and legislative reform. To know law is itself to yield power, in

¹⁶ Kennedy, Helena, *Eve was Framed* (London, Chatto and Windus, 1992), 263.

¹⁷ Canadian Bar Association, *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa, A Canadian Bar Association Task Force Report, 1993), 7. Quote taken from Murphey, Ronald, ‘The Quest for Equal Justice: Educating the Judiciary on the Oppression of Women in the Justice System,’ Ontario Women’s Directorate (1993), 123.

¹⁸ Baker, John, *An Introduction to English Legal History* (London, Butterworths, 4th ed, 2002).

that as Bourdieu states, 'Law is the quintessential form of the symbolic power of naming that creates the things named, and creates social groups in particular.'¹⁹

One of the many questions that arises out of a study such as this, is the extent to which women actually lawyer differently. The notion of a 'different voice'²⁰ in law – a caring, empathetic, conciliatory voice – remains contested. Gilligan²¹ argues that the 'male' approach to morality is based on the premise that individuals have certain basic rights, and that the rights of others have to be respected, so restrictions are imposed on behaviour in that way. The 'female' approach to morality, in contrast, assumes instead that people have responsibilities towards others; so morality is an imperative to care for others. Gilligan summarises this by saying that male morality has a 'justice orientation', and that female morality has a 'responsibility orientation'. As a psychologist, Gilligan was responding to works such as that of Kohlberg,²² who based developmental psychological theories on observations of men only, and suggested that women were morally underdeveloped, as their judgments are not abstract. Gilligan's thesis has been widely vulgarised and misinterpreted by others as a simple men/women contrast; and has generated much discussion of the 'ethic of care'. Aside from being open to criticism from a psychological point of view,²³ the thesis has been egregiously abused in the legal context.²⁴

However, Gilligan's thesis has also inspired many scholars to examine women's 'different voice' in various contexts, including that of lawyering. Menkel-Meadow expressed the desirability of such an approach 18 years ago, when she wrote that

¹⁹ Bourdieu, Pierre, 'The Force of Law: Toward a Sociology of the Juridical Field' (1987) *Hastings Law Journal* 838.

²⁰ Gilligan, Carol, *In A Different Voice: Psychological Theory and Women's Development* (Cambridge, Mass, Harvard University Press, 1983).

²¹ *Ibid.*

²² Kohlberg, Lawrence, *The Philosophy of Moral Development: Moral Stages and the Idea of Justice* (London, Harper & Row, 1981).

²³ Larrabee, Mary Jane (ed), *An Ethic of Care: Feminist and Interdisciplinary Perspectives* (Thinking Gender) (London, Routledge, 1992).

²⁴ In the Sears indirect discrimination case, the US Equal Employment Opportunities Commission took the Sears department store to court for discrimination against women employees, as few figured in high-paid commission-only sales jobs. Sears called a woman historian to give evidence, and she argued that men and women had different preferences with regard to employment, concern for home/childcare and different values. This was the basis for Sears' argument that they were not discriminating, but rather respecting women's different preferences: see further Bacchi, Carol Lee, *Same Difference* (Boston, Mass., Paul & Co Pub Consortium, 1991), Chapter 10.

women ‘could or will alter our legal sensibilities or values.’²⁵ In this study, we reject the idea that women are essentially different to men, or that women lawyers are of necessity more caring than men in practice. However, as feminists, we are convinced that women lawyers can and do make a difference, and that it is essential in the interests of justice to enhance the role of women lawyers. As Mary Robinson has written:

‘It is not simply a question of wanting more women per se involved in the various bodies. It is because the male domination at all levels affects the very ethos and culture of our society... It is vital that a sufficient number of women recognise that the domination by men in the power structures of our society does matter. That it is an imbalance which affects the ethos and priorities of that society, and that it must be altered in a concerted manner.’²⁶

In short, our study is informed by the conviction that women lawyers make a difference, while rejecting essentialist views on women’s nature. Our approach supports the strategy propounded by Deborah Rhode, which:

‘is neither to exaggerate nor deny gender differences. We can avoid sweeping claims about woman’s essential nature, while noting that particular groups of women under particular social conditions practice their professions based on different expectations and experiences than men. We also can observe that values traditionally associated with women - care, cooperation, context - have been undervalued in traditionally male-dominated professions, and that their absence impoverishes the lives of both sexes. In short, we can advocate visions of professionalism that resonate with women’s experience, but on the basis of feminist commitments, not biological categories.’²⁷

What we can be more sure of, is that the concept of ‘law’ and the concept of ‘woman’ are traditionally juxtaposed. ‘Law is supposed to be rational, objective, abstract and principled, like men; it is not supposed to be irrational, subjective, contextualised or personalised, like women.’²⁸ Women lawyers may be commonplace today, but we should not underestimate the disruptive potential of our presence.

²⁵ Menkel-Meadow, Carrie, ‘Portia in a Different Voice: Speculations on a Women’s Lawyering Process’ (1985) *Berkeley Women’s Law Journal* 39, 62. See also Menkel-Meadow, Carrie, ‘Portia Redux: Another Look at Gender, Feminism and Legal Ethics’ in Parker, Stephen and Sampford, Charles (eds), *Legal Ethics and Legal Practice: Contemporary Issues* (Oxford, Clarendon Press, 1995).

²⁶ Robinson, Mary, ‘Women and the Law in Ireland’ in Smyth, Ailbhe (ed), *Irish Women’s Studies Reader* (Dublin, Attic Press, 1993).

²⁷ Rhode, Deborah, ‘Gender and the Profession: An American Perspective’ in Schultz, Ulrike and Shaw, Gisela (eds), *Women in the World’s Legal Professions* (Oxford, Hart Publishing, 2003), 7.

²⁸ Olsen, Frances, ‘Feminism and Critical Legal Theory: an American Perspective’ (1990) *International Journal of Sociology of Law* 199, 201.

II. Methodology

Hitherto, no study had ever been conducted to examine the position of women lawyers in Ireland. Thus, as one important task we had to gather empirical data on the numbers of women entering both branches of the legal profession, and examine the way in which those numbers had changed over time. We did this through co-operation with the professional bodies: the Law Society and the Bar Council, who both provided us with access to their records. We used these records, together with other published and unpublished material, to create an historical account of the ‘pioneers’; the first women to qualify and practise as lawyers in Ireland in the late nineteenth and early twentieth centuries.

We carried out a comprehensive literature review, in order to ascertain the extent of relevant comparative material, seeking to use research and scholarship from other common law jurisdictions, from civil law jurisdictions, and from developing countries (see Appendix 6 for the list of lawyers’ associations contacted).

Since we wished to examine the views and aspirations of those about to enter the legal professions, we also surveyed and carried out focus groups among third-level law students nationally, both male and female, and among trainees studying on the professional courses to become solicitors or barristers.

In order to gather both quantitative and qualitative information about the lives of women and men lawyers, we designed a mailed questionnaire, provided at Appendix 1. We distributed this to a total of 3,422 persons: solicitors, barristers, legal academics, members of the judiciary and lawyers in public service; both women and men. Questionnaires were posted out accompanied by a pre-printed business reply envelope and a covering letter explaining the purpose of the research.

Of the 4,832 solicitors on the roll at the date of mailing, we posted questionnaires to 2,200 individuals; equal numbers of men and women, randomly selected and controlled for year of qualification, geographic area and size of firm. Of the total of 1,292 barristers, we sent one questionnaire to each of 21 women Senior Counsel, and the same number to a random selection of male Seniors. Of the total of 1,062 Junior Counsel, we sent one questionnaire to each woman (400) and the same number to a random selection of male Juniors. We sent a total of 842 questionnaires to barristers. Given the small numbers involved in each of the other categories, we sent one questionnaire to every Judge, every legal academic and every lawyer in public service (a total of 380). Overall, we received 788 responses in total, comprising 32 Judges, 518 solicitors, 220 barristers and 18 others. This was a response rate of 23 per cent, which is high for a mailed questionnaire, particularly one that is 21 pages in length.

From the very detailed answers provided, we gathered important findings on the views and experiences of women and men in the Irish legal professions. We have presented these in Chapters 4 – 10 of this report, in the form of statistical tables and text, including direct quotations from individual respondents where appropriate.

Unless otherwise stated, all of the statistical tests referred to in these chapters are based on Pearson's chi square test.

Based upon these findings, we identified a number of themes of particular concern to women and men in the legal professions, and used these upon which to conduct a series of focus groups drawn from a wide range of practitioners at different levels and stages of their careers, conducted both in and outside of Dublin. We also interviewed a number of 'key players', women who have built up successful legal careers, in order to gain their insights and experiences. The findings from these focus groups and interviews are incorporated into the text of Chapters 4 - 10.

Finally, we sought information from a number of other sources for discrete areas of research, and again this information is incorporated into the text of relevant chapters. We wrote to 13 large solicitors' firms to gain an insight into the gender breakdown of their partners, and other related matters (Appendix 3). We also wrote to a number of key institutions, public and private, including public tribunals of enquiry, seeking information on their practices or policies relating to the briefing of barristers (Appendix 4). We obtained information from all the university law departments or schools on the gender breakdown of their faculty members, and on the extent to which gender issues play a role in their law teaching (Appendix 5).

Our survey is unusual in that we sought to discover the views and experiences of men, as well as those of women lawyers. We believe that the inclusion of male perspectives provides us with a valuable insight and has enriched the findings of our study. There is one proviso, however, with regard to those findings; that is, that insufficient numbers of male lawyers at a more junior stage of their career may have responded to the questionnaire. Thus the findings in terms of men's experiences may relate disproportionately to men who are at a senior level in the professions. We have recognised this by controlling for age where relevant. The majority of women respondents are drawn from the lower levels of the professions, and this clearly is a proportionate and accurate reflection of the real distribution of women lawyers by seniority.

In Chapter 1, we 'set the scene' by presenting some important background information on the Irish legal system, describing the historical emergence of women lawyers in Ireland, and setting out the statistics on women in the legal professions. Chapter 2 provides an analysis of the comparative literature on women lawyers, and outlines the themes that emerge from the literature and which we seek to address and validate in our own study. In Chapter 3, we focus upon entry to the legal profession, presenting the findings of our research into the views and experiences of students and legal trainees. In Chapters 4 to 10, we present the findings of our survey, focus groups and interviews of and with practising lawyers, judges, legal academics and lawyers in public service.

Chapter 11, the executive summary, provides an overview of key findings drawn from all of the empirical work, and concludes with our recommendations for reform. It is to be hoped that these recommendations, and this study itself, will provide a useful resource for those seeking to change the legal professions in Ireland to ensure the fullest participation of both women and men.



Chapter 1

*Setting the Scene -
From Pioneers to Presidents*



1

Setting the Scene - From Pioneers to Presidents

1.1 Women Under the Law

This section provides a brief overview of the Irish legal system and its relevant aspects that have at various times defined the role and nature of ‘woman’. The heading ‘women under the law’ captures the sense in which women were for a long time objects of the law, not full legal subjects. Even relatively modern enactments such as the 1937 Irish Constitution were drafted with little or no input from women.²⁹ Naturally, this section takes a broad brush to this topic, and we do not suggest that these are the only features of the law that warrant gender scrutiny.³⁰ However, our aim is to illustrate at the outset the role of law in dictating gender divisions.

The Irish legal system is a common law system, based on the type of laws first established in England and then imported into Ireland after the Anglo-Norman Invasion of 1170. English law held sway in Ireland until independence in 1922. From that date on, the Irish legal system has been separate and distinct from the English system.³¹ Common law systems generally operate in English-speaking countries around the world, while civil law systems operate in continental European jurisdictions and their former colonies internationally. In common law systems, judges’ decisions are an important source of law, in that they create precedent. In Ireland, judges’ decisions are one source of law, along with legislation enacted through the Oireachtas (Parliament), while *Bunreacht na hEireann*, the Irish Constitution enacted in 1937, takes precedence as a superior source of law. Since Irish entry to the European Economic Community (EEC) in 1973, European Community law has become another source of law, superior to

²⁹ Scannell, Yvonne, ‘The Constitution and the Role of Women’ in Farrell, Brian (ed), *De Valera’s Constitution and Ours* (Dublin, Gill and MacMillan, 1988), chapter 9.

³⁰ Many texts deal with other features of the law that warrant gender scrutiny, such as the content of academic law courses; the way in which women are treated by different laws as compared to men, and so on. However, apart from Alpha Connelly’s text (*Gender and the Law in Ireland*, Dublin, Oak Tree Press, 1993), there are no Irish texts of this sort. Useful English texts include: McColgan, Aileen, *Women Under the Law* (London, Pearson, 2000); Bridgeman, Jo and Millns, Susan, *Feminist Perspectives on Law* (London, Sweet & Maxwell, 1998); Bottomley, Anne (ed), *Feminist Perspectives on the Foundational Subjects of Law* (London, Cavendish, 1996) and Bottomley, Anne and Conaghan, Joanne (eds), *Feminist Theory and Legal Strategy* (Oxford, Blackwell, 1993).

³¹ Upon independence in 1922, the Irish Free State was established. Ireland became a Republic under the Republic of Ireland Act 1948, but by then had adopted a Constitution that was already effectively a Republican document in 1937: *Bunreacht na hEireann*, the present Constitution of Ireland.

domestic legislation and to the Irish Constitution.³² Contemporary Irish laws seek to redress the imbalance of power between men and women. However, until relatively recently, the law was itself discriminatory in its form and effect, maintaining the domination of women by men.

1.1.1 Brehon Law

Before the Norman conquest of Ireland in the twelfth century, a system of early Irish laws, known as Brehon law, was already in place throughout the country. Scholars such as Kelly³³ and Binchy³⁴ have provided extensive details of the content of such laws, gleaned from the surviving fourteenth and sixteenth century manuscripts of the Old Irish law-texts, most of which originate in the seventh and eighth centuries AD. Under Brehon law, women were considered to be legally incompetent, along with children, insane persons and unransomed captives. Thus, they were regarded as having no independent legal capacity, and so along with the other categories of incompetent persons, they could not generally make contracts, or act as witnesses or sureties, without the authorisation of their legal guardian.³⁵ However, some important exceptions to this general rule existed in respect of women, who had many rights within the marital relationship that were not afforded them under the common law system later introduced into Ireland after the Norman conquest.

Women were excepted from the rule of legal incapacity if they owned property; a woman was entitled to inherit a life-interest in land when her father had no sons, and if she then married a landless man or stranger from another area, the normal roles of husband and wife were reversed and she made the decisions and paid his fines or debts. Within the marital relationship, both husband and wife were permitted to divorce for a wide range of reasons, and it was possible for a 'marriage of joint property' to exist, whereby each partner could retain the property that they had brought into the marriage, after their divorce.³⁶

1.1.2 Common Law

After the introduction of the common law system, which gradually gained sway over the whole island of Ireland and had come to replace, in full, the indigenous law system by the end of the sixteenth century, women's legal status was greatly diminished. At common law, as at Brehon law, women were regarded as legally incompetent, along with criminals, minors and the 'insane'. Moreover, until the late eighteenth century,

³² Article 29 of the Constitution.

³³ Kelly, Fergus, *A Guide to Early Irish Law* (Dublin, Institute for Advanced Studies, 1988).

³⁴ Binchy, Donald, in Thurneyson, Rudolf, *Studies in Early Irish Law* (Dublin, Hodges Figgis for the Royal Irish Academy, 1936).

³⁵ Kelly, above n. 33, 68-9.

³⁶ *Ibid* 76.

the common law gave women no right to hold property nor to guardianship of their own children.

At common law, in contrast with Brehon law, women had no rights within marriage either. By way of justification, Francis Power Cobbe, writing in 1868, said thus: 'The husband being physically, mentally and morally his wife's superior, must in justice receive from the law additional strength by being constituted absolute master of her property.'³⁷ This was known as the 'Doctrine of Coverture' whereby 'the very being or legal existence of the wife is suspended during the marriage or at least incorporated and consolidated into that of the husband under whose wing, protection and cover she performs everything.'³⁸ As Edwards writes, although women were not afforded any rights as subjects, they were however regarded as possessing duties and obligations at law. In practice, both women and men had a duty to work to support their families; in the England of the 1850s, women and children made up 52 per cent of the workforce.³⁹ At common law, women also had a duty to submit to sex with their husbands; intercourse had to be 'unlawful' as well as non-consensual to constitute rape, and 'unlawful' was defined as meaning outside of the marital relationship. Thus, according to Hale, 'A husband cannot be guilty of rape upon his wife for by their mutual matrimonial consent and contract the wife hath given up herself in this kind to her husband, which she cannot retract.'⁴⁰ Many women however challenged these and other discriminatory laws. For example, Caroline Norton became a student of the common law in the 1850s when she discovered that she lacked legal existence due to the doctrine of coverture.⁴¹ Her writings and activities influenced the 1857 reform of marriage and divorce law, although it was not until the Married Women's Property Act 1882 that women were permitted to keep their own property on marriage.

Women in Ireland were no better off than their English sisters, since the common law also applied in Ireland, and after the Act of Union of 1800, the Parliament of Westminster passed laws for Ireland. This situation persisted throughout the nineteenth century, although the emerging independence movement became more and more prominent during this time. Ireland was to become independent finally in 1922.

³⁷ Quoted in Edwards, Susan (ed), *Gender, Sex and the Law* (London, Croom Helm, 1985), 2.

³⁸ Blackstone, William, *Commentaries on the Law of England* (1809) Book I Chapter XV, 430.

³⁹ Edwards, above n. 37, 3.

⁴⁰ 'History of the Pleas of the Crown' 629, quoted in O'Malley, Thomas, *Sexual Offences; Law, Policy and Punishment* (Dublin, Round Hall Sweet & Maxwell, 1996), 46. This rule was abolished in 1990, after a long campaign by the rape crisis centres, with the enactment of section 5 of the Criminal Law (Rape)(Amendment) Act, 1990.

⁴¹ See Menkel-Meadow, Carrie, 'Feminization of the Legal Profession: The Comparative Sociology of Women Lawyers' in Abel, Richard and Lewis, Philip, *Lawyers in Society - An Overview* (Berkeley, University of California Press, 1995), 221, 226.

1.1.3 The Independence Movement and the Irish Free State

An influential women's liberation and suffrage movement developed alongside the emerging struggle for Irish independence in the late nineteenth and early twentieth century, although there existed a certain tension between those espousing the causes of feminism and of nationalism. A number of feminist organisations were formed, in particular the Irish Women's Franchise League, led by Hanna Sheehy-Skeffington, in order to campaign for women's suffrage and for equal participation by women in the public sphere.⁴² Women were also very active in the struggle for independence; particularly through the Cumann na mBan organisation, with which Constance Markiewicz, the first woman MP elected to the House of Commons, was associated. After the Easter Rising of 1916, and during the War of Independence that followed, women remained prominent in the increasingly popular nationalist movement.⁴³

For a brief period between 1920-1924, both before the creation of the Irish Free State and during the Civil War that followed independence, women played a particularly formal legal role in the Dáil Courts, a grassroots courts structure set up as part of the struggle for Irish independence, to replace the existing British-appointed courts. In Kotsonouris' definitive history of these courts, she mentions a number of women who played an important part; as secretaries (Madge Clifford, Kathleen Bulfin and Nora Brick), as registrars (Bridget Kennedy was registrar for West Limerick) and even as judges. She refers to 'Mrs. Heron and Mrs. Ceannt' as being 'judges of the District Court for Pembroke and Rathmines'.⁴⁴

However, after the creation of the Irish Free State in 1922, the 1924 Courts of Justice Act was passed, dismantling the unique Dáil court structure and replacing it with the present, constitutionally-based, court system; a system much closer to the pre-independence courts. As Ronan Fanning has written, after 1924, 'Irish law remained wedded to British traditions. Cases were heard in the same courtrooms, often conducted by the same lawyers in the same antique garb of wig and gown.'⁴⁵ It was to be almost forty years before the first woman, Eileen Kennedy, was appointed a District Justice within the new post-1924 constitutional court system – in 1963!⁴⁶

⁴² See further Connolly, Linda, *The Irish Women's Movement* (Dublin, Lilliput Press, 2003), 59-71.

⁴³ For a detailed account of the history of this period, see Ward, Margaret, *Unmanageable Revolutionaries: Women and Irish nationalism* (London, Pluto Press, 1995).

⁴⁴ Kotsonouris, Mary, *Retreat from Revolution: The Dáil Courts, 1920-1924* (Dublin, Irish Academic Press, 1994), 38; 45; 126.

⁴⁵ Fanning, Ronan, *Independent Ireland* (Dublin, Helicon, 1983), 67, quoted in Kotsonouris, Mary, *Retreat from Revolution: The Dáil Courts, 1920-1924* (Dublin, Irish Academic Press, 1994), 131.

⁴⁶ Kotsonouris writes that Mrs. Heron made representations to the Minister for Justice on behalf of Marian Duggan, a barrister and former Dáil Court official, 'urging that she be made a District Justice' under the new courts system; but this request clearly went unheeded. *Ibid*, 132.

Many of the women who had been so prominent in the independence movement and during the birth of the new State indeed tended to fade from public view soon after 1922, and few women were involved at a policy-making level in the first governments of the new state. For many years there was little sign of an organised 'women's movement', nor were many laws passed after 1922 that could be described as emancipatory for women. Despite this, women continued to be politically active, albeit at a different, more local, level, through grassroots organisations such as the Irish Countrywomen's Association and the Irish Housewives' Association, which campaigned on various issues relevant to their membership.⁴⁷ Progress on women's suffrage had already been made with the adoption of the Constitution of the Irish Free State in 1922, Article 3 of which provided that every person 'without distinction of sex, domiciled or born as provided therein, is a citizen of the Irish Free State and shall ... enjoy the privileges and be subject to the obligations of such citizenship.' The franchise was extended by Article 14 of the Constitution, on an equal basis, to all women and men over 21. A cynical commentator, however, might describe this as the last example of progressive lawmaking for women in Ireland for over 50 years.

1.1.4 The Irish Constitution 1937

The present Irish Constitution, or *Bunreacht na hEireann*, was introduced in 1937, in order to make a clear break with the arrangements demanded by the British Government which had been embodied in the Irish Free State Constitution.⁴⁸ The new Constitution was drafted largely by the then Taoiseach (Prime Minister), Eamonn de Valera, and was passed by the Dáil (parliament) and by the people through referendum. Articles 40 to 44 of the Constitution represent the 'Fundamental Rights' section of the Constitution, the equivalent of a bill of rights.

The equality guarantee contained in Article 40.1 of the 1937 Constitution reads as follows:

'All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.'

This provision constitutes a general guarantee of equality, albeit framed in rather restrictive or qualified language. Discrimination on specific grounds and in specific areas is dealt with in a number of other Articles, such as Article 9.1.3, which prohibits discrimination on the ground of sex in relation to nationality and citizenship, and Article 40.6.2, which forbids discrimination on the grounds of political opinion, religion and class in any laws regulating the exercise of the freedoms of assembly and of association.

⁴⁷ See Coulter, Carol, *The Hidden Tradition: feminism, women and nationalism in Ireland* (Cork, Cork University Press, 1993).

⁴⁸ Chubb, Basil, *The Constitution and Constitutional Change in Ireland* (Dublin, IPA, 1978), 7.

Two other Articles from the fundamental rights section of the Constitution have however been particularly problematic from a feminist perspective. First, Article 41.2 of the Constitution (which relates to the rights of the family) refers specifically to women having a 'life within the home' and declares that the State shall endeavour to ensure that 'mothers' are not forced into the workplace 'to the neglect of their duties in the home.' This Article has been widely criticised, but despite numerous calls for its removal from the Constitution, it remains in place.⁴⁹ Secondly, Article 40.3.3 of the Constitution provides that life of 'the unborn' shall be protected as equal with that of 'the mother'; again this has been widely criticised from a feminist perspective, and has given rise to immense political and legal controversy.⁵⁰

The inclusion of fundamental rights provisions marked a change from the 1922 Constitution, which did not guarantee enforceable personal rights. Indeed, the provisions in the 1937 Articles generated little or no case law until some decades after their introduction, perhaps because neither the judiciary nor the citizens of the new state had any experience of the concept of personal constitutional rights. Judge Ronan Keane, now Chief Justice, explained thus in 1992: 'experience since 1937 has suggested that it takes lawyers some time to become acclimatised to a new constitutional environment.'⁵¹

It took over 20 years for this acclimatisation to occur in respect of Articles 40 to 44 - but these provisions now form the basis of many very significant judicial decisions, and are regularly invoked before the courts.⁵² This change in approach is particularly evident from the late 1960s on, and may be attributed in particular to the appointment of a new generation of judges to the superior courts. However, while Irish Constitutional jurisprudence on individual liberties has developed relatively liberally in many respects, the equality guarantee under the Constitution has always been interpreted in a conservative manner by the courts. As Mullally writes, 'the Irish judiciary has displayed a marked reluctance to apply Article 40.1, preferring to rely on other substantive constitutional rights where possible.'⁵³ This pattern has been evident from a series of cases, where although the plaintiff based legal arguments

⁴⁹ See for example the *Report of the Constitution Review Group* (Dublin, Government Publications, 1996), 333; this expert group recommended the replacement of this Article with a revised gender-neutral provision recognising the importance of persons who perform a caring function within the home.

⁵⁰ See for example, Kingston, James and Whelan, Anthony with Bacik, Ivana, *Abortion and the Law* (Dublin, Round Hall Sweet & Maxwell, 1997).

⁵¹ Keane, Ronan, 'Fundamental rights in Irish law; a note on the historical background', in O'Reilly, James (ed), *Human Rights and Constitutional Law* (Dublin, Round Hall Press, 1992), 25.

⁵² See, for example, Hogan, Gerard and Whyte, Gerry, section on 'Fundamental Rights', in *The Irish Constitution* (Dublin, Butterworths, 1994).

⁵³ Mullally, Siobhan, 'Equality Guarantees in Irish Constitutional Law – the Myth of Constitutionalism and the "Neutral" State' in Murphy, Tim and Twomey, Patrick (eds), *Ireland's Evolving Constitution 1937-1997* (Oxford, Hart, 1998).

upon the equality guarantee, the court decision in their favour was made on alternative grounds; the unenumerated personal right to earn a livelihood in *Murtagh Properties v Cleary*; the rights of the marital family in *Murphy v Attorney General*; on a number of different grounds as well as the equality ground in *de Burca*.⁵⁴

A number of reasons may be identified for this restrictive judicial approach. First, as noted above, the language of the guarantee is itself limited, guaranteeing as it does only the narrow concept of equality ‘before the law’, or ‘formal’ equality, that is a view of equality limited to prohibiting discrimination, rather than the broader concept of substantive equality, which goes further by recognising the need to address pre-existing inequalities.⁵⁵ Second, while the guarantee clearly applies to vertical discrimination (between the State and the individual), it does not explicitly apply to horizontal discrimination (ie between two private actors). Nor does it include any reference to specific prohibited grounds of discrimination, unlike the South African Constitution, for example (Article 9(3)).

The final two ways in which the guarantee has been limited is through restrictive judicial interpretation. First, the Article contains a proviso, that the State may have regard to differences, including differences of ‘social function’. This proviso was used, for example, to justify the failure of the State to treat deserted husbands in the same way as deserted wives for the purpose of social welfare payments.⁵⁶ When read in conjunction with Article 41, the family rights provision, which has been held to provide protection only to the family based upon marriage, this proviso has also been applied by the courts so as to justify discrimination against unmarried persons.⁵⁷ Second and finally, the courts have used the phrase ‘as human persons’ contained in the Article to limit the guarantee further, through development of a ‘human personality’ doctrine, premised on the idea that the right to equality may only be claimed by human persons in respect of some ‘essential attribute’ of their personality. Thus, in the *Murtagh Properties* case, the plaintiffs, who owned a pub, claimed that a picket by the defendant trade unionists on the pub to dissuade the hiring of female staff was in breach of the rights of the potential women staff to earn their livelihood without gender discrimination. The plaintiffs won on the basis that the women had a right to earn a livelihood, but lost on the equality argument, the judge stating that the equality guarantee had nothing to do with trading activities or conditions of employment.⁵⁸ Although a more flexible approach has been

⁵⁴ [1972] IR 330; [1982] IR 241; [1976] IR 38.

⁵⁵ For further discussion of this theme, see Chapter 2.

⁵⁶ *Denmehy v Minister for Social Welfare*, High Court, July 26, 1984.

⁵⁷ For example, in *O’B v S* [1984] IR 316, the Supreme Court held that the exclusion of ‘illegitimate’ children from the right of succession upon a father’s intestate death was justified by reference to the protection of the marital family under Article 41. This decision was overturned by legislation; and the State subsequently settled the plaintiff’s application to the European Court of Human Rights in the same case.

⁵⁸ [1972] IR 330.

developed by the courts in subsequent years,⁵⁹ with no recent judgment confirming the human personality doctrine, it has nonetheless, as Mullally writes, ‘served within the Irish jurisdiction to restrict unduly the effectiveness of equality protection.’⁶⁰

1.1.5 European Community Law

In 1973, Ireland became a member of the EEC, a watershed for the development of gender equality in Ireland. The original 1957 Treaty of Rome contained a guarantee of equal pay for equal work for men and women. This article was anomalous, in that the original Treaty did not contain social provisions, its goals being predominantly economic. The presence of the equal pay article is of course not attributable to any particular adherence to gender equality as a human value, but rather has its origin in economic concerns. The French Government in particular was concerned that in the context of a common market, its industry would be uncompetitive, as it was the only Member State in which industry was obliged to pay men and women equally for equal work.⁶¹ Out of this inauspicious beginning, largely through feminist legal and political activism,⁶² the gender equality aspects of the Treaty were amplified, and a strong gender equality policy emerged, albeit generally confined to the economic sphere.⁶³

When Ireland joined the EEC, it was required to change many overtly discriminatory laws and practices. As Fennell and Lynch write, ‘[Irish equality legislation] was introduced, it should be noted, not as a result of the benevolence of the Irish government ... but due to our membership of the European Community, and the necessity to comply with EC Directives’.⁶⁴ Irish membership of the EEC necessitated the passing of the Anti-Discrimination (Pay) Act 1974, and the Employment Equality Act 1977, both prohibiting discrimination on gender grounds in employment.⁶⁵ In addition, the civil service ‘marriage bar’ was abolished; the Civil Service (Employment of Married Women) Act 1973 removed this ban on married women working in the

⁵⁹ See for example *Howard v Commissioners of Public Works in Ireland* [1993] ILRM 665; and *The Irish Constitution*, above n. 52, at 723.

⁶⁰ Mullally, above n. 53, at 154.

⁶¹ See Barnard, Catherine, ‘The Economic Origins of Article 119 EEC’ in Hervey, Tamara and O’Keeffe, David (eds), *Sex Equality Law in the European Union* (Chichester, Wiley, 1996), 321.

⁶² Hoskyns, Catherine, *Integrating Gender – Women, Law and Politics in the European Union* (London, Verso, 1996).

⁶³ More, Gillian, ‘Equality of Treatment in European Community Law: the Limits of Market Equality’ in Bottomley, Anne (ed), *Feminist Perspectives on the Foundational Subjects of Law* (London, Cavendish, 1996) and ‘The Principle of Equal Treatment: From Market Unifier to Fundamental Right’ in Craig, Paul and de Burca, Gráinne (eds), *The Evolution of EC Law* (Oxford, Oxford University Press, 1999).

⁶⁴ Fennell, Caroline and Lynch, Irene, *Labour Law in Ireland* (Dublin, Gill & Macmillan, 1993), 158.

⁶⁵ Now replaced by the Employment Equality Act, 1998.

public service. The same year a ban on married air hostesses was lifted in Aer Lingus following union negotiations.⁶⁶ Following a legal challenge on Irish constitutional grounds, men and women were finally selected on equal terms for jury service with the passing of the Juries Act 1976.⁶⁷ In 1981 the Maternity (Protection of Employees) Act gave women the right to paid maternity leave, and the right to return to work following such leave.⁶⁸ In 1998, the Parental Leave Act was introduced to implement another Directive, giving both parents the right to time off work to care for a young child.⁶⁹

Although Community law provided the main impetus for this legislative change, the period was also one of great political activism. The Irish Women's Liberation Movement was formed in 1970, and again this, together with the establishment of other, broadly speaking, feminist organisations, marked an increase in political activism by Irish women. In 1985, Ireland ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW'). This period also saw a significant increase in litigation around equality issues, often led by the women pioneers. Mary Robinson, in particular, acted in a number of cases in which challenges were made to discriminatory laws, and which led to legal change.⁷⁰ But as Robinson writes, particular credit for using law as an instrument of social change must go to 'those individual women who were prepared to use the courts to challenge the existing system': women like Mary McGee who challenged the law on contraception; Máirín de Burca on jury selection; and Josie Airey who established the right to civil legal aid.⁷¹

1.1.6 The Structure of the Courts and the Legal Professions

The Irish Constitution enshrines the doctrine of separation of powers, so that the organs of government may be divided into three: legislative, executive and judicial. Judicial power is exercised through the courts, originally established after

⁶⁶ Lynch, Irene, 'Labour Law' in Connelly, Alpha, (ed), *Gender and the Law in Ireland* (Dublin, Oak Tree Press, 1993), 53.

⁶⁷ *De Burca v Attorney General* [1976] IR 38.

⁶⁸ Now amended by the Maternity Protection Act, 1994.

⁶⁹ Directive 96/34/EC of 3 June 1996 on Parental Leave.

⁷⁰ For example, in *de Burca*, the voting rights case, where she acted as the plaintiff's junior counsel; and in *Airey v Ireland*, the case before the European Court of Human Rights establishing the right to civil legal aid; where she again acted for the plaintiff.

⁷¹ Robinson, Mary, 'Women and the Law in Ireland' in Smyth, Ailbhe (ed), *Irish Women's Studies Reader* (Dublin, Attic Press, 1993), 101. The cases she refers to are: *McGee v Attorney General* [1973] IR 284; *De Burca v Attorney General* [1976] IR 38; *Airey v Ireland*, European Court of Human Rights, 9 October 1979, Series A, No. 32.

independence in 1922 under the Courts of Justice Act 1924.⁷² The doctrine of *Stare Decisis*, imported from the English system, applies; judicial decisions set binding precedent, and the hierarchy of the courts will determine the binding force of the precedent set. The Supreme Court is the highest court in Ireland, and generally hears only cases already considered by lower courts.⁷³ Further, consideration by the Supreme Court is usually restricted to legal argument. Decisions of the Supreme Court are binding on all lower courts, but the Supreme Court may overrule its own prior decisions. The Supreme Court's powers also include the ability to determine the constitutionality of law. The Court's collegiate membership consists of eight judges, one of whom is the Chief Justice. Generally the Court sits in groups of three or five.⁷⁴

The High Court is the primary Court of first instance, and under Article 34 of the Constitution has the power to determine any issue of law or fact. Further, the High Court has the ability to hear appeals from decisions from lower courts as well as the ability to determine the constitutionality of law. The constitutional review function carried out by the High and Supreme Courts is highly political. Based on the open-textured provisions of the Constitution, judges may strike down laws in order to vindicate constitutional rights and principles. The Lower Courts consist primarily of the District and Circuit Courts.⁷⁵ The Circuit Court hears cases involving family hearings, contract, tort and more serious criminal offences. Further, the Circuit Court also hears appeals from the District Court. The lower of the two courts, the District Court, generally hears less serious matters such as minor criminal, contract and tort cases.⁷⁶ Family cases may also be heard in the District Court.

The Irish legal profession is composed of three main groups; solicitors, barristers and judges. The appointment of judges is the function of the President of Ireland, based

⁷² The Courts (Establishment and Constitution) Act 1961 carried forward the existing court system created under the 1924 Act, in order to regularise that system under the 1937 Constitution; see further Byrne, Raymond and McCutcheon, Paul, *The Irish Legal System* (Dublin, Butterworths, 4th ed, 2001), 105-6.

⁷³ The Supreme Court under exceptional circumstances does exert the authority enumerated in Articles 12.3 and 26 of the Irish Constitution regarding the capacity of the President of Ireland and the Constitutional validity of legislation.

⁷⁴ However, no less than five judges can render a decision as to the competence of the President of Ireland or the Constitutionality of a piece of legislation.

⁷⁵ Other specialised courts such as the Small Claims Court, the Special Criminal Court and the Court of Criminal Appeal also exist. Of particular importance for the purpose of this study is the specialised equality court, the Equality Tribunal (formerly the Office of the Director of Equality Investigations), which is empowered to hear discrimination claims based on nine different grounds including gender, under the Employment Equality Act, 1998 and the Equal Status Act, 2000. Appeals from the Tribunal are heard before the Labour Court, another specialist court dealing with employment matters.

⁷⁶ The structure of the criminal courts is currently under review in light of the Recommendations of the Working group on the Jurisdiction of the Courts, *The Criminal Jurisdiction of the Courts* (Dublin, Government Publications, 2003).

upon the advice of government following recommendations from the Judicial Appointments Advisory Board.⁷⁷ Both solicitors and barristers are eligible for judicial appointment, after a certain number of years in practice, depending on the level of appointment.

Solicitors are the primary contacts between the public and the legal profession, and are instructed directly by lay clients. The professional body for solicitors is the Law Society of Ireland. Solicitors work in many contexts – they may be sole practitioners, or work in partnership with other solicitors. Partnership connotes a legal relationship in which partners jointly own firms, and share profits. Other solicitors may work as employees in firms, or in-house within businesses. While solicitors enjoy the right to an audience in any court, advocacy in the higher courts is generally practised by barristers. In recent years, however, the strict division of functions between barristers and solicitors has become gradually eroded, and solicitors increasingly act as advocates on a very regular basis.

Barristers are members of the Bar of Ireland, their professional body is the Bar Council, and they become qualified through a course provided only by the single Inn of Court, the King's Inns.⁷⁸ Barristers are self-employed and can generally act only on instruction from solicitors on an independent referral basis; they are bound by the 'cabrank' rule and cannot refuse instructions unless they have a conflict, or feel the case is beyond their competence. They provide legal opinions regarding litigation, and practise advocacy within the courtroom. They are subdivided into two groups, junior and senior counsel. Junior counsel prepare litigation, and act as advocates primarily in the lower courts, and in the higher courts often when led by senior counsel. Barristers become senior counsel ('take Silk') normally after about 15 years practice; juniors must apply to the government in order to become seniors.

Barristers in Ireland work in a 'library system', which means that their 'central and primary place of practice' must be the Law Library,⁷⁹ a library building attached to the back of the Four Courts, with two additional annexes in nearby buildings. Within those buildings, barristers work at individual desks; there are no 'chambers,' or collective working groups of barristers, in the Irish system, as there are in England and Wales.⁸⁰

⁷⁷ See further below at 1.3.1.

⁷⁸ Upon qualification and in order to practise, an aspiring barrister must then be 'called to the Bar', that is they must participate in a ceremony in the Supreme Court and sign the roll of members of the Bar.

⁷⁹ *Code of Conduct for the Bar of Ireland*, para. 8.3.

⁸⁰ There have been two major studies into the legal profession in recent years, both of which will be referred to in this section, both conducted with a focus upon eliminating barriers to competition. Perhaps because of this narrow focus, neither study made reference to gender other than in a cursory or tangential way. The first review was conducted by the Fair Trade Commission, which reported in 1990; the second, conducted for the Competition Authority by the Indecon Group, in 2003.

1.2 Women Enter Law in Ireland

1.2.1 Women Gain Entry

While women in the nineteenth century were able to enter the medical and accounting professions, and could hold positions such as mayors, insurance commissioners and engineers, they were ‘rigidly excluded’ from the legal profession and generally also from public office.⁸¹ No law formally forbade women from becoming solicitors, but tradition and custom formed barriers to women’s full participation in the legal and political systems. A career in law or public office was seen as less fit for the sensibilities of women than the traditional roles of mother and wife.⁸² Despite this exclusion of women from the legal professions, some Irish women did become well known for taking cases on their own behalf through the courts. One such woman was described on her appearance in the Land Commission Court in Dublin in 1898 as a ‘well-known lady litigant from Co. Monaghan, a familiar figure at every Monaghan assizes for years past.’⁸³ Similarly, a woman called Theresa Yelverton became well-known for taking her own case on the validity of her marriage, even arguing her appeal in person (unsuccessfully) before the House of Lords in 1867; and later in the same century, another female plaintiff, a Miss Anthony, became notorious for her penchant for litigation, often being subjected to criticism for being ‘frivolous and vexatious’ in her taking of claims.⁸⁴

Apart from the brief period between 1920-24 when they played a formal role as judges, registrars and administrators in the Dáil courts,⁸⁵ women had to struggle to overcome customs and traditions in order to attain access to the legal professions on the same basis as men throughout the late nineteenth and early twentieth centuries. In 1901, the Minutes of the King’s Inns Benchers dated 25 October record that they had received a letter from a Miss Weir Johnston, ‘asking if a lady could become a member of the Irish Bar. The Under-Treasurer was directed to inform Miss Weir Johnston that it was not competent for a lady to enter this Inn as a student, or become a member of the Irish Bar. Ordered.’⁸⁶ Hogan notes that the *Irish Law Times* explained that the Benchers ‘felt themselves obliged to follow British precedent.’⁸⁷ Exclusion of

⁸¹ Redmond, Mary, ‘The Emergence of Women in the Solicitors’ Profession in Ireland’ in Hall, Eamonn and Hogan, Daire (eds), *The Law Society of Ireland 1852-2002 - Portrait of a Profession* (Dublin: Four Courts Press, 2002), 98.

⁸² Redmond, *ibid* 97-106.

⁸³ ILT & SJ, Vol. 33, p.110 (5 March, 1898) quoted in ‘Women and the Law – a Historical Note’ (November 1978) *Law Society Gazette* 192.

⁸⁴ *Ibid*.

⁸⁵ See above at 1.1.3.

⁸⁶ Minutes of the King’s Inns Benchers, 25 October, 1901.

⁸⁷ *Irish Law Times and Solicitors’ Journal*, Vol. 35, 507 (2 November, 1901); cited in Hogan, Daire, *The Legal Profession in Ireland 1789-1922* (Law Society, 1986), 37.

women was frequently rooted in apparently formalistic reasons, such as precedent, tradition and judicial deference to the legislature. It is probably more accurate to state that the Benchers simply chose to follow British precedent, because they agreed with it.

In England, an Oxbridge graduate, Gwyneth Bibb (or Bebb), and three women colleagues, challenged the refusal of the Law Society to allow them to practise in the *Bibb* case in 1914,⁸⁸ but the Court of Appeal held that women were not ‘persons’ within the meaning of the Solicitors Act 1843 and so could be excluded from legal practice. This case was one of many throughout the common law world in which judges, confronted with gender-neutral language, decided that the nature of lawyering and the nature of women were incompatible. As such, the concept of ‘person’ in the legislation meant ‘man.’ This corpus of comparative jurisprudence is outlined and discussed further in Chapter 2. It was not until 1930 that the ‘persons cases’ phenomenon was finally put to rest.⁸⁹

Following the failure of the *Bibb* case and a subsequent Bill to amend the Solicitors Act, another landmark case was brought by an Irish woman called Georgina Frost, who challenged the refusal of the Lord Lieutenant to appoint her clerk of petty sessions for two districts in County Clare.⁹⁰ She lost in the High Court and Court of Appeal, but by the time she had appealed to the House of Lords, the Sex Disqualification (Removal) Act 1919 had been adopted.⁹¹ This Act became law in England and Ireland on 27 April 1920, removing the legal bar to women being appointed to public office.⁹² Its passing was ‘due in no small measure to the courage and persistence shown by women like Georgina Frost in her long odyssey from Sixmilebridge [in County Clare] to the House of Lords.’⁹³

The 1919 Act prohibited any disqualification from the exercise of any public function, civil or judicial office or post, civil profession or vocation on the basis of sex or marital status. However, the Act was a compromise measure, after the failure of the more extensive Women’s Emancipation Bill. It provided a wide exception allowing women to be excluded from the areas of the civil service, and permitting restrictions on women’s entry to the civil service. This permitted the entrenchment of the marriage bar, which prohibited the employment of married women in the Irish civil service until the 1970s.⁹⁴

⁸⁸ *Bibb v Law Society* [1914] 1 Ch. 286.

⁸⁹ *Edwards v Attorney-General of Canada* (1930) AC 12. The ‘persons’ cases are discussed in more detail in Chapter 2.

⁹⁰ *Frost v the King* [1919] 1 IR 81. For a profile of Georgina Frost, see Donovan, Katherine, ‘An Unlikely Pioneer’, *Irish Times*, 27 April, 2000.

⁹¹ Redmond, above n.81, 103.

⁹² Redmond, *ibid*, 103.

⁹³ Keane, Ronan, *Georgina Frost and the Courts – A Famous Victory*, Paper to the Women and Law Conference, November 2000, at www.womenandlaw1919-2000.com.

⁹⁴ Fredman, Sandra, *Women and the Law* (Oxford, Clarendon Press, 1997), 80-81.

Further, the 1919 Act provided for the removal of official barriers in the statutes or charters of British and Irish universities regarding the admission of women. In fact, prior to that date women had already been obtaining degrees from the Royal University of Ireland for some time; the first woman Law graduate in Ireland and the UK was Letitia Alice Walkington, who commenced studies at the RUI in 1882, obtained a BA from there in 1885, an MA in 1886, and graduated with an LLB (law degree) in 1888 and an LLD in 1889.⁹⁵ The second woman to graduate with a law degree from the RUI was Frances H. Gray (LLB, 1889, LLD 1890); then came Marie Coyle (LLB 1895, LLD 1896); Mary Clements (LLB 1889); and Edith Kane (LLB, 1900). The RUI was abolished and replaced by the National University of Ireland (NUI) under the Irish Universities Act 1908, which provided that female students of the three constituent colleges of the University had status equal to male students and could sit for degree examinations. The first woman to graduate with a Dublin University (Trinity College Dublin) Law degree (LLB.) was Edith Badham in 1909; she was followed in 1910 by Madeleine Collins and Marion Duggan, and in 1911 by Helena Morony.⁹⁷

At around the same time, the women's suffrage movement was gaining strength. In 1918, women over 30 with property were given the vote in Ireland and Britain through the Representation of the People Act 1918, with Constance Markiewicz the first woman MP, elected in Ireland to the House of Commons in the 1918 general election. Following Irish independence, the Irish Free State Constitution in 1922 lowered the voting age for women to 21, the same as that for men.

It is significant that it was generally legislatures, not judges, which ultimately remedied women's exclusion from professional legal practice, from academic participation; and from the electoral register. It is also noteworthy that between England and Ireland, Ireland produced the first women law graduates, and indeed the first woman member of parliament. However, as we will see, even in Ireland, legislative change alone did not make it easy for the first women to avail of their new rights.

⁹⁵ Source: Dr. Susan Parkes; the Royal University of Ireland Archives; RUI Calendar; 1909 List of Graduates. See also Albisetti, James, 'Portia Ante Portas: Women and the Legal Profession in Europe, ca. 1870-1925' (Summer 2000) *Journal of Social History*, sourced at www.findarticles.com.

⁹⁶ Source: Dublin University Alumni Office; *Dublin University Calendar*, 1895-1912.

⁹⁷ Women were permitted to stand for election to parliament under the House of Commons (Parliament) (Qualification) Act 1918.

GEORGINA ('GEORGIE') FROST⁹⁸

Georgina Frost was born to Margaret (nee Kett) and Thomas Frost on 29 December 1879 in their home, Garna House, at Sixmilebridge in Co. Clare, one of five children to survive infancy. Her father Thomas was the Petty Sessions Clerk to the local Courts of the District of Sixmilebridge and Newmarket-on-Fergus. Before his retirement from that post in 1915 at the age of 73, Georgina had ably assisted him for some six years in carrying out his duties; and she often substituted for him, to the satisfaction of the Justices. On Thomas' retirement, they elected Georgina as his replacement. This appointment had to be approved by the Lord Lieutenant, who refused, on the basis that, being a woman, Georgina was not 'a person' within the meaning of the Petty Sessions Acts.

Georgina then secured the services of a high-powered legal team including among them the well-known barrister of the time, Tim Healy KC, and applied to the High Court in Dublin for the right to be appointed to the office of Clerk of Petty Sessions. She lost there, and appealed to the Court of Appeal, which held against her 2:1, again on the basis that the legislation prohibited the appointment of a woman. Nothing daunted, she took her appeal to the House of Lords; it came on for hearing on 27 April 1920. By then, the Sex Disqualification (Removal) Act 1919 had been passed, and so on the hearing date it was agreed that the matter could be adjourned so that the Lord Lieutenant could give a retrospective approval to Georgina's appointment (For a full report of the litigation, see *Frost v the King* [1919] 1 IR 81).

As Egan writes, 'And so it was that the first woman to hold Public Office in [Britain or Ireland] was Miss. Frost from Co. Clare'. Very shortly after her appointment was approved, however, she lost her position again when the office of Clerk of Petty Sessions was abolished by the District Justices (Temporary Provisions) Act 1923 – but she did receive a pension, and lived an active life until her death in December 1939.

1.2.2 Pioneers to Presidents - Landmarks for Women Lawyers

Following the 1919 Act, women began to apply to enter the legal professions in both Ireland and England almost immediately: 'The effect of the 1919 Act was quickly seen even if for some decades it was not dramatic.'⁹⁹ The first woman to become a solicitor in England was Carrie Morrison, admitted to the roll in December 1922. Dr. Ivy Williams was the first woman barrister in England, called to the Bar of England and Wales in May 1922.¹⁰⁰ She had taken all her law exams by 1903, but because of the legal restrictions on female students, she was not allowed to matriculate or receive her

⁹⁸ We are indebted to Twinkle Egan BL for her research into this formidable pioneer. All material drawn from Egan, Twinkle, *The Story of a Legal Suffragette – Miss Georgina ('Georgie') Frost*, paper to European Women Lawyers' Association Conference, Munich, Germany, 20 November 1999.

⁹⁹ 'Women and the Law – A Historical Note' (November 1978) *Gazette of the Incorporated Law Society of Ireland*, 192.

¹⁰⁰ Knight, Victor, 'Dr. Ivy Williams', (1997) *New Law Journal* 546.

degree from Oxford until 1920.¹⁰¹ The first woman actually to practise at the English Bar was Helena Normanton, who was called to the Bar on 17 November 1922, became the first woman elected to the General Council of the Bar, and the first woman to appear robed in wig and gown in the Counsel's Benches of the High Court, the Old Bailey and the Court of Appeal. She and Rose Heilbron were the first women to take Silk in England in 1949, becoming KCs (senior barristers; King's Counsel, the equivalent of QCs or Queen's Counsel in England today). Helena Normanton died in 1957.

Very little research has been done to date on the history of Irish women legal pioneers, although there were quite a number. In 1923, Mary Dorothea Heron became the first woman solicitor admitted in Ireland. She held a BA and LLB from Queen's University Belfast. Having obtained second place in the solicitors' final examinations, the first woman to sit those examinations, she then went into practice in her uncle's firm in Belfast, doing mainly probate work.¹⁰² In 1920, Helena Mary Early from Swords, Co. Dublin came first in the preliminary apprentices' examination, had become the first woman in the UK to become bound for a three-year apprenticeship. She then became the first woman practising as a solicitor in Ireland, continuing to appear in the courts for many years. She had been elected first woman auditor of the Solicitors' Apprentices Debating Society 1921-22, but Redmond notes that it was another fifty years before a second woman auditor, Elizabeth Ryan from Tipperary, was elected in 1970.¹⁰³

More women began to enter practice after these two women pioneers of the solicitors' profession in Ireland, Heron and Early, had paved the way; Dorothea O'Reilly was registered in Dublin in 1924, and Eleanor Scholefield in 1928. But Redmond comments that 'the number [of women] entering the profession in Ireland during the 1920s and 1930s was very small. The requirement that an articled clerk should pay a training premium made it very difficult for women to become solicitors.'¹⁰⁴ Thus, many of the first women to qualify and practise came from legal or professional families, and often entered their family practice once qualified.

The first woman solicitor in Northern Ireland was Kathleen Donaghy, admitted in 1926; she is recorded as having ceased to practise upon marriage, but Margaret Reside (nee Fisher) who was admitted in 1927, continued to hold a practising certificate into the 1990's.¹⁰⁵ Her sister Dorothy Fisher was also qualified in 1927, and both practised in Newry.

¹⁰¹ www.morrish.dircon.co.uk/alternative.html

¹⁰² Redmond, above n. 81, 110.

¹⁰³ *Ibid* 110.

¹⁰⁴ *Ibid* 112.

¹⁰⁵ Denham, Susan, *A Celebration of Women in the Law in the Twentieth Century*, Address to the Dublin University Women Graduates Association, 2 March 1999, 19.

However, before any woman had become a solicitor in Ireland, or indeed a barrister in England, in a truly historic development, two women were called to the Irish Bar. In spring 1920, the first women students, Frances Christian Kyle and Averil Deverell, had been admitted to the King's Inns. A resolution of the King's Inns Benchers of January 1920 had provided 'that women shall be admitted on precisely the same terms as men.' Both women were called to the Bar on 1 November 1921, alongside 18 men. It was a particularly historic occasion; Frances Kyle was called to the Bar not only as the first woman barrister in Ireland, but also as the first to be awarded the John Brooke Scholarship, the top Irish students' law prize, having come first in the Bar examinations. It was also the first Call day of a divided Irish Bar, since the Government of Ireland Act 1920 had created separate jurisdictions for North and South.¹⁰⁶ The call of the first two women barristers made headlines at the time; not just in the Dublin and Belfast papers, but also in the London Times, the New York Times, the suffragists' journal *The Vote*, and even *The Times of India*.¹⁰⁷ Photographs of the two women were carried in many of these publications; the caption below the picture in the New York Times read:

'First Irish Girl Barristers: Misses M. Kyle and A. K. S. Deverell. First colleens to be called to the Bar by the Lord Chief Justice, Their Dignified Wigs and Robes Sitting Lightly on Them.'

Born in 1894 and the daughter of a Belfast businessman Robert Kyle, Frances Kyle studied Law at Trinity College Dublin, where she completed a BA and LLB. After her Call, she only practised for a short while before returning to her family home in Belfast where she practised until 1944. She died in England in 1958.¹⁰⁸

¹⁰⁶ *Irish Times*, 26 October 1921; *Belfast Telegraph*, 1 November 1921.

¹⁰⁷ *Irish Times*, 2 November 1921; *Irish Independent*, 2 November 1921; *The Times*, 2 November 1921; *New York Times*, 20 November 1921; *The Vote*, 20 January 1922; *The Times of India*, 1 February 1922.

¹⁰⁸ Obituary of Frances C. Kyle, *The Times*, 25 June 1958. The John Brooke gold medal awarded to her was given to Trinity College Dublin by her niece, Dr. Elinor Meynell, in 2001, who also forwarded the newspaper cuttings referred to here.

AVERIL DEVERELL

Averil Deverell was the first woman actually to practise at the Bar in Ireland. Born in 1890, from Greystones, Co. Wicklow, her father was the local registrar of titles, and she had a twin brother, Captain William Deverell, who was called to the Bar on the same day as she was. She had had a colourful and interesting career prior to commencing legal studies, having been in the ambulance corps during World War I. As Cooke recalls, 'she shortened her skirts by 12 inches and went off to join the ambulance corps in France'. She had learned to drive while in her teens, since her father was one of the first men in Wicklow to own and drive a motorcar. Feeling obliged to make some contribution to the war, she wrote with her father's permission to the headquarters of the Queen Alexandra First Aid Nurse Yeomanry offering to serve as an ambulance driver, but they required her to take a driving test at the Royal Automobile Club in London. She passed the test, but was then asked to re-assemble a dismantled engine, which she was unable to do; but six months later the requirement was abolished, and she was driving an ambulance for the rest of the war!¹⁰⁹

On Averil Deverell's return from the war, she took up legal studies at Trinity College Dublin and subsequently the King's Inns, and after qualifying established a considerable Chancery practice, remaining actively in practice as a barrister until her retirement over forty years later. She developed a reputation while in practice of being a campaigner on behalf of her women colleagues; when the women's dressing room in the Law Library was changed in the 1930s, she organised the women to get their room back, and when the words 'Lady Barristers' were written on the door of the room, she insisted on their replacement with the words 'Women Barristers.'¹¹⁰ She lived in her parents' old house in Greystones until her death in 1979, and her portrait now hangs in the Law Library.¹¹¹

The third woman to become a barrister, Mary Dillon–Leech, from Ballyhaunis, Co. Mayo, was also a graduate of Trinity College Dublin, had a solicitor father, and was called to the Bar in Trinity Term 1923. She was the first woman to practise on the Western Circuit, working there until her marriage in 1926. Her daughter Sylvia O'Connor, to the best of her knowledge, was the next woman barrister to practise on that Circuit some years later.¹¹² Two more women, Marion Duggan and Antonia McDonnell, were called in 1925. Marion Duggan had already graduated with a BA, LLB and LLD from Trinity College before being called to the Bar, and had previously

¹⁰⁹ Cooke, Richard, *A Portrait of Averill K. S. Deverell BL*, unpublished note, November 2000.

¹¹⁰ Source: personal recollections of individual barristers.

¹¹¹ Source: Richard Cooke SC, and www.lawlibrary.ie.

¹¹² Letter from Sylvia O'Connor to Maurice Gaffney SC, 22 November, 1999.

worked as secretary, teacher and journalist; she was aged 40 at the date of her Call.¹¹³ Antonia McDonnell, from Co. Meath, had been a student at the National University of Ireland, and had graduated from the Edinburgh School of Cookery and Domestic Economy before studying law.¹¹⁴

The fourth woman to be called to the Irish Bar, in 1924, and also the first woman to become a Senior Counsel, Dr. Frances Moran, was born in 1893. Her father, James Moran, was a Justice of the Peace in Clontarf, north Dublin. She took Silk in Dublin on 9 May 1941. Her primary career was more that of an academic than a practitioner; she was appointed Reid Professor of Criminal Law at Trinity College Dublin in 1925, became Professor of Laws there in 1934 and was also made Professor at King's Inns in 1938.¹¹⁵ She died in 1977 and her portrait hangs in the Law School at Trinity College Dublin. When Frances Moran was called to the Bar, she was already in her early thirties, and studying for an LL.D. in Trinity College; she had previously been a temporary French teacher in a Dublin secondary school.¹¹⁶

In 1926, Margaret Flood was called to the Bar; and in 1927, Mary Malone, from Trim, Co. Meath, who had completed an MA from the National University before her Call. In 1927, Kathleen Phelan from Waterford was called, but she eventually became a civil servant, having originally been a maths lecturer. Three other women, Violet Kimpston, Kathleen Butler Garrett and Anne Caulfied from Cork, were all called to the Bar in 1929 and 1930. Ó hÓgortaigh notes that while these women were geographically diverse, 'most were from comfortable backgrounds' and family legal connections were often evident.¹¹⁷ Having reviewed the early careers of these pioneering women, Ó hÓgortaigh also considers that: 'This tendency to pursue a legal career, after various other professional activities, may suggest that women had to earn sufficient money before selecting this profession;' hence they were likely to be older than their male colleagues.¹¹⁸ By 1930, out of the ten women called to the Bar from 1921 on, five were still listed as being in practice; Deverell, Duggan, Kimpston, Kyle and Moran; perhaps a higher rate of retention than that experienced by women pioneers in law in other jurisdictions.¹¹⁹

¹¹³ Marion Duggan had been the third woman to graduate with a Law degree from Trinity College Dublin, in 1910; and we may assume that she was also the same woman about whom a request was made to the Minister for Justice that she be appointed a judge; see above n. 46.

¹¹⁴ Source of personal information on these women: Ó hÓgortaigh, Margaret, *Far From Few: Professional Women in Ireland: 1880-1930* (Unpublished Ph.D. thesis, University College Dublin, 1999), 320-21.

¹¹⁵ Denham, Susan, *A Celebration of Women in the Law in the Twentieth Century*, Address to Dublin University Women Graduates Association, 2 March 1999, 6-7.

¹¹⁶ Ó hÓgortaigh, Margaret, above n. 114, 320.

¹¹⁷ *Ibid* 320.

¹¹⁸ *Ibid* 322.

¹¹⁹ *Ibid* 322.

In 1963, Eileen Kennedy, a solicitor from Carrickmacross, Co. Monaghan, became the first woman judge in Ireland, appointed as District Court Justice and Justice of the Metropolitan Children's Court. Her courtroom was 'crowded for days with people coming to witness the novelty of it all' and she created a legal precedent in another way too; she was 'the first female to sit in a court with her head uncovered!' Kotsonouris recalls that, as a solicitor's apprentice herself at the time, she still remembers 'the *frisson* of excitement at such daring!' ¹²⁰

It was to be a long time, however, before another woman judge, Mella Carroll, was appointed, in 1980. She was called to the Bar in 1957 and had taken Silk in 1976, only the second woman to do so and the first woman to practise as a Senior Counsel. She was appointed a Judge of the High Court in 1980, the first woman to be appointed as a Superior Court judge, and remains on the High Court today. In 1979-80, immediately prior to her appointment, she had been the first woman elected Chair of the Bar Council (no other woman has been Chair since). She has chaired the Commission on the Status of Women, served as a Judge on the Administrative Tribunal of the International Labour Organisation (1987-2002), and has been President of the International Association of Women Judges since 2000. In the year of Judge Carroll's appointment to the Bench, solicitor Moya Quinlan became the first woman to be elected President of the Law Society in 1980. It was to be another 20 years before Elma Lynch became the second President, in 2001; Geraldine Clarke, the current President, is the third woman to hold that office.

Susan Denham was the first woman appointed as Judge of the Supreme Court in January 1993, having been appointed as the second woman judge on the High Court in 1991. Catherine McGuinness, who commenced legal practice having raised a family, was called to the Bar in 1977, specialised in family law and was appointed to the Circuit Court in 1993, to the High Court in 1996 and the Supreme Court in 2000. She was the first person to progress as a Judge through all three courts. Katherine Delahunt was the first woman solicitor appointed to be a Judge of the Circuit Court, in 2001. Fidelma Macken SC (who took Silk in 1995) was made a Judge of the European Court of Justice in 1999, the first woman judge from any EU country on the court, having been made a High Court Judge in December 1998. Maureen Harding Clark, also formerly an SC (she took Silk in 1991), was made a Judge of the International Criminal Tribunal for Former Yugoslavia in 2001 and then elected as a Judge of the International Criminal Court in 2003.

¹²⁰ Kotsonouris, above n. 44, 132.

Mary Robinson, the most prominent Irish woman lawyer internationally, graduated in Law from Trinity College Dublin, was called to the Bar in 1968, took Silk in 1980, and was elected Ireland’s first woman President in 1990. Subsequently in 1997, she became UN Commissioner for Human Rights, a post she held for five high-profile years. She had also been Reid Professor of Criminal Law at Trinity College Dublin 1969-75, was elected as a Senator for Dublin University in 1969, and was well-known for her campaigning work on women’s rights for many years, prior to her election as President. Her election was widely seen as a transformative event in Irish society, with women’s votes particularly important in the result. As she herself put it, it was an election when Irish women, ‘instead of rocking the cradle, rocked the system.’¹²¹

Ireland’s second woman President, elected to succeed Robinson in 1997, was another barrister and law lecturer, Mary McAleese. She graduated from Queen’s University Belfast in 1973, was called to the Northern Ireland Bar in 1974 and then became Reid Professor at Trinity College in 1975. She was later appointed Director of the Institute of Professional Legal Studies in Belfast, and in 1994 became the first woman Pro-Vice Chancellor at Queen’s University Belfast, prior to her election as President of Ireland, a position she still holds today.

Table 1.1 Landmark Developments for Women in Law in Ireland

DATE	DEVELOPMENT
1882	Letitia Walkington admitted to Royal University of Ireland to study for a BA, leading to a Law degree
1888	Letitia Walkington graduates with a Law degree from the Royal University of Ireland
1918	Women over 30 given the right to vote; Constance Markiewicz elected from Ireland to the House of Commons
1919	Georgina (‘Georgie’) Frost takes her case to the House of Lords challenging the ban on her appointment as clerk of petty sessions in Co. Clare; Passing of the Sex Disqualification (Removal) Act
1920	Dáil Courts established (in place until 1924)
1921	Frances Kyle and Averil Deverell called to the Bar – first women barristers
1922	Independence; Creation of Irish Free State; Women over 21 given right to vote on same basis as men under Irish Free State Constitution
1923	Mary Dorothea Heron becomes first woman solicitor admitted
1925	Frances Moran is appointed Reid Professor of Criminal Law at Trinity College Dublin (and was subsequently appointed Regius Professor of Laws)

¹²¹ Quoted in O’Leary, Olivia and Burke, Helen, *Mary Robinson – the Authorised Biography* (London, Hodder & Stoughton, 1998), at 135. Mary Robinson is now Director of the Ethical Globalisation Initiative, a New York based NGO; and Honary president of Oxfam International.

1937	Irish Constitution adopted with Articles recognising women's place in the home
1941	Dr. Frances Moran becomes first woman Senior Counsel
1963	Eileen Kennedy becomes first woman judge (District Court justice)
1973	Marriage ban removed (women no longer excluded from jobs in civil service, health boards etc. upon marriage)
1974	Anti-Discrimination (Pay) Act passed providing for equal pay for women and men
1976	Juries Act 1976 passed providing for women's participation in jury service on equal basis to men; Mella Carroll becomes second woman Senior Counsel
1977	Employment Equality Act passed prohibiting discrimination in employment on grounds of gender and marital status
1979	Mella Carroll becomes first woman Chair of the Bar Council
1980	Mella Carroll is first woman appointed Judge of the High Court Moya Quinlan becomes first woman President of the Law Society
1990	Mary Robinson is elected Ireland's first woman President
1993	Susan Denham becomes first woman Judge of the Supreme Court
1997	Mary McAleese, another lawyer, is elected Ireland's second woman President
1998	New Employment Equality Act 1998 passed prohibiting discrimination in employment on nine different grounds including gender
1999	Fidelda Macken becomes first woman Judge of the European Court of Justice
2000	Equal Status Act 2000 passed prohibiting discrimination in the provision of goods and services on nine different grounds including gender; Catherine McGuinness becomes the second woman Judge on the Supreme Court and the first person on that Court to have been both a High Court Judge and a Circuit Court Judge previously
2001	Katherine Delahunty becomes first woman solicitor appointed Judge of the Circuit Court
2003	Maureen Harding Clark is elected a Judge of the International Criminal Court

Table 1.2 Women Called to the Bar in Selected Early Years (1921-30, 1936, 1938, 1946, 1950) ¹²²

Year Admitted	Year Called	Women Called ¹²³
1920	1921	Frances Kyle, Averil Deverell
1920	1923	Mary Dillon Leech
1922	1925	Marion Duggan
1923	1925	Antonia McDonnell
1922	1926	Margaret Flood
1924	1927	Mary Malone
1926	1929	Violet Kimpston
1927	1930	Kathleen Garrett
1928	1938	Anne Dockrell
1943	1946	A.E. Blaney
1948	1950	Ethel Beatty ¹²⁴

¹²² Source: King's Inns Records.

¹²³ Additionally, between 1921-26, four women were admitted to the King's Inns but not called to the Bar. No women were called in 1922, 1924, 1928 or 1936 .

¹²⁴ Ethel Beatty (later Exshaw) obtained first place in the Bar final examination in May 1950, and won the John Brooke Scholarship, only the third woman to do so. Source: Ethel Exshaw

Table 1.3 Women Admitted as Solicitors in Selected Early Years (1923-30, 1936)¹²⁵

Year Admitted	Women Admitted ¹²⁶
1923	Mary Dorothea Heron, Helena Mary Early
1924	Dorothea Mary Browne (O'Reilly)
1926	Maureen McDowell
1927	Annie Smyth
1928	Eleanor Scholefield
1929	Clohra MacBride, Mary Smith, Maria MacInerney
1930	Mary Kearns, Catherine Tyman
1936	Stella Barclay Webb, Margaret Carey, Mary McCarroll, Maire O'Neill, Una Treacy

1.3 Women In Law in Ireland

In this section, statistics and current trends on women's participation in law in Ireland are presented. A comparative perspective on these is provided in Chapter 2.

1.3.1 Judges

Current Women Judges

Table 1.4 Women Judges ¹²⁷

Court	Number of Judges	Number of Women Judges and as percentage of total
Supreme Court	8	2 (25%)
High Court	28	3 (11%)
Circuit Court	31	9 (29%)
District Court	53	11 (21%)

There are eight judges on the Supreme Court, including the Chief Justice, Ronan Keane. Two of those are women: Judge Susan Denham (appointed 1993) and Judge Catherine McGuinness (appointed 2000). On the High Court, there are 28 Judges; the

¹²⁵ Source: Law Society Records; Roll of Solicitors of the Supreme Court in Ireland from 1 January 1899 – 1936. Between 1923 – 1936, 36 women entered onto the Roll of Solicitors; during the same years, over 1,000 men were registered.

¹²⁶ No women were admitted in 1925.

¹²⁷ Source: Courts Service (www.courts.ie).

President (Judge Joseph Finnegan) and 27 other Judges, only three of whom are women: Judge Mella Carroll (appointed 1980), Judge Mary Laffoy (1995) and Judge Mary Finlay Geoghegan (2002). On Circuit, there is the President (Judge Esmond Smyth) and 30 other Judges, of whom nine are women: Judge Alison Lindsay, Judge Elizabeth Dunne, Judge Olive Buttimer, Judge Jacqueline Linnane, Judge Yvonne Murphy, Judge Katherine Delahunty, Judge Mary Faherty, Judge Patricia Ryan and Judge Miriam Reynolds.

At District Court level, there is the President (Judge Peter Smithwick) and 52 other Judges, of whom only eleven are women: Judges Clare Leonard, Catherine Murphy, Mary Collins, Miriam Malone, Bridget Reilly, Anne Watkin, Angela Condon, Mary Devins, Mary Fahy, Mary O'Halloran and Mary Martin. In the Dublin Metropolitan District, out of 15 ordinary District Judges, seven are women; 47 per cent of the total; a notably high proportion. However, conversely, women judges at District Court level are relatively rare outside of Dublin; only four out of 37 or 11 per cent of the total.

Overall, out of a total of 120 judges, 25 are women, amounting to 21 per cent or one in five. While this is lamentably low, considering the proportions of women in the professions generally, it is nevertheless a relatively high proportion of women judges compared to other common law jurisdictions (See Chapter 2 for further comparative discussion).

Appointment of Judges

In any country, the method by which judges are appointed is a critical factor in determining the levels of women in the judiciary. In Ireland, the judicial appointment process was reformed in 1995 and more recently in 2002 (section 6 of the Courts and Court Officers Act 2002 extended full rights of appointment to solicitors). Barristers and solicitors of at least ten years' standing are eligible for appointment to become Circuit Court judges; and barristers and solicitors of at least twelve years' standing may be made Judges of the High or Supreme Court. In addition, judges may be promoted within the Court system.

Section 13 of the Courts and Court Officers Act 1995 established the Judicial Appointments Advisory Board, which is made up of the Chief Justice, President of the High Court, Circuit and District Courts, the Attorney-General, a representative of each of the professional bodies and three persons appointed by the Minister for Justice, Equality and Law Reform. As of 2002, the three people appointed by the Minister are Olive Braiden, currently Director of the Crisis Pregnancy Agency and a former Director of the Dublin Rape Crisis Centre; John Coyle, and Tadhg O'Donoghue, both businessmen.¹²⁸ Olive Braiden is currently the only woman member of the Board.

¹²⁸ Judicial Appointments Advisory Board, *Annual Report 2002*. There were 13 judicial vacancies, and nine male judges and four women judges were appointed by the Minister, between 10 April and 31 December 2002.

Where a vacancy arises, the Board can either advertise for applications, or invite persons identified by them to submit their names for consideration for judicial appointment.¹²⁹ The Board must then recommend at least seven persons in respect of each vacancy for appointment to judicial office to the Minister for Justice, Equality and Law Reform, although it is not empowered to recommend applicants in any order of preference. Section 16 of the 1995 Act provides that the Board should only recommend those who:

- (a) have displayed in their practice a degree of competence and probity appropriate to and consistent with the appointment concerned;
- (b) are suitable on grounds of character and temperament;
- (c) are otherwise suitable.

The criteria for selection to the Supreme and High Courts were amended by section 8 of the Courts and Court Officers Act, 2002, to include an additional requirement that an appointee to either of these Superior Courts should have ‘an appropriate knowledge of the decisions, and an appropriate knowledge and degree of experience of the practice and procedure, of the Supreme Court and the High Court.’

Section 16 of the 1995 Act requires the Minister to first consider persons for appointment who have been recommended by the Board, but the Minister is not however obliged to follow the Board’s recommendation, and the ultimate decision as to whom to appoint rests with the Government (although the President makes the formal appointment). Ultimately, the power remains with the Government to appoint a person who has not been recommended by the Board, once the consultation process has been followed. Nor does the Board have to be consulted at all, where the Government proposes to ‘promote’ to higher judicial office a person who is already a judge of the High Court, Circuit or District Courts.

Thus, despite the establishment of the Board, the appointment process remains, as it has always been, subject to political influence and patronage. As Byrne and McCutcheon write, ‘In general, many of those appointed to judicial office have had connections, to some extent or another, either with the political party or parties whose members form the Government of the day or have become known to the Government in some other way.’¹³⁰ This has not changed, and the process continues to be a matter of public controversy: ‘there have been suggestions that appointments have been delayed until candidates acceptable to the government party or parties have been on the list of candidates sent to government by the Judicial Appointments Advisory Board.’¹³¹

¹²⁹ In its 2002 Report, the Board noted that it had never availed of its power to invite persons identified by it to submit their names for consideration (*Report*, 24).

¹³⁰ Byrne, Raymond and McCutcheon, Paul, *The Irish Legal System* (Dublin, Butterworths, 4th ed, 2001), 121.

¹³¹ *Ibid* 128.

There are also other unseen but well-known influences at work in judicial appointment; it is an established convention, for example, that, of barrister applicants, only Senior and not Junior Counsel are considered for appointment to the High and Supreme Courts. There are other conventions too, as Byrne and McCutcheon point out: 'at least one judge of the Supreme Court is not a Roman Catholic, while a number of judges in the other courts are also from other religious faiths.' They also state, although with little apparent justification given the figures, that 'More recently, the convention has grown that judicial appointments reflect a gender balance in proportion to the increasing numbers of women at senior levels in the profession.'¹³²

The establishment of the Judicial Appointments Advisory Board, with the function of advising the Government on judicial appointments, has undoubtedly made the system more transparent, and the publication of annual reports by the Board is particularly welcome, especially as they provide a gender breakdown of applications for appointment. The Minister's practice to date of seeking recommendations from the Board in respect of every judicial vacancy that has arisen, even where an existing judge has ultimately been promoted, is also commendable. It should also be noted that the Minister has not, to date, exercised the power to appoint a person who was not recommended by the Board.

However, the process should undoubtedly be reformed further, in order to increase its transparency, in accordance with best practice elsewhere, and with the recent recommendations of the Commissioner for Judicial Appointments for Northern Ireland.¹³³ Proposals for reform are set out in Chapter 11. But despite the remaining flaws in the appointment process, it is undoubtedly true that in recent years the number of women becoming judges has increased significantly, and indeed that once women apply, they have at least an equal chance of appointment as their male colleagues (although, as the Northern Ireland report notes, women often need to be encouraged to apply). From the detailed breakdown provided by the Judicial Appointments Advisory Board for 2002, it can be seen that while 23 per cent of applicants for judicial office were women (50 out of 218), women made up 31 per cent of those appointed judges during the relevant time period (four out of 13). The problem is that there are relatively few women eligible for appointment to the Superior Courts, compared to men, particularly given the small proportion of women Senior Counsel (women constitute only 9 per cent of all Senior Counsel).

¹³² *Ibid* 129.

¹³³ Commissioner for Judicial Appointments for Northern Ireland, *Audit Report* (Belfast, 2003); a wide-ranging review of practice in judicial appointments and the taking of Silk in Northern Ireland, the recommendations from which are discussed further in Chapter 2.

Table 1.5 Applicants for Judicial Appointment between 10 April and 31 December 2002¹³⁴

	Supreme Court	High Court	Circuit Court	District Court
Men Applicants	2	24	70	72
Women Applicants	0	3	21	26

Table 1.6 Appointments to Judicial Office between 10 April and 31 December 2002

	Supreme Court	High Court	Circuit Court	District Court
Male judges appointed	1	3 ¹³⁵	1	4
Female judges appointed	0	1	2	1

1.3.2 Barristers

Entry to the Bar

Entry to practice at the Bar is controlled by the Honorable Society of King's Inns, a voluntary society under the control of the Benchers, a group of members of the senior judiciary and senior members of the Bar. In order to enter the professional training course leading to the degree of barrister-at-law, run by the King's Inns, it is necessary to pass entrance examinations in a number of core legal subjects. In order to be eligible to sit the entrance examinations, applicants must either have a Law degree, or if not, they must have graduated from the King's Inns Diploma in Legal Studies, a two-year part-time conversion course for non-law graduates provided only by the King's Inns with lectures provided on the Inns premises.¹³⁷

Once an applicant has passed the King's Inns entrance examinations, they must take the two-year part-time course at King's Inns leading to the degree of barrister-at-law, and pass final examinations in order to be called to the Bar. The lecturers on both the diploma and degree courses are all practising barristers who teach part-time; of the

¹³⁴ Source for both tables: Judicial Appointments Advisory Board, *Annual Report 2002* (Dublin, 2002).

¹³⁵ A fourth male judge was appointed on 28 January 2003, outside the timeframe for the Annual Report, but the meeting held to recommend him for appointment was in December 2002.

¹³⁶ The entrance examination for all applicants was introduced in 2002; prior to that, 50 per cent of places on the degree course were reserved for law graduates, 40 per cent for holders of the King's Inns diploma, and the remaining 10 per cent were allocated by the Education Committee of the King's Inns, a practice that was viewed by many as lacking transparency.

¹³⁷ It is also possible to enter practice as a barrister in Ireland, having qualified at the Bar of another jurisdiction, subject to certain conditions.

total of 22 barristers currently teaching at the Inns, ten are women (45%). King's Inns exams are graded anonymously. Finally, prospective barristers must also dine in the Hall of King's Inns on at least ten occasions in each year of the degree course.

Many of those called to the Bar choose not to practise, but in order to practise as a barrister, it is long-established practice that it is necessary to be a member of the Law Library.¹³⁸ Membership is open to those qualified barristers who pay an annual fee to the Bar Council. On 2002/03 rates, annual fees range from €7,000 for a Senior Counsel of five years or more standing, and €5,000 for a Junior of ten years or more standing; to €1,300 for a Junior without an assigned seat in the Library, based in Dublin; and €850 for a Junior in their second year, based in Cork. Reduced fees are available for those who wish to become 'external members' (usually barristers who have moved into employment), or who are on leave of absence (€500 each p.a.).

Prospective applicants must also pay an additional entry fee of €1,500 (2002/03 rates), and fill in a standard application form, which seeks background information on the applicant.¹³⁹ Applicants must also attend for a short 'introductory meeting' or interview in advance of entry and must undertake to cease any occupation or practice that is in conflict with the rules of the Bar.

Finally, in order to practise at the Bar, it is also necessary to be taken on by as a 'Devil' (like an apprentice or trainee) by a 'Master', that is a practising barrister (Junior Counsel) of at least seven years' standing (post-Call).¹⁴⁰ The Bar Council maintains a register of those barristers eligible to be Pupil Masters, but there is no system of allocation of Masters; and it is up to individual aspiring Devils to find themselves a Master – usually in practice through word of mouth or personal recommendation from those who have already devilled. This informal practice may be criticised, as it could make it more difficult for those who have no connections with the legal profession to be sure that they are devilling with the right Master. Masters generally agree to take on as Devils the first person to approach them in relation to any given year; but those Masters

¹³⁸ Since 1986, each person called to the Bar gives an undertaking to the Chief Justice when receiving the degree of Barrister-at-Law that he/she will become a member of the Law Library if they wish to practise as a barrister. This requirement was criticised as a restrictive practice by the 1990 *Report of the Fair Trade Commission*, but remains as a matter of practice, although paragraph 8.2 of the *Code of Conduct For the Bar of Ireland* (as adopted by the Bar in General Meeting on 30 July 1985 and subsequently amended at later General Meetings) simply states that 'It is desirable that all practising barristers should be members of the Law Library.' The Bar Council has asserted (Bar Council, *Response to Competition Authority's Questionnaire in connection with the Authority's Study of Professional Services*, March 2002, para. 38) that there may be members of the barristers' profession who exercise rights of audience before the courts but are not members of the Law Library – for example, barristers in employment.

¹³⁹ This includes details of date of call to the Bar; career history prior to joining the Library; the name of the Master with whom they propose to 'devil' or do an apprenticeship.

¹⁴⁰ Conduct of the Master/Devil relationship is governed by paras 8.4-8.6 of the *Code of Conduct* and any guidelines issued from time to time by the Bar Council.

with a particularly good reputation for passing on work to Devils tend to get booked up some years in advance. It is only necessary to devil for one year, but in practice many choose to devil for two years with two different Masters. In what may seem a medieval practice, devilling is still unpaid, and is seen as a means of gaining work experience and introductions to solicitors through doing work provided by the Master. In previous years, indeed, devils were actually required to pay a fee to their Master for the privilege of doing their work! Devils are, however, free to take on their own paid work where instructed themselves by solicitors, from the time of entry to the Law Library (the only exception being that they may not be paid from the criminal legal aid scheme until they have completed six months' practice).

Dress Codes and Professional Culture

There is a dress code for barristers when appearing in court, as required under the Rules of the Superior Courts. They must wear a white band or collar with 'tabs' (two narrow white strips in place of a tie), and a black gown over dark dress. Until 1996, barristers also had to wear grey wigs, usually made of horsehair, in court.

However, this rule was criticised by the Fair Trade Commission's Report into the legal professions in 1990. Bar Council representatives had stated to the Commission that they had 'no firm views but that they would not like to see the wig disappear, because it helped maintain standards and anonymity.' But many other submissions were highly critical of court dress codes, and the Commission recommended the abolition of the compulsory rule that wigs be worn. It considered the wearing of wigs to be 'anachronistic, unnecessary and, possibly, intimidatory' in that it discouraged a closer relationship between barrister and client, and unjustifiably distinguished between barristers and solicitors in court.¹⁴¹ The Report noted the views of (the late) Supreme Court judge, Judge Niall McCarthy, who had attacked the 'post-colonial servility' bedevilling the Irish courts system, and described the wearing of wigs as absurd. In particular, he said that he saw the wearing of male wigs by women barristers as 'comic', and remarked that he had heard it suggested that wigs gave barristers 'a sense of protection against their clients, as if they were a sort of forensic condom.'¹⁴²

Section 49 of the Courts and Court Officers Act 1995 provides now that the wearing of wigs by barristers 'shall not be required', thus it has become a matter of individual discretion. In practice, the majority of barristers continue to wear wigs in court, other than in certain courts, like family courts and the Children's Court, where the wearing of wigs is prohibited. Some judges have even let it be known that they disapprove of Counsel appearing before them without wearing wigs; this inevitably instils fear of going wig-less among many junior barristers, and so wigs continue to be worn widely in the courts in practice. This outcome of the retention of the discretion to wear wigs was foreseen by Alan Shatter TD, in a speech to the Dáil during the debate on the

¹⁴¹ Fair Trade Commission, *Report of Study into Restrictive Practices in the Legal Profession* (Dublin, 1990), 309.

¹⁴² *Ibid*, 308, citing his address to the McGill Summer School, August 1987.

Courts Bill 2000:

‘Under pressure from the Law Library, a provision in that legislation which proposed to abolish the wearing of wigs was amended to confer on barristers a discretion to determine whether they should or should not wear wigs. As a consequence, the overwhelming majority of barristers continue to dress in 19th century garb except when appearing in family law cases ... Most newly qualified junior counsel wear wigs due to peer pressure by their elders and a fear that if they abandon the wig, it could detrimentally impact on their legal careers. The wearing of wigs, however, has minimal impact on the general public and is more an item of curiosity. There are more serious issues to be tackled than the wearing of wigs.’¹⁴³

The debate on wigs and court dress is an important one, however, since wigs remain a powerful symbol of elitism in the barristers’ profession for most ordinary people. The wearing of wigs also has an important, often unstated, gender dimension. While Judge McCarthy may have seen the wearing of wigs by women barristers as ‘comic’, in that it was absurd for women to mimic men’s [eighteenth century] dress, some women barristers have expressed the view that wearing a wig may be helpful in order to mask their relative youth and indeed gender.¹⁴⁴ This view is based on the underlying premise that gender bias is operational in the court system, and that women somehow need manly gravitas (conferred ostensibly by the wig) in order to be taken seriously. While this is one of many strands of the debate, it is worth articulating clearly in that it reveals the layers of gendered thinking that influence apparently gender-neutral professional culture. That some women have made this argument in earnest is even more worrying, in that it reveals that women assimilate to a sexist professional culture, rather than challenge it overtly.

Apart from the wig and gown, barristers are always required to wear dark suits. Until the early-1990s, women tended not to wear trouser-suits, although this was not prohibited by any rule and appears to have changed through practice and in particular through the actions of individual women like Mary Robinson in challenging convention, as she recalls:

‘I had been wearing this very smart pin-striped trouser suit in the Law Library. I went up to the loo one day – by this stage there were twenty women barristers at most – and there was a printed notice saying: “At a meeting of the ladies of the Bar, it was decided that trousers would not be worn.” I took out my Biro and amended that to read: “At a meeting of some of the ladies of the Bar.”’¹⁴⁵

¹⁴³ Dáil Debates, 10 October 2000, available at <www.gov.ie/debates-00/10oct/sect4.htm>.

¹⁴⁴ Authors’ own discussions with female barristers.

¹⁴⁵ Quoted in O’Leary and Burke, above n. 121, at 74.

*Patterns and Trends - Women at the Bar***Table 1.7 Persons Called to the Bar** ¹⁴⁶

Year Called	Number of Men Called	Number of Women Called	Women as a Percentage of Total Called
1921	30	2	6%
1922	18	0	0%
1923	32	1	3%
1924	20	0	0%
1925	33	2	6%
1926	26	1	4%
1936	10	0	0%
1946	23	1	4%
1956	21	4	16%
1961	22	0	0%
1966	30	6	17%
1971	39	7	15%
1976	58	14	19%
1981	19	5	21%
1986	91	47	34%
1991 ¹⁴⁷	123	47	28%
1996	78	55	41%
2001	61	67	52%

¹⁴⁶ Source: King's Inns Records.¹⁴⁷ In 1991, of the 123 men called, 61 were Australian barristers; of the 47 women, 9 were Australian barristers. The Australian barristers would not have pursued the King's Inns course or practised at the Irish Bar. This Australian phenomenon may also account for the large numbers called in 1986. By 1996, only three of the men called to the Bar were Australian, and none of the women.

Table 1.8 Members of the Law Library

Year Called	Total Barristers	Total Juniors	Total Senior Counsel	Women Juniors	Women Senior Counsel	Women as a % of Total Barristers
1921	*	*	*	2	0	0%
1937	261	*	*	4	0	2%
1947	293	*	*	8	0	3%
1952	283	*	*	7	0	2%
1962	242	*	*	9	0	4%
1968	217	169	48	10	0	5%
1970	253	197	56	12	0	5%
1975	292	226	66	12	0	4%
1978	382	307	75	36	1 ¹⁴⁹	10%
1980	429	352	77	62	1	15%
1982	467	383	84	72	1	16%
1985	534	431	103	92	1	17%
1988	722	618	104	152	4	22%
1990	750	642	108	181	5	25%
1992	862	746	116	212	5	25%
1995	985	847	138	284	6	29%
1998	1185	999	186	338	12	30%
2000	1342	1124	217	376	18	29%
2002	1398	1151	247	459	23	34%

¹⁴⁸ Source: Bar Council Records; Bar Council *Submission to the Restrictive Practices Commission Investigation of the Legal Profession*, 1987, 61. Where possible, figures here are based on 1 October of each year, but it should be noted that the figures for total numbers of barristers contained in the Indecon Report (2003) are somewhat different; they may have been calculated on different dates. Where figures are missing, this is because they are not available from the Bar Council. The figures for the 2002 intake are as of 14 August, 2003 (Source: Bar Council Finance Office).

¹⁴⁹ Frances Moran took silk in 1947, the first woman to do so, but was not a practising member of the Law Library. The second woman to become Senior Counsel, and the first practising woman SC, was Judge Mella Carroll, who took silk in 1976, and was made a Judge of the High Court in 1980. Mary Robinson took silk in 1980, Susan Denham (now a Supreme Court judge) and Mary Laffoy (now a High Court judge) in 1987, Mary Finlay (now a High Court Judge) in 1988 and Catherine McGuinness (now a High Court Judge) in 1989.

As Judge Denham writes, after the initial few women entrants in the 1920s, ‘Women barristers in Ireland remained few and far between in the first half of [the twentieth] century.’¹⁵⁰ This was also the case in England, and some discussion of why this was so is provided in a 1930 edition of the *Irish Law Times*, as follows:

‘Seven women were among the 135 students of the Four Inns of Court who were called to the English Bar on Wednesday...Some retire when they marry, while others carry on in the face of opposition from solicitors who regard giving briefs to women as only worth while when the most brilliant male advocate could not win. There is a definite prejudice against women barristers in the legal world, according to a prominent solicitor who said that women have yet to prove themselves the equal of men as advocates. The real test of an advocate was whether he or she could convince a jury. There was no doubt in his opinion that the average woman barrister was inferior to her male colleague, though certain women were making comfortable livings at the Bar.’¹⁵¹

The percentage of women at the Bar remained low for many decades, right into the 1970s. In 1937, only four out of 261 barristers were women (2%). In 1970, there were 12 women barristers out of a total of 253; still only 5 per cent. That percentage had actually worsened in 1975 (there were still only 12 women, out of 292 barristers; a mere 4%). But only three years later, by 1978, the percentage of women had more than doubled; in 1978, there were 37 women in the Law Library (including one Senior Counsel), out of a significantly increased overall total of 382 barristers, amounting to 10 per cent. The massive increase in numbers both overall and of women thus occurred at quite a definite point in the late 1970s. In 1976, there were 318 barristers and 19 women (6%); in 1977, 355 barristers and 24 women (7%). One can only surmise that the same impetus that had led to the legislative changes in the 1970s, described above, had also had an effect on women seeking to work at the Bar.

Numbers of barristers overall, and numbers of women, have continued to increase almost every year since then. In 1980, women made up 15 per cent of barristers; in 1997, they made up 28 per cent, and in 2000 they amounted to 29 per cent. Women now make up over one-third of all practising barristers. As of 14 August 2003, according to the most up-to-date Bar Council figures, there are 1,398 members of the Law Library, of which number 1,151 are Junior Counsel and 247 are Senior Counsel. There are 459 women Junior Counsel and 23 women Senior Counsel; a total of 482 women out of 1,398 or 34 per cent. Almost two out of every five Junior Counsel are women (40%). The proportion of women Senior Counsel remains much lower, however, at less than one in ten of all Seniors; 23 out of 247, or 9 per cent.

¹⁵⁰ Denham, Susan, above n. 115, 14.

¹⁵¹ *Irish Law Times and Solicitors Journal* (1930), 161.

¹⁵² www.lawlibrary.ie.

In terms of geographical breakdown, the Bar Council website states that most barristers practise in Dublin, but 55 are based in Cork and 100 in the rest of the country. The website also states,

‘The Irish Bar is broadly based. Approximately 70% are male and 30% female. A number of different nationalities and religious beliefs are represented.’¹⁵²

Despite this assertion, and the fact that the majority of Law students have been women for many years (see below), students at King’s Inns have remained predominantly male until very recently; only in 2001 were more women than men called to the Bar.

Attrition Rates

It is impossible to obtain reliable figures on drop out rates of barristers by gender. The Bar Council has only recently begun to keep statistics on current drop out rates, but has produced some figures based on attrition rates in the past (see below). However, there is no indication as to why persons dropped out. Some for example may have left the Law Library in order to become judges. It may be seen that the figures on those who enter the Library and those who leave tend to fluctuate from year to year. No gender breakdown is available for the attrition figures for 1980-1996. It is clear that a better system of gendered record keeping is required.

Recent figures on attrition provided by the Bar Council to the Indecon Group show that of the entrants to the practising profession in 1997, six had left by 2002; of those who entered in 1998, nine had left by 2002, and of the group who entered in 1999, six had left by 2002.¹⁵³ Again no gender breakdown of these figures was available. Indecon calculated that since the average annual increase in the number of Junior Counsel has been approximately 41 over the decade 1991-2001, with a slightly higher annual increase during the five years 1997-2001, to an average yearly intake of 47. Thus they concluded that:

‘between 15 and 20% of a given cohort of new entrants to the Law Library will leave the practising profession in a period of less than five years from entry. This in our view is a significant rate of attrition in view of the investment (both financial and in terms of time) involved in entering the profession in the first place.’¹⁵⁴

Most recently, the Bar Council provided the authors with additional figures showing the gender breakdown of members of the Law Library who left between 1997-2003. Again, it is impossible to know from these figures the reason why individuals left; and the overall numbers leaving appears to be very small (with the exception of 2002, when apparently 46 persons left), but women appear to be disproportionately represented among those leaving practice.

¹⁵³ Indecon Group, *Report to the Competition Authority on Competition in the Legal Professions*, March 2003.

¹⁵⁴ *Ibid*, 183.

Table 1.9 Drop-Out Rates for Selected Years between 1980 - 1991¹⁵⁵

Year of Entry	Entry Numbers	Drop-Out Numbers	Drop-Out Rate
1980/81	32	11	38%
1984/5	46	21	44%
1985/6	69	23	33%
1989/90	52	17	33%
1990/91	40	9	23%

Table 1.10 Gender Breakdown of Members who left between 1997-2003¹⁵⁶

Year	Men who Left	Women who left	Total	Women as a % of Total Who Left
1996	0	1	1	100%
1997	0	1	1	100%
1998	2	1	3	33%
1999	4	2	6	33%
2000	13	6	19	32%
2001	17	7	24	29%
2002	32	14	46	30%
2003	7	9	16	56%

Taking Silk

Senior Counsel are only engaged on more complex cases, in order to 'lead' Junior Counsel. In some of the most serious or complex matters, it is possible to have two Senior Counsel engaged on the case along with one Junior. Senior Counsel earn more per case than Junior Counsel, but many barristers choose not to become Senior Counsel, remaining 'Juniors' throughout their practising career. As Byrne and McCutcheon state, 'in general, most barristers consider 'taking silk' after about 15 years' practice, when they reach their late 30s or early 40s.'¹⁵⁷ In order to take Silk, barristers must apply to the Chief Justice and Attorney General for approval. The Government makes the actual appointment on the advice of the Attorney General.

¹⁵⁵ Source: Bar Council.

¹⁵⁶ Source: Bar Council.

¹⁵⁷ Byrne, Raymond and McCutcheon, Paul, *The Irish Legal System* (Dublin, Butterworths, 4th ed, 2001), 78.

Procedures for taking Silk are set out briefly in the Code of Conduct of the Bar of Ireland, at paras. 10.1 – 10.2. These provide that ‘Admission to the Inner Bar should be confined to practising barristers’ and that ‘Only persons of professional eminence should be admitted to the Inner Bar.’ There are no other strict rules or criteria, although ‘applicants are obliged to complete a questionnaire containing information relating to the nature and content of the applicant’s practice as a barrister’. The Fair Trade Commission, referring to the mystery surrounding the taking of Silk, noted that approval ‘depends on considerations such as personal observation of the barrister’s work in court, and his [or her] general reputation and standing.’¹⁵⁹ Few applicants in practice are refused, ‘it could be said that virtually no member of the Bar applies unless they have already made informal soundings amongst their colleagues that they are “qualified” to be approved.’¹⁶⁰

The proportion of women Senior Counsel remains tiny; only 23 women Silks as of September 2003, out of a total of 247 Senior Counsel altogether (9%). If one takes the figures for male barristers, there are 224 men at Senior level, and 692 male Juniors; 22 per cent of all male barristers are Senior Counsel. In marked contrast, only 5 per cent of women in the Law Library are Seniors. Moreover, while Byrne and McCutcheon estimate that barristers normally consider taking silk after about 15 years in practice, a survey of the current women Senior Counsel shows that on average, they were called to the Bar 17.2 years before taking Silk, suggesting that it may take longer for women juniors to be ready to take Silk. However, it is instructive to review the career progression of men and women called at particular years. A review of those members of the Law Library called to the Bar in 1980, for example, shows that of the 32 men called that year, 11 are now Silks (34%); whereas of the six women called, two are Senior Counsel (33%). Thus, the same proportion of both women and men called that year are now Silks – one in three. This is an encouraging figure, but given the small number of barristers in the sample it indicates that further study is required to ascertain if it is borne out generally.

There is another important caveat in relation to the small number of women Silks. There are currently 14 women judges who were originally Senior Counsel, prior to their appointment to the bench. Clearly the promotion of women Seniors to the judiciary is a sure sign of their ability, but it also contributes to the ongoing shortage of women at the top end of the practising Bar.

Finally, there is no mechanism to ensure that women, or men, are encouraged to take Silk at any stage. Informal peer group pressure, through the taking of ‘soundings’, and more importantly the individual’s own assessment of the potential effect of taking silk on their practice, remains the impetus for those who do choose to become Senior

¹⁵⁸ Bar Council, *Response to Competition Authority’s Questionnaire in connection with the Authority’s Study of Professional Services*, March 2002, para. 36.

¹⁵⁹ *Report*, above n. 141, 107.

¹⁶⁰ Byrne and McCutcheon, above n. 157, 78.

Counsel. To some extent, is difficult to see how the self-selecting nature of the process could be changed, since so much depends on the nature of the work being carried on by particular barristers. For many Juniors, taking Silk would mean a significant drop in income if their practice does not involve the sort of cases that Seniors would routinely be engaged upon. Given that appointments to the superior courts are drawn from the inner Bar, it is vital that more be done to ensure a greater proportion of women take Silk. Consideration should also be given to changing the criteria for judicial appointment, as discussed above and in Chapter 11.

Professional Governing Bodies for the Bar: King's Inns and Bar Council

The Honorable Society of King's Inns was established in 1541 and is the governing body of the Bar of Ireland.¹⁶¹ Until 1980, the King's Inns itself was run by its Benchers, senior members of the judiciary and the Bar. In order to become a Bencher, one must be elected by the existing Benchers. Once a new Bencher is elected, a formal dinner takes place in the King's Inns to mark their election, known as a 'Benching'. In 1980, a new body was established to run the King's Inns, the Council of King's Inns, made up of Benchers, representatives of the judiciary, the practising Bar and the non-practising Bar. However, the Benchers retain the function of admitting candidates to the degree of Barrister-at-Law, and of disbaring of barristers. The Benchers thus play an important role in the education and call to the Bar of aspiring barristers.

There are 82 Benchers in total, of whom only six are women (7%) – all of them judges. There are also 44 Honorary (ie non-practising) Benchers, with none of the functions of Benchers, of whom only three are women (Mary Robinson, President Mary McAleese and Cherie Booth QC). Frances Moran was made an Honorary Bencher, but the first woman actually to become a Bencher was Judge Mella Carroll in 1979. However, that was after she became a judge, and by tradition all those appointed judges of the superior courts are also made Benchers. The first and only woman to be made a Bencher without being first appointed as a judge was Mary Finlay SC in 1996 (she was subsequently appointed a High Court Judge in 2002). There are now no women Benchers who are not judges, by contrast with 43 male Benchers who are not judges.

Barristers are subject to the professional standards set by the Bar Council.¹⁶² The Bar Council, founded in 1815, is concerned with the day-to-day operation of the barristers' profession, and with the running of the Law Library. It has multiple roles: regulatory body, governing the members of the Law Library; disciplinary body with a Code of Conduct and Disciplinary Code; professional association representing the interests of its members; and educational body, through its continuing legal education programme.

¹⁶¹ See further Hogan, Daire, *The Honorable Society of King's Inns* (Council of King's Inns, 1987).

¹⁶² See further below at 1.4.1 for a discussion of the disciplinary rules for barristers.

The Bar Council is run on a day-to-day basis by a Director, Jerry Carroll. It is, however, headed by an elected Chairperson (currently Conor Maguire SC) and three officers (all currently men). The first and only woman Chair was Mella Carroll (1979-80), now a High Court Judge. Apart from the officers, there are 20 barristers on the Bar Council itself, ten Junior and ten Senior Counsel, as well as the Attorney-General. Each year half of the members on the Council are subject to re-election. On the 2002-03 Council, only three members of the Council, out of 20, were women. Following the July 2003 Bar Council elections, there are only three women out of twenty Council members (15%). The Council has seven permanent committees and four non-permanent committees. There is no Equality Committee, and there is no woman member on the important Finance Committee.

The Bar Council *Code of Conduct* sets professional standards for all barristers. It is amended by General Meetings of barristers and contained in the Bar Council Yearbook and Diary, produced annually. There is no equality clause in the Code, nor is there any equality code pertaining to barristers or to the Law Library workplace.

1.3.3 Solicitors

Entry to the Solicitors' Profession

Unlike the barristers' profession, which is not governed by any statute, the rules governing entry to the solicitors' profession and other aspects of solicitors' practice are based in legislation. Entry to practice as a solicitor is regulated under the Solicitors Act 1954, which confers responsibility for the training of solicitors upon the Incorporated Law Society of Ireland, the solicitors' professional body.¹⁶³ In order to enter the professional training courses run by the Law Society, it is necessary to pass its entrance examinations in eight core legal subjects (known as Final Examination Part 1, or FE-1). Those sitting the entrance examinations are not required to have studied law at university, but must hold a university degree or equivalent, or be a barrister or equivalent. In practice, many entrants have completed a legal diploma or 'crammer' legal course in preparation for the examination; several of these are offered both through public and private colleges.

Having passed this examination, in order to commence study on the Law Society course, applicants must also have a training contract with a solicitor or solicitors' firm. The training course is then run over 24 months, with periods of full-time work with one's Master interspersed with periods of full-time study at the Law Society Education Centre in Blackhall Place, Dublin. The FE-2 course is known as the 'professional course', involving 14 weeks intensive full-time lectures and tutorials, followed by FE-2 exams; this is followed by 18 months training in-office, and then a final seven week period of further intensive instruction (the FE-3 or 'advanced course') with a final FE-3 exam at the end.

¹⁶³ See further O'Callaghan, Patrick, *The Law on Solicitors in Ireland* (Dublin, Butterworths, 2000).

After passing the final examinations, trainee solicitors are awarded a parchment and thus entered onto the roll of solicitors maintained by the Law Society. In order to practise, however, solicitors must also obtain an annual practising certificate from the Registrar of Solicitors. This amounts to the solicitor's 'badge of honour'; for a solicitor to practise without a certificate amounts to misconduct and can lay them open to proceedings before the Disciplinary Committee of the Law Society.¹⁶⁴ Exceptions to the requirement exist in respect of State solicitors and certain solicitors employed in conveyancing services.

Patterns and Trends - Women Solicitors

Table 1.11 Solicitors by Year of Admittance¹⁶⁵

Year Admitted	Total Solicitors Admitted	Women Solicitors Admitted	Women as a % of Total Admitted
1960	23	0	0%
1962	26	2	8%
1968	45	4	9%
1970	70	19	27%
1975	113	36	32%
1978	227	73	32%
1980	283	87	31%
1982	285	93	33%
1985	173	79	46%
1988	172	75	44%
1990	161	89	55%
1992	305	127	42%
1995	339	186	55%
1998	319	178	56%
2000	350	202	58%
2002	401	216	54%

¹⁶⁴ *Ibid*, 381.

¹⁶⁵ Source: Law Society Records.

Table 1.12 Solicitors Holding a Practising Certificate ¹⁶⁶

Year	Total Number of Certificates	Total number of Women Solicitors	Practising Women as a % of Total Practising
1960	1,335	62	5%
1970	1,363	71	5%
1975	1,655	106	6%
1980	2,139	359	17%
1982	2,674	575	22%
1985	3,188	711	22%
1988	3,410	859	25%
1990	3,529	947	27%
1992	3,808	1,082	28%
1995	4,355	1,406	32%
1998	4,975	1,776	36%
2000	5,551	2,142	39%
2002	6,176	2,503	41%

Overall, the number of practising solicitors, both male and female, has grown continuously over time, with a cumulative rate of increase of over 62 per cent between 1991-2001. The *Indecon Report* found that virtually every solicitor entitled to practise in Ireland is a member of the Law Society (98%).¹⁶⁷ Of Law Society members, the vast majority (83%) were employed in private practice, with 7 per cent employed in corporate bodies and just 2 per cent employed in the service of the State. Only 8 per cent of the Society's members were not practising as solicitors, and less than 1 per cent working as solicitors in other jurisdictions. This shows that the predominant mode of work for solicitors in Ireland is in private practice.

However, private practice can take many forms. Some solicitors specialise in litigation (court work) but many others conduct their work from the office, and never have to appear in court.¹⁶⁸ Solicitors may practise either as sole practitioners, in partnership with other solicitors, or as employees of a firm of solicitors. In large firms, there may

¹⁶⁶ Source: Law Society Records.

¹⁶⁷ *Indecon Report*, 98.

¹⁶⁸ Those who appear in court must dress 'in a manner which shows respect for the dignity and formality of the court', Law Society of Ireland, *A Guide to Professional Conduct of Solicitors of Ireland* (Dublin, Law Society, 2nd ed, 2002), para. 5.9.

be many partners and employed solicitors, and partners can be either 'equity' partners (ie they earn a share of the profits of the firm) or salaried partners (who are on a fixed salary). The Indecon Report showed that in 2001 there were 2,035 solicitors' firms in Ireland. On average, each firm employed three solicitors, with the largest firm employing 163 solicitors. By far the greatest density of solicitors is in Dublin, with one solicitor per 409 persons at the end of 2001, compared with one solicitor per 1,546 persons in Co. Laois.¹⁶⁹ Of the 2,035 firms in Ireland in 2001, 47 per cent (947) were single-solicitor firms, and the remaining 53 per cent were either firms run by one principal with one or more assistant/associate solicitors, or partnerships made up of two or more solicitors. Only 46 firms (2%) contain more than ten solicitors, and only 16 firms (under 1%) have more than 20 solicitors.

In 1923, the first woman was admitted as a solicitor in Ireland. After that date, one commentator has written that 'a picture emerges of a slow but steady stream of women becoming solicitors.'¹⁷⁰ In fact, it might be more accurate to describe the entry of women into the profession over the following decades as a 'light trickle.' But certainly, by 1953, a total of 108 women had been admitted as solicitors.

The number increased more rapidly after 1970. In 1971, 62 men and 19 women enrolled. Just as with the barristers' profession, women began to enter in much larger numbers during the late 1970s. In 1981, 124 men and 65 women qualified, and in 1991 117 men and 86 women were enrolled. Since the early 1990s, the number of women obtaining practising certificates has consistently exceeded the number of men. In 1995, women constituted 55 per cent of those admitted; there were 186 women enrolled and 153 men. In 1998, women accounted for 56 per cent of the total of 319 admitted, and in 2000, 58 per cent.

While the proportion of women admitted onto the solicitors' roll is close to three-fifths, the percentage of those holding practising certificates who are women is also steadily increasing but has not yet reached the same level. Today, there are 6,176 solicitors with practising certificates in Ireland. Women now constitute well over one-third and just over two-fifths of this total (2,503 or 41%).

Making Partner

A crucial career development step as a solicitor is becoming a partner in a firm. Partnership generally connotes becoming an owner of the firm, and a change in status from employment to self-employment. Partners generally share in the profits of the firm, rather than receiving a fixed salary (although in some larger firms, there is a distinction between equity partners, who share in the profits, and non-equity salaried partners, who do not). The conditions for acquiring partnership status vary depending on the nature of the firm. In small firms, inviting another partner to join

¹⁶⁹ *Indecon Report*, 99.

¹⁷⁰ Denham, Susan, *A Celebration of Women in the Law in the Twentieth Century*, Address to the Dublin University Women Graduates Association, 2 March 1999, 17.

may mean altering the nature of the practice fundamentally. In contrast, in larger firms, becoming a partner is sometimes the only means of career progression. However, it is not an ordinary promotion, in that partnership criteria are often highly informal, and the decision may be viewed by existing partners as based on personal, business and meritocratic criteria. From the comparative literature reviewed in Chapter 2, it is clear that women solicitors tend not to become partners with such ease or speed as men.

In order to enhance our understanding of partnership structures, we sought information on this topic from the Managing Partners of 13 large solicitors firms in Dublin. Only one of these Managing Partners is a woman. We received only five responses, from which the following insights have been gained.

First, the practice of developing a firm structure which includes both non-equity or salaried partners (ie who do not own a share in the firm) alongside the more traditional equity partners seems to have become relatively common. Three of the five respondents had non-equity partners. This suggests that large legal workplaces are becoming increasingly stratified, and that there is a growing distinction between equity partners and partners with a lower status and no share of the profits.

Second, in terms of criteria for becoming partner, a number of diverse responses were received. One firm provided two pages of detailed 'performance criteria' which outlined clear career achievements necessary to obtain partnership, falling under five headings: 'client/marketing', 'internal', 'staff', 'financial-own', 'financial – your team'. Under each heading, up to nine specific criteria were set out, with a performance indicator. For example, the first criterion under the heading 'financial – own' refers to billable and non-billable hours as the criterion for 'producing at a high level'. Other criteria under this heading included 'converting billable hours to bills and extent to which billings target exceeded'; 'profitability issue – comparison of fees billed against time value'; 'sound business practices' and 'use of IT to achieve more efficiencies and profitability'. It should be noted that most large firms employ time management software that allows the firm to monitor billable and non-billable hours, and that they require fee earners to note their activity at regular intervals.

Another firm provided the following list of criteria, again highlighting fee earning. The Managing Partner responded, 'We have an equal opportunities policy in place and take into account: Personal fee performance, practice development activities, training and coaching of other lawyers and staff within the firm; contribution to knowledge management databank; and potential.' Flexibility and emphasis on intangible qualities are also evident in the following list: 'Promotional criteria concern excellence as a lawyer, integrity, people skills, personality, business sense and character. The business case for promotion (i.e. The strength of the business in the area that the individual focused on) is relevant also, although less so than

might be thought, as in practice, young talented lawyers are drawn to the areas of business where the level of client demand is high.’ Other firms highlighted the importance of discretion in making these decisions. One stated, ‘We maintain a flexible approach but taking into account such matters as billings, expertise, client management, client development and team management.’

Another firm was much less forthcoming in its reply, stating ‘I would be of the view that we have a reasonable number of Female Partners at both Equity and non-Equity level and that promotion is open to them on the same basis as to male Partners. However I would have to comment that not all female Lawyers choose to go the Partnership route.’

Using the information from the responses, and based on publicly available information, we can provide the following snapshot of gender imbalance in 13 large firms in Dublin (each with between 10 – 60 partners). As regards the distinction between equity and non-equity partners, ‘not provided’ indicates that this information was not available to us. ‘Not applicable’ connotes that all the firm’s partners are equity partners.

Table 1.13 Proportion of Women Partners in 13 Large Firms

Firm	% Female Equity Partners	% Female Non-Equity Partners	% Female Total Partners
A	16%	38%	25%
B	Not provided	Not provided	25%
C	18%	25%	20%
D	27%	Not applicable	27%
E	36%	Not applicable	36%
F	Not provided	Not provided	32%
G	Not provided	Not provided	29%
H	Not provided	Not provided	17%
I	Not provided	Not provided	8%
J	Not provided	Not provided	22%
K	Not provided	Not provided	19%
L	Not provided	Not provided	29%
Average			24%

The Professional Governing Body for Solicitors: The Law Society

The Law Society was originally established in 1773, and formally adopted the title of the Incorporated Law Society in 1888. The Solicitors Acts 1954–2002 now constitute the modern legislative basis for the Society, which became the Law Society of Ireland in the Solicitors Act 1994. While there is no requirement that a solicitor must be a member of the Law Society in order to practise, the vast majority of practising solicitors are members (98%).¹⁷¹

The Society is run on a day-to-day basis by the Director-General, Ken Murphy, and his staff, and its governing body is the Council, elected from among practising solicitors. Moya Quinlan was the first woman president of the Council in 1980, Elma Lynch the second (in 2001), and Geraldine Clarke the third (2002). On the 2001-2 Council, apart from the president there were 30 members including two vice-presidents. Five out of the 30 were women (17%).

Solicitors are subject to the disciplinary powers of the Law Society, which has a Complaints Department and Disciplinary Tribunal. Breach of professional ethics can lead to proceedings before the Tribunal. The most recent edition of the Law Society's Guide to Professional Conduct was published in 2002.¹⁷² Para. 6.9 of the Guide, under the general heading of 'The Solicitor and his relationship with Third Parties', constitutes an anti-discrimination clause:

'A solicitor should treat all persons as equal. A solicitor should avoid discrimination against any person whether clients, counsel, professional witnesses, opposing clients or witnesses because of their sex, race, colour, religion, sexual persuasion, creed, ethnic origin or membership of any social grouping.'

There is no equality clause relating to solicitors' relationships with each other, nor is there an Equality Committee to monitor practices within the profession.

1.3.4 Legal Academics*The Role of Legal Academia*

There are many routes to enter the legal professions, and those routes have changed significantly over time. Until the late 1960s, it was usual to enter the legal professions without having studied law at university, and university legal departments had few full-time academic staff, relying almost entirely on practitioners to provide part-time lectures. Now, while third-level colleges and universities still have no role in professional legal training, most of those entering legal practice have studied law as their undergraduate degree. Degree courses in Law are offered by four universities: Trinity College Dublin (a four-year course leading to an LL.B.); University College Dublin,

¹⁷¹ *Indecon Report*, 117.

¹⁷² Law Society of Ireland, *A Guide to Professional Conduct of Solicitors in Ireland* (Dublin, Law Society, 2nd ed, 2002). See further below at 1.4.1.

University College Cork, the National University of Ireland Galway (all three-year courses leading to a BCL). Some universities offer Degree courses in Law and another subject (eg the Law and French degree at TCD).

Additionally there are Law departments in the University of Limerick, Dublin City University, the National College of Ireland and the Institutes of Technology offering Law teaching on non-Law degree, diploma and certificate programmes. Apart from these public institutions, a number of private colleges also offer Law degrees. Until recently, studying law to degree level granted students exemption from the entrance exams of the professional bodies.¹⁷³ Now both professional bodies require applicants both with law degrees and without to sit entrance examinations prior to entry. Those with degrees in other disciplines than law, and indeed in some cases those without degrees, may thus enter the professional legal courses by passing the relevant entrance exams.

As well as providing legal education (although not vocational training), legal academics now play a crucial role through research and publication. In Ireland, however, there is no longstanding tradition of legal academic research, and law as an academic discipline (rather than law as vocational training) was underdeveloped until the late 1960s and 1970s, as noted above. This had significant ramifications, one of which was the paucity of publications, texts or academic writing on Irish legal themes. In this respect, the recent transition is remarkable. John Temple-Lang noted in 2001:

‘Irish legal writing .. has changed unbelievably in the past thirty-five years. Then we had no serious law journal and no textbook on Irish land law, constitutional law, tort law, equity law (since Kiely), administrative law, private international law, family law, planning or company law. The anti-intellectual bias of some Irish lawyers was so strong that one successful Dublin solicitor .. refused to have his firm subscribe to the Irish Reports... Now we have books on all of the subjects just mentioned ..’¹⁷⁴

There are now two major publishing companies producing Irish legal texts, law books and journals; Thomson Round Hall (TRH) and Butterworths. Out of a total of 170 authors listed in the former company’s most recent Irish law catalogue, 46 are women (27%). Of a total of 132 legal textbooks TRH have published, 31 are by female authors (23%).¹⁷⁵ It should be noted, however, that many of the authors, both male and female, are full-time practitioners and may teach or carry out research and writing part-time. As may be seen below, the numbers of full-time legal academics in Irish universities is still very small, and every law school supplements its teaching requirements with part-time staff, usually drawn from the practising bar and solicitors’ profession.

¹⁷³ See further below at 1.4.2.

¹⁷⁴ Temple Lang, John, Foreword to Power, Vincent, *Competition Law and Practice* (Dublin, Butterworths, 2001).

¹⁷⁵ *Thomson Round Hall Catalogue 03* (Dublin, Thomson Round Hall, 2003).

*Patterns and Trends - Women Legal Academics***Table 1.14 Full-Time Academic Staff in University Law Schools**¹⁷⁶

University	Full-Time Staff	Women	Percentage of Women
DIT	7	2	29%
DCU	4	1	25%
NUI(G)	27	11	41%
TCD	16	5	31%
UCC	20	11	55%
UCD	29	10	35%
UL	8	3	38%

Table 1.15 Breakdown of Women Lecturers and Professors in University Law Schools

University	Total Law Professors (including Associate Profs)	Women Law Professors	Permanent F/T Law lecturers (excluding Professor)	Women permanent Law lecturers	Temporary F/T Law lecturers	Temporary Women F/T Law lecturers
DIT	-	-	7	2	-	-
DCU	-	-	4	1	-	-
NUI(G)	3	0	24	11	unknown	unknown
TCD	3	1	8	3	5	1
UCC	4	2	14	7	2	2
UCD	5	0	18	6	6	4
UL	3	0	5	3	unknown	unknown

Only full-time academic staff are included in these figures, although every law school also relies heavily on part-time lecturers (usually practitioners). Of the full-time academics, some are also practitioners, while many are engaged in other 'public service' work through serving on government-appointed expert boards, such as the Law Reform Commission, or through State or EU-funded research.

¹⁷⁶ Source: Individual Law Schools and Departments.

When gender breakdown is examined, it can be seen that in all but one University, women make up less than half of the small law school faculty. Of the total of 110 full-time Irish legal academics currently employed in our universities, 42 are women (38%). Of the total of 18 professors, only three are women (17%). The low number of women professors is particularly noteworthy, given the early appointment to Law Professorship of Dr Frances Moran.¹⁷⁷

This imbalance in women's representation at academic level is not unique to Law faculties. Eileen Drew's recent report to Trinity College Dublin, *Best Practice Models for the Career Advancement of Women in Academe*,¹⁷⁸ shows that women are considerably underrepresented at all levels throughout the university sector. Drew comments that this 'lack of numerical progress towards parity among academics is even more serious when taking into account the lower proportion of women aged 30 years or less holding permanent positions (1 in 14), compared with (7 out of 21) men.'¹⁷⁹ Suggesting that interventions are needed in order to improve gender balance in academic appointments, she offers an alternative model, based on procedures applied in Nordic countries, for ensuring greater representation of women at higher levels in faculties.

The small numbers of those employed in legal academe, as in other academic disciplines in Ireland, makes it difficult to obtain qualitative information about women's experiences as law lecturers. Although the questionnaire developed for this study was distributed among academics as well as practitioners (see further Chapter 4), only a small number of academics responded. Others were interviewed, however, to try and throw some light on why the number of women progressing through academic promotion structures remains so low. Drew's study notes that the causes of women lecturers' failure to make professor are generally rooted in structures and conditions of academic life. Studies like Drew's demonstrate further need, not only for positive interventions such as those she recommends, but also for a change in attitudes among male academics, and the introduction of clear procedures for dealing with individual cases of discrimination. However, the Higher Education Authority (HEA) has recognised these needs, and has worked for change through its Equality Unit. All universities now have equality codes, and it has become routine to have equality committees to develop and monitor those codes; but real change in promotion of women remains a necessity.

Gender and the Law Curriculum

With increased numbers of women academics teaching law, and greater awareness of equality issues generally in academic life, we were interested therefore to explore whether the law curriculum in different universities had changed as a result, and

¹⁷⁷ See further above. The three women professors listed are: Professor Yvonne Scannell at Trinity College Dublin, and Professors Caroline Fennell and Irene Lynch at University College Cork.

¹⁷⁸ Drew, Eileen, *Report to the Equality Committee* (Trinity College Dublin, Unpublished, October 2002).

¹⁷⁹ Wright, Barbara, *Women Academics and Promotion* (Trinity College Dublin, Unpublished, 2002).

whether gender was an issue in taught law courses. We sought this information from individual law schools, while recognising that ‘gender and law’ courses may be taught in other departments outside the scope of this study (eg on the Equality Studies course at University College Dublin).

We also recognised that gender issues are integrated into many law courses without being specifically named; in the Dublin Institute of Technology (DIT), for example, we were informed that ‘gender issues arise throughout the [family law] course, particularly in the child law and marriage formation elements of the course...lecturers point out gender inequalities in the content and application of various aspects of family law’. Similarly, at University College Cork (UCC), Jurisprudence contains a component on feminist legal theory, and Constitutional law includes a consideration of gender roles under the Article 41 heading. At postgraduate level in UCC, the LL.M. in Advanced Criminal Process incorporates feminist materials on discourse analysis, and examines differential treatment of certain offences, such as sexual offences, from a feminist perspective; feminist penalty counts for 10 per cent of the course on the LL.M. in Criminal Justice, and a feminist component is also included on the Criminology course.¹⁸⁰ However, there is only one stand-alone feminist theory and law/gender and law course offered, at Trinity College Dublin. It is difficult to know the reason for the lack of specific stand-alone feminist courses in Irish law schools.

Patterns and Trends - Women Law Students

Table 1.16 Women as a Percentage of Full-Time Undergraduate Enrolments in Law¹⁸¹

Academic Year*	UCD		UCC		NUIG		TCD		TOTALS		% Female
	M	F	M	F	M	F	M	F	M	F	
2001/02	131	259	141	318	104	182	155	255	531	1014	66%
1995/96	189	221	123	176	50	54	135	177	497	628	56%
1990/91	167	160	105	152	0	0	137	158	409	470	53%
1985/86	165	162	102	95	0	0	130	118	397	375	49%
1980/81	219	137	98	87	0	0	151	81	468	305	39%
1978/79	289	136	126	59	0	0	161	67	576	262	31%
1975/76	364	170	135	64	0	0	191	72	690	306	31%

¹⁸⁰ Source: responses from DIT and UCC Law departments.

¹⁸¹ Source: Higher Education Authority (HEA). Figures refer to March of each academic year.

As may be seen, the numbers of women students enrolling in university law schools has equalled the numbers of men enrolling since the mid-1980s, twenty years ago. On average, women now constitute two-thirds of the enrolments in Law across all the universities (66%).

But even in the mid-1970s, when women were seriously under-represented in the professions, women were already making up almost one-third of undergraduate enrolments in the universities. Those large numbers of women entering Law in the mid-late 1970s should therefore have been expected to progress more swiftly through the profession than in fact they did. The fact that the ‘inevitable progression’ of women to senior levels in solicitors firms and at the Bar has not (yet?) occurred exposes the ‘trickle-up effect’ or ‘pipeline fallacy’, discussed further in Chapter 2. As Drew writes, referring to the situation in academia generally where women’s contribution remains devalued,

‘The comparative analysis of experience in the Nordic countries and Australia shows that this situation does not rectify itself into some form of parity or equitable share of positions within the hierarchy. Rather the evidence points to a continuing need for interventions to address new, as well as continuing, disparities between women and men in academe.’¹⁸²

In other words, change does not come about through the inevitable passage of time; if it did, then there would be many more women solicitors who had made partner by now! Rather, positive intervention is needed to ensure that those women who are graduating from law schools now in equal or even greater numbers than their male peers are equally represented twenty years from now in the upper echelons of legal practice.

1.4 Regulation, Redress and Remedies

1.4.1 Self-Regulation of the Legal Professions

The legal professions have always been self-regulating, with power to investigate complaints against members, and to impose their own sanctions on members who breach their respective codes. Both solicitors and barristers must have professional indemnity insurance in order to practise. In addition the Law Society maintains a Compensation Fund to compensate clients who have suffered loss due to a solicitor’s wrongdoing.

In relation to barristers, the Bar Council Code of Conduct and Disciplinary Code govern disciplinary matters. The Bar Council’s Professional Practices Committee considers complaints of misconduct by a barrister or Judge against another barrister. The Professional Conduct Tribunal of the Council, which comprises members of the Bar and lay representation, considers complaints against barristers made by anyone else, including solicitors or members of the public. Appeals go the Appeals Board, made up of a Judge or retired Judge, a non-lawyer nominated by the Attorney

¹⁸² Drew, *Best Practice Models*, above n. 178, 9.

General, and the Chair of the Bar Council has recently stated that no legal action has been taken to enforce any rules, regulations, or codes relating to the profession and its members within the last ten years.¹⁸³

The King's Inns retains the separate disciplinary power to disbar members for misconduct, but the Society of King's Inns has recently stated that it has 'not disbarred any person for disciplinary reasons in living memory.'¹⁸⁴ The Indecon Report found that these complaints procedures 'are designed to protect consumer interests and high standards in the profession'.

Different disciplinary procedures apply for solicitors, who on admission to the roll become subject to the disciplinary powers of the Law Society. The Society has a Complaints Department, to which members of the public may bring complaints against any solicitor. The Law Society also has a Disciplinary Tribunal, established under statute, which sits as a division of the High Court, and which can investigate an allegation of misconduct against a solicitor, for example an allegation that a solicitor has misappropriated client funds, and can then refer that allegation to the President of the High Court, who has power to discipline, suspend or ultimately strike-off a solicitor. 'Misconduct' is defined in the Solicitors Acts 1954 to 2002 - harassment is not included in that definition.¹⁸⁵

In addition, in 1997, the Office of the Independent Adjudicator of the Law Society was established. Members of the public who are dissatisfied with the way in which the Law Society has dealt with their complaint may apply to the Adjudicator for an independent examination. The Adjudicator may either direct the Law Society to re-examine the complaint, or make an application to the Disciplinary Tribunal, which in turn can be referred to the President of the High Court. Again, the Indecon Report found the complaints, discipline and enforcement procedures of the solicitors' profession to be 'logically structured, fair and open...appropriately designed to protect consumer interests and to maintain high standards in the profession.'¹⁸⁶

The Fair Trade Commission had been more critical of self-regulation, however, saying that:

'Self-regulation is a distinguishing feature of the legal profession, involving responsibility for the discipline of members, including the ultimate sanction of exclusion from the profession and withdrawal of the right to practise. The Law Society can no longer impose penalties itself, however, but must report the solicitor to the High Court, which alone can impose penalties for misconduct... The Bar Council can

¹⁸³ Bar Council, *Response to Competition Authority*, above n. 158, March 2002, para. 70.

¹⁸⁴ *Indecon Report*, 161.

¹⁸⁵ Law Society of Ireland, *A Guide to Professional Conduct of Solicitors in Ireland* (Dublin, Law Society, 2nd ed, 2002) 4-5.

¹⁸⁶ *Indecon Report*, 118.

impose a range of penalties on barristers, but disbaring can only be done by the Benchers of King's Inns...The Commission accepts that there is a need for the exercise of a disciplinary function in the legal profession, and that the profession itself should bear the primary responsibility for the maintenance of professional standards. It is concerned, however, that the disciplinary function is exercised almost exclusively by the profession itself, without any lay involvement. Not only are there complaints against legal practitioners, there is a lack of public confidence in the complaints procedures. These concerns, it is believed, would be remedied if there were lay representation on the disciplinary bodies and by the establishment of an office of Legal Ombudsman.¹⁸⁷

The Commission recommended that the Minister for Justice should appoint laypersons to each of the professional disciplinary bodies, with a ratio of one layperson to two lawyers. It also recommended the establishment of an office of Legal Ombudsman, who would deal with complaints concerning both solicitors and barristers, and would be a layperson, completely independent of the legal professions. The Chairperson thought the Ombudsman should have power to prosecute on behalf of a claimant, but the other member of the Commission thought otherwise. Both recommended that the costs of the Ombudsman would be paid by the State, but with additional funding supplied by a 'modest annual levy' on all solicitors and barristers.¹⁸⁸

Following publication of the Report, both professional bodies made further submissions.¹⁸⁹ On the issue of supervision, the Bar Council stated that it 'strongly disagrees with and deprecates' the Commission's critique of self-regulation.¹⁹⁰ It was:

'strongly of the opinion that the independence and standards of the Bar require that the profession remain self-regulating.... Any intervention by the Minister for Justice, Equality and Law Reform in the disciplinary procedures of the Bar would tend or appear to tend to reduce the independence of the Bar...'¹⁹¹

Despite this opposition to the appointment of laypersons to professional disciplinary bodies, the Council said that it welcomed the proposal for the appointment of a Legal Ombudsman, although it noted the disagreement between the two members of the

¹⁸⁷ Above n. 141, 324.

¹⁸⁸ *Ibid.*

¹⁸⁹ See for example the *Response of the Incorporated Law Society to the Fair Trade Commission Report*, October 1990; *Submission of the Dublin Solicitors Bar Association to the Minister for Industry, Trade and Commerce* on the provision of services in the legal profession, 16 October, 1990. Neither body however made any comment on any of the recommendations relating to discipline or supervision, nor any reference to gender. See also Bar Council, *Observations regarding the Report of the Fair Trade Commission on the Legal Profession*, September 1990.

¹⁹⁰ *Ibid.*, 66.

¹⁹¹ *Ibid.*, 67-8.

Commission as to the powers of such a person. No further action, however, appears ever to have been taken on the idea of an Ombudsman.

Despite the approving comments made by the *Indecon Report* about the disciplinary procedures of both professional bodies, it is clear from this study that these procedures are not adequate to address the problems of discrimination identified by respondents to the survey, and participants in the focus groups. Many respondents expressed a lack of awareness about how to access the procedures; others expressed cynicism about the benefit of using the internal redress routes available. Given the nature of the disciplinary procedures of both bodies, it was not possible to obtain any information on particular complaints made or sanctions imposed as a result of any allegations of discrimination or harassment that were dealt with internally by either body. It appears that the case for a Legal Ombudsman (or better still an Ombudsperson) could be re-opened: see Chapter 11.

1.4.2 External Regulation: Formal Mechanisms for Redress

The question then is whether the external mechanisms for redress are adequate to provide remedies for those members of the professions who feel they have suffered discrimination. The obvious route for redress is under the equality legislation, discussed below. However, apart from the legislation, the equality guarantee in Article 40.1 of the Constitution also offers protection against discrimination more generally, as do different provisions within EC law (see further below). The limits of the constitutional guarantee have already been discussed; these tend to make EC law an attractive alternative to assert equality rights. To date, however, there has only been one case challenging a professional legal body by invoking the EC Treaty provision which prohibits discrimination on the grounds of nationality. In *Bloomer & Others v Incorporated Law Society of Ireland*,¹⁹² the plaintiffs, law graduates of Northern Ireland universities, sought exemptions from having to sit the FE-1 examinations for entry to the professional course run by the Society. At the time, law graduates from universities in the Republic were exempt from the FE-1 exams, and the plaintiffs claimed that the exemption rule was in conflict with the prohibition on nationality-based discrimination in Article 6 of the EC Treaty. This was upheld by the Court; as a result the Law Society decided that rather than extend the exemption, it would require all persons to sit the FE-1 examinations.¹⁹³

¹⁹² [1995] 3 IR 14 (HC); (1997) 6 IJEL 220 (SC).

¹⁹³ In *Abrahamson & Others v Law Society of Ireland* [1996] 1 IR 403, a large group of undergraduates from universities in the Republic sought to restore the pre-*Bloomer* exemption that would have applied to them; the High Court held that they were not entitled to rely on the exemption, but that the Law Society had discretion to exempt all those who were taking previously exempted law degree courses at the time of the decision; which it duly did. Thus applicants for the Law Society course have only had to sit the FE-1 examinations if they commenced their law degree studies in a university in the Republic from the academic year 1996-7 onwards.

The equality legislation allows recourse where a person wishes to claim discrimination on gender or any of eight other specified grounds in employment.¹⁹⁴ They may seek redress under the Employment Equality Act, 1998, before the Equality Tribunal and, on appeal, the Labour Court. This legislation however applies only to employees, and does not offer redress to those who are self-employed, so it would offer no remedy to a barrister alleging discrimination against another barrister; nor to a solicitor who was a partner, claiming discrimination against another partner. The Equal Status Act, 2000 offers protection against discrimination on the same nine grounds in the provision of goods and services; but again does not cover the self-employed alleging discrimination in the workplace. Until now, EC employment equality law has similarly not applied to the self-employed.

1.4.3 The New EC Gender Directive

EC gender equality law applies in the employment context primarily. Thus the Gender Equal Treatment Directive applies to ‘access to employment, including promotion, and to vocational training and as regards working conditions’ and under limited circumstances, social security.¹⁹⁵ That Directive was recently amended.¹⁹⁶ Its amended provisions will alter the manner in which EC gender equality law will be translated into national policy and practice.

The new Article 1a imposes a positive obligation on Member States to give effect to gender equality, requiring them to ‘actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities.’ However, this obligation applies only in the areas to which the Directive applies, namely ‘access to employment, including promotion, and to vocational training and as regards working conditions’ and under limited circumstances, social security.

¹⁹⁴ The grounds on which discrimination is prohibited in the equality legislation are: gender, marital status, family status, sexual orientation, religion, age, disability, race (including colour, nationality, ethnic or national origins) and membership of the Traveller community.

¹⁹⁵ Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ L39/40, Article 1.

¹⁹⁶ Parliament and Council Directive 2002/73/EC of 23 September 2002, amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [2002] OJ L296/15.

As regards self-employment, a new provision makes it clear that certain aspects of self-employment are covered by the Directive. The new Article 3(1) provides:

‘Application of the principle of equal treatment means that there shall be no direct or indirect discrimination on the grounds of sex in the public or private sectors, including public bodies, in relation to:

- (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion.
- (b) membership of, and involvement in, an organisation of workers, or *any organisation whose members carry on a particular profession*, including the benefits provided for by such organisations.’ (italics are authors’ own).

On its face, this provision does expand the gender equality guarantee to new fields. It would clearly encompass the activities of the professional bodies and the activities of public bodies in appointing Silks and judges, and it might even encompass partnership decisions. Ireland must implement the Directive by 5 October 2005.

1.4.4 Reported Discrimination Cases Taken by Lawyers

While the impact of the new Directive is yet to be seen, Irish employment equality legislation clearly offers protection against discrimination to those solicitors who are employed in a firm, and also to legal academics and lawyers employed in the public or private sectors, although not to those who are self-employed. Thus one might expect lawyers in employment to be aware of the availability of remedies for discrimination through these formal routes of redress. However, participants in the research unanimously expressed the view that, because Ireland is ‘a small country’, it would be pointless and indeed counterproductive for those alleging discrimination to have recourse to legislative remedies and the courts. It is deeply troubling that this view of the limits of the law should be so widely held by legal practitioners.

Given this universal acceptance that ‘law is not for lawyers’, it is not surprising that there are very few documented legal cases in Ireland involving lawyers alleging discrimination. Since Georgina Frost took on the Crown in her historic case in 1919,¹⁹⁷ there does not appear to have been any gender discrimination cases taken by Irish barristers or solicitors, against either the State or their professional bodies. Those few that have been taken, and are reported, are outlined in Appendix 7.

Although the number of cases alleging discrimination taken by those working in legal jobs is very small, there are some common themes that deserve comment. First, as already noted, such claims are generally taken by those employed in the public, not private, sector. Second, they tend to be taken by persons employed in a para or quasi-

¹⁹⁷ *Frost v the King* [1919] 1 IR 81. See further above.

legal role, rather than those employees with professional qualifications as barrister or solicitor. Third, they are unlikely to be successful, and even where claimants succeed the remedies involved are minimal. This brief overview does not, then, provide much encouragement to those seeking to advocate a legal route for redress where lawyers suffer discrimination.

Chapter 2

*Literature on Lawyers-
A Comparative Perspective*



2

Literature on Lawyers- A Comparative Perspective

2.1 Sources

This section (2.1) provides an overview of the various comparative sources that have inspired and informed this study. They are many and varied. First (2.1.1), we draw on feminist studies on women in the professions generally. Second (2.1.2), we examine two types of literature on women lawyers, namely academic studies on women in law, and studies carried out by professional bodies on women lawyers. In so doing, we have concentrated on the common law world,¹⁹⁸ looking at the somewhat scant existing literature in Ireland and Northern Ireland, and then turning to Great Britain, the USA, Canada, Australia and New Zealand. The reasons for this anglophone bias are twofold. The common law countries share legal cultures, and the structures of their legal systems and in particular, judiciaries and practicing professions have important commonalities. In addition, the early struggles of the first pioneer women took place when these entities shared even more common features. However, we have examined literature from the civil law world, in particular from EU Member States, in order to highlight certain contrasts. Our sources are also exclusively from the developed world, as gathering literature from developing countries proved very difficult.¹⁹⁹ Finally (2.1.3), we have also drawn heavily on academic work on equality law, particularly that which critiques the limits of anti-discrimination law, and seeks to develop new models of equality and new enforcement mechanisms.

Based on all these sources, in section 2.2 we examine the position of women lawyers in comparative perspective. We outline the struggle of women to become lawyers in early twentieth century (2.2.1), and then examine women's progress as judges (2.2.2), practitioners (2.2.3), and academics and students (2.2.4). There is much to celebrate in this account, as women have made dramatic inroads, particularly in the past thirty years. However, our sources also reveal some more disquieting common themes.

In section 2.3, common themes of disadvantage that affect women lawyers are discussed. All of the sources reveal gender disparities in entering the professions

¹⁹⁸ This reflects the traditional dichotomy in legal sociology between the civil and common law worlds, as exemplified by the work of Abel and Lewis. See Abel, Richard and Lewis, Philip (eds) *Lawyers in Society, Volume 1 – the Common Law World, Volume 2 – the Civil Law World, Volume 3 – Comparative Theories* (Berkeley, University of California Press, 1988-1989).

¹⁹⁹ See Appendix 6 for list a of all the professional bodies consulted.

(2.3.1), career prospects (2.3.2), specialisation (2.3.3), and income differentials (2.3.4). In addition, we examine the significance of ‘social capital’ in career progress, and the culture of the legal professions (2.3.5). Finally, we provide some comparative insight into the theme of the dual burden of professional and family life, which emerges as a major issue in our empirical findings (2.3.6). In section 2.4, we refer to common themes of denial or problems of perception that impede the solution of the disadvantages identified. In particular, we deal with the assumption that women’s progression is inevitable with time (‘the trickle-up fallacy’)²⁰⁰ (2.4.1) and the tendency to construe gender difference as a matter of ‘choice’ rather than the result of prejudice or discrimination (2.4.2). Finally, we outline a feature of legal professions, namely the absence of legal regulation, self-regulation, and professional culture dominated by informal networks and structures (which we term ‘the lawless domain’ (2.4.3)).

2.1.1 Feminist Studies on Women in the Professions

A major theme of feminist literature is the emergence of women into the public sphere after the second wave of the feminist movement in the 1960s, and the erosion of the public/private dichotomy.²⁰¹ Pateman’s concept of the ‘sexual contract’ challenges the assumption that labour market work and work at home are independent of each other. Rather, she has highlighted the gendered division of labour, whereby women’s caring role is institutionalised in the home, in a ‘contract’ which leaves men free to sell their labour on a public market. Furthermore, ‘[t]he construction of the feminine in terms of corporeality, reproduction, love, and peculiarity has supposedly rendered women unfit for participation in public life, as these characteristics by their nature prevent women from developing a sense of justice.’²⁰²

The public and private divide, although no longer impermeable, remains. As Eisenstein writes, ‘[a]lthough the meaning of ‘public’ and ‘private’ changes in concrete ways, the assignment of public space to men and private space to women is continuous in Western history.’²⁰³ In particular, the gendered reality of caring continues to affect the participation of women in the public sphere in three distinct ways. First, in practice for many women it is difficult to do two jobs (‘the double day’) in the home and in the labour market, particularly if they have dependent children or

²⁰⁰ This expression derives from Sommerlad, Hilary, ‘The myth of feminisation: women and cultural change in the legal profession’ (1994) *International Journal of the Legal Profession*, 31, 34.

²⁰¹ See for example, Pateman, Carol, *The Sexual Contract* (Cambridge, Polity Press, 1988); O’Donovan, Katherine, *Sexual Divisions in Law* (London, Weidenfeld, 1985); Olsen, Frances E, ‘The Family and the Market: A study of Ideology and Legal Reform’ (1983) *Harvard Law Review* 1497; Eisenstein, Zillah, *The Radical Future of Liberal Feminism* (London, Longman, 1981).

²⁰² Thornton, Margaret, *Dissonance and Distrust: Women in the Legal Profession*, (Melbourne, Oxford University Press, 1996) 15, citing Pateman, Carol, ‘The Disorder of Women’: Women, Love and the Sense of Justice’ in Pateman, Carol, *The Disorder of Women: Democracy, Feminism and Political Theory* (Cambridge, Polity Press, 1989).

²⁰³ Eisenstein, Zillah, *The Radical Future of Liberal Feminism* (London, Longman, 1981), 22.

are caring for an aged parent. This is not to suggest that all women bear caring responsibilities, or that no men do. However, the dual burden of work and care afflicts women disproportionately. Second, the construction of women as paid workers has been notably shaped by the assignation of responsibility for caring. As such, women in paid work are allocated or choose roles that are derivative of caring, as their area of specialisation or as a gloss on their designated work. In our study and in the comparative literature, family law emerges as a particular area of specialisation for women.²⁰⁴ Finally, women are often employed to ‘soften’ or humanise the environmental backdrop of the workplace, and this may be reflected in the tasks they are assigned or the behaviour they are expected to demonstrate.

The emergence of women from the purely private realm to the public realm of employment, politics and empowerment has been central to the feminist project. Thus, studying the emergence of women professionals has been a key concern in feminist studies.²⁰⁵ In a leading work, Glazer and Slater note strategies employed by early women professionals. These are *superperformance*, *separatism*, *subordination* and *innovation*.²⁰⁶

Superperformance connotes women pioneers, who outperform their male colleagues and thereby establish their role and identity in the profession. They often reach important positions as ‘first women to...’ and their presence may be pointed to as evidence of the absence of discrimination. The ‘first women to’ (‘FW2’) phenomenon does not necessarily provide evidence of absence of discrimination, but rather often signals the continued and persistent exclusion of women – the exception that proves the rule.

Separatism is a strategy women have employed in certain professions, particularly in the US. For example, in the medical professions, separate colleges to train women doctors flourished for a time. In contrast, only two women’s law colleges were established in the US. The first, Washington College of Law, was established in 1896 by Emma Gillett and Ellen Spencer Mussey for the express purpose of making legal education available to women. The first class included ten women and one man.²⁰⁷

Subordination refers to women entering professions but occupying inferior roles. In some instances, the very presence of women may de-value their areas of specialisation in the eyes of their male colleagues. In the legal context, this is noted internationally

²⁰⁴ See Chapter 8 for our findings on gender segregation in legal practice.

²⁰⁵ See for example, Harris, Barbara, *Beyond her Sphere: Women and the Professions in American History* (New York, Greenwood Press, 1978).

²⁰⁶ Glazer, Penina Migdal and Slater, Miriam, *Unequal Colleagues: The Entrance of Women Into the Professions 1890 – 1940* (New Brunswick, NJ, Rutgers University Press, 1987).

²⁰⁷ See further, Clark, Mark, ‘The Founding of Washington College of Law: The First Law School Established by Women for Women’ (1998) *Am U L Rev* 613.

in the emergence of non-partnership track solicitors in large firms, who are employed in a predominantly ‘back-room’ context as support lawyers in transactional work.

Innovation refers to the adoption of new specialties by women entrants. Women may find it easier to establish niches in new fields, thereby avoiding institutional barriers that may surround established lucrative areas. In this Irish legal context, this explanation has been given by a number of women lawyers for their specialisation in family law, as it was an area characterised by major new legislative frameworks at the time their careers began.

The lessons from studies on women in the professions also reveal the importance of professional culture in structuring and defining those professions, and maintaining continuity despite significant societal and even internal changes, including the entry of women. Professional culture is often distinctly masculine, but because it defines the characteristics and virtues of the ‘good professional’, women must conform and assimilate in order to progress, rather than transform the professions they enter. However, in so doing, women (and indeed some men) lose out in adhering to the traditional unwritten ‘rules’ of professions, as these are formed with the male bread-winner model and stereotypical masculine behaviour in mind. Furthermore, if women and men conform to the professional culture, the appearance arises that inequality does not exist. Assimilation thus permits an unquestioning acceptance of professional structures, and impedes true equality in diversity.²⁰⁸ Thus stereotypes are perpetuated not challenged.

2.1.2 Women in Law - A Discrete Area of Feminist Academic Inquiry Emerges

Early women lawyers have been subject of historical works in many jurisdictions, though not in Ireland. For example, Drachman has written a work on early women lawyers in the US.²⁰⁹ J Clay Smith has examined the perspectives of black women lawyers from the 1890s to the present.²¹⁰ In addition, there are many historiographies of the individual early women lawyers.²¹¹

²⁰⁸ Rhode, Deborah, ‘Gender and Professional Roles’ (1994) *Fordham L Rev* 39.

²⁰⁹ Drachman, Virginia, *Sisters in Law: Women Lawyers in Modern American History* (Cambridge, Mass., Harvard University Press, 1998). The study examines women lawyers from 1860s to 1930s. See also Morello, Karen Berger, *The Invisible Bar: The Women Lawyer in America: 1638 to the Present* (Boston, Beacon Press, 1986).

²¹⁰ Smith, J Clay (ed), *Rebels in Law: Voices in History of Black Women Lawyers* (Michigan, University of Michigan Press, 1998).

²¹¹ In the US context, see for example, Brown, Dorothy, *Mabel Walker Willebrand: A Study of Power, Loyalty and Law* (University of Tennessee Press, 1984); Perry, Elizabeth, *Belle Moskowitz: Feminine Politics and the Exercise of Power in the Law* (New York, Oxford University Press, 1987); Friedman, Jane, *American’s First Woman Lawyer: The Biography of Myra Bradwell* (Buffalo NY, Prometheus, 1993). For a discussion of this phenomenon, see Sanger, Carol, ‘Curriculum Vitae (Feminae): Biography and Early American Women Lawyers’ (1994) *Stan L Rev* 1245. In Australia, see Mackinoly, Judy and Radi, Heather, (eds), *In Pursuit of Justice: Australian Women and the Law 1788 – 1978* (Sydney, Hale & Iremonger, 1979).

One of the first monographs to examine women in law in the manner of this study was that of Cynthia Fuchs Epstein. Her 1981 book, entitled *Women in Law*²¹² focuses on why women's entry to the legal profession in the USA had occurred so late and so reluctantly and what had impeded women's career progress. More recent is Harrington's book *Women Lawyers, Rewriting the Rules*,²¹³ based on interviews with over 100 women lawyers, mainly graduates of Harvard Law School. She begins with the contention that that women entering the law are necessarily claiming equal authority to make the rules, thereby claiming authority in a manner which contradicts traditional patriarchal assumptions. Women in the law thereby herald a new order, even if they arrive with no personal revolutionary intent. She examines the barriers to equal professional authority for women lawyers, in particular 'the belief systems, the cultural imprints, the unspoken interests, the concealed ideologies.'²¹⁴ She also discusses how women lawyers can use the authority they have to advance the equality of women in general and the importance of female law professors addressing gender disparity issues in the classroom.

Some years later but also in the US, Carrie Menkel-Meadow developed different research questions.²¹⁵ Given the undeniable rise of women lawyers, would the profession change women or would they change the profession? A difference feminist in the vein of Carol Gilligan,²¹⁶ her work reflected the idea that women would lawyer differently than men and bring different qualities to the profession thereby changing it. In a similar vein, Rand Jack and Dana Crowley Jack (an attorney and a developmental psychologist) in their work entitled *Moral Vision and Professional Decisions*²¹⁷ examine the relationship between gender and patterns of moral thinking and their impact on lawyers' understanding of justice and their own role in promoting it. With Gilligan's thesis as their starting point, they conclude that the concept of lawyer is inherently masculine in the form of morality it espouses, being detached and abstract. In their study of 36 lawyers, they conclude that gender was associated with different moral orientations, where the legal norm or professional standard was unclear. They argue that the unidimensional concept of lawyer ill serves the complexities of the legal system. They also include many recommendations to develop different modes of lawyering, through reform of legal education and professional culture.

²¹² Epstein, Cynthia Fuchs, *Women in Law* (New York, Basic Books, 1st ed, 1981), (Champaign, Il., University of Illinois Press, 2nd ed, 1993).

²¹³ Harrington, Mona, *Women Lawyers, Rewriting the Rules*, (New York, Plume-Penguin, 1993).

²¹⁴ *Ibid*, 16.

²¹⁵ Menkel-Meadow, Carrie, 'Portia in a Different Voice: Speculation on a Women's Lawyering Process' (1985) *Berkeley Women's Law Journal* 39.

²¹⁶ Gilligan, Carol, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, Mass., Harvard University Press, 1981). See the discussion of this text in the Introduction.

²¹⁷ Jack, Rand and Crowley Jack, Dana, *Moral Vision and Professional Decisions: The Changing Values of Women and Men Lawyers* (New York, Cambridge University Press, 1989).

Most recently, these research questions formed the basis for an international research project led by Ulrike Schultz and Gisela Shaw, which led to the collection *Women in the World's Legal Professions*, which deals with 15 countries and four continents.²¹⁸ Although informed by a 'difference feminist' agenda, it also attempts to answer the research questions which are posed in this report, namely how have women progressed as lawyers, and what barriers impede women's career progression in the law. As such, it has been an invaluable source of comparative empirical research for this study and we refer to it throughout. On the question of whether women lawyer differently, the study's general, albeit tentative, conclusion is negative. The authors write,

'Our investigations lead us to conclude that women lawyers' primary motivation is a sense of obligation towards their professional role, which encourages them to adapt to existing norms. This process of integration has been largely completed by the time they finish their legal training. Stepping outside that predetermined framework would require a bold decision on their parts. The first condition for women finding and articulating a voice of their own would be a further increase in numbers.'²¹⁹

In the UK, a range of studies has been devoted to the topic. Clare McGlynn has written extensively on the theme of women lawyers,²²⁰ publishing a leading monograph in 1998, *The Woman Lawyer – Making the Difference*.²²¹ Drawing on empirical sources and attributed personal testimonies, she examines the progress and experiences of law students and academics, solicitors, barristers and judges. She demonstrates that women continue to be excluded and marginalised in the law and that this is attributable to real structural and institutional disadvantages facing women, which require institutional responses. Sommerlad and Sanderson's 1998 study *Gender, Choice and Commitment*²²² was part-funded by the Law Society of England and Wales. It focuses in particular on the reconciliation of work and family life. In so doing, it critiques in particular the 'voluntarist' approach to these issues, which portrays women as voluntarily opting for caring responsibilities over the workplace, and why the issue of caring responsibilities remains a 'women's problem'

²¹⁸ Schultz, Ulrike and Shaw, Gisela (eds) *Women in the World's Legal Professions* (Oxford, Hart Publishing, 2003). (Hereafter 'Schultz and Shaw'). Contributors deal with the US, Canada, Australia, New Zealand, United Kingdom, Israel, Germany, the Netherlands, Poland, Finland, France, Italy, Brazil, South Korea and Japan.

²¹⁹ *Ibid* lvii.

²²⁰ McGlynn, Clare, 'Soliciting Equality – the way forward' (1995) *New Law Journal* 145; McGlynn, Clare, and Graham, Caroline, *Soliciting Equality – Equality and Opportunity in the Solicitors' Profession*, (London, Young Women Lawyers, 1995); McGlynn, Clare, 'The Status of Women Lawyers in the United Kingdom' in Schultz and Shaw, Gisela, above n. 218.

²²¹ *The Woman Lawyer: Making the Difference*, (London, Butterworths, 1998).

²²² Sommerlad, Hilary and Sanderson, Peter, *Gender, Choice and Commitment: Women Solicitors in England and Wales and the struggle for equal status* (Aldershot, Ashgate, 1998). (Hereafter 'Sommerlad and Sanderson').

when what is really at issue is women's right to participate in the workplace. The related theme is that of commitment – as women 'choose' to take on caring responsibilities, their perceived commitment to the law is undermined. As commitment becomes the single most important criterion for success, a clearly gendered model of professional success emerges. In addition, the study notes the importance of 'cultural capital' in dictating success, whereby women's skills and the attributes they believe to be significant are devalued.

The benchmark study in Canada is Hagan and Kay's 1995 book, *Gender in Practice*.²²³ In common with this study, it aims in particular to examine 'the use of law and other remedies to address issues of gender discrimination in the legal profession' and whether 'greater responsibilities must be shifted from affected individuals to affecting organizations, including firms and governing bodies, such as bar associations and law societies.'²²⁴ Problems identified and scrutinised include the ceiling effect, limited partnership prospects, conflicts between home and career for women lawyers, and billable hours. Their findings reflect the gender disparities seen in many of the other studies mentioned. The study also examined how lawyers had tried to influence their workplace structures (in the widening of maternity leave, diversifying partnership arrangements, and expanding the range of clients served.)²²⁵ Nearly 40 percent of the women who tried to change maternity leave policies were successful.²²⁶ About the same proportions of men and women lawyers tried to influence partnership structures; men were twice as successful as women.²²⁷

In Australia, the leading work is Margaret Thornton's *Dissonance and Distrust*.²²⁸ Her study, based on interviews with 100 Australian women lawyers, shows how law's claims to technocratic neutrality reinforces its hidden norms, in order to reveal the underlying hostility to 'the feminine'. Thornton sees the legal professions (and indeed law itself) as an inherently masculinist culture in which women are inevitably outsiders. For example, she argues that women lawyers are in a bind – in order to be accepted by male colleagues, certain 'feminine' behaviour is expected. However, the behaviour that is professionally rewarded is typically 'masculine'. This is her explanation for the fact that the legal professions have not been meaningfully feminised. Instead, women dominate only 'the pyramidal base of legal hierarchies.'²²⁹ It should however be noted that her critique of

²²³ Hagan, John and Kay, Fiona, *Gender in Practice: A Study of Lawyers' Lives* (New York, Oxford University Press, 1995). (Hereafter 'Hagan and Kay').

²²⁴ *Ibid*, 23.

²²⁵ *Ibid*, 175.

²²⁶ *Ibid*.

²²⁷ *Ibid*.

²²⁸ Thornton, Margaret, *Dissonance and Distrust: Women in the Legal Profession*, (Melbourne, Oxford University Press, 1996). (Hereafter 'Thornton').

²²⁹ *Ibid* 273

legal culture entails damning evidence of overtly sexist practices in Australian law. She catalogues incident after incident in which men lawyers chose men's clubs (where women's mere attendance was prohibited) for a range of business-related occasions, such as an event to celebrate the appointment of a woman judge, to mark the occasion of a new woman partner joining the firm, and to hold partnership meetings.²³⁰

2.1.3 Reports of Professional Bodies on 'Women in Law'

In addition to feminist literature and feminist inquiry into women in law, the third source used in this study is the reports of professional bodies on 'Women in Law'. Many of these studies were utilised at the outset of this project, in designing the questionnaire.²³¹ In addition, they have informed our recommendations.²³² In this section, we provide a geographical overview of the most pertinent reports consulted. We synthesise key findings, in order to provide a context in which to appraise the Irish situation, which we sought to capture through the responses to the survey and other qualitative sources.

In Northern Ireland, a study of gender equality in the solicitors' profession was undertaken in 1999 by the Equal Opportunities Commission for Northern Ireland.²³³ It concluded that women were more likely than men to cite fewer prospects for promotion, and that the absence of flexible or part-time working arrangements in their previous job, were important factors in their decision to seek employment elsewhere. Under-representation of women solicitors in the senior levels of management in private practice (partnership in particular) was noted.²³⁴ A significant gender pay gap also emerged.²³⁵ The picture on maternity issues reflected pressure to demonstrate total commitment to the workplace. In the private sector, 70 per cent of those women solicitors who had taken some form of maternity leave felt under pressure not to take up their right to an additional period of unpaid leave. Three quarters reported that no locum was employed to cover their absences. Over a quarter continued to work from home. However, 79 per cent of the women solicitors reported that their organisation had handled their absence on maternity leave either very or fairly well. Most women felt there would be a serious effect on their career if they reduced their hours of work following maternity leave. However, women solicitors employed in the public sector felt more secure about taking their full range of entitlements under the legislation than did their colleagues in the private sector.

²³⁰ *Ibid* 167.

²³¹ See Appendix 1.

²³² See below, Chapter 11.

²³³ Equal Opportunities Commission for Northern Ireland, Statistics and Research Branch, *A Case for Equality Gender Equality in the Solicitors' Profession in Northern Ireland* (March, 1999).

²³⁴ *Ibid*.

²³⁵ *Ibid*.

Gender stereotyping also emerged as a significant problem, being experienced by 33 per cent of women solicitors, and sexual harassment by 31 per cent. Overt job discrimination was reported by 20 per cent of women respondents. More recently, the Northern Ireland Office published a comprehensive report on gender in the criminal justice system.²³⁶ Although it focused on the gender of defendants or victims, it also found that seven out of every 10 people working in the criminal justice system are male. In relation to the legal system more generally, they found that 86 per cent of full-time permanent members of the judiciary and 83 per cent of the deputy judiciary are male. Since the Report was published, the Law Society has introduced practising certificate and professional indemnity fees rebate schemes for part-time working and maternity leave. A revised Anti-Discrimination Code has been approved, and an Equal Opportunities Code has also been adopted by the Bar Council of Northern Ireland.²³⁷

In England and Wales, the Law Society has supported and undertaken various discrete studies. For example, it part-funded Sommerlad and Sanderson's 1998 study *Gender, Choice and Commitment*.²³⁸ In 1990, the Law Society commissioned some research on how to facilitate re-entry into the profession by women solicitors due to the shortage of women solicitors at that time.²³⁹ The Law Society now publishes regular updates on gender issues²⁴⁰ and the Law Gazette frequently contains gender-related articles.²⁴¹ In addition, the Law Society has also funded a major large-scale study, based upon a longitudinal design. It followed a cohort of one-time law students through the period in which many of them completed their full-time education and legal training and became established as fully qualified lawyers. The study showed how some candidates - particularly those from Black and minority Ethnic groups and those who studied at new universities - were disadvantaged in the process of entry into the legal profession. It also highlighted the way in which patterns of disadvantage were reinforced by the financial arrangements that surround legal education and training, and noted gender disparities in relation to applications for training

²³⁶ Northern Ireland Office, *Gender and the Northern Ireland Criminal Justice System* (Belfast, 2002).

²³⁷ Commissioner for Judicial Appointments for Northern Ireland, *Audit Report* (Belfast, 2003), para 5.5.15.

²³⁸ Sommerlad and Sanderson, above n. 222.

²³⁹ Sommerlad, Hilary and Allaker, *Retrieve or retain: training for women returners to private practice* (Unpublished report prepared for the Law Society of England and Wales by Leeds Metropolitan University). The research was then updated in Sommerlad, Hillary, *Issues in the retention of women solicitors: a Regional Study*, Unpublished report prepared for the Law Society of England and Wales by Leeds Metropolitan University, 1994).

²⁴⁰ See, for example, *The Law Society, Women Solicitors – Fact Sheet Information Series, Statistics for England and Wales* (2001).

²⁴¹ See, for example, MacCullum, Victoria, 'Magic Circle makes women partners disappear', *The Law Gazette*, (16 May 2002); MacCullum, Victoria, 'Women tell of sex bias', *The Law Gazette*, (13 July 2001); Baker, Chris, 'Women failing to make partner' *The Law Gazette* (10 July 2003).

contracts.²⁴² In addition, in 1995 the Young Women Lawyers Association published a study on gender equality.²⁴³

A particular feature of the Law Society's approach is its adherence to the 'business case for equality.' This approach advocates gender equality policies as sound business practice, required in order to enhance profitability. In particular, gender sensitivity is required for three main business reasons. First, such policies prevent women leaving practice (which entails loss of human capital and increased recruitment and training costs). Second, gender equality policies keep staff moral high and thereby enhance productivity and finally, they avoid costly discrimination lawsuits. In 1995, the Law Society introduced a practice rule, a code of practice and a model anti-discrimination policy. In keeping with the 'business case' approach, the first clause in the model anti-discrimination policy states: 'It is good business sense for the firm to ensure that its most important resource, its staff, is used in a fair and effective way.' In 1997, when the Law Society figures revealed a persistent gender pay gap,²⁴⁴ the then President of the Law Society and the Chair of the EOC sent a joint letter to all solicitors' firms, advising them to review their pay policies. The language again is redolent of the 'business case', stating 'Pay equality makes good business sense. It helps keep staff turnover and loss of key skills to a minimum and avoids the expense and negative publicity of an industrial tribunal case.'²⁴⁵ While reliance on the 'business case' is not without its perils for adherents of gender equality,²⁴⁶ it has provided a means to institutionalise gender equality issues within the solicitors' profession in England and Wales.

In 1992, the English Bar Council and Lord Chancellor's Department ('LCD')²⁴⁷ published a report on sex equality at the Bar and the Judiciary, entitled *Without Prejudice? Sex Equality at the Bar and in the Judiciary* (referred to hereinafter as '*Without Prejudice?*').²⁴⁸ The results showed substantial evidence of early and continuing unequal treatment between the sexes at many levels of the profession. This

²⁴² Shiner, Michael *et al*, *Entry into the Legal Professions: The Law Student Cohort Study Year 3-6*, (London, The Law Society, 1995, 1997, 1999, 2000).

²⁴³ McGlynn, Clare and Graham, Caroline, *Soliciting Equality – Equality and Opportunity in the Solicitors' Profession* (London, Young Women Lawyers, 1995).

²⁴⁴ Law Society, Press Release: New Survey Reveals Continuing Inequality Between Male and Female Solicitors, 7 July 1997.

²⁴⁵ Quoted in McGlynn, Clare, 'Strategies for Reforming the English Solicitors; Profession: An Analysis of the Business Case for Sex Equality' in Schultz and Shaw, above n. 218, 159, 165.

²⁴⁶ McGlynn, Clare, 'Strategies for Reforming the English Solicitors; Profession: An Analysis of the Business Case for Sex Equality' in Schultz and Shaw, above n. 218, 159, 166-172.

²⁴⁷ The British Prime Minister announced on 12 June 2003 the creation of a new Department for Constitutional Affairs, to incorporate most of the LCD's functions.

²⁴⁸ TMS Consultants, *Without Prejudice? Sex Equality at the Bar and in the Judiciary* (London, Bar Council and LCD, 1992). (Hereafter '*Without Prejudice?*').

earlier disadvantage combined with the selection methods used in turn affected applications for and the appointment as a Queen's Counsel ("QC")²⁴⁹ and judge.²⁵⁰ Over 60 per cent of women respondents favoured positive measures to encourage women to apply for Silk and judicial appointment, compared with 30 per cent of men. However, a larger number of respondents stated that they were against positive discrimination. The study included recommendations for the Bar and the Lord Chancellor's Department.²⁵¹ These recommendations were included in the 1995 publication of the Equality Code for the Bar, which included guidelines for maternity leave, sex and race discrimination, and tools for overcoming discrimination in the Bar.²⁵²

The late 1980s to early 1990s also marked the development of greater consciousness in North America. In the USA, the American Bar Association established a Commission on Women in The Profession in 1987, with Hillary Rodham Clinton as its first chair. The Commission publishes a tri-yearly newsletter²⁵³ and several reports and recommendations²⁵⁴ that have in turn provided the impetus for many state bar

²⁴⁹ QC is the title granted to the UK equivalent of Irish Senior Counsel. See Chapter 1, at 1.3.2 above.

²⁵⁰ Shultz and Shaw, above n. 218, ii-iii.

²⁵¹ *Ibid*, iii-iv.

²⁵² General Council of the Bar, *Equality Code for The Bar*, 1995.

²⁵³ Available at <www.abanet.org/women>.

²⁵⁴ *The Difference 'Difference' Makes: Women and Leadership* (2001); *Balanced Lives: Changing the Culture of Legal Practice* (2001), a revision and update of *Lawyers and Balanced Lives - A Guide to Drafting and Implementing Workplace Policies for Lawyers* (1990); *The Basic Facts from Women in Law: A Look at the Numbers* (1995); *The Burdens of Both, The Privileges of Neither - Report of the Multicultural Women Attorneys Network on the status of multicultural women lawyers* (1994); *Directory of Associations for Women Lawyers* (2002); *Elusive Equality: The Experiences of Women in Legal Education* (1996); *Fair Measure: Toward Effective Attorney Evaluations* (1997); *Lawyers and Balanced Lives - A Guide to Drafting and Implementing Sexual Harassment Policies for Law* (1990); *Options and Obstacles: A Survey of the Careers of Women Lawyers* (1994); *Pathways to Leadership - An ABA Roadmap* (1997); *The Unfinished Agenda: Women in the Legal Profession* (2001); *Unfinished Business: Overcoming the Sisyphus Factor* (1995).

associations' studies.²⁵⁵ All of the surveys or studies reported gender disparity in the legal or judicial systems, state and federal. The reports focus on a variety of issues in the profession, from courtroom behaviour to childcare responsibilities. Given the number of studies and surveys done in the United States, this list presents only a sample of the findings from the various reports:

One-third of men, two-thirds of women reported work/life balance as one of their top three reasons for choosing their current employer.²⁵⁶

Women now account for almost 30 per cent of the profession, but only about 15 per cent of federal judges and law firm partner, 10 per cent of law school deans and general counsel (the top in-house counsel in a corporation), and 5 per cent of managing partners of large firms.²⁵⁷

An Illinois State Bar Association reveals, 'a significant portion of the female lawyer population ... believes that the professional community they have chosen to join has not fully accepted them. Any differential treatment is cause for serious concern, not only because it may potentially affect the outcome of litigation, but also because it may undermine public confidence in the fairness and impartiality of our institutions of justice'.²⁵⁸

²⁵⁵ Those reviewed include Alabama State Bar, *Quality of Life Among Lawyers in Alabama* (1992); Illinois State Bar Association, *Report of the Illinois Task Force on Gender Bias in the Courts* (1990); Boston Bar Association Task Force on Work / Family Challenges, *Facing the Grail: Confronting the Cost of Work-Family Imbalance* (1999), Indiana State Bar Commission on Women in the Profession, *Report on Women in the Profession*, (1990); Maryland State Bar Association, *Report of the Special Joint Committee on Gender Bias in the Courts*, (1989); Maryland State Bar Association, *Retrospective Report Select Committee on Gender Equality*, (2001); Minnesota State Bar Association Women in the Legal Profession Committee, *Self Audit for Gender Equity: Survey of Private Law Firms 1995,1997*, (June 1999); Minnesota State Bar Association Women in the Legal Profession Task Force, *Women in the Legal Profession Task Force 1997 Report* (1997); Oregon Supreme Court Oregon State Bar, *Report of the Oregon Supreme Court Oregon State Bar, Task Force on Gender Fairness*, (1998); State Bar of Texas Department of Research and Analysis, *Annual Report of the Status of Women in the State Bar of Texas* (2001); Tennessee Bar Association, *Report of the Commission on Gender Fairness* (1998); Virginia Gender Bias in the Courts Taskforce, *Gender Bias in the Courts of the Commonwealth*, (October 2000); Women's Bar Association of Massachusetts, *More Than Parttime: The Effect of Reduced Hours Arrangements on the Retention, Recruitment, and Success of Women Attorneys in Law Firms*, (2000).

²⁵⁶ *Balanced Lives: Changing the Culture of Legal Practice* (2001), a revision and update of *Lawyers and Balanced Lives - A Guide to Drafting and Implementing Workplace Policies for Lawyers* American Bar Association, *Commission on Women in the Profession* (1990) 15.

²⁵⁷ *The Unfinished Agenda: A Report on the Status of Women in the Legal Profession*, (2001), 14.

²⁵⁸ Illinois State Bar Association, *Report of the Illinois Task Force on Gender Bias in the Courts* (1990), 25.

In a Maryland study, women serving on the bench during a 12-year period increased from 9 per cent to 32 per cent, yet women still do not serve on the bench in numbers proportional to their representations as attorneys, or the general populace.²⁵⁹

The Women's Bar Association of Massachusetts Report on Part-Time Work found that major sources of dissatisfaction expressed by attorneys with a reduced-hours arrangement included lack of institutional support from law firms for reduced-hours arrangements; deterioration of professional relationships within the firm and adverse career consequences.²⁶⁰

In Canada, the leading study is that of the Canadian Bar Association ('CBA') Gender Equality Task Force of 1993, entitled *Touchstones for Change: Equality, Diversity and Accountability*. (referred to as '*Touchstones*').²⁶¹ The Task Force was chaired by Supreme Court Justice Bertha Wilson (as she was then), and is regarded as the springboard from which much research, activity and indeed activism emerged. The *Touchstones* study detailed the various impediments to women's progress in law, and contained a comprehensive series of recommendations, and CBA approved model policies on alternative work arrangements, parental leave, sexual harassment and workplace equity. As a result of the Report, the CBA amended its constitution; established several new equality bodies, in particular a Standing Committee on Equality, and amended the Code of Professional Conduct to include a non-discrimination chapter.²⁶² It led to a range of other studies and activities, in particular at the level of the state law societies.²⁶³

Overall, Canadian surveys suggest gender disparities in many areas. Three challenges emerged with reference to balancing career and family, namely the lack of recognition for family commitments; the lack of support in the workplace to accommodate lawyers' with family responsibilities and the strategies adopted by lawyers to meet the

²⁵⁹ Maryland State Bar Association, *Retrospective Report - Select Committee on Gender Equality*, (2001), 30-31.

²⁶⁰ Women's Bar Association of Massachusetts, *More Than Part-time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment, and Success of Women Attorneys in Law Firms*, (2000), 4.

²⁶¹ Canadian Bar Association, *Touchstones for Change: Equality, Diversity and Accountability*, (Ottawa, A Canadian Bar Association Task Force Report, 1993).

²⁶² See Chapter 11.

²⁶³ Saskatchewan and the College of Law, University of Saskatchewan, *Report of the Committee on Gender Discrimination: A Joint Committee of the Law Society of Saskatchewan*, (1992); Kay, Fiona Dautovich, Nancy and Marlor, Chantelle, *Barriers and Opportunities Within Law: Women in a Changing Legal Profession: A Longitudinal Survey of Ontario Lawyers 1990-1996* (Toronto, Law Society of Upper Canada, 1996); Ornstein, Michael, *Lawyers in Ontario: Evidence From the 1996 Census A Report for the Law Society of Upper Canada*, (2001); The Law Society of Upper Canada, *Transitions in the Ontario Legal Profession A Survey of Lawyers called to the Bar Between 1975 and 1990*, (1991); Nova Scotia Barristers' Society Gender Equality Committee, *Gender Equality in the Legal Profession A Survey of Members of the Nova Scotia Legal Profession*, (October 1993).

challenges of balancing their demanding careers and important responsibilities outside of careers.²⁶⁴ The overall conclusion was that ‘Women lawyers as a group continue to fail to achieve the status and success of their male counterparts, despite the dramatic increase in the number of women in the profession since the mid 1970’s.’²⁶⁵ Another finding was that 84 per cent of female respondents and 57 per cent of the male respondents felt there was a ‘men’s club’ aspect to the practice of law.²⁶⁶

Since Touchstones, the Canadian Bar Association publishes annual Equality Reports to monitor the implementation of the Touchstones recommendations, culminating most recently in the publication of *Ten Years into the Future: Where are we now after Touchstones?* (referred to as ‘*Ten Years*’)²⁶⁷ The latter report reviews recent initiatives on equality in the legal professions, as detailed in a 2003 report.²⁶⁸ These include equality auditing mechanisms, integrating equity policies into the workplace, building mechanisms for communities and institutions to work together, developing partnership strategies, design of model policies and so forth. In light of the modest impact of many equality policies, *Ten Years* reviews the growing literature on ‘organizational development’ and identifies the features of successful equality policies within organisations. These are leadership; communications; representation; participation/decision-making; non-discrimination; and positive action.

In Australia, the Law Reform Commission undertook an extensive study concerning gender equality in the legal system and elsewhere in the labour force in 1994.²⁶⁹ Also, the Law Society of New South Wales and the Women Lawyers’ Association of Tasmania have researched issues involving gender disparity, tackling issues such as

²⁶⁴ Kay, Fiona Dautovich, Nancy and Marlor, Chantelle, *Barriers and Opportunities Within Law: Women in a Changing Legal Profession: A Longitudinal Survey of Ontario Lawyers 1990-1996* (Toronto, Law Society of Upper Canada, 1996) 19.

²⁶⁵ *Report of the Committee on Gender Discrimination: A Joint Committee of the Law Society of Saskatchewan and the College of Law, University of Saskatchewan*, (1992), 18-19. See also Ornstein, Michael, *Lawyers in Ontario: Evidence From the 1996 Census - A Report for the Law Society of Upper Canada*, (2001).

²⁶⁶ Nova Scotia Barristers’ Society Gender Equality Committee, *Gender Equality in the Legal Profession - A Survey of Members of the Nova Scotia Legal Profession*, (October 1993), 4.

²⁶⁷ Canadian Bar Association Annual Equality Report, *Ten Years into the future: Where are we now after Touchstones? 1993-2003* (Toronto, August 2003).

²⁶⁸ Arising out of the conference, *Promoting Dialogue, Creating Change: Equality and Diversity in the Legal Profession 2002*, Canadian Bar Association, *Report on Equity Initiatives and Resources in the Legal Profession*, Law Society of Upper Canada, (Toronto, January 2003).

²⁶⁹ The Australian Law Reform Commission, *Equality Before the Law: Women’s Equality*, ALRC 69 Part II, (1994).

family responsibilities and quality of life.²⁷⁰ All of the data supported the idea that gender bias does exist in the legal profession in Australia. Several studies found discrepancies in pay between men and women²⁷¹ and the surveys confirm the profession as unrepresentative of the numbers of women coming out of Australian Law Schools.²⁷² Another recurring theme in Australian research is the topic of maternity/paternity leave. The Law Society of New South Wales (1998) survey found that 69 per cent of female respondents, as opposed to 47 per cent of male respondents, are likely to take leave for childcare related difficulties.²⁷³ The Women Lawyers' Association of Tasmania found that 75 per cent of respondents to their survey stated that pregnancy/children had a negative influence on their career progression.²⁷⁴ Legal entitlement to maternity leave in Australia varies from state to state. However, 'Even where employed solicitors have legal entitlement to maternity leave, many hesitate to enquire about it or take it, fearing that their employer will interpret the request as indicating lack of commitment to the firm.'²⁷⁵

Some of New Zealand's Law Societies have carried out studies on equal employment opportunities. For example, the Working Party on Women in the Legal Profession reported in 1981 and 1989.²⁷⁶ In addition, the Auckland District Law Society published an equal opportunities report in 1996.²⁷⁷ It reported that less than half of the lawyers surveyed knew of a sexual harassment procedure in their workplace. A high number of employers (43%) had Equal Employment opportunities policies that did not address issues of concern to women, the largest 'designated' EEO group. In particular, the lack of family friendly policies in law offices was a concern to women lawyers. Maternity leave was generally unpaid and many were reluctant to raise the

²⁷⁰ Women Lawyers' Association of Tasmania, *Women Working in the Legal Profession in Tasmania, Final Report* (1996); The Law Society of New South Wales, *Family Responsibility Study* (1998); The Law Society of New South Wales, *Quality of Life in the Legal Professions* (1999); The Law Society of New South Wales, *Profile of Solicitors of New South Wales 2001* (2001).

²⁷¹ In reference to pay disparity, see the Law Society of New South Wales, *Quality of Life in the Legal Profession*, (1999), 6. See also, the Law Society of New South Wales, *Profile of Solicitors of New South Wales 2001*, (2001), which provides, 'The mean income for male solicitors (across all sectors) was 87,700, for female solicitors \$67,600. The gender difference in income is evident throughout all stages of the profession when income is analyzed according to years since admission', 39.

²⁷² Above n. 270.

²⁷³ *Ibid*, 1-5.

²⁷⁴ *Ibid*, 1-3.

²⁷⁵ *Ibid*, 9.13.

²⁷⁶ Cocayne, Jane (ed), *Women in the Legal Profession: The Report of the Second Working Party on Women in the Legal Profession* (Auckland, Auckland District Law Society, 1989).

²⁷⁷ Gatfield, Gill and Auckland District Law Society, *Towards 2000: Implementing Equal Employment Opportunities*, Vol. II (Auckland, Equity Works Limited, 1996) 46-47, 63-64.

issue of leave with employers, whom they feel undervalue their contribution to the workplace. As well as such discrete studies, the New Zealand Law Society has a Women's Consultative Group, which has undertaken a number of studies and made submissions on gender issues.²⁷⁸ For example, it made submissions to the Ministry of Women's Affairs on the discussion paper, *Next Steps Towards Pay Equity* (5 December 2002), highlighting the experience in the 1990s where the increase in well-qualified women participating in the labour market coincided with a widening of the gender pay gap, refuting the argument that dealing with the gender pay gap was a 'wait and see' issue. In addition, the Consultative Group has commented on the Ministry of Justice Discussion Paper, *Part-Time Judges in the District Court*, (15 May 2002). It noted several barriers to women in the profession expressing an interest in judicial appointments, including inflexible working practices; the requirement to relocate; failure to advertise vacancies and the perception that applicants were being sought within the ages of 38 and 45 years ideally, typically the years of greatest family responsibilities, particularly for children. The submission suggests that part-time work should be included as an option for District Court Judges, giving a definition of part-time work and guidelines as to how to make it work.

In civil law countries, these issues have not found as significant a place on the agendas of professional bodies, although women lawyers' associations exist throughout the EU.²⁷⁹ The agenda appears most advanced in Germany, where there is a considerable volume of literature on women lawyers. In particular, the German association of women lawyers has published two historical works.²⁸⁰ Most recently, the German lawyers' association carried out an extensive survey of women lawyers. Key findings were that almost two-thirds of all women lawyers found the practice of law family-unfriendly for women. However, less than a half of respondents thought this was so for men lawyers, indicating that they saw a societal (rather than professional) problem. Most respondents urged the lawyers' association to take a more active role in promoting women's issues. Forty per cent thought there should be a quota established to ensure women's representation on the governing council of the association.²⁸¹ As a result of the survey a working group was established in early 2003 in order to focus on issues of particular concern to women lawyers.

The preliminary conclusion from the review of the activities of professional bodies is self-evident, but striking in the Irish context. Gender equality issues have been studied by professional bodies throughout the common law world (and in some civil

²⁷⁸ Available at < <http://www.lawyers.org.nz/wcg/>>.

²⁷⁹ See <www.ewla.org> for full list of national organisations.

²⁸⁰ Deutscher Juristinnenbund, *Juristinnen in Deutschland. Eine Dokumentation*. (1900-1984). (Munich, Schweizer, 1984); Deutscher Juristinnenbund, *Juristinnen in Deutschland. Die Zeit von 1900-1998* (Baden-Baden, Nomos, 1998); Deutscher Juristinnenbund, *Berufsorientierung und Karriereplanung. Informationen und Tipps für junge Juristinnen* (Baden-Baden, Nomos, 2000).

²⁸¹ Ahlers, Monika, *Zusammenfassung des Ergebnisses/Auswertung*, (Berlin, Deutscher Anwaltverein, 2002).

law countries) for at least the past decade, resulting in the institutionalisation of gender equality awareness, policies and practices. As such, the absence of such activity in Ireland is all the more noteworthy. While the empirical findings of the studies examined vary, according to the national professional profiles, and indeed legislative context, all identify significant remaining barriers to the progress of women within the professions and make recommendations for institutional change. In this study, we have the advantage therefore not only of the findings and methodologies of these earlier studies, but also the insight from the recommendations made and the impact of these changes (where this impact has been studied).

2.1.4 The Lessons and Limits of Anti-Discrimination Law

This study is also informed by legal scholars' writings on the limits of anti-discrimination law. The debate in feminist legal studies about the efficacy, propriety and desirability of reliance on the concept of equality to promote the advancement of women is an ongoing and seemingly intractable one.²⁸² Advocates of traditional approaches to equality argue that women have essentially two choices: either equality on the basis of similarities between the sexes or special treatment on the basis of sexual differences ('the sameness versus difference debate'). Many favour the former, since difference always means women's difference, and this provides the basis for treating women worse as well as better than men.²⁸³ However, other scholars of anti-discrimination law quickly become disenchanted with 'formal equality' approaches, which require women to be like men in order to be entitled to equal treatment, and which depend exclusively on individual enforcement for their vindication.²⁸⁴ Their critique argues that formal understanding of equality is 'programmed not to succeed' in its aim of achieving substantive equality for women as a whole, in that it guarantees only formal equal treatment. Accordingly they advocate an understanding of gender equality as parity, aiming at *de facto* equal participation of women in all areas in

²⁸² The literature on this topic is vast. 'Classic' arguments are expressed in the following articles: Williams, Wendy, 'The Equality Crisis: Some Reflections on Culture, Courts and Feminism' in Bartlett, Katherine & Kennedy, Roseanne, *Feminist Legal Theory: Readings in Law and Gender - New Perspectives On Law Culture and Society*, (Boulder, Co., Westview Press, 1991); MacKinnon, Catharine *Feminism Unmodified: Discourses on Life and Law*, (Cambridge, Mass., Harvard University Press, 1987), esp. Ch.2 'Difference and Dominance: On Sex Discrimination'; MacKinnon, Catharine, 'Reflections on Sex Equality under Law', (1991) *Yale Law Journal* 1282; Littleton, Christine, 'Reconstructing Sexual Equality' (1987) *California Law Review*, 1274-1289; Cain, Patricia, 'Feminism and the Limits of Equality' (1990) *Georgia Law Review* 803. European Community sex equality law is examined in the light of common feminist critiques in: Fredman, Sandra, 'European Community Discrimination Law: A Critique', (1992) *Industrial Law Journal*, 119.

²⁸³ An exponent of this approach is Wendy Williams. Above n. 282. As she argues, 'If we can't have it both ways we ought to think carefully about which way we want it' 26.

²⁸⁴ See for example, Vogel-Polsky, Eliane, *The Conception and Instrumentalisation of Legislation on Equal Opportunities for Men and Women: Programmed Not to Succeed*, Speech at European Parliamentary Hearing of 25 April 1996.

which they are currently underrepresented.²⁸⁵ Some critics go even further in arguing that the concepts utilised in anti-discrimination law are inherently flawed. Thus Catharine MacKinnon criticises the concept of equality for its reliance on the male norm. Non-discrimination relies on the sameness/difference dichotomy, which grants women what men have, as long as they are like men. Thus women are inevitably judged according to the male standard such that equality conceals ‘the substantive way in which man has become the measure of all things’.²⁸⁶ To avoid this demeaning process, and its negative consequences, she advocates a shift in focus to the identification of dominance. Thus she treats gender equality issues as questions about the distribution of power, about male supremacy and female subordination.

In the Irish context, the leading works on equality law are informed by this debate. For example Curtin argued in 1989 that ‘Formal legal equality presupposes an equality of interest and of social position in order to enjoy equal rights. The limitations of formal equality as a feminist goal are now widely recognized: it has little bite in view of the disadvantages which women suffer in ‘private’ areas such as family life.’²⁸⁷ More recently, in light of the critique of formal approaches to equality, other models of equality have been developed.²⁸⁸ In this study, we reject the formal equality model, the limits of which are by now well established. In particular, it is inappropriate in the context of subtle indirect barriers to women’s progress now more prevalent than overt sexism in legal practice. Thus, we are drawn to the model of ‘substantive equality’, and are aware of the multifaceted nature of ‘equality’, and the importance of recognition of diversity and participation to achieve institutional change. What we propose therefore is a nuanced and functional understanding of equality, bringing an awareness drawn from the past three decades of scholarship.

Therefore our focus shifts from abstract models, to concrete tools for achieving change. In particular, this study is informed by recent work on making equality law

²⁸⁵ ‘The importance accorded to the concept of formal equality and the anti-discriminatory approach contributes to drastically reduce the scope and effectiveness of legislation on equality. The only possible way out of the impasse of abstract and theoretical equality is to change paradigms and base gender equality on parity, in other words recognising the fundamental right of equality between women and men. This right imposes equal status and an obligation to take the measures necessary to implement it effectively’ *Ibid.*

²⁸⁶ *Feminism Unmodified*, above n.282, 34.

²⁸⁷ Curtin, Deirdre, *Irish Employment Equality Law* (Dublin, Roundhall Sweet & Maxwell, 1989), 42.

²⁸⁸ See for example the three different models devised by Bolger and Kimber: formal equality/strict identical treatment; identical treatment combined with special treatment, and anti-subordination: Bolger, Marguerite and Kimber, Cliona, *Sex Discrimination Law*, (Dublin, Roundhall Sweet & Maxwell, 2000), 2-24. See also the five models identified by McCrudden: ‘equality as mere rationality’, the ‘individual justice model’, the ‘group justice model’, ‘equality as recognition’ and ‘equality as participation’: McCrudden, Christopher, ‘Theorising European Equality Law’ in Costello, Cathryn and Barry, Ellis, *Equality in Diversity – the New Equality Directives* (Dublin, ICEL, 2003), 1

more effective, in light of the deficiencies in the individual enforcement model. It has long been documented that equality law which relies solely on individual enforcement will be ineffective, as it relies on the willingness, ability and capacity of the individual to bring an action with consequent financial and other costs. In addition, as Barry argues,

‘the individual enforcement model relies on an *ex post facto* individual remedy in the context of retrospective fault finding, rather than encouraging proactive identification and elimination of discriminatory practices. This adversarial approach thwarts the identification and removal of discriminatory factors in a consensual manner. All in all, the individual enforcement model has very limited capacity in tackling institutional or structural discriminations.’²⁸⁹

Although Irish equality law does facilitate some forms of institutional enforcement, as embodied in the Equality Authority,²⁹⁰ we argue that further tools should be employed, particularly those of mainstreaming, imposing positive duties and taking forms of positive action in order to tackle subtle institutional discrimination. Mainstreaming refers to the incorporation of gender equality perspectives in all policies at all levels and at all stages. It requires that the gender impact of policies and processes is reviewed, and that women are engaged in the decision-making processes. Positive duties go even further. They impose a requirement to promote equality via the tools of impact assessment and consulting, but also impose an enforceable duty to eliminate discriminatory practices by proactive and anticipatory action, rather than waiting for individual action by means of individual challenges. While positive duties are generally applied to the public sector, in some instances positive duties are also applied to private sector actors, in the form of contract compliance and procurement obligations. Positive action entails a range of policy tools, including requiring professional bodies and others to take steps to counter sexist or exclusivist cultures.

In this respect we draw on the Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation, entitled *Equality - a New Framework* (Hepple, Cousey and Choudhury, 2000). The Report develops a sophisticated enforcement model, in the form of an ‘enforcement pyramid’, starting from a base of persuasion, information and voluntary action plans, and if these fail, moving upwards to commission investigation, compliance notice,

²⁸⁹ Barry, Ellis, ‘Different Hierarchies – Enforcing Equality Law’ in Costello, Cathryn and Barry, Ellis (eds) *Equality in Diversity – the New Equality Directives* (Dublin, ICEL, 2003).

²⁹⁰ The Equality Authority was established under the Employment Equality Act 1998. Its ambitious statutory mandate is working towards the elimination of discrimination and promoting equality of opportunity in employment and in matters covered by the Equal Status Act 2000, mainly in relation to the provisions of goods and services (Section 39 Employment Equality Act; Section 39 Equal Status Act). It is also given a public information function in regard to a number of Acts, including the Employment Equality Act 1998, Equal Status Act 2000, Maternity Protection Act 1994, Adoptive Leave Act 1995 and the Parental Leave Act 1998.

judicial enforcements, sanctions and withdrawal of contracts or subsidies.²

2.2 Women in Law – Comparative Perspectives

2.2.1 Women Gain Entry

There are examples of women lawyers in antiquity, but these were exceptions to the strict rule that women could not play public roles.²⁹⁶ In most Western States, admission of the first female jurists to the legal profession took place at the turn of the nineteenth century or in the early decades of the twentieth century. In countries that industrialised more recently, the entry of women to the legal professions was even later. For example, in Korea, it was 1952 before the first woman became a lawyer.

The main device used to exclude women from practising law was the legal concept of personhood. Women had traditionally not been regarded as full persons in law, and a central objective of the first wave feminist movement in the late nineteenth and early twentieth centuries was to assert the personhood of women. In the leading text of that movement, *A Vindication of the Rights of Women*, Mary Wollstonecraft argues passionately for women to be treated as persons: rational agents, autonomous decision-makers.²⁹⁷

It was against this background that the campaign for personhood began, seeking to break the barriers excluding women from the public domain. Women led campaigns and brought cases during the later nineteenth and early twentieth century seeking recognition of their right to vote, to hold political office, to receive education and to be admitted to the professions.²⁹⁸ In attempting to enter the legal professions, throughout the common law world, the person's cases illustrate the lengths to which male judges went in order to preserve the law as an exclusively male domain.

²⁹⁶ For example, Oligiati notes that Prospera Porzia Malvezzi was a famous jurist in sixteenth-century Bologna. Oligiati, Vittoria, 'The Case of the First (Failed) Women Lawyer in Modern Italy' in Schultz and Shaw, above n. 218, 419, 422.

²⁹⁷ (New York, Norton, 1975, originally published in 1792).

²⁹⁸ See, for example, the English case of *Chorlton v Lings* (1868) LR4CP 374. Mary Abbott claimed the right to be included on the electoral register. Bovill CJ rejected this argument on the basis that the word 'man' in the 1867 People Act 'was intentionally used, in order to designate expressly the male sex.' See further Bridgeman, Jo and Millns, Susan, *Feminist Perspectives on Law* (London, Sweet & Maxwell, 1998), Chapter 1, 'Are Women Persons Too?'

The Persons Cases

'Women learned their law trying to become lawyers.'²⁹⁹

Women's struggle to gain entry to the legal professions is evidenced in legal challenges throughout the common law world to be recognised as legal persons, and thus be allowed to practise. These cases are all the more striking as the laws governing the legal professions generally provided that 'any person' could practice. The gender-neutral language naturally suggested that women were included. However, for would-be women lawyers, the judicial response was negative. Case after case confirmed that women lacked personhood sufficient to practice law; that women personified care, and that care was an emotional task, devoid of rationality; and that consequently lawyering was not a feminine pursuit. As Sommerlad and Sanderson explain, 'What become known as the 'persons cases' illustrate [a] mix of judicial activism and proclaimed neutrality. Rationalised as based in the Common Law's endorsement of custom and tradition, the judgments in these cases were delivered with a sense of their self-evident and obvious character by an apparently monolithic judicial establishment.'³⁰⁰

In the United States, Arabella Mansfield was the first woman admitted to the Iowa Bar in 1869. However, in 1873, the US Supreme court confirmed that Myra Bradwell could not be admitted into the Chicago Bar,³⁰¹ and in 1894, the Supreme Court confirmed a decision that denied Belva Lockwood the right to practice law in Virginia, because she was not a 'male person'.³⁰² The Court stated, '[t]he family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belongs, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct career from that of her husband.'³⁰³ This decision embodied the separate spheres argument, frequently employed against women taking on public roles. Men lawyers at the time generally applauded the decisions. One stated, 'You can't be shining lights at the Bar because you are too kind. You can never be corporation lawyers because you are not cold-blooded.'³⁰⁴ Another commented, 'A woman can't keep a secret, and for that reason if for no other, I doubt if anybody will

²⁹⁹ Menkel-Meadow, Carrie, 'Feminization of the Legal Profession: The Comparative Sociology of Women Lawyers' in Abel, Richard and Lewis, Philip, *Lawyers in Society – An Overview* (Berkeley, University of California Press, 1995), 221, 226.

³⁰⁰ Sommerlad and Sanderson, above n. 222, 50.

³⁰¹ *Bradwell v State of Illinois* 83 US (16 Wall) 442 (1873).

³⁰² *In Re Belva Lockwood* 154 US 116 (1894).

³⁰⁶ Quoted in Rhode, Deborah, *Justice and Gender: Sex Discrimination and the Law* (Cambridge, Mass., Harvard University Press, 1989), 1188.

³⁰⁴ Darrow, Clarence cited in Day O'Connor, Sandra, 'The Challenge of a Woman in Law' in Shetreet, Shimon (ed) *Women in Law* (London, Kluwer Law International, 1998), 5, 6.

ever consult a women lawyer.’³⁰⁵ Eventually in 1897 Belva Lockwood was admitted to practise at the Bar before the US Supreme Court. She succeeded not through the courts, but by political lobbying male politicians throughout Washington DC. In 1884, she even ran for President, garnering 4,149 votes, despite the fact that women could not vote at the time.³⁰⁶

In England in 1914, four women who had been refused permission by the English Law Society to sit the solicitors’ entrance examinations challenged the Society’s refusal.³⁰⁷ The Court of Appeal in *Bibb* held that women were not ‘persons’ within the meaning of the Solicitors Act 1843. The sort of views upon which the ‘persons cases’ were based were expressed forcibly by a former Lord Chancellor during one of the debates on reform of the law to allow women to become solicitors, in 1917:

‘I believe that the common sense of mankind has taken a particular view of occupations that are fitted for women, and although you may have among women particular instances of great learning and great genius even, and in some respects the qualities that are appropriate to such a transaction as bringing an action, I do not think that the common sense of mankind will recognise the sort of thing that solicitors have to do as work which is appropriate to women.’³⁰⁸

In Australia, Ada Evans, who graduated from Law School in 1902, was refused admission to the practice of law in New South Wales.³⁰⁹ In 1904, Edith Haynes challenged a similar refusal in Western Australia.³¹⁰ The Supreme Court of Western Australia also held that women were not ‘persons’ and so could not practice law. As Thornton writes, ‘Haynes’s case illustrates the power of law to determine women’s peripheral role as citizens, despite the worldwide struggles of suffragists to secure the rights and privileges of the citizenship for women....the three male judges acted as the supposedly neutral arbiters of women’s fitness for the public realm. Their status and expertise as legal knowers permitted them to uphold the prevailing gender order.’³¹¹ Another Australian case of relevance is that of Mary Kitson. Despite having been admitted to legal practice in 1916, the Supreme Court of South Australia found that she did not qualify for personhood under the Public Notaries Act 1859 (SA).³¹² As in

³⁰⁵ *Ibid.*

³⁰⁶ See further Davis, ‘Belva Ann Lockwood: Remover of Mountains’ (1979) *ABA Journal* 924.

³⁰⁷ *Bibb v Law Society* [1914] 1 Ch 286.

³⁰⁸ The Earl of Halsbury, former Lord Chancellor, speaking in the debate in the Lords on the Solicitors (Qualification of Women) Bill, Lords Debates, Hansard XXIV, Col. 269, 27 February 1917.

³⁰⁹ For a discussion of the Australian pioneers, see Thornton, above n. 228, 56.

³¹⁰ *In re Edith Haynes* (1904) 6 WAR 209, 213.

³¹¹ Thornton, above n.228, 59

³¹² *Ibid*, 59-60.

the Haynes' case, the court determined that 'the legislature alone could 'alter the law', a law that, ironically, the court itself had just created.'³¹³

In Ontario, Canada, it took Clara Brett Martin six years to be admitted to the Law Society of Upper Canada. She was denied admission to study law on the grounds that the authorizing statute applied to males only. Martin successfully lobbied for the Ontario Legislature to pass an Act to Provide for the Admission of Women to the Study and Practice of Law in 1892. Still, the Law Society denied her admission. The Ontario Legislature had to pass yet another Act to Amend the Act to Provide for the Admission of Women to the Study and Practice of Law in 1895 in order for her to practice. She was finally admitted as a Barrister in 1897, with further intervention by the Attorney General.³¹⁴

In Ireland, following the failure of the Bibb case and a subsequent Bill to amend the Solicitors Act, an Irish woman, Georgina Frost challenged the refusal of the Lord Lieutenant to appoint her clerk of petty sessions for two districts in Co. Clare.³¹⁵ She lost in the High Court and Court of Appeal. Barton J. was in the Chancery Division of the High Court and he had decided she was unfit because of her sex and rationalized his decision by stating 'The reason of the modern decisions disqualifying women from public offices has not been inferiority of intellect or discretion, which few people would now have the hard hood to allege. It has been rather rested upon considerations of decorum, and upon the unfitness of certain painful and exacting duties in relation to the finer qualities of women.'³¹⁶ By the time Frost had appealed to the House of Lords, the Sex Disqualification (Removal) Act 1919 had been adopted and she was allowed then to take office.³¹⁷

It was eventually a case originating in Canada that led to the demise of the legal construction of women as non-persons, concerning women's right to stand for elected office in the Senate – a right granted under statute to 'persons'.³¹⁸ The five

³¹³ *Ibid.*

³¹⁴ *Ibid.*, 7.

³¹⁵ *Frost v the King* [1919] I IR 81. For a profile of Georgina Frost, see Donovan, Katherine, 'An Unlikely Pioneer', *Irish Times*, 27 April 2000.

³¹⁶ *Frost v the King* [1919] I IR 81, 86. See also Chapter 1.

³¹⁷ Redmond, Mary, 'The Emergence of Women in the Solicitors' Profession in Ireland' in Hall, Eamonn and Hogan, Daire (eds), *The Law Society of Ireland 1852-2002 - Portrait of a Profession* (Dublin, Four Courts Press, 2002), 103.

³¹⁸ This account is based on the speech of the Right Honourable Beverly McLachlin, Chief Justice of the Supreme Court of Canada at the 'Famous Five Breakfast', 17 October 2000. Available at <www.scc-csc.gc.ca/aboutcourt/judges/speeches/famousfive_e.asp>. See also the account in the Canadian National Archives, Benoit, Monique 'Are women Persons? The 'Persons' Case' available at <www.archives.ca/04/042412_e.html>.

petitioners, known as the ‘famous five’ were Henrietta Muir Edwards (a philanthropist who was involved in aboriginal rights), Nellie McClung (a life-long activist for women’s rights, who had led campaigns securing women’s right to vote in Alberta and Manitoba), Louise McKinney (a temperance advocate and the first woman to sit in a Canadian provincial legislature in 1917), Irene Parlby (an activist in the United Farmers of Alberta and in 1921 a member of cabinet in that state) and the ‘driving force’ Emily Murphy. Emily Murphy was appointed a magistrate in 1916 in Alberta, the first woman to hold this position in the British Empire. After her appointment, her jurisdiction was challenged on the basis that she was not a ‘person’, but the Alberta courts rejected this argument and she continued to sit on the bench. Rather than seeking an amendment to the governing statute (the British North America Act 1867), the five launched a judicial challenge. The Canadian Supreme Court rejected their petition, in a ‘cautious, positivist, textual approach.’³¹⁹ However, before the Privy Council, a different result was reached.³²⁰ Lord Chancellor Sankey warned against adhering to customs which are ‘apt to develop into traditions which are stronger than the law and remain unchallenged long after the reason for them has disappeared.’ He concluded that ‘to those who ask why the word [persons] should include females the short answer is why should it not?’ The background should not be forgotten. The struggle for the right to vote had been won and the political context thereby immeasurably altered.

In Canada, 18 October is ‘Persons’ Day’, commemorating the Famous Five and women legal and political pioneers generally. As one of the five, Nellie McClung put it:

‘People must know the past to understand the present and face the future.’

In civil law countries, barriers to entry were equally pervasive, and masked in legal formalism. For example, in Italy, Lidia Poet was the first woman to be admitted to legal practice in Italy in 1883. However, the Attorney General challenged her entry, and the courts contrived a distinction between admittance to university law courses (to which women were explicitly entitled and which was the legal prerequisite for becoming a lawyer) and the exercise of public powers. Although there was no rule prohibiting women from exercising such powers, the Courts invented one. It was not until 1919 that the legislature enacted a law authorising women to practise ‘private lawyering’ so that women could enter the roll of practitioners. However they were still excluded from activity ‘implying juridical public powers.’ Women only finally gained access to the judiciary in Italy in 1963.³²¹ In Belgium, in 1893, a similar case arose and again it was the judiciary that erected the barrier to women’s entry to the

³¹⁹ *Ibid*, 3.

³²⁰ *Edwards v Attorney-General of Canada* (1930) AC 124

³²¹ For example, Oligiati notes that Prospera Porzia Malvezzi was a famous jurist in sixteenth-century Bologna. Oligiati, Vittoria, ‘The Case of the First (Failed) Women Lawyer in Modern Italy’ in Schultz and Shaw, above n. 218, 419, 426-428.

legal profession. Jeanne Chauvin was the first women lawyer in France. However, again in her case judicial barriers arose. When she presented herself for swearing in as a lawyer, her application was turned down by the court on the basis that lawyering was ‘un office virile’! Even at the time, scholars criticised the ruling as a blatant misinterpretation of the law. Women finally gained entry to the profession in 1900, as a result of a legislative amendment.³²²

Table 2.1 Landmarks for Women in Law in Selected Countries³²³

Country	First woman admitted to Law Faculties	First Woman Law Student Graduate	First Lawyer	First Judge	First Legal Academic
Ireland	1882	1888	1920	1963	1925
USA	2nd Half of 19th century; Harvard Law	School, 1950	2nd Half of the 19th century		
Canada	1899 Northwest Territories	1892	1895-1942		
Australia			1905 (Victoria) 1935 (Tasmania) (1965 1st)	Supreme Court judge, 1987 first high Court judge)	
New Zealand	c. 1873	1897(1971 first Maori; 1982 first Pacific Islander)		1975	1957- first lecturer

³²² Boigeol, Anne, ‘Male Strategies in the Face of the Feminisation of a Profession: The Case of the French Judiciary’ in Schultz and Shaw, above n. 218, 401, 402.

³²³ Source: Schultz, Ulrike and Shaw, Gisela (eds), *Women in the World’s Legal Professions* (Oxford, Hart Publishing, 2003), xxxiv. Data on Ireland from our own sources.

Table 2.1 Landmarks for Women in Law in Selected Countries ³²³

Country	First woman admitted to Law Faculties	First Woman Law Student Graduate	First Lawyer	First Judge	First Legal Academic
UK	1873	1917 Solicitors: Scotland 1920 England 1922 Wales 1922	Barristers 1920	1960's (County Court) 1988 1st Court of Appeal judges)	
Germany	1900-1909	1912	1922		1965 1st law professor
Netherlands			1903	1947	
Poland	1915		1925	1929	
Norway			1890		
Sweden		1897	(doctoral degree)		
Finland			1906	1930s	
France	1887	1897	1900	1946	1931 1st Law professor
Italy		1876	1777	1919	1963
Korea	1946	1951	1952		
Belgium					1921
Denmark					1919
Portugal					1918

2.2.2 Judges

Current Women Judges

Table 2.2 Comparative Percentages of Women in the Judiciary ³²⁴

Country	Percentage of Women in Judiciary
Ireland	21%
U.K.	12%
New Zealand	8%
Canada	26%
U.S.	10-12%
Australia	9%
Finland	46%
France	54%
Germany	26%
Netherlands	34%

In general terms, the key distinction between entry to the judiciary in common and civil law countries is the manner of selection. In common law countries, judges are appointed after many years of practice, based on their professional standing. Appointment criteria are often nebulous, based on experience and professional standing. In contrast, in civil law countries the judiciary is a career option based exclusively on academic criteria in civil law countries, to which entry is gained after the basic legal qualification has been obtained. Today, as outlined in Table 2.2, common law countries continue to lag behind civil law countries in terms of the appointment of women as judges. For example, it remains the case that there has never been a woman judge on the High Court of Northern Ireland or the UK House of Lords. France epitomises the civilian tradition. Judges and prosecutors are trained in a specific college, entry to which is gained on the basis of university grades. Women have made greatest inroads in the judiciary and public prosecutorial service in France. The first woman judge was appointed in 1946. ³²⁵ In 2000, 54 per cent of French judges were women. ³²⁶ However, women make up under 15

³²⁴ Source: Schultz, Ulrike and Shaw, Gisela (eds), *Women in the World's Legal Professions* (Oxford, Hart Publishing, 2003), xxxvii. Additional information: Thornton, Margaret, *Dissonance and Distrust: Women in the Legal Profession*, (Melbourne, Oxford University Press, 1996), 293; Canadian Embassy in Ireland; and data on Ireland from our own sources.

³²⁵ Boigeol, Anne, 'Male Strategies in the Face of the Feminisation of a Profession: The Case of the French Judiciary' in Schultz and Shaw, *ibid*, 401, 403.

³²⁶ 'Introduction', Schultz and Shaw, *ibid*, xxxviii.

per cent of court presidents, a constant feature.³²⁷ Similarly, in Germany, women constitute between one quarter and one half of newly appointed judges.³²⁸

In contrast, there are far few women judges in common law countries. In the UK, only 12 per cent of judges are women.³²⁹ A similar percentage applies in the US. Other common law jurisdictions are even worse. In Australia in 1995, only 9 per cent of judges and magistrates were women.³³⁰ Similarly in New Zealand, only 8 per cent of judges are women. Of common law jurisdictions, the best representation has been achieved in Canada, where 272 out of 1029 federally-appointed judges are women (26%).³³¹

A further documented phenomenon is the uneven progression in women's appointment to the judiciary. Very often, once one or two women are appointed to high judicial office, many years elapse before other women are appointed. In the US, for example, Florence Allen was the first woman to be appointed to the Federal Bench where she remained alone for the next 15 years.³³² She served from 1934 to 1959 on the US Court of Appeals for the Sixth Circuit and was thought by many to be worthy of a Supreme Court nomination. The first woman, Sandra Day O'Connor, was appointed to the US Supreme Court in 1981, followed 12 years later by Ruth Bader Ginsberg in 1993. These are the only two women to have served on that court. There is no woman, nor has there ever been, on the UK's highest court, the House of Lords. The most senior woman judge in the UK is Lady Justice Butler-Sloss, on the Court of Appeal. She was the only woman on that court for 11 years. In Australia, following the appointment of Dame Roma Mitchell, it was more than 20 years before another woman was appointed to an Australian State Supreme Court.³³³ This phenomenon of the highly visible trailblazer woman should be understood not necessarily as an example of 'advances' made by women, but as a reminder of continuing male domination.

³²⁷ Boigeol, Anne, 'Male Strategies in the Face of the Feminisation of a Profession: The Case of the French Judiciary' in Schultz and Shaw, above n. 324, 401, 413.

³²⁷ Boigeol, Anne, 'Male Strategies in the Face of the Feminisation of a Profession: The Case of the French Judiciary' in Schultz and Shaw, above n. 218, 401, 413.

³²⁸ Schultz, Ulrike, 'The Status of Women Lawyers in Germany' in Schultz and Shaw, above n. 324, 272, 279-284.

³²⁹ For general discussion, see Malleson, Kate, 'Prospects for Parity - The Position of Women in the Judiciary in England and Wales' in Schultz and Shaw, above n. 218, 175.

³³⁰ Thornton, above n. 228, 293.

³³¹ Source: Ginette Beauparlant, Chief, Administrative Services to the Judiciary, Federal Judicial Affairs, Ottawa, Canada, September 2003. Figures for provincially-appointed judges in Canada are only available from individual provinces.

³³² Ginsberg, Ruth Bader and Brill, Laura, 'Women in the Federal Judiciary: Three Way Pavers and the Exhilarating Change President Carter Wrought' (1995) *Fordham Law Review* 281, 28

³³³ Thornton, above n. 228, 293.

The most obvious exception to this trend is Canada. Bertha Wilson was appointed to the Supreme Court of Canada in 1982 and retired in 1991. Her appointment was followed by that of Claire L'Heureux-Dubé in 1987, who retired in 2002. Three of the nine justices currently on the Canadian Supreme Court are women. Beverly MacLachlin was appointed in 1989 and appointed Chief Justice in 2000, a position she currently holds. Louise Arbour was appointed in 1999, followed by Marie Deschamps in 2002.³³⁴ This appears to be the only example of a highest court where a 'second generation' of women judges has been appointed.

Judicial Appointments Procedures

It is argued that the under-representation of women judges in common law countries is 'obviously a consequence of selection procedures which set great store by experience, age and professional networks – all of which criteria are more easily met by male applicants.'³³⁵ This is borne out by the experience in the Netherlands, where there are two routes to appointment to the judiciary, which have resulted in a significant vertical segregation. After graduation from law school, it is possible to enter a six year training programme to enter the judiciary. A significant proportion of women enter via this route, which depends on academic achievement only. The second route allows those with at least six years' experience, usually in private practice, to enter the judiciary. Most (97% in 1986) of entrants via this route, which depends on professional standing, are men.³³⁶

Therefore, it is useful to examine the judicial appointments process in other jurisdictions more closely. While the civil law experience is informative, the adoption of such a model would be a radical reform for Ireland. Instead we examine the reform of the judicial appointments process in common law jurisdictions, namely Northern Ireland, England and Wales and Canada.

In February 2003, the Commissioner for Judicial Appointments for Northern Ireland, John Simpson, published the findings of a wide-ranging review he had conducted of current procedures for judicial appointments, and the award of Silk, in Northern Ireland.³³⁷ Women's representation among the N.I. judiciary is currently very poor, and the more senior the judicial office, the lower the proportion of women in that office. There are currently no women among the 12 judges on the N.I. superior courts. Out of a total of 124 judges listed in the Commissioner's report (including deputy judges and resident magistrates), there are 19 women; thus women make up only 15 per cent of the N.I. judiciary, a clear sign of their under-representation, particularly given the high numbers of women students entering the Institute of

³³⁴ For detailed biographical details of all, see < www.scc.csc.gc.ca/aboutcourt/judges/aboutjustices_e.asp>.

³³⁵ Schultz and Shaw, above n. 324, xxxvii.

³³⁶ De Groot-Van Leeuwen, Leny, 'Women in the Dutch Legal Profession (1950 – 2000)' in Schultz and Shaw, above n. 218, 341, 343.

³³⁷ Commissioner for Judicial Appointments for Northern Ireland, *Audit Report* (Belfast, 2003).

Professional Legal Studies at Queen's University for professional training since the late 1980s.³³⁸ Among the reasons provided to the Commissioner for the low number of women judges were: the narrow specialisation of many women in family/children law; the lack of training and of lack of confidence among women; and the 'trickle up' fallacy, ie the mistaken sense that if we simply wait, the present imbalance will be addressed naturally as more women gain sufficient experience to become judges. The Commissioner did not accept this 'waiting' proposal, however, although he noted that it 'tends to be supported by the senior judges'. He found that, even where women do apply, men have a better statistical chance of success.³³⁹ Of six judicial appointment schemes audited, 28 per cent of candidates were women and 72 per cent were men; but only 17 per cent of successful candidates were women, compared to 83 per cent of men.

In order to remedy this imbalance, the Commissioner recommended that the key principle in judicial appointment should be selection on merit, and that appointment should be competency based as opposed to criteria based. He argued:

'Merit can be a highly subjective concept – the criteria or competence used to measure it must be stated in terms that are as objective as possible. To have a measurable concept of merit requires well-defined competences for each judicial office to be identified, and selection processes which focus on those.'³⁴⁰

In the Commissioner's view, the competencies required of judges should be clearly defined, transparent and publicly announced; and a conscious decision should be taken to reduce the impact of length of experience as the key factor. He also recommended that the process should not 'discriminate indirectly against women who generally make up the larger group of solicitors and barristers with lesser years standing.'³⁴¹ At present, it is necessary to have a minimum of 10 years in practice in Northern Ireland in order to be appointed a judge of the high court; and seven years to be a county court judge.

The Commissioner further recommended that judicial appointments should be advertised in newspapers and within the legal professions; that the advertisements should include a message about equality; that research should be commissioned into the factors which affect women in applying for judicial appointments and the taking of silk; and that the 'barriers for women putting themselves forward for appointment, whether perceived or real, should be examined and policies implemented for their removal.'³⁴² Such policies, the Commissioner suggested, could include the use of part-time appointments, which would be 'a positive step in attracting candidates who

³³⁸ *Ibid*, para 5.5.

³³⁹ *Ibid*, para 5.5.3.

³⁴⁰ *Ibid*, para 5.2.2.

³⁴¹ *Ibid* para. 5.3.5.

³⁴² *Ibid* para 5.5.8

would be better able to combine family responsibilities with work. This would be in line with current European approaches to employment practices as well as current thinking on work/life balance.⁷

The judicial appointments process in England and Wales had been subject to much criticism.³⁴³ Three fundamental principles underpin the Lord Chancellor's policies in selecting candidates for judicial appointment: (a) appointment is strictly on merit and there is a non-discrimination guarantee; (b) part-time service is normally a prerequisite of appointment to full-time office; (c) significant weight is attached to the independent views of members of the professional community (and others) as to the suitability for judicial appointment.³⁴⁴ The final aspect of the process is pejoratively referred to as 'secret soundings.' Helena Kennedy has argued that the secret soundings process leads to 'cloning',³⁴⁵ whereby certain types of men are appointed to the judiciary in a self-perpetuating manner. She has also expressed scepticism as to whether excellence as an advocate is a good criterion for judicial appointment.³⁴⁶

The reform proposals that have emerged in the UK debate on judicial appointments are worthy of scrutiny here. In 1992, the *Without Prejudice Report* concluded that 'It is unlikely that the judicial appointment system offers equal access to women of fair access to promotion to women judges. The system depends on patronage, being noticed and being known.'³⁴⁷ It recommended that judicial vacancies should be advertised and that there should be job descriptions and specific criteria for appointment. In March 1993, the *Moriarty Report* also recommended open advertising, descriptions of the content of the posts to be filled and the qualities and experience required. In July 1993, the then Lord Chancellor announced that he intended to introduce specific competitions for judicial vacancies, including open advertising; more specific job descriptions and criteria for appointment; improved application forms; a more structured basis for consultations on candidates; and the involvement of lay people in the process.

Since his appointment as Lord Chancellor in 1997, Lord Irvine has built on these developments and introduced further improvements. In particular, in 1999 he asked Sir Leonard Peach, formerly Commissioner for Public Appointments, to scrutinise the appointments process. The *Peach Report*³⁴⁸ made a number of Recommendations,

³⁴³ JUSTICE, *The Judiciary in England and Wales* (London, JUSTICE, 1992); *Without Prejudice?* above n. 248.

³⁴⁴ Available at < www.lcd.gov.uk/judicial/appointments/japplcpp.htm >.

³⁴⁵ Kennedy, Helena, *Eve Was Framed* (London, Chatto and Windus, 1992), 267.

³⁴⁶ She states '[G]ood advocates often make lousy judges – they continually want to step down into the ring and spar with one side or the other.' *Ibid.*

³⁴⁷ *Without Prejudice?* above n. 248, 48.

³⁴⁸ Sir Leonard Peach, *An Independent Scrutiny of the Appointments Processes of Judges and Queens Counsel in England and Wales* (London, Lord Chancellor's Department, 1999) (the 'Peach Report').

including the restructuring of the soundings process. In addition, in 1997 the Joint Working Party on Equal Opportunities in Judicial Appointments and Silk³⁴⁹ was established. It reported in September 1999, and its recommendations were examined by Sir Peach. Also published at this point was Malleson and Banda's report, on the factors affecting decisions of women lawyers and lawyers from minority ethnic backgrounds from applying. It suggested that part of the problem lay with the attitudes of members of the profession, and in particular that women might lack confidence in their abilities, inhibiting their applications.³⁵⁰ In October 2001, the LCD published a further report on this theme.³⁵¹

Key changes introduced as part of the reform process include:

- At the lower level, the procedures are considerably more open and transparent than the Irish system. There are detailed job descriptions, posts are advertised and there is lay involvement in interviewing. Cherie Booth QC has argued that in this context, 'where reforms have rendered the appointment process far more similar to ordinary public appointment processes, women are far better represented.'³⁵²
- For higher judicial appointments,³⁵³ job descriptions also apply. However, only those of the High Court are advertised. No interviews are held. Potential candidates may be approached, although application is the norm.
- Salaried part-time appointments have been introduced for the District Bench.
- The Commission for Judicial Appointments was established in March 2001, to review the appointments process (for judges and QCs) and investigate individual complaints about the process. Sir Colin Campbell was appointed as the first Commissioner, and he published his first report in October 2002.³⁵⁴

³⁴⁹ The Report's Recommendations are contained in Appendix 8 of the Peach Report. The Joint Working Party comprises representatives of Committees of The Bar Council and The Law Society, The African, Caribbean and Asian Lawyers' Group, The Society of Asian Lawyers, The Society of Black Lawyers, The Association of Women Barristers and The Association of Women Solicitors. Officials from LCD provide a secretariat to the Working Party and are closely involved in developing initiatives emanating from the Working Party.

³⁵⁰ Malleson, Kate and Banda, Farenda, *Factors affecting the Decision to apply for Silk and Judicial Office*, Research Paper Published by the LCD (London, Lord Chancellor's Department, 1999).

³⁵¹ LCD, Judicial Appointments in England and Wales, *The Appointment of Lawyers to the Professional Judicial Equality of Opportunity and Promoting Diversity* (London, Lord Chancellor's Department, October 2001).

³⁵² Cherie Booth QC, Opening Address, 4th EWLA Congress 2003, Helsinki, Finland, 6-8 June 2003. Available at <www.ewla.org>.

³⁵³ Those of the Lords of Appeal in Ordinary, the Heads of Division, the Lord Justices of Appeal and the High Court Judges.

³⁵⁴ Commission for Judicial Appointments, *Annual Report 2002*, (London, Lord Chancellor's Department, 2002).

- In addition, in relation to part-time service, 'those who have had a career break for family reasons [can apply] as Assistant Recorders, or in certain tribunals, in concentrated blocks, rather than their sittings being spread over a number of years as is usual. As a result, those who have taken a career break are now able to catch up with those who have not.'³⁵⁵ This is significant as it is a prerequisite to appointment at higher judicial office that lawyers have spent time in part-time service. This allows the acquisition of such experience more quickly.

Recent figures show that women are more successful in their applications for judicial appointment than men. In 2001, in England and Wales, 24 per cent of women who applied were successful, compared to 21 per cent of men. In 2002, 34 per cent of judicial appointments were women. In addition, as this study was going to press, the UK reform process was ongoing, with proposals for radical change promised. In particular, the new system is likely to confer power to appoint on an independent body. If the government did not accept the appointment, it would have to give its reasons publicly.³⁵⁷

In Canada, the reform of appointment processes began some time ago, and has had impact. Chief Justice Beverly McLachlin has argued that redefining selection criteria was central to these reforms, stating:

'We only started to make progress when we started to re-think the definition of merit. We started to ask, 'What do you need to be a good judge?' and the pool of candidates was enlarged. We need to be very conscious of the stereotypes that lie within the way we think about what constitutes merit. How do we get diversity? Most importantly, we have to clarify what we mean by merit and recognise that merit doesn't mean being like existing judges.'³⁵⁸

In some Canadian provinces reforms have had a dramatic impact. For example, in Ontario the Judicial Appointments Advisory Committee was set up in 1988, when only 4 per cent of provincially appointed judges were women. Since then, 18 of the 39 judges appointed have been women. An independent body, the Committee recommends candidates to the Attorney General for judicial appointments to the Ontario Court of Justice Bench. Its composition is particularly noteworthy. There are 13 members on the Committee, three representing the Judiciary, three representing the legal community; and seven lay members are appointed by the Attorney General.³⁵⁹ The Judicial

³⁵⁵ LCD, Brochure on Judicial Appointments (London, Lord Chancellor's Department). Available at <www.lcd.gov.uk/judicial/appointments/japlcpp.htm>.

³⁵⁶ Lord Chancellor's Reply to a question in the House of Lords, 4 November 2002, cited in Commissioner for Judicial Appointments for Northern Ireland, *Audit Report* (Belfast, 2003), para 5.5.4.

³⁵⁷ Doward, Jamie, 'Radical Overhaul for Judge Selection' *The Observer* (31 August 2003).

³⁵⁸ Reported in Dyer, Clare, 'Where are the women?' *The Guardian* 8 July 2003.

³⁵⁹ For details of the current membership, see <www.ontariocourts.on.ca/judicial_appointments/biography.htm>.

Appointments Advisory Committee is required to provide the Legislature with an annual report.

Applicants must have at least 10 years membership at the Bar and have a sound knowledge of the law, an understanding of the social issues of the day and an appreciation for the cultural diversity of Ontario. While courtroom experience is an advantage, candidates may instead have experience including work with administrative tribunals, academia and in the social policy field. Appointment criteria are detailed, clear, meritocratic and sensitive to equality and social issues:

Professional Excellence

- A high level of professional achievement in the area(s) of legal work in which the candidate has been engaged. Experience in the field of law relevant to the jurisdiction of the Ontario Court of Justice on which the applicant wishes to serve is highly desirable but not essential.
- Involvement in professional activities that keeps one up to date with changes in the law and in the administration of justice.
- An interest in or some aptitude for the administrative aspects of a judge's role.
- Good writing and communications skills.

Community Awareness

- A commitment to public service.
- Awareness of and an interest in knowing more about the social problems that give rise to cases coming before the courts.
- Sensitivity to changes in social values relating to criminal and family matters.
- Interest in methods of dispute resolution, alternatives to formal adjudication and interest in community resources available for participating in the disposition of cases.

Personal Characteristics

- An ability to listen.
- Respect for the essential dignity of all persons regardless of their circumstances.
- Politeness and consideration for others.
- Moral courage and high ethics.
- An ability to make decisions on a timely basis.
- Patience.
- Punctuality and good regular work habits.

- A reputation for integrity and fairness.
- Compassion and empathy.
- An absence of pomposity and authoritarian tendencies.

Demographics

- The Judiciary of the Ontario Court of Justice should be reasonably representative of the population it serves. This requires overcoming the under-representation in the judicial complement of women, visible, cultural, and racial minorities and persons with a disability.³⁶⁰

The process is open and transparent, although information relating to applicants is treated as highly confidential. All appointments are advertised, and each applicant must complete a detailed Judicial Candidate Information Form, which elicits information in relation to each of the appointment criteria. While references are checked and certain confidential inquiries are undertaken, the range of those consulted is much wider than in the UK's 'secret soundings' encompassing 'the judiciary, court officials, lawyers, law associations, community and social service organizations, plus the named references provided by the candidate.' A ranked list of candidates is sent to the Attorney General.

In Chapter 11, we have drawn on this material in developing our Recommendations on reform of the judicial appointments process in Ireland.

Do Women Judges Make a Difference?

The promotion of women judges is clearly an important equality issue. We express concern at the current procedures as they appear to be open to bias, and may not ensure the best qualified individuals, be they women or men, are appointed to the judiciary. In addition, gender balance is also important for public confidence in the judiciary. The importance of a representative and diverse judiciary has been emphasised by Malleon, as a means of increasing public confidence in the judiciary.³⁶¹

However, as mentioned in our Introduction to this Report, this study is also motivated by the conviction that it is important that women are represented in law in order to 'make a difference'. Nowhere is this need more apparent than in the judiciary, where the exercise of judicial function (with all the law enforcement and lawmaking that it entails) has such dramatic consequences. While judging may be masked in neutral tones, legal provisions are usually indeterminate, and judges yield significant discretionary power. As Judge Pillay, current President for the International Criminal Tribunal for Rwanda has remarked, 'who interprets the law is at least as important as

³⁶⁰ Judicial Appointments Advisory Committee, *Policies and Processes* (Toronto, August 2002), available at < www.ontariocourts.on.ca/judicial_appointments/policies.htm >.

³⁶¹ Malleon, Kate, *The New Judiciary: the effects of expansion and activism* (Aldershot, Ashgate, 1999).

who makes the law, if not more so.’³⁶² In this respect, Harrington argues that ‘It is demonstrably true that women judges, although they make up only about 10 percent of both state and federal benches, have brought a markedly different focus to laws applying specifically to women.’³⁶³ She goes on to detail examples in relation to child custody, rape, and domestic violence.³⁶⁴

A further research question that then emerges is whether women judges actually make a difference in the sense of whether they exercise their functions differently and with a different sensibility. Attempts have been made to apply Carol Gilligan’s ‘different voice’ thesis in the judicial context, for example in Suzanna Sherry’s study of the judgments of US Supreme Court Justice Sandra Day O’Connor, which focuses on the differences between her judgments and those of her male colleague, Judge Rehnquist.³⁶⁵ We argue, however, that such studies appear methodologically and conceptually flawed. In focusing on individual judges, any claim to describe a ‘feminine voice’ is undermined. In addition, Gilligan’s concepts are not easily translatable into the professional realm.³⁶⁶ Justice Day O’Connor herself has expressed scepticism, stating ‘asking whether women attorneys speak with a ‘different voice’ than men do is both dangerous and unanswerable. It sets up the polarity between the feminine virtues of homemaking and the masculine virtues of breadwinning.’³⁶⁷

³⁶² Cited in Cherie Booth QC, Opening Address, 4th EWLA Congress 2003, Helsinki, Finland, 6-8 June 2003. Available at <www.ewla.org>.

³⁶³ Harrington, above n. 213, 176.

³⁶⁴ *Ibid*, 176-179.

³⁶⁵ Sherry concludes that Justice O’Connor approaches legal issues from a different perspective than her male colleagues, although O’Connor is firmly within the conservative camp. For example, she ‘seems to reject the rigid, abstract decision-making process that characterises modern equal protection jurisprudence.’ While O’Connor’s influence is rarely decisive, Sherry argues that the ‘feminine voice’ is significant in that it may lead to the development of a feminine jurisprudence: Sherry, Suzanna, ‘Civic Virtue and the Feminine Voice in Constitutional Adjudication’ (1986) *Va L Rev* 543, 608.

³⁶⁶ For a critique of Sherry’s thesis, see Solimine, Michael and Wheatley, Susan, ‘Rethinking Feminist Judging’ (1995) *Ind LJ* 891.

³⁶⁷ O’Connor, Sandra Day, ‘The Challenge of a Woman in Law’ in Shetreet, Shimon (ed), *Women in Law* (London, Kluwer Law International, 1998), 5, 12-13.

2.2.3 Practising Lawyers

Table 2.3 Percentage of Women Lawyers in Selected Countries ³⁶⁸

Country	Lawyers (%)	Solicitors (%)	Barristers (%)
Ireland	39%	41%	34%
USA (2000)	27%	n/a	n/a
Canada (1999)	32%	n/a	n/a
Australia (1997)	25% (1994/5)	28%	16% (1997) QCs – 6 JCs – 28
UK	Not available	39% (2003)	22% (1997)
Israel (2000)	36%	n/a	n/a
Germany (2000)	25%	n/a	n/a
Netherlands (1993)	30%	n/a	n/a
Poland (1998)	Advocates: 30% In-house: 49%	n/a	n/a
France (1999)	45%	n/a	n/a
New Zealand	Not available	n/a	29%
Finland (2000)	43%	n/a	n/a

Women now make up a sizeable proportion of practising lawyers in all the jurisdictions examined. This is a relatively recent phenomenon. Although women generally gained entry to the profession early this century, they remained a tiny proportion of lawyers until the 1970s. This pattern is evident, for example, in the UK, where the numbers of women solicitors only went into triple figures in 1973, with 222 women being admitted (13% of the profession). The increase in women solicitors in the UK is seen as resulting from a combination of a number of factors, including the ‘transformation of legal training in that a formal university education became the norm for entry into the law, rather than an apprenticeship.’ ³⁶⁹ In addition, the legal professions have themselves changed significantly and increased in numbers over this period. McGlynn notes the following structural changes: ‘greater involvement of services funded by the state

³⁶⁸ Source: Schultz, Ulrike and Shaw, Gisela, *Women in the World's Legal Professions* (Oxford, Hart Publishing, 2003), xxxvi, with additional information from this study.

³⁶⁹ McGlynn, Clare, ‘The Status of Women Lawyers in the United Kingdom’, *ibid*, 142.

which led to an increased demand for solicitors, and the distribution of work became less reliant on networks from which women were excluded;³⁷⁰ expansion in demand for legal services generally; greater involvement of services funded by the state in hiring lawyers;³⁷² and the practice of ‘mega-lawyering’ – ie the growth in numbers of corporate firms with a smaller ratio of equity partners to assistant solicitors.’ Thus, women have entered professions undergoing considerable change. Similar observations have been made in other countries.

The pattern is also evident in the United States, where Martin and Jurick report that though the absolute number of women partners have grown, increased firm size and changes in employment patterns have reduced the percentage of lawyers who are partners. This has had a pronounced effect on women’s chances for partnerships than on men’s, and its greatest impact occurred in the proportionate reduction of women partners in small firms.³⁷³

While women now make up a sizeable proportion of lawyers, this is not to suggest that their position is unproblematic. In 2.3, we detail continuing gender disparities in entering the professions (2.3.1), in terms of: career prospects (2.3.2), specialisation (2.3.3); income differentials (2.3.4); ‘social capital’ (2.3.5) and work/life balance (2.3.6).

2.2.4 Legal Academia

The Role of Legal Academia

The role of legal academia in training lawyers is of course highly significant. In some jurisdictions (for example the US), law schools in universities provide professional training in the form of degrees which allow students to sit state bar exams. In others, such as the UK and Canada, as in Ireland, university law courses are distinct from the legal professions, being only one possible precursor to professional training, which is undertaken by separate professional training bodies. Naturally this influences the nature of legal education.

Notwithstanding these differences, one issue that arises in the comparative literature is the extent to which women academics put gender issues on the curriculum. Including gender issues on the law curriculum reflects a move away from traditional black-letter legal scholarship. In traditional mode, law is portrayed as an apolitical system of rules and principles, with the outcome of individual cases dictated by those rules. This depiction of law may even exclude considerations of the propriety,

³⁷⁰ *Ibid.*

³⁷¹ Abel, Richard, *The Legal Profession in England and Wales* (Oxford, Blackwell, 1988), 104.

³⁷² Sommerlad, Hilary, ‘Managerialism and the legal profession: a new professional paradigm’ (1995) *International Journal of the Legal Profession* 31.

³⁷³ Ehrlich Martin, Susan and Jurick, Nancy, *Doing Justice, Doing Gender* (Sage, London, 1996).

morality and ideology of rules or their societal impact. Thus, traditional legal scholarship excludes not only questions of gender, but also those relating to other values and structures. In this way, traditional technocratic legal scholarship is inherently conservative.³⁷⁴

However, there is an increasing trend to include gender on the curriculum. ‘Gender-related issues have been included in the Anglo-American law school curricula, but have not yet found their way into legal studies on the continent of Europe where they have met with little sympathy.’³⁷⁵ Donovan notes several ways in which feminist legal scholars have transformed the academic discipline of law.³⁷⁶ The influence of gender-sensitivity on the curriculum has other more subtle desirable effects. For example, in Germany, where women legal academics remain a rarity, sexist textbook stereotypes remain standard.³⁷⁷ This does not appear to be a feature any longer in Ireland and the UK.

Patterns and Trends – Women Legal Academics

Table 2.4 Percentage of Women Legal Academics in Selected Countries³⁷⁸

Country	Lecturers	Professors	Total Academic Legal Staff
Ireland	41%	17%	39%
USA (2000)	Not available	22%	32%
Canada	Not available	Not available	41%
Australia (1999)	56% (1998)		
New Zealand (1995)	68%	1 dean, 2 professors, 3 assistant professors	28%
UK (1997)	Lecturers 49% Readers 22%	14%	Not available
Germany (1997)	22%	5%	Not available
France (1997)	Not available	14%	Not available

³⁷⁴ Thornton, above n. 228, 76-78.

³⁷⁵ Schultz and Shaw, above n. 368, xxxix.

³⁷⁶ O’Donovan, Katherine, ‘Before and After: The Impact of Feminism on the Academic Discipline of Law’ in Dale Spender (ed) *Men’s Studies Modified: The Impact of Feminism on the Academic Disciplines* (Pergamon Press, Oxford, 1981), 175.

³⁷⁷ Schultz, Ulrike, ‘Women Lawyers in Germany – Perception and Construction of Femininity’ in Schultz and Shaw, above n. 368, 305.

³⁷⁸ Source: Schultz, Ulrike and Shaw, Gisela, *Women in the World’s Legal Professions* (Oxford, Hart Publishing, 2003), xl, with Irish data from this study

The patterns of women legal academics vary considerably. In some countries, where legal academia is highly prestigious and regimented (such as in Germany), women academics remain a rarity. In common law countries, legal academia is approaching gender balance at the lower levels, but there are few women professors.

Patterns and Trends – Women Law Students

Table 2.5 Percentage of Women Law Students in Selected Countries³⁷⁹

Country	University Law
Students %	
Ireland	66%
USA (2000)	50%
Australia (1998)	56%
New Zealand (1998)	62%
UK (1997)	59%
Germany (1997)	44%
Netherlands (1995)	51%
Poland (1998)	53%
Finland (1989)	>50%
France (1997)	65% (first degree)

Parity in terms of numbers of male and female law students has been achieved in most countries. In several countries, including Ireland, current intake of students is predominantly female. This is a momentous change, indeed one which prompted this study. In this context, has gender difference become an irrelevance? Comparative studies suggest not. The literature suggests that gender disparities exist regarding students' motivations in studying law. A stronger desire to promote altruism³⁸⁰ and justice³⁸¹ is noted among women students. However, other studies

³⁷⁹ Source: Schultz, Ulrike and Shaw, Gisela, *Women in the World's Legal Professions* (Oxford, Hart Publishing, 2003), xl, with Irish data from this study.

³⁸⁰ Rhode, Deborah, 'Gender and The Profession: An American Perspective', in Schultz, Ulrike and Shaw, Gisela (eds), *ibid.*

³⁸¹ De Groot-van Leuwan, Leny, 'Women in the Dutch Legal Profession (1950-200)', in Schultz and Shaw, *ibid.*

contradict this, in finding that women are particularly motivated by the professional prestige and gravitas that law studies imply (a result not borne out by our findings on motivation; see further Chapter 3).³⁸²

The literature also suggests a change in the atmosphere in law schools with the increase in women students. For example, Sommerlad and Sanderson³⁸³ describe the alienation and harassment experienced by women law students during the 1950s, when they constituted a significant minority of law students.³⁸⁴ Even up to the 1980s, respondents referred to the strong masculine ethos in law schools.³⁸⁵ Students interviewed in 1997 did not however, complain of such exclusionary ethos or practices, reflecting the transition to a critical mass of women students. However, students still complained of the apolitical and hierarchical approach to the teaching of law, reflecting the important role of acculturation in law schools.³⁸⁶ Similarly, Harrington describes sexist practices in US law schools, where certain forms of questioning were used to inflict embarrassment on female students.³⁸⁷ Thornton concurs that for women studying law before critical mass was established, the climate in the law school was distinctly chilly, with the student body addressed as 'gentlemen'. She reports widespread experiences of sexist language and sexual harassment of women students in the 1970s and 1980s.³⁸⁸ These studies appear to suggest a distinct change in the practices and atmosphere in law schools, when women came to make up a critical mass of students. In our study, similar findings emerge among current law students, with few complaints emerging about university law schools, although criticisms about professional training were strongly expressed in some cases.

In terms of exam performance, women students tend to do as well, or better, than their male counterparts in many jurisdictions.³⁹⁰ For example, in England and Wales, 52 per cent of women achieved a 2.1 or 1st class degree in 2000, while 47 per cent of men achieved such results.³⁹¹ There are, however, exceptions to this trend. In Germany, women perform less well than men in their final state exams. It is suggested that this is due to the emphasis placed on oral exams, which are open to

³⁸² Thornton, above n.228, 89.

³⁸³ Sommerlad and Sanderson, above n. 222

³⁸⁴ *Ibid* 95.

³⁸⁵ *Ibid* 96.

³⁸⁶ *Ibid* 96-97.

³⁸⁷ Harrington, above n. 213, 41-68.

³⁸⁸ Thornton, above n. 228, 73-105.

³⁸⁹ See further, Chapter 3.

³⁹⁰ Schultz and Shaw, above n. 218, xxxviii.

³⁹¹ *The Law Society, Women Solicitors – Fact Sheet Information Series, Statistics for England and Wales* (2001), 14.

bias with examiners being overwhelmingly older men. In addition, the overall impression created by the candidates' personality is a criterion for the award of marks.³⁹²

International studies also note disparities between men and women's participation in class. For example, a 1998 US study noted an acute difference between male and female students in this regard.³⁹³ The authors concluded that 'female students and graduates were more likely than were male students and graduates to experience stress during law school also supports the hypothesis that the law school experience is in some ways more unpleasant and uncomfortable for women than it is for men.'³⁹⁴ Similarly, the US book, *Becoming Gentlemen*,³⁹⁵ based on a study of women students' experiences in Pennsylvania Law School, concludes that while women enter law school with virtually identical credentials as their male counterparts, they do not perform as well academically and do not participate as much in class. Based on a range of qualitative empirical sources, this disparity was attributed to the 'standardized, hierarchical, competitive approach to training lawyers' that 'inhibits many women and some men.' In turn, this approach contributes to a 'peer culture that often intimidates and silences women' and as a result of which women 'begin to question their own abilities.'³⁹⁶ A recent study was also undertaken at Yale Law School,³⁹⁷ examining staff-student relationships from a gender perspective. This follows from two previous publications, both of which found gender disparities in the experience of law school.³⁹⁸ The most recent study noted persistent differences in class participation, with men participating more than women, attributed by students and faculty to the greater confidence of male students. Again, these findings were not borne out by our own study of undergraduate law students in Ireland. Students did not perceive there to be any notable gender difference in class participation, although the view that women students tend to have less confidence than men was expressed in focus groups.

³⁹² Schultz and Shaw, above n. 218, xxxix, quoting Para 25 of the Legal Training Act.

³⁹³ Weiss, Catherine & Melling, Louise, 'The Legal Education of Twenty Women' (1988) *Stan L Rev* 1297.

³⁹⁴ Taber, Janet, Grant, Marguerite, Huser, Mary, Norman, Rise, Sutton, James, Wong, Clarence, Parker, Louise, Picard, Claire, 'Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates' (1988) *Stan L Rev* 1209, 1256.

³⁹⁵ Guinier, Lani, *Becoming Gentlemen: Women's Experiences at One Ivy League Law School* (Boston, Beacon Press, 1997). The book is based on the report undertaken by Professors Lani Guinier, Jane Balin and Michelle Fine, with Ann Bartow and Deborah Lee Stachel.

³⁹⁶ *Ibid* 2.

³⁹⁷ Yale Law Women, *Yale Law School and Staff Speak About Gender – A Report on Faculty Student Relations at Yale Law School* (New Haven, Conn., 2002), available at <www.yale.edu/ylw>.

³⁹⁸ Weiss, Catherine and Melling, Louise 'The Legal Education of Twenty Women' (1988) *Stan L Rev* 1299; Gaber, Paula, 'Just Trying to be Human in this Place – The Legal Education of Twenty Women' (1998) *Yale LJ Feminism* 165.

Professional Training

‘[T]he primary function of both articling and bar admission courses .. has been less to educate than to socialize students, to symbolically continue the nineteenth century system of professional formation.’³⁹⁹

‘[T]raining for subservience is learning for domination as well. Nothing could be more natural, and if you’ve served your time, nothing more fair than to do as you have been done to.’⁴⁰⁰

The professional training of lawyers has also been the subject of analysis and critique. It is noteworthy that the opening up of the profession to women was facilitated by the move towards university legal education as the primary route to legal practice. However, practical training remains an important aspect of legal training in many jurisdictions.

In the UK, Canada, Australia and New Zealand, as in Ireland, solicitors’ training includes a traineeship (sometimes referred to as apprenticeship or articles.) In various studies, the nature of the solicitors’ traineeship has been criticised. Thornton for example argues that ‘Articles have long been criticised as an unsatisfactory form of practical legal training because of their ad hoc and unsystematic nature. The privatised character of the articling experience can also disguise discriminatory practices.’⁴⁰¹ Sommerlad and Sanderson note articles punctuated by inappropriate menial tasks and generally provided little by way of formal training.⁴⁰² Hagan and Kay’s criticisms are similar, ‘[T]he articling process is not directly monitored, and the relationship between principal and student becomes individualized in relation to specific practice needs. Legal research and drafting are often the most advanced forms this work takes, and more often the work of articling involves more prosaic forms of logistical support, with little opportunity for interviewing, advocacy or negotiation that form more central parts of the contemporary practice.’⁴⁰³

Similar criticisms emerge in relation to training for barristers. In particular, the more archaic traditions, such as dining, are subject to criticism. Helena Kennedy has argued:

³⁹⁹ Arthurs, Harry, Weisman, Richard and Zemans, Frederick, ‘The Canadian Legal Profession’ (1986) *American Bar Foundation Research Journal* 447, 498.

⁴⁰⁰ Kennedy, Duncan, ‘Legal Education as Training for Hierarchy’ in Grigg-Spall, Ian and Ireland, Paddy (eds), *The Critical Lawyers’ Handbook* (London, Pluto Press, 1992), 51, 61.

⁴⁰¹ Thornton, above n. 228, 146.

⁴⁰² Sommerlad and Sanderson, above n. 222. See also Burrage, Michael, ‘From a gentleman’s to a public profession: status and politics in the history of English solicitors’ (1996) *International Journal of the Legal Profession* 45.

⁴⁰³ Hagan and Kay, above n. 223, 274.

‘The time has come to call it a day for ridiculous practices like compulsory dining. These tribal rituals induct young lawyers into modes of behaviour which are exclusive and objectionable. They are the product of a particular class experience. Every profession has the odd dinner to create professional bonding, but it is ludicrous that we are still so wedded to this schoolboy ritual and the tradition of the high table.’⁴⁰⁴

2.3. Common Themes of Disadvantage

This section deals with some of the common themes of disadvantage that emerge from a review of studies conducted internationally on women lawyers. Not surprisingly, we found that the same issues arise for Irish women in legal practice.

2.3.1 Entering the Professions

Findings globally, including Ireland, indicate that women tend to enter the professions with equal or better academic capital than men.⁴⁰⁵ Where initial recruitment decisions are based predominantly on these academic criteria, one would thus expect women to be recruited in equal or greater numbers than men. Later, on entering the world of legal professions, women soon find that in order for them to be successful, academic capital (which they have) needs to be complemented by social capital (regarding which men are much better placed). Some studies indicate that the latter is more important than the former.⁴⁰⁶

In relation to getting a first job, studies reveal contradictory results. One early UK study⁴⁰⁷ found little disparity between the experiences of men and women in finding first jobs. A similar finding emerged from a 1986 study of Stanford graduates.⁴⁰⁸ In contrast, an early Canadian study, based on the experiences of nearly 3,000 graduates of six Ontario law schools in the late 1970s found considerable disparity in success in finding their desired type of articling position.⁴⁰⁹ Later studies found similar patterns.⁴¹⁰ In one

⁴⁰⁴ Kennedy, above n 345, 37-38.

⁴⁰⁵ See Chapter 4 at 4.2.2.

⁴⁰⁶ Boigeol, Anne, ‘Male Strategies in the Face of the Feminisation of a Profession: the Case of the French Judiciary’, in Schultz and Shaw, above n.379.

⁴⁰⁷ Podmore, David and Spencer, Anne, ‘Women Lawyers in England: The Experience of Inequality’ (1982) *Work and Occupations* 337.

⁴⁰⁸ Stanford Law Project, ‘Gender, Legal Education and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates’ (1988) *Stanford Law Review* 1209.

⁴⁰⁹ Huxter, Marie, ‘Survey of Employment Opportunities for Articling Students and Graduates of the Bar Admission Course in Ontario’ (1981) *Law Society Gazette* 169.

⁴¹⁰ Brockman, Joan, ‘Gender Bias in the Legal Profession: A survey of Members in the Law Society of British Columbia’ (1992) *Queen’s Law Journal* 91; ‘Bias in the Legal Profession: Perceptions and Experiences’ (1992) *Alberta Law Review* 747.

subsequent Canadian study, the authors noted less overt sexism at the initial stage, competition for places ensures that grades play a significant role, and thus the impulse to discriminate is inhibited. However, they also noted the role (albeit less important) of non-meritocratic factors, including personal contacts.⁴¹¹ 'Male lawyers are more likely to have attended private school and are able to sustain and capitalize on these contacts in findings first jobs in large firms.'⁴¹² Again, this is borne out by our findings. Male respondents to our questionnaire were significantly more likely to have attended private school than were their female colleagues.⁴¹³

Overtly discriminatory recruitment practices have been noted in many contexts, even relatively recently. The UK Bar Council's *Without Prejudice?* report found that in tenancy interviews, 39 per cent of women were asked about marriage and children, compared with only 15 per cent of men. Thirty-six per cent of women had 'squatted' (ie worked in Chambers without having a permanent place or tenancy), compared with only 18 per cent of men. Helena Kennedy reports that 'the rape question' was commonplace in interviews for tenancies until recently.⁴¹⁴ A major longitudinal study carried out for the Law Society of England and Wales⁴¹⁵ showed that women had to make more applications for training contracts than men.

It was extremely difficult for women to start their training as a barrister in the early 1970s. Studies showed that although they could obtain pupillage (ie a training position), a tenancy (ie a permanent position) eluded them.⁴¹⁶ Many chambers operated a 'no women' policy, although sex discrimination in employment was then illegal. However, as chambers were not employers, these legal provisions did not apply. An unpublished Bar Council study of the time indicated that most chambers operated a quota system, limiting the number of women to two at the time.⁴¹⁷ This was not remedied until the UK Courts and Legal Services Act 1990.⁴¹⁸ Section 24 of this Act amended the Sex Discrimination Act 1975 to insert a specific prohibition on gender discrimination in relation to pupillage and tenancy. A similar prohibition on racial discrimination was also included. In 1996, the UK Bar Equality Code was adopted, after three years of preparation, providing comprehensive advice on all

⁴¹¹ Hagan and Kay, above n. 223, 69.

⁴¹² *Ibid* 70.

⁴¹³ See Chapter 4 at 4.2.1.

⁴¹⁴ Kennedy, above n. 345, 134-135.

⁴¹⁵ Shiner, Michael, *Entry into the Legal Professions: the Law Student Cohort Study Year 4*, RPPU Research Study No 25, (London, Policy Studies Institute for the Law Society, 1997).

⁴¹⁶ Kennedy, Helena, 'Women at the Bar' in Hazell, Robert (ed), *The Bar on Trial* (London, Quartet Books, 1978).

⁴¹⁷ *Ibid*.

⁴¹⁸ McGlynn, Clare, 'The Status of Women Lawyers in the United Kingdom', in Schultz and Shaw, above n. 379, 144.

equal opportunities issues. Bar Council monitors compliance. Initially, many chambers failed to comply with the reporting requirements.⁴¹⁹

2.3.2 Career Prospects

Most of the studies on career progression focus on law firms in the English-speaking world. A range of issues recur. We focus on four of those. The first relates to the barriers that may face women in making two key advances in their legal careers, namely making partner as a solicitor/attorney, and taking Silk as a barrister. Partly as a result of such barriers, women lawyers tend to move jobs more frequently than men, and to become employees rather than being self-employed. Hence two common trends can be discerned. First, women have higher levels of professional mobility than men. Second, women frequently opt for positions as employed lawyers, particularly in the public service, but also as in-house counsel.

Partnership

A range of US studies indicates that women are less likely to make partner than men.⁴²⁰ This is a persistent problem, and is primarily attributed to work/life balance issues and tendency to employ informal criteria for partnership decisions.

In the UK, Sommerlad and Sanderson note that men are more likely to make it to partner irrespective of specific achievements, thus lending support to the view that partnerships are based on fraternal trust and male bonding.⁴²¹ Current figures for the UK indicate that while 52 per cent of men solicitors are partners, only 24 per cent of women are.⁴²² When years since admission are factored in, the gender disparity remains highly significant. With 20-29 years Post-Qualification Experience (PQE), over 80 per cent of men solicitors are either partners or sole practitioners. In contrast, with the same number of years PQE, only over 60 per cent of women have acquired that status.⁴²³ This finding strongly undermines the 'trickle-up' theory.

In Northern Ireland, a similar pattern is evident.⁴²⁴ The Northern Ireland solicitors' study found a notable under-representation of women solicitors in the senior levels

⁴¹⁹ *The Lawyer*, 5 June 1998. Only 92 of 420 sets responded.

⁴²⁰ ABA Commission on Women in the Profession, *Balanced Lives: Changing the Culture of Legal Practice*, (2001); ABA Commission on Women in the Profession, *The Unfinished Agenda: Women and the Legal Profession*, (2001); Abrahamson, Jill and Franklin, Barbara, *Where are they now? The Story of the Women of Harvard 1974* (New York, Doubleday, 1986).

⁴²¹ Sommerlad and Sanderson, above n. 222.

⁴²² The Law Society, *Women Solicitors – Fact Sheet Information Series, Statistics for England and Wales* (2001), 25.

⁴²³ *Ibid*, 31.

⁴²⁴ Equal Opportunities Commission for Northern Ireland, *A Case for Equality - Gender Equality in the Solicitors' Profession in Northern Ireland* (March 1999).

of management in private practice. Overall, less than a quarter of women solicitors were either equity or salaried partners in their firm, compared with over two-thirds of men.

In some instances, studies suggest that women are encouraged to focus upon areas of less visibility and client contact. New career stages are being introduced (non-equity partner, junior partner etc.), which frequently result in women's promotion being restricted to the lower rungs of career hierarchy. Hagan and Kay's Canadian longitudinal study suggests that large firms are constructing a secondary tier of employment for qualified lawyers, with little prospect of partnership, and that women tend to occupy this tier.⁴²⁵ They illustrate that 'the entry of large numbers of women into the profession has helped facilitate a change in the structure of legal practice that in relative terms provides "less room at the top."⁴²⁶ Thus women remain excluded from the topmost level of the career hierarchy. Similar findings were made on the basis of interviews with UK solicitors.⁴²⁷

It appears that the absence of clear partnership criteria or competences is one impediment for women. Without clear criteria, it is all too easy for decision to be biased. In addition, criteria (usually informal and tacit) may privilege certain forms of contribution, in particular 'rainmaking' or bringing in business, while undervaluing other inputs. Rainmaking has been described as 'a key to the inner sanctum of private firms'. While it is hard for everyone, it is particularly so for women because of family responsibilities or the 'golf factor'.⁴²⁸ Emphasis on fee earning through billable hours is a further issue of concern, as work/life balance issues tend to effect women disproportionately. In the UK, an international firm of solicitors introduced flexible partnerships in 1997 in order to retain talented women lawyers.⁴²⁹ In section 2.4.3 below, we analyse further the particular nature of partnership.

Taking Silk

In the UK, the *Without Prejudice?* report described the process of taking Silk as one of 'patronage': a system of appointments based on the 'old boys' network, with an in-built advantage for men which does not favour equality. McGlynn argues that as the process is based upon 'secret soundings' and includes vague criteria including that the barrister be of the 'highest professional standing, having gained the respect of the Bench and profession'. She argues that the criterion of standing is 'a very subjective notion that is prone to stereotypical interpretation.' However, in 1994 the Kalisher

⁴²⁵ Hagan and Kay, above n. 223.

⁴²⁶ *Ibid*, 25.

⁴²⁷ Sommerlad and Sanderson, above n. 222, 110.

⁴²⁸ Aye, Judith, 'Women Lawyers in Big Firms: A Study In Progress Towards Gender Equality' (1988) *Fordham L Rev* 111, 121.

⁴²⁹ McGlynn, Clare, 'Strategies for Reforming the English Solicitors; Profession: An Analysis of the Business Case for Sex Equality' in Schultz and Shaw, above n. 218, 159, 165.

Report supported the retention of the existing system for taking Silk, without referring to the *Without Prejudice?* report. However, the report itself gave examples of the comments made in secret soundings, which reflect the 'gut instinct' approach of the evaluations given. The absence of criteria or open procedures is seen as lending itself to discriminatory practices.

In Northern Ireland, the recent report of the Commissioner for Judicial Appointments made several findings in relation to the taking of Silk.⁴³⁰ He recommended that more women would become Silks, 'if the requirement for 10 years experience ('ordinarily required') was refined with less emphasis on length of experience as a criterion for appointment.'⁴³¹ He suggested that further research be conducted to ascertain why more women are not applying for Silk, and that monitoring should be introduced for appointment to Silk and to the judiciary. In this comprehensive and thought-provoking report, the Commissioner made extensive reference to the recent changes brought about in the judicial appointments process in England and Wales.

Professional Mobility

International studies show that female lawyers generally have a higher mobility rate than their male colleagues, but this tends to be less upwards than sideways, downward and out.⁴³² Chambers undertook a major longitudinal study of University of Michigan law graduates, and found that women were substantially more like to leave private firms five years after graduation.⁴³³ Hagan and Kay note that career patterns and experiences vary considerably between men and women lawyers. Women are likely to hold more professional positions than their male counterparts and they are more likely to be employed in government. They are less likely to be partners and are more likely to be among those leaving legal practice. '[W]omen see these outcomes as constrained rather than chosen.' It is suggested that the revolving door effect turns women into transient members of the professions. One Canadian study described senior women in large firms as an 'endangered species' because of the rate of attrition.⁴³⁵

⁴³⁰ Commissioner for Judicial Appointments for Northern Ireland, *Audit Report* (Belfast, 2003).

⁴³¹ *Ibid* para. 9.10.8.

⁴³² Schultz and Shaw, above n. 379, xv.

⁴³³ Chambers, David, 'Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family' (1989) *L & Soc Inquiry* 251, 261.

⁴³⁴ Hagan and Kay, above n. 223, 117.

⁴³⁵ Canadian Bar Association, *Touchstones*, 85.

Employed Lawyers - Public Sector and In-House Counsel

A general trend is that women tend to be attracted to public service careers.⁴³⁶ For example, in the early 1990s, three quarters of women lawyers in Finland were employed in the public sector.⁴³⁷ However, there is a disparity in terms of legal practice. In Canada, 81 per cent of male lawyers are in private legal practice, compared with 63 per cent of women. Similar patterns are evident in other countries, in particular UK, New Zealand, Germany, Finland and Poland.⁴³⁸ Careers in-house also tend to attract disproportionate numbers of women. In the US, 25 per cent of attorneys in corporate legal departments reported having at least four female colleagues, while only 10 per cent in law firms reported having at least four female colleagues.⁴³⁹

2.3.3 Specialisation

‘The equity, conveyancing and general advisory branches of the profession all afford scope for the womanly wit, and the electric perceptive intuition – which does not pause to reason – but unerringly hits the mark – of the would be gentle jurist.’⁴⁴⁰

Women globally tend to be less specialised than men. Where they do specialise, they tend to be in areas with individual (as opposed to corporate) clients. There is a global tendency towards family law as a women’s area; this is confirmed in Ireland too.⁴⁴¹ For example, in Northern Ireland a report found a tendency for women to pursue work ‘traditionally associated with the home (ie children and family)’.⁴⁴² The global tendency has been summarised thus: ‘Broadly speaking, men dominate commercial and property work, and women are to be found in areas of little prestige and financial gain but greater emotional labour.’⁴⁴³

⁴³⁶ Canadian Bar Association, *Touchstones for Change*, 48; Menkel-Meadow, Carrie, ‘The Comparative Sociology of Women Lawyers: The ‘Feminization’ of the Legal Profession’ (1986) 124 *Osgood Hall Law Journal* 897, 908.

⁴³⁷ Silius, Harriet, ‘Women Jurists in Finland at the Turn of the Century: Breakthrough or Intermezzo?’ in Schultz and Shaw, above n. 218, 387, 391.

⁴³⁸ Schultz and Shaw, above n. 218, xxxviii.

⁴³⁹ Gellis, Ann, ‘Great Expectations: Women in the Legal Profession, A commentary on State Studies’ (1991) *Ind LJ* 945. For a general discussion of the likely effects of this phenomenon, see Giesel, Grace, ‘The Business Client is a Woman: The Effect of Women as In-House Counsel on Women in Law Firms and the Legal Profession’ (1993) *Neb L Rev* 760.

⁴⁴⁰ (1902) *All About Australians* 23.

⁴⁴¹ Schultz and Shaw, above n. 218, xlii. See Chapter 8 at 8.1.

⁴⁴² Commissioner for Judicial Appointments for Northern Ireland, *Audit Report* (Belfast, 2003), para 5.5.9.

⁴⁴³ Schultz and Shaw, above n.379 xlii.

A further tendency is for women who work in the commercial area to dominate backroom positions. This sexual division of legal labour has been remarked upon in the Canadian *Touchstones* report.⁴⁴⁴ Also in the Canadian context, it was noted that 'Women are allocated more 'pink files' which involve less high profile matters, less client contact and correspondence, and reduced opportunities to develop legal skills and a client base.'⁴⁴⁵

2.3.4 Income Differentials

The Northern Ireland solicitors' study⁴⁴⁶ noted three types of remuneration package - a flat salary, salary with profits, and 'other arrangements'. Considerably more female solicitors (70%) than males (32%) received a flat salary, while more than twice as many males as females received a salary plus profits or 'other arrangements'. This was only partly accounted for by the disparities in levels of seniority and partnership status. Marked gender differences emerged regarding remuneration levels within the profession. In general, women respondents with a comparable level of professional experience tended to earn less than their male counterparts.

US studies have consistently found that gender differences in wages and rates of attaining partnership do exist.⁴⁴⁷ A sophisticated study⁴⁴⁸ examining how human capital variables, such as education, experience and family choices, affect earnings, revealed the following:

- Women are in disproportionately high percentages in specialties such as family law and poverty law, and in the public sector, which includes employers such as government and public interest groups.⁴⁴⁹
- Women are significantly penalized for time taken out of the labour force, and they receive a smaller income premium for attending a more prestigious law school.⁴⁵⁰

⁴⁴⁴ Canadian Bar Association, *Touchstones for Change: Equality, Diversity and Accountability* (1993).

⁴⁴⁵ Hagan and Kay, above n. 223, 87.

⁴⁴⁶ Equal Opportunities Commission for Northern Ireland, *A Case for Equality Gender Equality in the Solicitors' Profession in Northern Ireland* (March 1999).

⁴⁴⁷ Wood, Robert et al, 'Pay Differences Among the Highly Paid: The Male-Female Earnings Gap in Lawyers' Salaries' (1993) *J Lab Econ* 417, 421; Epstein, Cynthia, *Women in Law* (2nd ed, 1993), 97-99.

⁴⁴⁸ Huang, Wynn, 'Gender Differences in the Earnings of Lawyers' (1997) *Colum. JL & Soc Probs* 267. The author examines the gender wage gap using regression analysis and the Oaxaca decomposition technique to analyze the factors that affect the gender wage gap among lawyers, using a cohort study in three stages.

⁴⁴⁹ *Ibid*, 309.

⁴⁵⁰ *Ibid*.

- Women attain partnership status in smaller percentages than do men, and when they do achieve partnership status, they receive smaller income premiums for the achievement than do men who achieve the same position.⁴⁵¹

- A higher percentage of the gender wage gap remains unexplained in private firms than in the legal profession at large.⁴⁵²

- The percentage of the gender wage gap that is unexplained increases with time out of law school.⁴⁵³

- 'Finally, differencing equations and equations that interact being female with being married show that while men experience income premiums from deciding to marry and to have children, women receive smaller positive effects--or even negative effects--on income for making those same decisions.'⁴⁵⁴

The only good news was that the gender wage gap narrowed for the most recent graduating group, providing some hope for further decreasing and eventually eliminating the gender wage gap.⁴⁵⁵

In the UK, a 1996 Law Society study indicated serious income differentials at all levels of the solicitors' profession.⁴⁵⁶ This extended even to trainees.⁴⁵⁷ In Canada, Hagan's 1985 study of Toronto lawyers found that one quarter of the difference in earnings could conservatively be attributed to gender discrimination.⁴⁵⁸ Kay's 1990 study of Ontario lawyers revealed not only a persistent gap between the earnings of women and men, but also an amplification of that gap as careers progressed. The gap persists even after taking into account different specialisation and employment.⁴⁵⁹ A German study in 1994 found a pay gap, which was only partly explained by differences in seniority, nature of practice

⁴⁵¹ *Ibid* 310.

⁴⁵² *Ibid*.

⁴⁵³ *Ibid*.

⁴⁵⁴ *Ibid*.

⁴⁵⁵ *Ibid* 311.

⁴⁵⁶ See McGlynn, Clare, 'Paying for Equality' (1997) *New Law Journal* 147.

⁴⁵⁷ Moorhead, Rachel, *Protecting whom? The impact of the minimum salary: a survey into salary and debt levels of trainees and LPC students* (London, Institute of Advanced Legal Studies, 1997).

⁴⁵⁸ Hagan, John, 'The Gender Stratification of Income Inequality Among Lawyers' 1990 *Social Forces* 835.

⁴⁵⁹ Hagan and Kay, above n. 223, 280-309.

and specialisation.⁴⁶⁰ In Ireland, we found similarly that there is a marked gender disparity in lawyers' pay.⁴⁶¹

2.3.5 Sport and Privilege: The Significance of Social Capital

'The exclusion of women is historically and linguistically embedded in the notion of 'fraternity'.⁴⁶²

Sommerlad and Sanderson emphasise the significance of social capital in legal careers. This concept, derived from Bourdieu, operates in particular fields in which actors seek power through legitimacy. Actors use, most often unknowingly, strategies shaped by the specific field. In addition to economic capital, Bourdieu identifies the concept of social capital, or 'the number of culturally, economically, or politically useful relations accumulated by a given person.' A person with low educational capital but high social capital may succeed, whereas a person with both low social and educational capital will have a more difficult time.⁴⁶³ The concept has been employed widely in the comparative literature.

For example, Sommerlad and Sanderson note that 'A woman can work hard, perform exceptionally in examinations, become expert in her field, only to discover that she is regarded as 'a good technician' a 'back room girl', since what may be required for 'partnership material' is someone who is 'clubbable', or 'lady' or attractive.'⁴⁶⁴ Similarly, Thornton argues that the culture of the legal workplace rests on a 'fraternal contract'.⁴⁶⁵ Male camaraderie, sports talk (and some occasional action), and after hours socialisation are the manifestations of this contract. Such workplace diversions would be harmless if this is all they were, but studies suggest that they are crucial to progress in legal careers. Women may find these practices alienating or simply uninteresting, but there are career costs for non-conformity. Women often put faith in their academic and workplace achievements as guarantors of success. Thornton sums up the difficulty women face as follows:

'However, the advantages accruing from qualifications and credentialism tend to diminish within an organisational structure in which informal factors are ultimately accorded more weight. Fraternal bonds facilitate the acquisition of

⁴⁶⁰ Passenberger, Jurgen, 'Kennzeichen zur Berufssituation angestellter Anwaelte und freier Mitarbeiter in Anwalstkanleien in den alten Bundeslaendern 1994' (1996) BRAK-Mitt 225.

⁴⁶¹ See Chapter 8 at 8.2.

⁴⁶² Frazer, Elizabeth and Lacey, Nicola, *The Politics of Community: A Feminist Critique of the Liberal-Communitarian Debate* (Harvester Wheatsheaf, London, 1993), 140.

⁴⁶³ Bourdieu, Pierre, 'The Forms of Capital' in John G. Richardson (ed), *A Handbook and Research for the Sociology of Education* (New York, Greenwood Press, 1986), 241-258.

⁴⁶⁴ Sommerlad and Sanderson, above n. 222, 17.

⁴⁶⁵ Thornton, above n. 228, 179

managerial skills, for example, so that women are deemed less worthy the closer they are to the apex of the pyramid of legal authoritativeness. A more subtle and insidious impediment is the culture of conformity that characterises the legal workplace.⁴⁶⁶

Sport recurs as a significant socialising factor in this regard.⁴⁶⁷ Its role is so prominent and so pervasive in the creation of legal bonds, that US scholars Rand Jack and Dana Crowley Jack describe it as ‘the first stage of pre-law training.’⁴⁶⁸ It influences workplace culture and indeed the culture of law. In a tangible way, sports-based outings often exclude women from client contact and important informal meetings. Socialising in men’s clubs, where it occurs, is more overtly exclusionary.⁴⁶⁹ In other ways, drinking culture and after-hours socialising may have similar, albeit more subtle, exclusionary affects.

2.3.6 Long-hours Culture and the Dual Burden

‘Is it practicable for a woman to successfully fulfil the duties of wife, mother and lawyer at the same time?’

(Leila Robinson, first women admitted to the Massachusetts State Bar, 1882)⁴⁷⁰

‘For centuries, women were excluded from the professions on the assumption that they were different; once admitted, the assumption typically was that they were the same. By and large, women have been expected to practise within established structures; those structures have not sufficiently changed to accommodate women.’⁴⁷¹

A recent American Bar Association (ABA) study was devoted exclusively to the topic of work/life balance. Entitled *Balanced Lives: Changing the Culture of Legal Practice*, one of its most worrying findings is that the proportion of women who doubt the possibility of combining work and family life has tripled over the past two decades. The context of the US study is also noteworthy, with a recent exponential increase in

⁴⁶⁶ *Ibid*, 139.

⁴⁶⁷ *Ibid*, 167-171.

⁴⁶⁸ Jack, Rand and Crowley Jack, Dana, *Moral Vision and Professional Decisions: The Changing Values of Women and Men Lawyers* (New York, Cambridge University Press, 1989), 131. See also ‘Women Lawyers: Archetype and Alternatives’ (1989) 57 *Fordham Law Review* 933, 935.

⁴⁶⁹ Some of the most egregious anecdotes in this regard come from Australia. See Thornton, above n. 228, 167.

⁴⁷⁰ Quoted in Boston Bar Association Task Force on Work / Family Challenges, *Facing the Grail: Confronting the Cost of Work-Family Imbalance* (1999), 5.

⁴⁷¹ Rhode, Deborah, ‘Gender and the Profession: An American Perspective’ in Shaw, Ulrike and Schultz, Gisela, (eds) *Women in the World’s Legal Professions* (Oxford, Hart Publishing, 2003), 4.

expected billable hours. Out of 1,400 lawyers surveyed, equal proportions (70%) of men and women reported work/life conflict. However, two-thirds of women rated work/life balance as one of their top three reasons for choosing their current employer, compared with only one third of men. The study also found that while 95 per cent of firms have policies that allow part-time work, only 3 per cent of lawyers actually work part-time. There is a huge gap between the existence of policies and whether people feel they can avail of them in practice. Fear of penalisation for reduced working hours is not groundless. Inflexibility in turn can lead to higher costs borne by employers and is seen as the single most significant cause of women's high attrition rates. While there are insufficient figures available in Ireland on attrition rates to be able to draw the same conclusion, it is clear from our research that there is significant fear of penalisation for working reduced hours or taking family-related leave among women lawyers. This fear is justified in many cases, given the high numbers of women who stated that availing of leave had impacted adversely upon their careers.⁴⁷²

The stronger the focus upon billable hours as the sole measure of a lawyer's primary worth, the harder it is for women to succeed, based on the fact that women continue to be the primary caregiver in a dual-earner family household.⁴⁷³ Sommerlad and Sanderson's key thesis is that the emphasis on long hours as the key determinant of 'commitment' to work, and the related elevation of 'commitment' as the overarching professional value, leads to a situation in which women lawyers are significantly disadvantaged. The demonstration of commitment has huge personal costs, like the woman who in 1982 was described by her employer as 'having a baby the responsible way' - taking two weeks off and returning full time.⁴⁷⁴ Similarly Harrington notes that in her US survey, all the women lawyers 'have primary responsibility for home and children, and that a great majority of male colleagues have wives at home to provide household and family care. If this were not the case - if the social rules assigned home and family responsibilities equally to men and women - the effect on the workplace would be profound.'⁴⁷⁵ Chambliss has examined the process of gender integration into elite law firms in the US. She noted that 'Law firm characteristics significantly affect the level of law firm integration. The most important determinants of gender integration are the structural characteristics of the firm such as the length of the internal promotion hierarchy.'⁴⁷⁶ In particular, she noted that women with family responsibilities were seen as 'uncommitted' and perceived as working less than they actually do.⁴⁷⁷

⁴⁷² See Chapter 7 at 7.3, 7.4.

⁴⁷³ Lukey, Joan, 'The Multi-Layered Glass Ceiling: Why Does it Exist and What Can We do About It' (1996) *Maine Bar J* 214, 215.

⁴⁷⁴ Williams, Joan, 'Canaries in the Mine: Work/Family Conflict and the Law' (2002) *Fordham L Rev* 2221, 2228.

⁴⁷⁵ Harrington, above n. 213, 35.

⁴⁷⁶ Chambliss, Elizabeth, 'Organizational Determinants of Law Firm Integration' (1997) *Am U L Rev* 669, 739.

⁴⁷⁷ *Ibid*, 741.

A further disturbing finding is that rather than challenge the long-hours culture directly, women tend to leave for other types of employment or self-employment. Harrington notes:

‘Women are voting with their feet and they are talking to researchers and interviewer, but they are not ..forcefully carrying their messages of dissatisfaction into the big forms’ executive committees.’⁴⁷⁸

All of these studies note the increase in emphasis on billable hours as the main criterion for professional success. We have found a similar emphasis among solicitors who work for larger commercial firms, particularly those with multinational and international clients.⁴⁷⁹ Although there are no major international law firms in Ireland, the practices of such law firms appear to have been imported through client demands; it is to be hoped that the long-hours culture is not so strongly engrained as to be the intractable problem that many of our respondents felt.

2.4 Common Themes of Denial

In this section, we draw together common themes in the comparative literature dealing with the difficulty of conducting an informed and enlightened debate on the disadvantages that women lawyers suffer. Rhode expresses the difficulty thus:

‘[W]omen’s increasing representation and influence in the profession has recreated the ‘woman problem’ in a different form. The central contemporary problem is the denial that there is in fact a serious problem. The prevailing assumption is that barriers have come down, women have moved up, and full equality is just around the corner.’⁴⁸⁰

The myth of meritocracy rests on two assumptions: (1) that women are already achieving close to proportionate representation in almost all areas of the professions and (2) that any lingering disparities are attributable to women’s own different choices and capabilities.⁴⁸¹ We refer to the first assumption as the ‘trickle up’ or ‘pipeline’ fallacy. The second, we critique under the heading ‘choice or prejudice?’ Both of these assumptions are and have been empirically rebutted.

The third theme of denial we refer to as ‘the lawless domain’. This refers to the phenomenon whereby the legal workplace is characterised by informal, rather than legal, relationships. This has several aspects. First, the main tools for enforcing gender equality, namely law and litigation, are either formally or informally unavailable.

⁴⁷⁸ Harrington, above n. 213, 39.

⁴⁷⁹ See Chapter 7.

⁴⁸⁰ Rhode, Deborah, ‘Gender and the Profession: An American Perspective’ in Schultz and Shaw, above n. 471, 10.

⁴⁸¹ *Ibid.*

Second, in their place, informal contacts and criteria determine progress. Third, the reluctance to legalise relationships has implications for reform proposals.

2.4.1 The Trickle-up Fallacy

Much of the more recent literature on women in law is taken up with dispelling the powerful misperception that women's progress as lawyers is simply a matter of time, with increasing number of women studying law and entering the profession. In fact, this misperception is easily dispelled, by tracking the progress of the sizeable proportions of women who have entered the professions over the past thirty years. In all instances, women have failed to progress in the same manner or at the same pace as their male colleagues.

For example, the American Bar Association's Commission on Women in the Profession reported in 1995 that: 'Women have comprised no less than 37% of all lawyers admitted to practice since 1985. It is incomprehensible that the percentage of women who have attained partnership positions in large firms is still in the low teens. Clearly, advancement opportunities are artificially limited.'⁴⁸² In the UK, similarly negative conclusions have been reached, based on women lawyer's views and experiences. Women interviewed said that they thought that once they entered the profession, every opportunity would be open to them, but find that many times, long hours culture and ideas of 'professionalism' close many doors. The conclusion was that with change of professional culture doesn't change, even with the increasing numbers of women in the field, women will be kept at certain levels.⁴⁸³

Similarly in Canada, the trickle-up fallacy has drawn attention at the highest level. In the 2003 follow up to Touchstones, entitled *Ten Years into the Future: Where are we now after Touchstones?* the on-going barriers were noted. In a speech delivered in February 2003, the Governor General Adrienne Clarkson, employing data from a 1996 report,⁴⁸⁵ drew attention to the injustice of the situation that although women have made considerable advances since the end of the 1970s, they have yet to make the inroads in the practice of law comparable to their male counterparts.⁴⁸⁶ Her strident critique warrants attention:

⁴⁸² American Bar Association Commission On Women in the Profession, *Unfinished Business Overcoming the Sisyphus Factor - A Report on the Status of Women in the Legal Profession* (1995), 5.

⁴⁸³ Sommerlad, Hillary, Carter, Terry, Simmons, Michael, and Parkinson, Alison, 'The Lot of the Women Lawyer' (1996) *Law Society's Gazette* 93.

⁴⁸⁴ Canadian Bar Association Annual Equality Report, *Ten Years into the future: Where are we now after Touchstones? 1993-2003* (Toronto, August 2003).

⁴⁸⁵ Ornstein, Michael, *Lawyers in Ontario: Evidence from the 1996 Census* (Toronto, Law Society of Upper Canada, 2001).

⁴⁸⁶ Speech on the Occasion of an Honorary Doctorate of Laws Degree from the Law Society of Upper Canada, 27 February 2003, available from <http://www.gg.ca/governor_general/index_e.asp>

‘That the profession is capable of change and evolution is not in doubt. The kind of systematic discrimination that I remember so well from forty years ago, when friends of mine went out to article in different law firms, has largely disappeared. ... But still there are worries for your profession because, with more than half the law school students being women, you have a great deal of trouble retaining women in the profession.....[Why?] [T]he legal profession has been built by men for men in a man’s world. It’s not surprising to me that, after making the efforts for a number of years, many women find it distinctly uncomfortable to continue in a world that basically grants them certain privileges from the height of the masculine world. The whole structure of the pecking order, the networking, the ways that things are done have little to do with the way women would choose to do them. ... Following the rules of a man’s world, to a certain extent, has wrought havoc on women. Building a career steadily and strongly to the age of forty can preclude having children. If you do have children, it reduces the size of the steps forward that you can make. Such that, in the 50-to-54 age group, male lawyers ... earn ninety-four percent more than women the same age. What that means to me is that women are working at least as hard and making compromises with the part of themselves that is most female in order to earn half of what men earn.’

She went on to argue that this represented not only an injustice, but also would have a deleterious effect on the profession and public interest. She suggested that failure to deal with this inequity would be an abuse of the self-regulatory privilege conferred on the legal profession.

In Australia, the ‘trickle-up’ thesis has also been rebutted. For example, the Australian Law Reform Commission rejected submissions suggesting that the current disparity between men and women in positions of influence will be corrected as increased numbers of women move through the profession, responded. It stated that statistical evidence indicated that equal numbers of women in law schools and greater numbers entering the junior ranks of the profession will not automatically lead to women reaching senior levels of the profession. The belief that gender equality will be attained simply by allowing women to ‘work their way through the system’ was misplaced. Women have made up half the law graduates in Western Australia for the last ten years, but only make up 26 per cent of lawyers holding practicing certificates and 6 per cent of all partners in law firms.⁴⁸⁷

2.4.2 Choice or Prejudice?

It is clear from the comparative findings synthesised above that women and men have different experiences in law, and that women’s career progression is not comparable to that of men. The key question that emerges is whether this uneven progression is the result of choice by women or prejudice against women. Many studies in this area

⁴⁸⁷ *Equality Before the Law: Women’s Equality* (1994).

have confronted this issue, and different approaches emerge.⁴⁸⁸ To what extent are women agents of their own outcomes, or are these outcomes structurally dictated?

On the one hand, the argument is made that women choose to privilege family commitments, choose less lucrative specialisations, choose to be less committed to their work, and hence that their careers legitimately suffer as a result of market forces. This is the human capital theory of gender difference, and explains patterns and developments as the combined operation of efficiency and choice. We categorically reject this view, as being empirically suspect and conceptually flawed. It rests on two fallacies. First, it ignores the manner in which women's choices are institutionally and culturally constrained. Second, it suggests that discrimination is a thing of the past.

The Nature of Choice

As regards women's life choices, we prefer an explanation that acknowledges that women's choices are limited by the fact that workplace structures are designed by and for men. In addition, subtle biases operate to highlight women's perceived lack of commitment, and in effect exaggerate it. This gender stratification theory argues that the differences in the occupational success of women and men in law, as elsewhere, are the products not of choice, but of inefficiency and constraint. In this manner, Hagan and Kay have demonstrated, based on a large cohort study, that the assumption that women display less commitment to their careers over time is erroneous.⁴⁸⁹

'[W]omen express greater dissatisfaction with current workplace structures than men, and are disproportionately likely to opt out of positions with the greatest demands on time, travel and unpredictable schedules. Yet such patterns are not simply a function of 'natural' preferences. Women's career sacrifices are attributable not just to women's choices but to men's choices as well. Male spouses' failure to shoulder equal family responsibilities and male colleagues' failure to support alternative working arrangements are also responsible.'⁴⁹⁰

The problem is that men's choices are rarely examined for the effect they have upon women's lives. When solutions to the 'double-day effect' or 'work/life balance' issues are proposed, they are invariably described as measures to promote the advancement of women (as of course they are). However, this is to address only half the problem. As Tang writes, feminist activism has 'sent women out into the public realm without

⁴⁸⁸ For a discussion of three studies' treatment of this theme, see Hull, Kathleen and Nelson, Robert, 'Gender Inequality in Law: Problems of Structure and Agency in Recent Studies of Gender in Anglo-American Legal Professions' (1998) *Law and Social Inquiry* 681.

⁴⁸⁹ Hagan and Kay, above n. 223, 12-14.

⁴⁹⁰ Rhode, Deborah, 'Gender and the Profession: An American Perspective' in Schultz and Shaw, above n. 218, 13.

summoning men into the private domain.’⁴⁹¹ Until it acknowledges that it is men’s choices that constrain women’s choices as regards caring responsibilities, the possibility of instigating change is limited.

The Nature of Prejudice and Discrimination

In addition, although overt discrimination is certainly less common and certain forms of overt sexism are unacceptable, discrimination is far from a thing of the past. Sommerlad and Sanderson devote a chapter of their study to this theme.⁴⁹² Overt acts of discrimination, disparagement and harassment are documented in all the studies we have consulted, including the most recent. They also occur in Ireland, as we have found. Thus individual men are implicated and indeed blamed.

However, more pervasive and serious are informal exclusionary practices. While formal discriminatory barriers have been eroded, the strength of legal culture is such that exclusionary practices are prevalent. Discrimination, in the sense we employ the term, should be understood as the result of social structures and institutions, as much as individual conduct. Part of the problem is lawyers’ restrictive (and legally ill-informed) understanding of discrimination. Male lawyers may see isolated incidents of sexist conduct, but fail to appreciate what it is to be on the receiving end – such incidents may not be isolated, but routine for the recipient. For women lawyers experiencing discrimination, ‘the problem has less to do with intentional discrimination than with unconscious stereotypes, unacknowledged preferences and workplace policies that are neutral in form but not in practice.’⁴⁹³

‘That the legal profession remains biased is not surprising given the near exclusion of women as recently as twenty years ago. Whether the situation will improve as the curmudgeons of the professions retire is not so clear. Men may have accepted at one level the entrance of women into the work force, but, by and large, they have not changed their attitudes to women’s roles ... Lawyers and their institutions need to change fundamentally the way they do business so that women can participate as fully and equally as men in the legal profession.’⁴⁹⁴

2.4.3 The Lawless Domain - The Absence of Law in the Professional Workplace

The legal workplace is a ‘lawless domain’ in several respects, and this section outlines these. First, the legal professions enjoy the privilege of self-regulation. While this does

⁴⁹¹ Tang, Rosemary, *Feminist Thought: A Comprehensive Introduction* (London, Routledge, 1989), 24.

⁴⁹² Sommerlad and Sanderson, above n. 222, Chapter 6, ‘She’s All Right for a Bird’: The Accommodation of Women’.

⁴⁹³ Rhode, Deborah, ‘Gender and the Profession: An American Perspective’ in Shaw, Ulrike and Schultz, Gisela, (eds), *Women in the World’s Legal Professions*, (Oxford, Hart Publishing, 2003), 11.

⁴⁹⁴ Gellis, Ann, ‘Great Expectations: women in the legal profession, a commentary on state studies’ (1991) *Indiana Law Journal* 941.

not mean they are unregulated, it does imply that the quality and quantity of rules regulating their members are different than those that apply in society at large. Second, the tendency toward self-employment in law (both in solicitors' partnerships and barristers' practices) mean that the corpus of employment law is often inapplicable to lawyers workplaces. Third, the comparative literature identifies a strong professional taboo against the use of formal complaint mechanisms (be they statutory or self-regulatory). Professional culture instils a 'grin and bear it' attitude to unfair treatment.

Self-regulation

The law is a self-regulating profession ("SRP"). Historically, the bargain struck by such professions is that the state grants the SRP a monopoly on the provision of services (enforced by demarcatory strategies) and control over entry standards (enforced by exclusionary standards).⁴⁹⁵ In return, the SRP undertakes to maintain the competence of its members, regulating the application of professional knowledge and disciplining its members for misconduct. The SRP justifies this role on the basis of expertise ('the profession knows best') and that standards will be higher if self-regulatory strategies employed, because a broader range of ethical and moral conduct may be prohibited, than if state law was the only available tool. In addition, it is argued that the censure of peers is a highly effective disciplinary tool, as professional integrity and respect depends upon it.

In this respect, it is clear that the SRP's regulatory space depends on its maintenance of high standards among the profession. Generally, the rules of the SRP deal with entry qualifications and standards of professional conduct, predominantly geared to protect the consumer. In this way, the rules of professional conduct maintain professional standards. Nevertheless, the rules do not usually contain rules that regulate the behaviour of members inter se. However, a growing trend in the comparative literature is to include non-discrimination rules in the rules of professional conduct. This change is significant in that it signals that respecting equality is an aspect of professional integrity. From an enforcement perspective, it also means that internal disciplinary procedures are mobilised when a breach of the rules emerges. However, some reservations have also been expressed about the efficacy of professional rules of conduct. In the UK, studies have noted a lack of awareness of the content of the rules.⁴⁹⁷ In Canada, an array of concerns have been expressed, ranging from the fact that lawyers

⁴⁹⁵ Brockman, Joan, 'The Use of Self-Regulation to Curb Discrimination and Sexual Harassment in the Legal Profession' (1997) *Osgoode Hall LJ* 209, 214.

⁴⁹⁶ See, for example, General Council of the Bar (England and Wales), *Equality Code for The Bar*, (1995); Northern Ireland Law Society, *Anti-Discrimination Code*, Bar Council for Northern Ireland, *Equal Opportunities Code*, Canadian Bar Association, *Code of Professional Conduct*.

⁴⁹⁷ Sommerlad and Sanderson, above n. 222, 130.

would be able to avoid the rules (as that was their inherent skill!), to the fact that professional culture militated against bringing complaints.⁴⁹⁸

Law Formally Unavailable

The legal workplace is often formally unregulated by law, in particular equality law. Two examples are given. At present, in most countries, employment equality law does not apply to the relationship between partners, and the decision to grant partnership is similarly unregulated. As recently as 1992, the UK solicitors' journal noted that in light of the 'unusual nature of partnership' combining 'the roles of worker, shareholder and manager', the process of appointing partners should retain 'an element of mystery' entailing 'a strong subjective element'.⁴⁹⁹ Although there is now a Code of Practice that applies, a UK study noted that legal employers displayed a shocking lack of awareness of its provisions.⁵⁰⁰ Similarly, the relationship between barristers is often not regulated by employment law. In the UK context, legislative reform in this area was introduced in 1990, in the form of section 64 of the Courts and Legal Services Act. This provision prohibits gender discrimination in the context of offering pupillages and tenancies.

In the US, this proposition has been refined, at least partly. The 1984 US Supreme Court case of *Hishon v Spalding*⁵⁰¹ accepted that the granting of partnership entails intangible factors, but also held that these factors cannot be used to shroud discriminators' criteria. This proposition was refined in *Ezold v Wolf*.⁵⁰² In that case, Nancy Ezold sued her employer for sex discrimination in refusing to make her partner in a law firm. At first instance, her claim was upheld. However, on appeal, this was overturned, on the basis that the denial of partnership was a business decision and as such could be based on wholly subjective factors. *Price Waterhouse v Hopkins*⁵⁰³ developed the law of partnership discrimination further. This case required the Supreme Court to undertake the task of defining the burden of proof necessary for a partnership candidate to establish her sexual discrimination claim. Price Waterhouse was the first 'mixed motive' case considered by the Court, that is a case in which gender is only one of several motivating factors influencing an employer's decision rather than the only factor. In this case, the burden of persuasion was shifted to the employer, the Court holding that when a plaintiff establishes that gender was a motivating factor in an employment decision, the employer may avoid liability only

⁴⁹⁸ Brockman, Joan, 'The Use of Self-Regulation to Curb Discrimination and Sexual Harassment in the Legal Profession' (1997) *Osgoode Hall LJ* 209.

⁴⁹⁹ Olive, Catherine, 'The Path to Partnership' (May 1992) *The Lawyer* 17, quoted in Sommerlad and Sanderson, above n. 222, 130.

⁵⁰⁰ Sommerlad and Sanderson, above n. 222, 130.

⁵⁰¹ 467 US 69 (1984).

⁵⁰² *Ezold v Wolf, Block, Schorr, Solis-Cohen* 983 F 2nd 509 (3rd Cir. 1992).

⁵⁰³ 490 US 228, (1989).

by proving by a preponderance of the evidence that the decision would have been the same if gender had not been a factor. Because of this decision, Congress modified Title VII⁵⁰⁴ to specifically recognize a mixed motive analysis. In our Recommendations in Chapter 11, we draw on the US experience to develop reform proposals. However, a gap in legal protection still exists, as regards the relationship between existing partners. The so-called ‘Title VII gap’ means that Title VII does not protect partners from sexual harassment or discrimination *inter se*, as partners are considered employers, not employees, under Title VII.⁵⁰⁵

A second aspect of the legal gap relates to clients. When sexual discrimination comes from clients, as purchasers of services, their choices are usually unregulated. The ‘bottom line’ wins out and the discrimination will usually be allowed to persist so as not to offend the client and possibly lose his or her business.⁵⁰⁶ In the UK, Josephine Hayes, Chair of the Association of Women Barristers, brought a case against the Attorney General alleging that the government was biased in favour of appointing men to represent it in civil cases.⁵⁰⁷ Around the same time, the Attorney General announced an inquiry into the method by which government lawyers were appointed. In this respect, in Chapter 8, we examine the reality of briefing practices, and examine the possibility of regulating such practices, at least of public bodies and major private consumers of legal services.⁵⁰⁸

Law Informally Unavailable

Global studies report the widespread perception that for lawyers to revert to law or litigation in order to vindicate their own position would be professional suicide.⁵⁰⁹ For example, in the UK the Reynell Report⁵¹⁰ and Sommerlad and Sanderson⁵¹¹ note

⁵⁰⁴ Title VII refers to Title VII of the Civil Rights Act 1964, which prohibits discrimination on grounds of sex.

⁵⁰⁵ Ziewacz, Elizabeth, ‘Can the Glass Ceiling be Shattered?: The Decline of Women Partners in Large Law Firms’ (1996) *Ohio St LJ* 971, 981.

⁵⁰⁶ *Ibid*, 980.

⁵⁰⁷ McGlynn, above n. 221, 179.

⁵⁰⁸ See Chapter 8, at 8.4.

⁵⁰⁹ Brockman, Joan, ‘Resistance by the Club’ (1992) *Canadian Journal of Law & Society*, 47; Foster, S Elizabeth, ‘The Glass Ceiling in the Legal Profession: why do law firms have so few female partners?’ (1995) *UCLA Law Review* 1631; Kaye, Judith, ‘Women Lawyers in Big Firms: A Study in progress toward gender equality’ (1988) *Fordham Law Review* 111; Epstein, Cynthia Fuchs with Saute, Robert, Oglensky, Bonnie and Gever, Martha, ‘Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession’ (1995) *Fordham Law Review*, 306

⁵¹⁰ Reynell Legal Recruitment Consultants, *The Law at Work – the view from within the profession, Report on a survey of assistant solicitors*, (London, Reynell Ltd, 1997).

⁵¹¹ Sommerlad and Sanderson, above n. 222.

this reluctance. In the latter book, the authors report that only three women interviewed had brought legal complaints, although many more indicated serious instances of discrimination and harassment.⁵¹² In Germany, there is one reported case of gender discrimination concerning lawyers. The advertisement was in gender specific terms and the firm was all-male.⁵¹³

In a Canadian survey to assess the effectiveness of anti-discrimination rules of professional conduct, the reluctance to use law was also noted. Respondents to the survey conveyed the following sentiments in relation to the use of formal complaint mechanisms:

‘Even lawyers that are associates that are dismissed wrongfully generally don’t sue the firm because they are afraid the rest of the community won’t hire them, and they’ll get a bad name.’ And ‘If you have been discriminated against at [a law firm] ... are you really going to step forward to the Law Society and complain about [the firm], when half of the benchers at one point or another came from there?’⁵¹⁴

This view of legal practice as partly beyond the realm of legal regulation and in particular the reach of litigation as a means of securing redress is one which is widely shared by Irish lawyers, as our findings show.⁵¹⁵ A key aim of the study was to examine how discrimination (direct and indirect) against women lawyers may be addressed in this context. In the following chapters, which present our findings, we seek to tackle this problem, and many others that emerge in the comparative literature.

⁵¹² *Ibid*, 131.

⁵¹³ Labour Court, Dusseldorf (Az: 9 Ca 4209/99), cited in Schultz, Ulrike, ‘The Status of Women Lawyers in Germany’ in Schultz and Shaw, above n. 218, 288.

⁵¹⁴ Brockman, Joan, ‘The Use of Self-Regulation to Curb Discrimination and Sexual Harassment in the Legal Profession’ (1997) *Osgoode Hall LJ* 209, 220.

⁵¹⁵ See Chapter 10, at 10.1 and 10.2.



Chapter 3

Learning to Lawyer - Students' Views



3

Learning to Lawyer - Students' Views

3.1 Background to the Research on Students and Trainees

In addition to our survey of legal professionals, the results of which are set out in detail in Chapters 4 to 10, we felt it was necessary to conduct research into the aspirations and expectations of those people entering the legal professions. We therefore conducted a study, confined to final year law students, in Trinity College Dublin, University College Cork and the National University of Ireland Galway. To this end a mailed questionnaire survey was issued to the university students which brought a response from 126 students (Table 3.1). Legal trainees attending the Law Society course at Blackhall Place, and those studying on the degree course at King's Inns, were invited to participate instead in Focus Group sessions. This Chapter sets out the results of the survey and the findings from the Focus Groups.

3.2 Undergraduate Law Students

Table 3.1 Student Respondents

University	Male	Female	Total
UCC	16	32	48
UCG	4	19	23
TCD	11	44	55
Total	31	95	126

Female respondents accounted for 75 per cent of the total while male students were one-quarter. A disproportionate number of mature students responded to the survey; 27 per cent of female students surveyed are mature students, and 45 per cent of males.¹ Conversely, a lower proportion of male law students had entered from school via the CAO system - 45 per cent compared with 61 per cent of female law students. The remaining 10 per cent of male students and 12 per cent of female students had entered via A levels or equivalent.

¹ In most law schools, mature students constitute no more than 5 per cent of each class.

Table 3.2 Entry Method to Third Level

University	Male	% Male	Female	% Female	Total
CAO	14	45%	58	61%	72
A Levels or Equivalent	3	10%	11	12%	14
Mature Student	14	45%	26	27%	40
Total	31	100%	95	100%	126

A higher proportion of male students (39%) than female students (23%) had attended a fee paying school. In contrast, more than a quarter of female students (77%) had gone to a non fee-paying school compared with 61 per cent of the male respondents. This disparity bears out similar findings in other countries (see further Chapter 2).

Marginally more male students (65%) had been to a single sex school compared with 60 per cent of female students. The remaining 36 per cent of male and 40 per cent of female students had attended co-educational schools.

3.3 Links with Legal Profession

Only 25 of the students surveyed responded to the question about links with the legal profession prior to commencing their studies. Of these, male law students were marginally more likely (22%) to have had links with the legal profession compared with 19 per cent of female law students. All of the 18 female students who responded had links with a solicitor either as a close relative or close friend/parent (Table 3.3). Male students were also more likely to have links with solicitors as close relatives/friends or a parent.

Table 3.3 Links with the Legal Profession

Links with Barrister			
	Men	Women	Total
Parent	1		1
Close Relative	2	4	6
Close Friend		3	3
Links with Solicitor			
	Men	Women	Total
Parent	1	5	6
Close Relative	2	8	10
Close Friend	2	5	7
Links with Judge			
	Men	Women	Total
Parent			
Close Relative		3	3
Close Friend	1	2	3

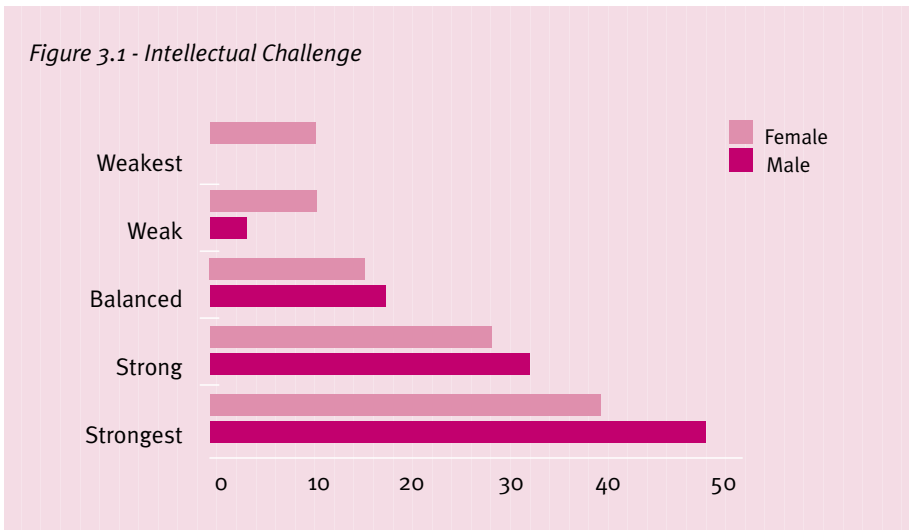
Respondents were asked whether they could identify any role models associated with law. Forty-nine answered in the affirmative, 41 per cent of male students and 43 per cent of the female students who responded. Names mentioned included Mary Robinson and Judges Susan Denham and Catherine McGuinness.

3.4 Motivation for Choosing to Study Law

Students were asked whether any of 11 listed factors had encouraged them to study law. The results are outlined in this section.

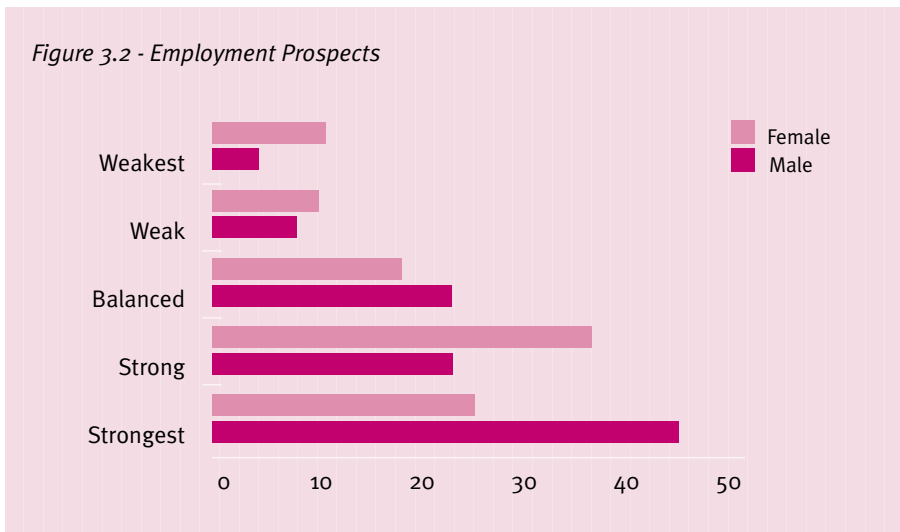
3.4.1 Intellectual Challenge

It is clear that male rather than female students were more strongly motivated to study law by the intellectual challenge. Nearly half of male students (48%) rated it a strongest motivation compared with 39 per cent of female students (Figure 3.1). One fifth (20%) of female students rated intellectual challenge as a weak/weakest motivation compared with only 3 per cent of male students.



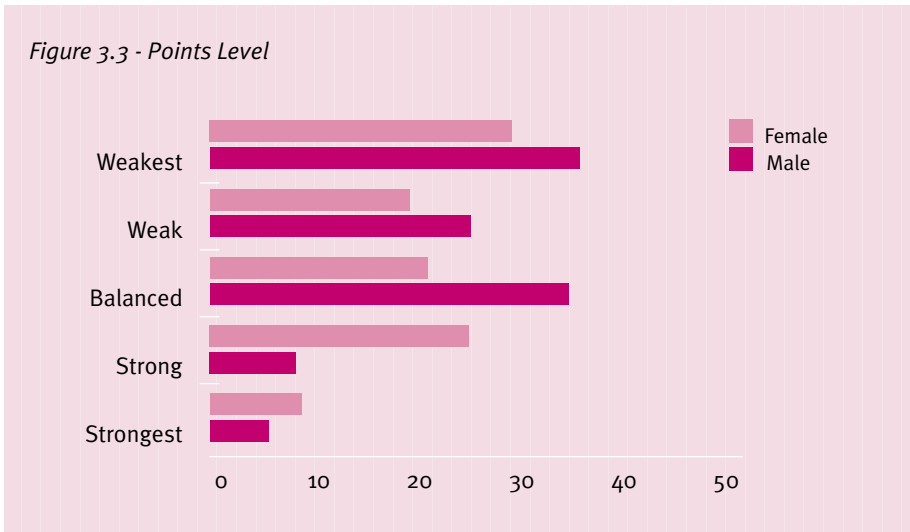
3.4.2 Employment Prospects

Employment prospects were rated as a strongest/strong motivation to study law on a similar basis by female and male students. However the major gender difference noted is that male students were more likely to rate it as strongest (43%) compared with only 25 per cent of female students (Figure 3.2). This gender gap is partially offset by the high proportion of female students (36%) who rated employment prospects as a strong motivation while this applied to 23 per cent of male students.



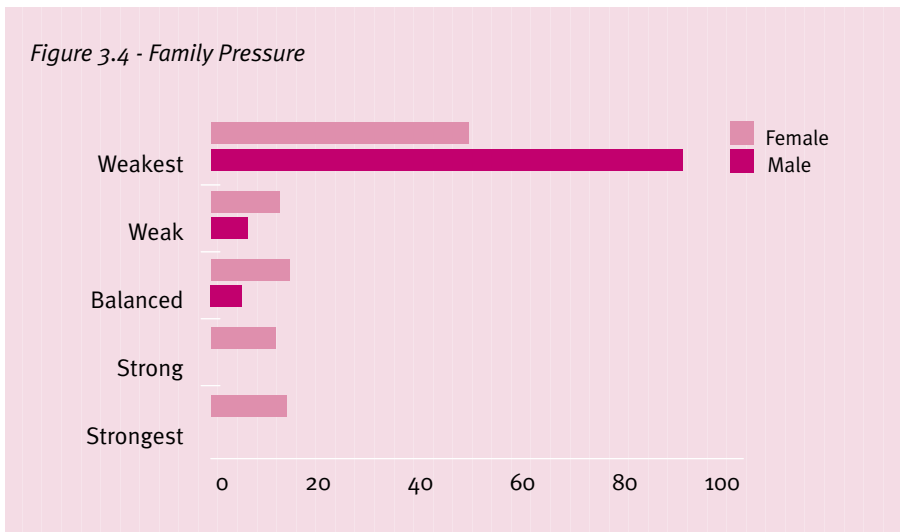
3.4.3 CAO Points

Getting the CAO points was a more important motivation to study law for female students than for their male counterparts. While only 5 per cent overall rated it as a strongest motivation, a further 26 per cent of female students rated it as strong, compared with a total of 8 per cent of male students rating CAO points as a strongest/strong motivation (Figure 3.3).



3.4.4 Family Pressure

There was a difference in the responses from male and female students to how important family pressure was as a motivation to enter the legal profession. While 91 per cent of male students rated family pressure as a weakest motivation, this applied to only 50 per cent of female students (Figure 3.4). Nearly one quarter of female students (23%) rated this factor as a strong or strongest motivation, while no male students responded in this way.



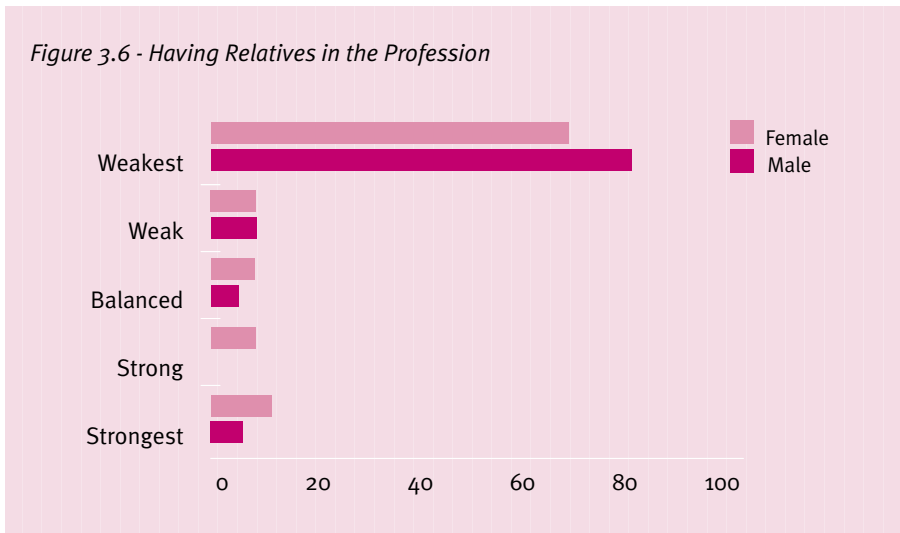
3.4.5 Potential Earning Levels

There were also differences in the responses of male and female students to the incentive effect of potential earnings in the legal profession. While only a minority of female students (42%) rated this as a strong/strongest motivation, 54 per cent of male students ranked this as a strong/strongest motivation (Figure 3.5). However proportionately more male students (18%) rated earnings as the weakest motivation compared with only 7 per cent of female students.



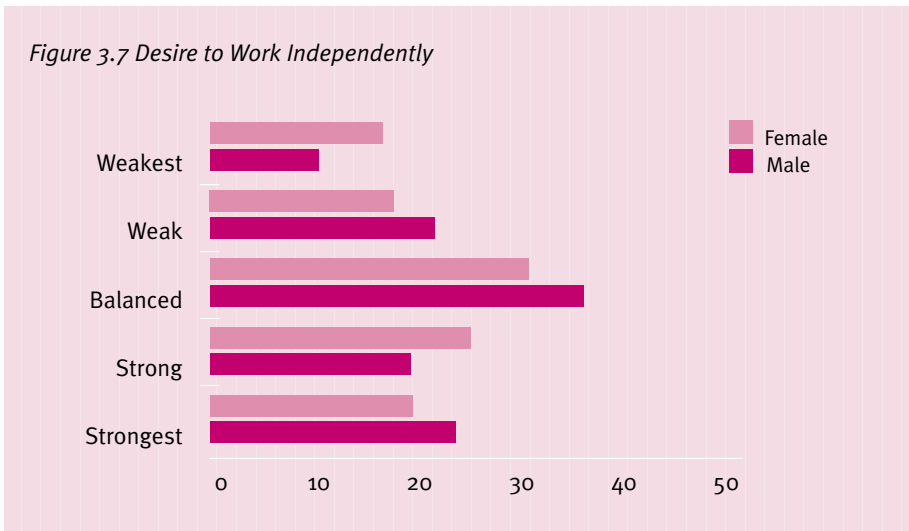
3.4.6 Having a Relative in the Profession

Having a relative in the legal profession proved to be a weakest motivation for female and male students, compared with all the other factors. Eighty-four per cent of male students and 71 per cent of female students ranked it as the 'weakest' motivation (Figure 3.6). However 10 per cent of female students ranked having a relative in law as a strongest factor compared with 4 per cent of male students.



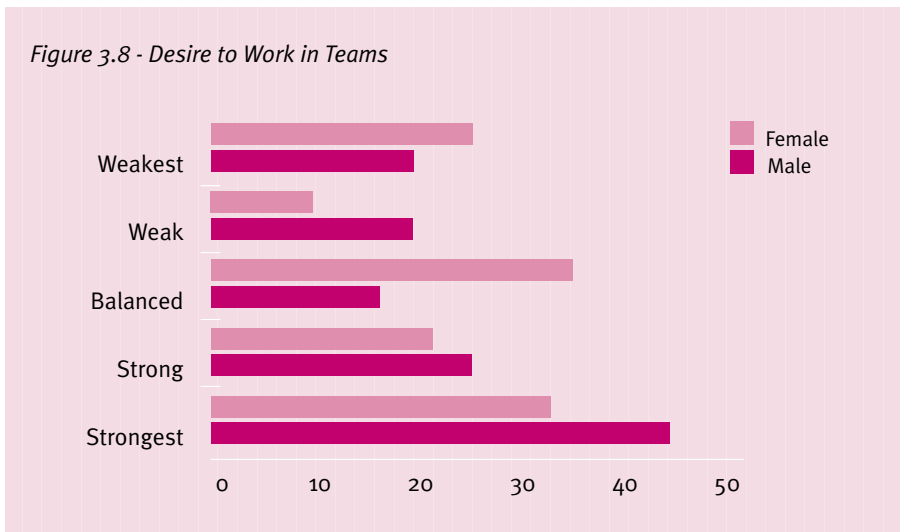
3.4.7 Desire to Work Independently

Responses to working independently as a motivator to study law produced mixed results and no specific gender differences. More female (16%) than male (7%) students rated it as a weakest factor while marginally more male students (22%) than female students (18%) rated it as a strongest motivation (Figure 3.7).



3.4.8 Desire to Work as Part of a Team

More male students (44%) were strongly/strongest motivated by a desire to work as part of a team compared with female students (32%) (Figure 3.8). Female respondents were most likely to give the balanced/neutral motivation as their response - 34 per cent - compared with male respondents (16%).



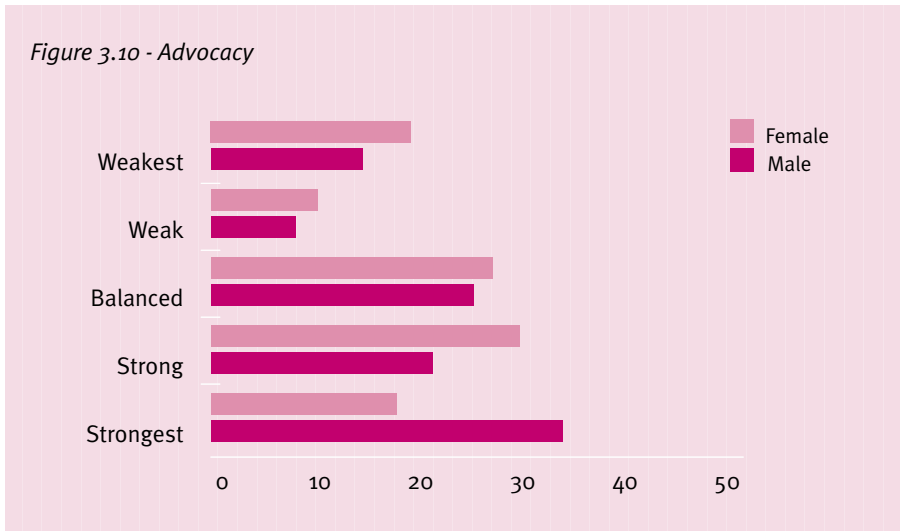
3.4.9 Prestige/Status

Attraction to law for the prestige/status was definitely felt more strongly by male rather than female students. Sixty-one per cent of male students rated prestige/status as a strongest/strong motivator compared with 40 per cent of female students (Figure 3.9). Conversely 39 per cent of female students ranked it as a weak/weakest factor, compared with 21 per cent of male students.



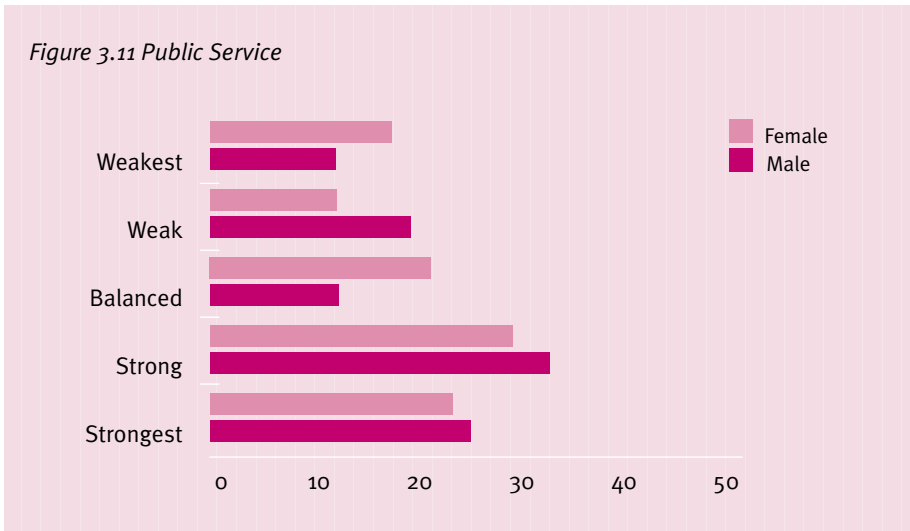
3.4.10 Ability to Practise Advocacy

The ability to practise advocacy was a stronger motivation for male than female students. This was a strongest motivation for one third of male students (33%) compared with 18 per cent of female students (Figure 3.10). However, advocacy was a strong motivation for 29 per cent of female students, compared with 22 per cent of males. One fifth (20%) of female students rated this as a weakest factor compared with 15 per cent of male students.



3.4.11 Public Service/'Making a Difference'

Male students were marginally more likely to rate public service/making a difference as a positive motivation than female students. Nearly 58 per cent of male students responded with strong/strongest motivation compared with 51 per cent of female students (Figure 3.11).



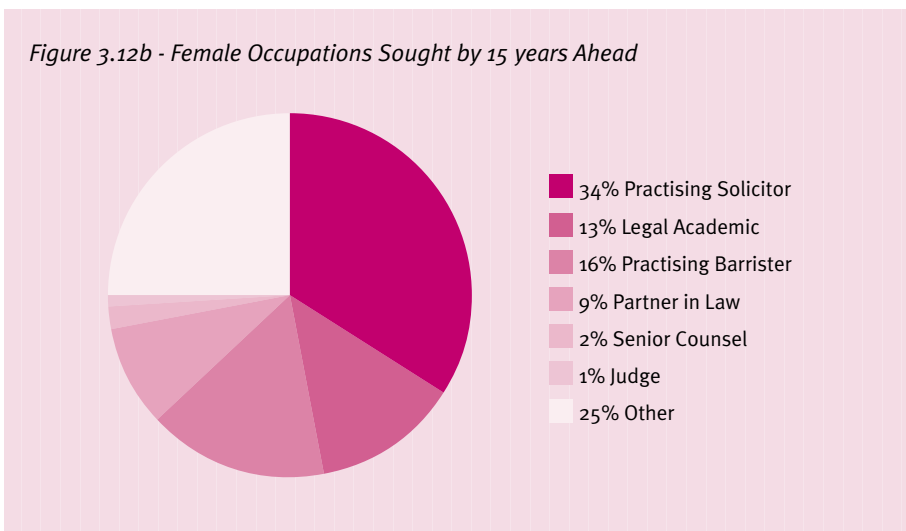
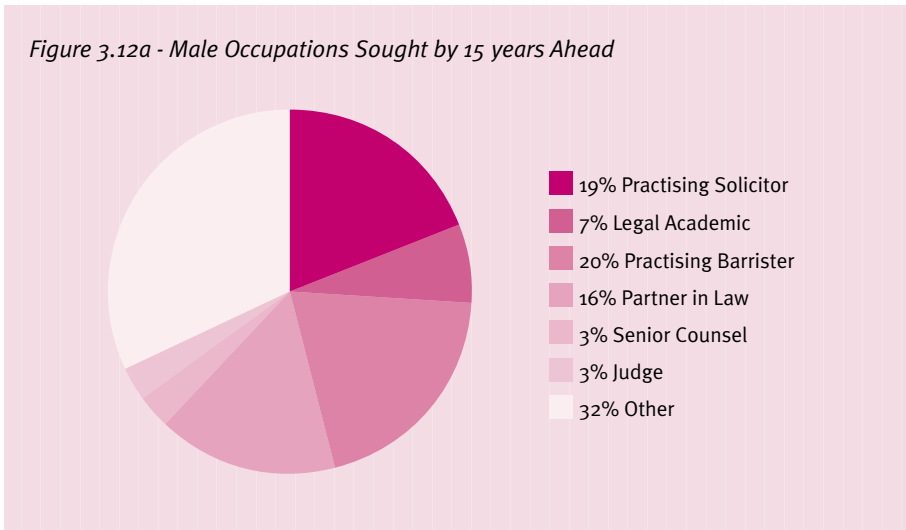
3.5 Career Aspirations

Law students were asked to state what area/occupation they aspired to work in 15 years ahead. Female and male students they are not embarked upon career paths in the same legal professions (Table 3.4). More than one-third of female students (34%) aspire to being practising solicitors, followed by 'other' career (25%) and practising barrister (16%). For men 'other' career was the most popular aspiration (32%), followed by practising barrister (20%) and practising solicitor (19%). Similar proportions of female and male students aspired to becoming senior counsel (3% of male and 2% of female respondents). More male than female students aspired to being partners in a law firm (16%) compared with women (9%) and this was true also for judges (3% of male and 1% of female students). Disproportionately more women aspired to becoming legal academics (16% compared with 7% of males).

Table 3.4 Career Aspirations - 15 years ahead

	Male No.	Male %	Female No.	Female %	Total
Practising Solicitor	6	19%	30	34%	36
Legal Academic	2	7%	12	13%	14
Practising Barrister	6	20%	14	16%	20
Partner in Law Firm	5	16%	8	9%	13
Senior Counsel	1	3%	2	2%	3
Judge	1	3%	1	1%	2
Other	10	32%	22	25%	32
Total	31	100%	89	100%	120

Figures 3.12a and 3.12b provide a clearer picture of these gendered career aspirations.

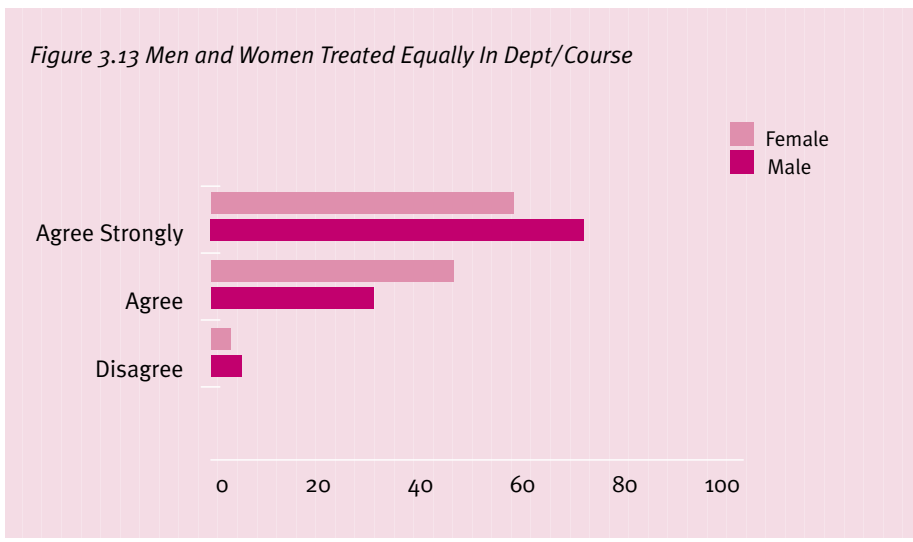


3.6 Attitudes/Experiences

In addition to factual information about links with the legal profession, career aspirations and motivation for choosing law, the survey of students sought to obtain information on the attitudes held by students by using a series of nine statements and testing dis/agreement with these.

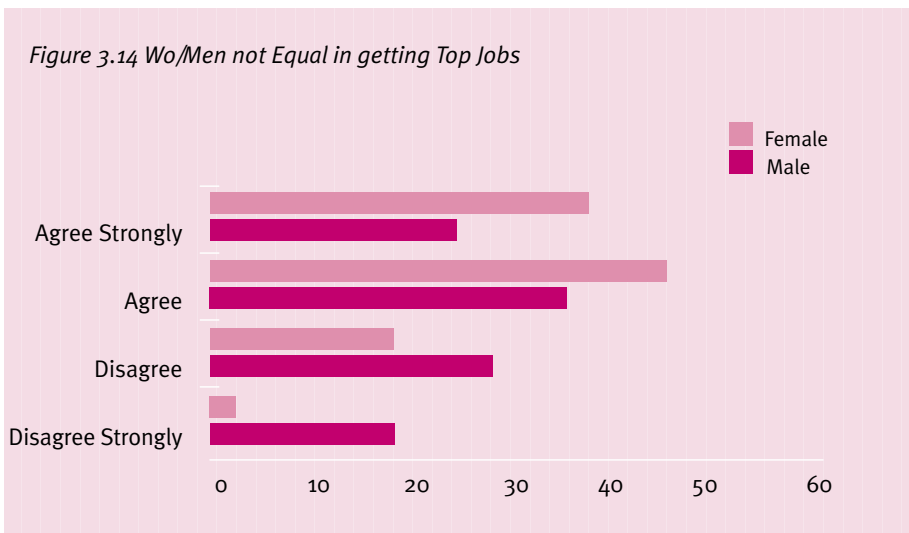
3.6.1 'In My Department/Course Male and Female Students Appear to be Treated Equally'

Agreement with the statement that all students appear to be treated equally in their department/course was almost unanimous with only 2 per cent of female students and 3 per cent of male students disagreeing with the statement (Figure 3.13).



3.6.2 'Men and Women do not get Treated Equally when it comes to Being Appointed to Top Jobs'

There were gender differences in the responses to whether men/women are equally likely to be appointed to top jobs in the legal profession. Female respondents were much more likely than male respondents to agree with this statement (Figure 3.14). Nearly eighty-four per cent of female students agreed/agreed strongly with this statement while this was the case for 55 per cent of male respondents. Conversely, 45 per cent of male students disagreed/disagreed strongly compared with only 16 per cent of female students.



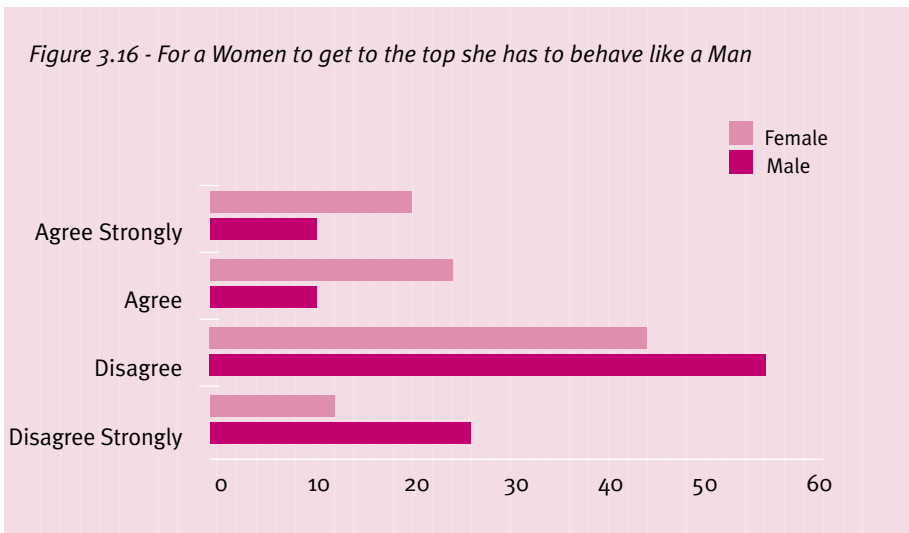
3.6.3 'The Culture of the Legal Profession is One that Better Suits Men's Careers'

Again there were discernible differences in the responses to this statement from fe/male students. While nearly two-thirds of female students (62%) agreed/agreed strongly with the statement, only 43 per cent of male students agreed/agreed/strongly (Figure 3.15). Hence more male respondents disagreed (47%) or disagreed strongly (10%) compared with 23 per cent of female respondents who disagreed and 15 per cent who disagreed strongly with the statement.



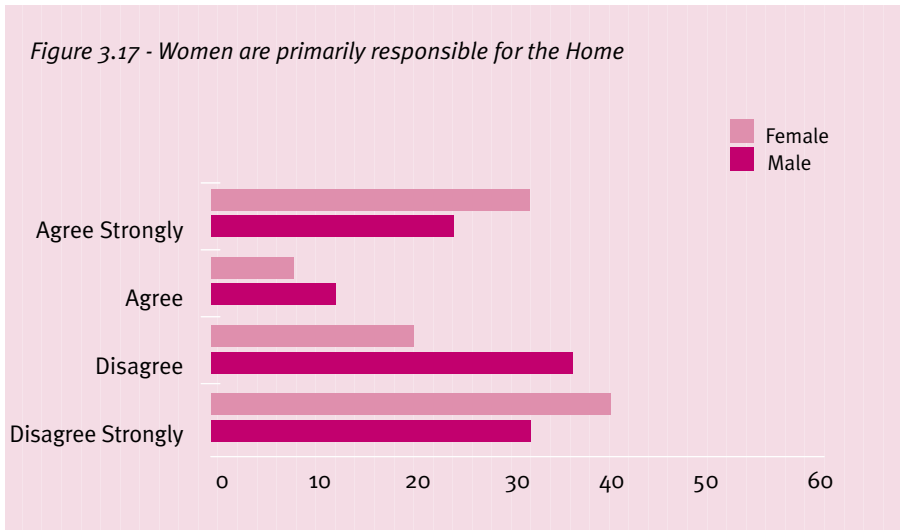
3.6.4 'For a Woman to Reach the Top She has to Behave Like a Man'

Not surprisingly more women agreed with this statement than men. Four out of five (81%) of male respondents disagreed or disagreed strongly with the statement, while this applied to 55 per cent of female respondents (Figure 3.16). Only 20 per cent of male respondents agreed with this statement compared with 46 per cent of female respondents.



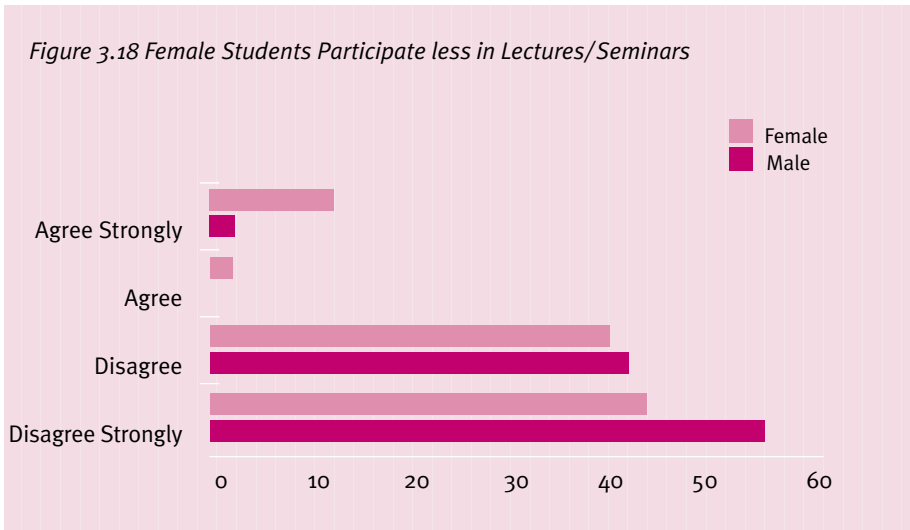
3.6.5 'Women are Primarily Responsible for Looking after the Home'

An interesting pattern arises from this analysis of the questionnaire data on the statement that women are primarily responsible for looking after the home. More female students agreed (7%) or agreed strongly (34%) compared with 10 per cent of male students who agreed, and 23 per cent who agreed strongly (figure 3.17). However, 40 per cent of female students surveyed disagreed strongly compared with 32 per cent of male students. More male students (36%) disagreed than female students (19%).



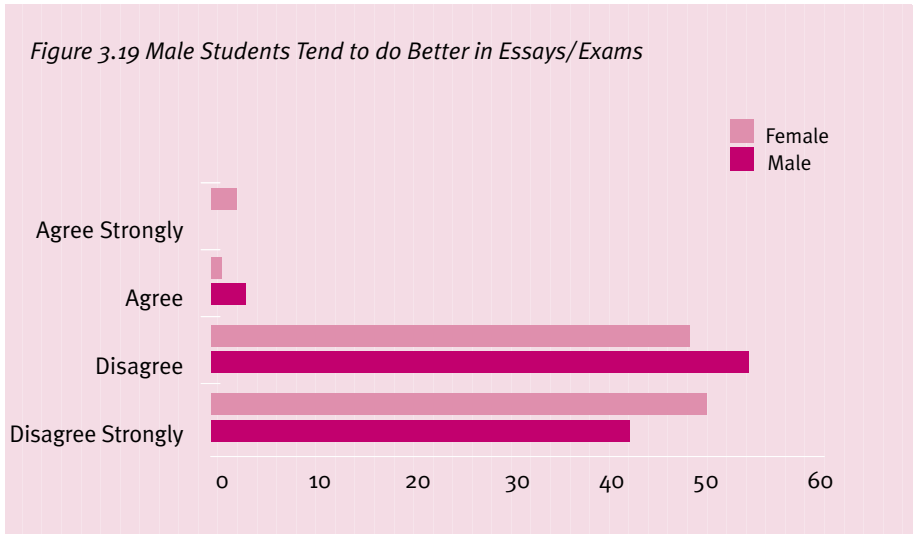
3.6.6 'Female Students Generally do not Participate as much as Male Students in Lectures or Seminars'

Paradoxically more male students disagreed strongly (55%) than female students (45%) that female students participate less in lectures/seminars (Figure 3.18). Conversely, 15 per cent of female students agreed or agreed strongly compared with only 3 per cent of male students.



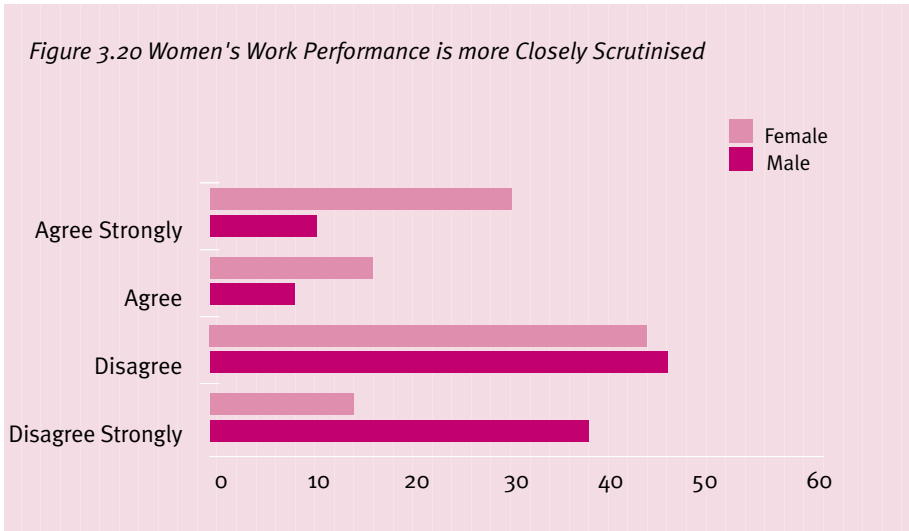
3.6.7 'Male Students Tend to do Better than Female Students in Essays and Exams'

There was virtual unanimity among female and male students that male students do not tend to do better in essays/exams. Ninety-seven per cent of both male and female students disagreed/disagreed strongly with this statement (Figure 3.19).



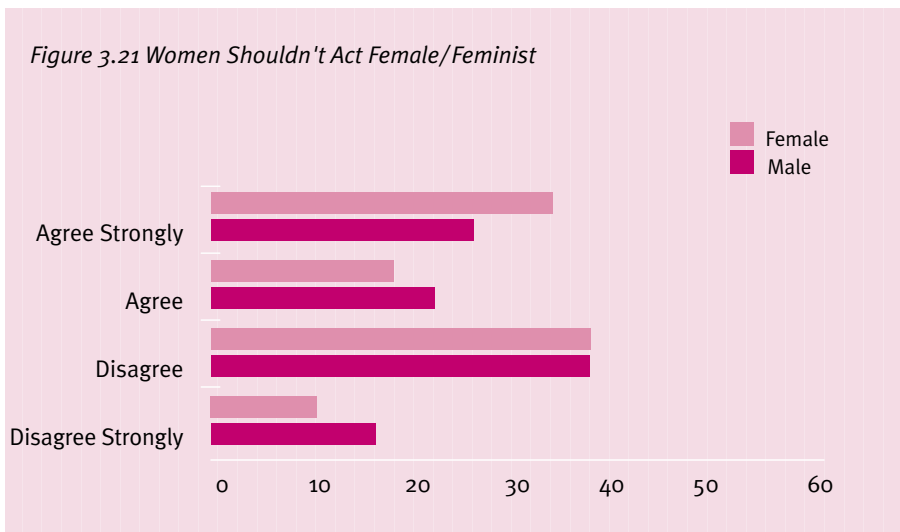
3.6.8 'Women's Work Performance is more closely Scrutinised than that of Men'

There were major gender differences in the male and female responses to this statement. Similar proportions of men/women disagreed (43% of women and 45% of men). However, 30 per cent of female students agreed strongly, compared with 10 per cent of male students (Figure 3.20). While only 14 per cent of female students disagreed strongly, this was the case for 38 per cent of male students.



3.6.9 'It is Important for Women's Success that they do not make an Issue of being a Woman/Express Feminist Views'

The majority of female students agreed/agreed strongly with this statement (53%) while only 45 per cent of male students believed this to be the case (Figure 3.21). More male students disagreed strongly (17%) compared with female students (10%). Similar proportions of female and male students disagreed (38%).



3.7 Professional Training

Apart from ascertaining the views of third-level Law students, it was also hoped to conduct a survey of those engaged on the professional training courses; students on the Barrister-at-Law degree course at King's Inns, and legal trainees on the Law Society course at Blackhall Place. A questionnaire was distributed among legal trainees which elicited a small number of responses (25). Focus groups were then conducted of both King's Inns students and legal trainees, with discussion centred on the same themes explored in the third-level student surveys: motivations, expectations, experiences on the professional courses, including any experience of discrimination; and finally the theme of improving opportunities for women in the law. Different issues emerged from each group.

3.8 Becoming a Barrister – the King's Inns Experience

Once a person has passed the King's Inns entrance examination, they must take the two-year part-time Degree course at the King's Inns, dine at the Inns ten times each year over the two years, and pass their final examinations, before being eligible to be called to the Bar (see further Chapter 1). In 1966, Mary Robinson (then Mary Bourke) conducted a survey of King's Inns students.² Of the 70 questionnaires

distributed, 44 were returned. Most questions focused on the content of the course, with much criticism from respondents as to the lack of practical training involved. While the majority (41:3) favoured the tradition of dining, many recommended change to encourage participation of first-year students and provide better value for money. One 'frustrated female' argued that "*Jokes should not be whispered behind the back of hands, but should be clearly enunciated for female honourable members' benefit..*".³ Another respondent suggested in relation to dress codes the introduction of "*with-it Mary Quant style gowns for female members.*" On a more general level, several referred to the need to update and overhaul King's Inns structures. One wrote "*A campaign should be launched to convince the Benchers, lecturers and all personnel in King's Inns that the twentieth century began just 66 years ago.*" Another said: "*I feel the whole system must be overhauled. What is needed is a new wall; there is little point in plastering the old*" while a third wrote: "*The Inns appears to regard itself as a pseudo-academic institution with an aristocratic hangover. A breath of the twentieth century might prove quite healthy.*"

In her concluding comments on the responses to the survey, Mary Bourke noted that 'an undercurrent of dissatisfaction and frustration is clearly evident.' A similar undercurrent was clearly discernible from the experiences of those interviewed for the focus group in this study, all of whom were in the second and final year of the King's Inns course.

3.8.1 Motivations in Studying to be a Barrister

Focus group participants described their attraction to the idea of doing a broad degree and having a choice of career later; others mentioned an interest in politics and debating in school; seeing lawyers on television programmes; or having lawyers in the family, as factors motivating them to study law in college. One participant observed that she liked the idea of law as "*a concrete job.. you were aware what it was that lawyers did.*" This certainty about the nature of lawyering as a career, largely because of television series about lawyers, was contrasted with a lack of awareness about the work of other professionals.

However, one participant remarked on the general perception that law is a profession that is "*hard to get into without family – everyone tells you that*", and this comment was strongly agreed with by the other members of the group. On a similarly negative note, several female participants in the group had experienced serious discouragement from career guidance counsellors about entering law: one remarked on having had "*lots of negative career guidance*" when she raised law as a choice of career.

When female participants were asked whether they thought this negativity was gender-related, they all agreed that there was a gender distinction between the choice of the Bar or the solicitors' profession. One observed that "*more women are deterred*

² Bourke, Mary, 'The Education of the Irish Barrister' (1966) *Justice – Irish Student Law Review* 16.

³ *Ibid*, at p. 18

from the Bar and choose to become solicitors, because they're thinking ahead 10 years down the line." Similarly, another remarked that "many women choose the solicitors' profession for maternity leave reasons. You don't want to be starting the Bar when you're thinking of having kids – this is a factor in deciding when to commence practice."

Another woman member of the group, who had entered the King's Inns having originally commenced training as a solicitor, disagreed with this as a strong motivating factor, remarking that she "didn't once think about maternity leave – rather it was about how I wanted to work." A male participant expressed surprise at this discussion, saying that he was unaware that his women colleagues had even thought about these issues at this stage; he had "never had a conversation about this before". But the women in the group, perhaps surprisingly given their age, had already given much thought to work/life balance issues. One observed that she now realised she was "not so ambitious as I had thought – success in both areas [family and work] is equally important." Another thought it would not be possible to 'have it all', but a colleague suggested it would depend on the type of work: "if you are doing conveyancing and opinion work – you can work at home and adapt."

When asked about role models, women who had successful legal careers and children, there were some negative responses; one participant felt these women were "paragons – you can't hope to emulate them, you're doomed to fail." Another thought that "women feel guilt – my friend is a woman barrister – she feels guilt coming home late, she has no time with the kids" and a third felt rather gloomily that it was "hard to expect it all to change in one generation". There was a consensus among these young women that the "really exceptional women in the 1980s" had not brought about real change in the legal professions, rather that just a few had broken through the barrier. They agreed on a general perception that the Bar is a hard career for women. Their class had been informed of a purported 40 per cent drop-out rate from the Bar, and all of them had received a letter from King's Inns warning them about the difficulty of making a living as barristers.

3.8.2 Expectations about the Bar

A difference of views was expressed as to expectations. Some participants felt that it would be better, having qualified as a barrister, to work elsewhere before attempting to build up a practice. Another felt it would be "better to go down early and take the blows". Some had no idea where they would be in ten years time; but the majority hoped to be in practice, possibly lecturing part-time to help fund themselves.

3.8.3 Experiences at King's Inns

Participants were generally very critical about their time studying at King's Inns. Some mentioned the financial strain involved, and noted that grant-holders had been told to get a bridging loan to pay their fees when grant payments were delayed. A particular complaint was made about the high fee required for the graduation.

Apart from financial considerations, more general criticism was levelled at the institutional ethos of the King's Inns. It was described by one participant as "*a shambles .. because there's no interest in it. Solicitors wouldn't stand it.*" The degree course was described as being designed "*to compensate for the deficiencies in the diploma.*" In particular, the lack of full-time teaching staff was criticised.

Another described it as "*old-fashioned and hierarchical*" and elitism was perceived as particularly evident in the institution of Benchers (senior barristers and judges elected to run the King's Inns), with whom most students have very little contact. The perception of Benchers as nepotistic in the past, involved in pulling strings to get relatives admitted, was noted, although it was agreed that the opaque system that had prevailed was done away with by the entrance exam. Generally the difficulty with 'rocking the boat' was commented upon. Institutional attitudes towards student representatives were described as unhelpful, and participants said they never knew who was in control. Nor is there any student representation on the governing body. Participants noted that there had been little change since Mary Robinson conducted her survey among King's Inns students in 1966, in which the same issues were raised. It was generally felt, however, that there was no gender bias within the King's Inns institution, and several students noted that among the staff at the Inns, many of the "*recognisable faces*" are women.

However, a different view was taken of the profession itself. One participant noted that there are "*definitely some barristers who are reputed not to take female devils.*" Several others referred to the occurrence of sexual harassment at social gatherings where older male barristers were present; as one put it: "*everyone knows it goes on – it is tolerated.*" A particular instance was remarked upon by some, although this was not seen as an isolated event: "*There is an expectation at social functions that some 'senior juniors' will behave inappropriately...We could all name random people, but it is widespread.*" As one participant summed up, "*It gets to the stage when it is acceptable behaviour.*"

The "*blurry line between work and play at the Bar*" was seen as being the cause of this behaviour, but the problem for these junior women is how to respond. There was widespread agreement that this is highly problematic, since "*if you do something then you are feisty;*" "*It's hard to get the right line - it's a case of being flirty against being a cold bitch;*" "*It would be the death knell of your career if you complained*" and in any case "*There is no-one to complain to.*"

On a more optimistic note, however, participants accepted that they could not "*see guys in our year behaving like this. It is a matter of time and it will become unacceptable.*" When asked to define how long it might take, however, one participant thought 20 years.

3.9 Trainee Solicitors – the Blackhall Place Experience

Before commencing the two-year vocational solicitors' course run by the Law Society at Blackhall Place, applicants must have obtained a training contract with a solicitor. The course itself is run at the Law Society Education Centre, also on Blackhall Place in Dublin, and its content and structure has recently been revised, with the introduction of a set of training manuals. In order to gain some insight into the experiences of legal trainees, a questionnaire was distributed, which gained only a small number of qualitative responses. Hence a focus group conducted.

3.9.1 Motivations in Studying to be a Solicitor

Different views were expressed by focus group participants as to their motivation. One said: *“I fell into it, no massive aspiration, but at my first lecture .. criminal law, very interesting, I said I'm happy, this is it.”* Another knew she wanted to study law from childhood:

“I had no connection with law, but my mum had an accident and the solicitor became a family friend, she helped people. At school I was put off by my career teacher, she said go for primary school teaching, you have summers off to look after your children – but I persevered, I wasn't sure if I would prefer the bar or solicitors – was unsure about the practicality. I thought the bar would be solitary, you're on your own, with solicitors there is a base and support network, I prefer meeting clients face to face. I'm not confident enough to be on my feet in court. I see more women as solicitors.. I thought it would be hard to pursue a career as a barrister.”

And a colleague agreed: *“It's easier, more women are solicitors, the bar seems more male dominated. It's how they build up business, you have to be aggressive.”*

3.9.2 Expectations about being a Solicitor

Women trainee solicitors in the focus group expressed optimism about their future careers as solicitors: as one said, *“I am looking forward to qualifying..I hope to be qualified and happy. I would like to specialise in one area, I don't want to be top notch, just to get an area that interests me, maybe employment law.”*

Another agreed; *“I'm the same, I'd like to qualify, gain experience with a good firm, get paid well, further down the line I'd like a practice of my own, or go into partnership.. I might need a business course as well to run my own practice, invoices, management, there should be an emphasis there.”*

When asked about combining careers with a family, however, the same young women expressed more scepticism:

“In relation to families, I'd like to, but not for a while. It's hard to balance. The first baby must be a massive change, if you're full force into a career something tends to suffer. The big problem is trying to juggle and be happy working and not have a kid in a creche. It's up to women to juggle. There's no mention of children with male

solicitors... I don't see men in the class being carers, there are only 30% males in the class. There are still a lot of men at the top, the practice takes on women solicitors niched in conveyancing rather than litigation."

Another summed up: *"You don't want to be seen as slacking, 'oh she can't meet that deadline' if you have kids at home."* They agreed that the only way to manage combining work and family was having a flexible employer, but as one pointed out:

"If you're a partner or have your own firm, there's pressure because you can't take maternity leave. You must be very organised, to organise your working life around family life, it could be done, but it must depend on how you feel on your first child, I don't know, it could be like you couldn't bear to be at home, but you can't say for definite how you'll feel."

3.9.3 Experiences as a Legal Trainee

Participants had uniformly positive experiences of the professional course at Blackhall Place. One said:

"I thought Blackhall was great, I know maybe it was different 3/4 years ago. But we have tutorials every day...they try to make it as near to working life as possible at Blackhall, use real forms etc. The tutors explain their real life experience, so you do learn."

Another agreed: *"It's really good. The course is getting better. There's no discrimination. It's maybe 70% women..It's right across all the tutorial groups.. The predominance of women is amazing."* At undergraduate level, participants had also noted that women were in a majority of the class, but *"it's more obvious at Blackhall. At [my university], there were more women, but the boys were more competitive, more outspoken, more women went ahead into Blackhall."*

Similarly, there was little experience of discrimination in legal offices: one participant summed up: *"I was given equal opportunities, if you're good and can do it, it doesn't matter if you're male or female. Sex doesn't come into it, if you're good at the job they'll keep you, if you can put in extra effort."* Another remarked:

"I haven't come across it yet. Our age group is more conscious. There's an emphasis on equality and discrimination law in college. Maybe in the early '80s when there weren't so many women. Women will speak out more if the boss says something. So many women are going in, it must be easier."

However, two respondents to the survey said they had experienced discrimination in legal firms: one respondent felt that it was *"very indirect but in the delegation of work to male and female apprentices."* Another said: *"Male trainees appear to get more responsibility and better experience."*

Similarly, focus group participants agreed that:

“In small practices women tend to do conveyancing and stay there – the men veer towards litigation. [In one city] there’s some defence litigation by three or four firms. Everyone else works for the plaintiff. Men keep it for themselves though some women are now trying to get in, that’s one thing I see clearly. It’s a bit unbalanced maybe. The litigation is mainly PI (personal injury). In family, there’s a lot more women – you’d see a lot of women. In the District Court, it’s both.”

But one thought this was because: “A lot of women solicitors don’t like going into court. You do hear that some are quite happy in the office. Others like going into court – it’s a personal taste. You put all your talent into what you like.” However, she spoke of a particularly obvious case of discrimination that she had seen occur in one city (not Dublin):

“I know two lady solicitors who took over or bought a practice that did a lot of defence litigation previously, for insurance companies. They [the insurance companies] pulled their files when the two took it over, they said it was because of their lack of experience, but maybe men are better litigators.”

As she said, the problem even where such apparently overt discrimination had occurred, was that no remedy was available:

“With insurance companies, I don’t see what redress is possible, you can’t sue them for taking away their business, or maybe you could? But what do you gain? There’s a stigma, maybe more outside Dublin, if solicitors take cases against other solicitors.”

The difficulty generally with obtaining a remedy for discrimination was addressed by one participant, who said:

“If I was being discriminated against at work, to go to the EAT [Employment Appeals Tribunal] is saying you’re weak, acknowledging, kind of giving in, it’s a man’s world. That’s a terrible statement. But you don’t want to be a test case. Unless it’s very severe I’d try to sort it out myself, or another way. If it was a clear case, you’re quite entitled, but something really unfair, but maybe it’s quite damaging to your career long-term, if the next employer looked at your work record, of five candidates one has taken action against her employer, if you have well-founded grounds and a clear case then no-one would have a problem. Smaller acts though would be different.”

However, another thought, more optimistically, that:

“women are more outspoken in the office now, very quick to say ‘I don’t appreciate that’...I heard a secretary say that to a male solicitor, he shut up! Women are more clued in, they won’t put up with old-fashioned stuff. Maybe a few years ago it was different.. change has happened in the last 2-3 years, or in the last five years maybe.”

3.9.4 Effect of Increased Numbers of Women Solicitors

Given the dramatic increase in women entering the solicitors' profession, within in the last decade, respondents were also asked what changes, if any, they thought that increasing numbers of women solicitors would make to the profession. One female respondent suggested: *"It should cause major concerns in relation to family and work flexibility to be addressed and introduce options of working part-time etc."* Another felt that more women would *"make it a more balanced and representative profession."* In the same vein, another woman said it would mean *"more equality in the workplace and less of 'the boys club';* a second said *"Less exclusive, less confrontational – more conciliatory approach to problem-solving. More equal opportunities. Less 'old boys network';* and a third respondent (male) said *"it may lessen the 'macho' element but increase the 'emotional' element"*.

One woman suggested it would lead to *"Better client care"* and another suggested: *"Improvements in efficiency!"* But a male respondent thought differently: *"No change,"* and another male respondent expressed an even more conflicting view: *"Due to female inefficiency, it will cause delays and upset to the legal system and will create a sorority type scenario where, as in other professions, men are pushed into the background."* More thoughtfully, one woman considered:

"In some ways, not much, as a successful woman solicitor needs to adopt something of a male work ethic. In other ways, there is an increasing acceptance of women taking maternity leave, career breaks etc, and an acknowledgement that you can still do your job and look after a family as well."

3.10 Steps to Improve Opportunities for Women in Law

A commonly held view among undergraduate law students, was that problems for women did not arise at the undergraduate stage, but rather within the professions. As one wrote:

"I do not believe that the problem of opportunity arises in the process of studying law, rather that the problems begin to arise in law as a choice of professional career. The whole system, especially that of the barrister, is geared towards a male hierarchy and is too traditional and conservative. In contrast, women enjoy what I consider equal opportunities and treatment in the academic system, ie university."

Similarly, another wrote *"While men and women are probably treated equally while in university, when they enter the workplace, it is probably easier for a man to get ahead, especially if a woman chooses to have children."* The same view was summarised in the comment: *"Studying is not the problem, it's combining a job and a family."*

But some thought that more could be done at university level: *"Within local institutions like the law school, women in positions such as Senior Lecturers should encourage women to excel and practise a more one-to-one approach."*

Another agreed:

“I think girls in law school should become or be encouraged to become more comfortable with speaking in public, as many are daunted by the thought of doing this while boys have no problem with it and thus see going to the bar as a less big deal than many girls would. Generally I would say that there is a lack of confidence among many girls studying law to be as assertive and confident as boys, even though in many cases they are achieving higher results.”

The need to increase the confidence of female law students was raised by several students; one suggested: *“Encourage young women studying law to develop confidence in their own abilities through seminars/workshops.”*

Other practical proposals for achieving change at law school included: *“Girls in underprivileged areas should be given the opportunity to come in contact with practising lawyers by means of seminars etc. This would make the profession less closed and intimidating”* and:

“More mentoring – internships with women judges, solicitors, barristers etc..Require ‘feminism and the law’ – all the other courses are essentially masculinity and the law thus far and so it is only right. More lectures/seminars with special speakers who are women in the profession that are required as part of the coursework and are not billed as a special ‘women’s’ lecture.”

But most of the students who accepted the need to improve women’s opportunities identified particular problems with the legal professions themselves that would have to be addressed. One observed that:

“The legal system as a whole has to be changed to overcome the present old boys club ethos, which excludes not only women but also the vast majority of the population who do not belong to this particular class.”

Another student said:

“I think the major obstacle to women is the long hours that have to be put in order to be really successful. When women have children, their priorities change and it becomes difficult for them to devote the time necessary to reach the top in the legal profession. I don’t think much can be done to change this situation.”

Many of these students made practical recommendations for change within the professions. One suggested: *“Make more part-time opportunities available.”* Another proposed *“Making progress in the professions more open and transparent – with certain criteria expected and/or an interview process to become an SC or judge.”*

A third argued:

“I think it is important to raise women’s profile in areas of law traditionally associated with men. I find it discouraging that women continue to be pigeonholed in areas of family law, human rights. I think more positive encouragement should ensue in order to see an increase in the number of women wishing to become practising barristers.”

And one detailed suggestion for change was as follows:

“I think that abolishing the distinction between barristers and solicitors, and also allowing barristers to form chambers, would help the position of women, making the working environment more flexible. I think that as more women reach the upper echelons of legal society the traditional chauvinistic attitude of the legal profession will diminish, but unless it becomes easier for women to remain in the profession, particularly as barristers, by becoming more flexible, there won’t be the number of women necessary for this change to come about.”

Many students thought, however, that more fundamental societal change would be necessary in order to improve opportunities:

“Before steps can be taken, changes should be made in the male/female relationship structure, which is shaped by the acceptance and maintenance of different roles for men and women in society...Men should have an equal expectation on them to participate in the household but this can only come about if they are introduced to such thinking in their childhood.”

Others summed up similarly:

“Prejudices regarding a woman’s lack of bravado and confidence in comparison to a man, which I believe can hinder a woman’s chances, cannot be easily erased” and “How can you change all the de-Valerian stereotypes in one go? It is up to the people to change their views, otherwise true equality will not be achieved.”

But some were sceptical about the need for any steps to be taken at all:

“To be honest I believe it is up to the individual to make their own opportunities” and “I didn’t know it was an issue. None of the women I know who are studying law seem to have problems with discrimination on the grounds of their gender.”

Others thought that change would occur inevitably with increased numbers of women lawyers. As one student said:

“I don’t think there are any steps to be taken – I think that a SILENT REVOLUTION is taking place and equality is slowly being achieved. I disagree fundamentally with affirmative and discriminatory action.”

Another concurred that change would come with time:

“I think it will be a s-l-o-w process, primarily hinging on having an increasing number of women in the profession so that it is seen as ‘normal’. I also think it is important for women not to be (or allow themselves to be) perceived as victims, since that will only perpetuate the stereotypes of women in law. We need to get on with it!”

Few concrete proposals for reform were made by student barristers, with one respondent saying *“do not perceive any difference between male and female lawyers”*. Most however agreed that there could be improvements. One respondent suggested there should be *“more high profile women judges, barristers and partners.”* Several suggested that moving to a chambers system would improve the position of women barristers, since it would enable the introduction of maternity leave, and sick leave. But others suggested there might in fact be a loss of flexibility with such a move. As one (male) participant remarked, referring to the present library system as comprising a group of self-employed persons: *“The Bar should be so amenable to change – it should be able to change so easily”*.

Among the student solicitors, concerns were raised about many of the issues emerging from the study of qualified practitioners (see Chapters 4 to 9). In particular, trainees thought that workload would be a problem; that it would be difficult to ‘compartmentalise’ or switch off from work in one’s own time; that it would be problematic to combine work and family life; and that the profession was insufficiently flexible to accommodate this at present. But others thought change would come inevitably, as more women qualify as solicitors (further evidence of a belief in the ‘trickle-up fallacy’ discussed in Chapter 2).

Better provision of childcare facilities was proposed by many, together with greater flexibility from employers. One female trainee solicitor suggested:

“Positive discrimination regarding number of female partners in legal firms; More availability of locum solicitors particularly in rural areas. A female solicitor going on maternity leave could represent half the solicitors in that firm. This fact makes country practices slower to employ female solicitors because they would not be able to handle the extra workload during the maternity period.”

Another suggestion was: *“Better childcare or more understanding of the need for flexible working hours. Men taking equal responsibility for the home.”* Similarly, another recommended: *“Better support/resources for working mothers to assist them in maintaining a balanced homelife and career.”* And a practical proposal from a male respondent was: *“Clearly articulated office policies on women’s career guidance, in particular in relation to when women become pregnant. The profession forces women to have a pregnancy only when they reach a certain point in their career.”*

However, one woman remarked about employers offering women more flexibility: *“that could go either way. You don’t want to be seen to get a helping hand just because you’ve had children – you can’t punish someone just because they don’t have a child.”*

On a more general theme, another woman said *“I think it is difficult to forget about workload – very difficult to detach in own personal time. I know this is common having talked among other female trainees.”*

Some thought change needed to be more fundamental, one asking for: *“Male attitudes to change.”* Similarly, another said: *“Need to change the outlook of men in relation to women, so that they can be seen as equals in workplace.”* And a third wrote: *“Make salaries of female solicitors similar to those of male solicitors,”* indicating a clear view that discrimination exists in this area at present.

But a further (also female) trainee solicitor, when asked what steps are necessary, replied: *“None – matter of time due to the increase of women solicitors now practising – opportunities will automatically have to emerge by default.”* A male trainee simply said: *“None necessary.”*

3.11.1 Conclusions

Some obvious conclusions emerge from a detailed study of the motivations, expectations and experiences of those engaged in the study of law, both at undergraduate and at professional training levels.

First, from the results of the undergraduate survey, it appears that women and men have different motivations in studying law. In particular, women were more inclined to cite getting the CAO points as a strong motivation than men, while men were more likely to regard the ability to practise advocacy as a strong motivating factor. Similarly, on the attitudinal questions, again men and women expressed different views, with women very much more likely, for example, to believe that they were not treated equally in appointment to top jobs; and to see the culture of the legal profession as better suited to men’s careers.

Second, taking the views expressed by those on both the undergraduate and professional courses together, it is perhaps surprising how many of the women students had already given thought to the difficulties that would be entailed in combining family life and legal careers. Many were very pessimistic about their ability to do this. Similarly, there appeared to be little awareness of the many women pioneers who had already managed to forge successful careers while having a family. The students saw themselves as having to make a choice, in a way that their mothers had not had to do - although many of them had mothers who worked outside the home. It was as if there was a disconnection between the generations of women lawyers. Current students were unable to identify with those who had gone before. In addition, they felt that those women were too exceptional to provide a blueprint for career success. Perhaps most worryingly, they saw work/life balance issues as a

problem affecting individual women, and seemed unaware of the broader context. The small number of male students involved in focus groups and surveys, by contrast, had not given any thought to work/life balance issues, and expressed genuine surprise when confronted with these concerns of their female colleagues.

Third, the issues that were raised by the students reflect acutely the concerns raised among women actually practising law, showing that female students have already gained an accurate, if rather negative, perception of what it is like for women who work in the law. The long hours culture, the lack of provision for childcare, and general lack of flexibility in legal workplaces, were referred to by many. However, like the women professionals, they expressed serious doubt as to whether any of these problems could be remedied. Also like their professional counterparts, many of them simply assumed that the problems existing for women in the professions would be resolved over time, as more women qualified. This view was expressed by many students, without any apparent recognition of the fact that equal numbers of men and women have been qualifying with law degrees for the last 20 years. It seems that the 'trickle-up fallacy' is alive and well, even at an early stage in the legal training process.

Finally, many of the undergraduates made useful suggestions for improving opportunities in the teaching of law at university, with an emphasis on the need to develop the confidence of female students. At the professional training level, a marked contrast emerged between the experience of studying at King's Inns, and that of studying at the new Education Centre in Blackhall Place. While the King's Inns system was criticised as being, in the words of one participant, "*old-fashioned and hierarchical*," the Law Society course in contrast was praised for its relevance and practicality. However, in neither institution was gender discrimination perceived to be an issue (although it is clear that sexual harassment can occur at social events where King's Inns students mix with qualified barristers). Rather, most participants believe that discrimination only becomes an issue for women once they start working within the professions, for the reasons identified above. The remainder of this study is aimed at finding out whether or not this is the reality for women lawyers.



Chapter 4

*Lawyers' Lives -
Survey of Legal Professionals*



4

Lawyers' Lives - Survey of Legal Professionals

The sections that follow concentrate on the analysis of empirical data collected for this study in the form of survey questionnaires of quantitative and qualitative data, interviews and focus group discussions. The survey was conducted using a mailed questionnaire for self-completion. It was sent to 1,292 barristers, 2,200 solicitors, all the members of the judiciary, and all lawyers in academia or public sector work (380 persons in total). The response rate was 23 per cent (788 out of a total of 3,422 questionnaires sent).

The survey data are based on the responses of 788 legal professionals, comprising 32 judges (31 of whom gave their gender), 518 solicitors (513 of whom gave gender), 220 barristers (216 gave gender) and 18 others. Women comprised nearly three-quarters (73%) of the solicitors who responded, compared with one quarter (25%) of the barristers and only 2 per cent of the judges. A total of 28 respondents omitted to provide information relating to their gender and/or profession (Table 4.1). Unless otherwise stated, all of the statistical tests referred to in this study are based on Pearson's chi square test.

Table 4.1 Gender Representation among Respondents

	Men	% of Men	Women	% of Women	Total
Judge	23	9%	8	2%	31
Solicitor	146	56%	367	73%	513
Barrister	91	35%	125	25%	216
Total	260	100%	500	100%	760

This section sets out the demographic characteristics and educational attainment of the survey respondents.

4.1 Demographic Profile

4.1.1 Gender of Respondents

The 788 responses to the questionnaire included 272 men (35% of the total) and 506 women (64% of the total). An additional 10 respondents did not state their gender. These responses (1% of the total) have been excluded from further analysis.

4.1.2 Age of Respondents

The female respondents to the questionnaire have a younger age profile than their male counterparts. More than two-thirds (67%) are aged under 40 years compared with 40 per cent of the men (Table 4.2). These differences are statistically highly significant. They suggest that the legal profession is becoming feminised, due to high entry levels of female graduates in the last one/two decades. The smaller proportion of women among older legal professionals may reflect lower levels of recruitment and/or higher levels of attrition (wastage/exit) from legal careers by women. In the absence of age data on female and male professionals it has proved impossible to establish whether these age differences reflect the age profile of the professions generally. The reason for the smaller number of younger men may also be due to a lower response rate from young men than from their older male colleagues.

Table 4.2 Age Profile of Respondents

Age Category	Men	% of Men	Women	% of Women	Total
20-29 years	23	9%	92	18%	115
30-39 years	84	31%	246	49%	330
40-49 years	75	28%	125	25%	200
50-59 years	63	23%	34	7%	97
Over 60 years	25	9%	7	1%	32
Total	270	100%	504	100%	774

Chi-Square Test .000

Unless otherwise stated, all of the statistical tests referred to in this study are based on Pearson's chi square test.

4.1.3 Marital Status

Allied to their younger age profile, female respondents are also less likely than their male colleagues to be married or formerly married. Over one-third of the women (34%) are single while this applied to only one-fifth (22%) of the men, two-thirds of whom (68%) are married. In contrast only half of the women who responded (51%) are married. These differences between women and men are highly significant. However, 11 per cent of the women are living with their partner, compared with 5 per cent of the men (Table 4.3).

Table 4.3 Marital Status of Respondents

Marital Status	Men	% of Men	Women	% of Women	Total
Single	59	22%	170	34%	229
Married	181	68%	256	51%	437
Widowed	4	2%	7	1%	11
Separated	9	3%	10	2%	19
Divorced	1	<1%	4	1%	5
Living with Partner	13	5%	54	11%	67
Total	267	100%	501	100%	768

Chi-Square Test .000

4.1.4 Family Status

A total of 346 respondents have children. The proportion of women with children is lower, 43 per cent compared, with two-thirds of men (67%). This difference is highly significant. While women comprise 65 per cent of survey respondents, they collectively have less than half of the children (49%). Few fathers have only one child - 28 in total compared with 57 women (Table 4.4). This may be due to their age and current marital status. Overall the men in the survey are more likely to have more than three children compared with female respondents.

Table 4.4 Total Number of Children Among Respondents

	No. of Men	No. of Women	Total
1 Child	28	57	85
2 Children	44	62	106
3 Children	44	47	91
4 or more Children	40	24	64
Total Parents	156	190	346
TOTAL No. of Children	446	426	872

Chi-Square Test .009

4.1.5 Postponed Parenting?

The significant difference between men and women may be attributed to the postponement of childbearing, or the ‘child delay’ phenomenon, discussed further in Chapter 7, and noted among focus group participants. They observed that many women colleagues had delayed having children, due to the internalisation of fear about the consequences for their careers. Whether that fear is objectively justified or not, is another question (see section 7.4.4). One woman solicitor in a large firm said that no woman partner in her firm had a child before being made partner: *“women solicitors are having children older, the same across England, and the US... It applies to women in careers everywhere.”*

This pragmatic view was confirmed by a younger and more junior solicitor, who commented:

“About children, I would feel I was selling myself out, studying so long ..I would like to be established as a solicitor before that...It is harder for women, you want to be every bit as good if not better than men; you want to have a successful career and home.”

Another participant said she herself had *“waited until I was well in as a partner. Instinctively I felt it would be to my disadvantage earlier.”* But others thought this delay may have adverse consequences: *“It’s worrying to think that young women solicitors are holding off having children – because maybe they’ll hold off, for some implicit reason, until they can’t have children.”* It was also agreed that the role models of women partners who are mothers may present a daunting example for young women solicitors, since their lives are so busy.

Among barristers, a similar fear about having children was identified, although this took a different form, as one participant recalled:

“Some years ago, a woman colleague was having a baby but was terrified that others would find out, and her work would evaporate. She had her gown on to hide the pregnancy, even at seven or eight months. She feared solicitors would hear and not brief her. That might be an issue, I have heard of this fear from others, they say careful planning is necessary to have babies at the start of vacations. I’m interested to know if this fear is real.”

Another barrister put it graphically as follows:

“The present position is that having a baby adversely affects your career unless you come back to work almost immediately after the birth. For me this is the single most difficult aspect of being a barrister – I have been putting off the prospect of pregnancy for that reason.”

4.2 Educational Attainment

4.2.1 Secondary Education

Information was sought on the type of school attended by respondents. The results show that men are much more likely to have attended a fee-paying school (62 per cent), compared with women (38%) (Table 4.5). These differences are highly significant. This gendered pattern of public versus private education was noted in the international literature in Chapter 2.

Table 4.5 Secondary School Type Attended

Type of School	Men	% of Men	Women	% of Women	Total
Fee Paying	166	62%	193	39%	359
Non Fee-paying	103	38%	305	61%	408
Total	269	100%	498	100%	767

Chi-Square Test .000

4.2.2 Tertiary Education

More than half of male (55%) and female (56%) respondents entered the legal profession with a single honours law degree, while a further quarter (26% of men and 23% of women) graduated in another discipline or entered the profession without a degree (some for example had qualified as legal clerks first). The remainder had obtained a law degree combined with other studies (Table 4.6).

Table 4.6 Type of Degree

Degree Type	Male	% of Men	Female	% of Women	Total
Law Degree single honours	132	55%	269	56%	401
Law Degree + other	47	19%	104	21%	151
Non-Law Degree	62	26%	110	23%	172
Total Degree	241	100%	483	100%	724

Ten per cent of female and male respondents hold first class honours degrees. However women (54%) are more likely to hold upper second class degrees than men (43%). Conversely, men are more likely to have achieved a lower second or third class degrees. These differences were statistically significant (Table 4.7).

Table 4.7 Class of Degree

Degree Class	Men	% of Men	Women	% of Women	Total
First	21	10%	43	10%	64
Upper Second	94	43%	245	54%	339
Lower Second	72	33%	117	26%	189
Third	31	14%	45	10%	76
Total	218	100%	450	100%	668

Chi-Square Test .036

Similar proportions of women and men had studied full-time - 95 per cent and 94 per cent respectively. Only 5 per cent of both male and female respondents had studied for their legal degree on a part-time basis.

There were highly significant differences among the respondents in terms of the date of graduation. One-fifth of the men (20%) graduated before 1970, compared with 3 per cent of the women. In contrast, less than one-quarter of the men surveyed (23%) graduated after 1990, while 43 per cent of the women had done so (Table 4.8).

Table 4.8 Decade of Graduation

	Men	% of Men	Women	% of Women	Total
<1970	30	20%	10	3%	40
1971-1980	50	33%	57	20%	107
1981-1990	36	24%	98	34%	134
>1990	35	23%	126	43%	161
Total	151	100%	291	100%	442

Chi-Square Test .000

Similar proportions of women and men hold postgraduate qualifications, 44 per cent of the men and 47 per cent of the women. In the majority of cases (75 women and 41 men), the respondents had obtained an LLM or equivalent. A total of 29 had a Ph.D. (13 men and 16 women). The remainder had a Masters degree (15 men and 7 women) (Table 4.9).

Table 4.9 Postgraduate Qualification

	Men	% of Men	Women	% of Women	Total
Yes	105	44%	217	47%	322
No	136	56%	243	53%	379
Total	241	100%	460	100%	701

4.3 Fees/Support

A large proportion of respondents had received financial support during their training; 332 women and 167 men (62 per cent of the total) had received support from their parents (Table 4.10). Men were marginally more likely than women to have their own income, while more women had support from a firm or their employer. In total, 32 women and only two men had been supported by their partner.

Table 4.10 Source of Fee Support

Fee/Support from:	Men	Women	Total
Parents	167	322	489
Partner	2	32	34
Own income	92	153	245
Firm/Employer	41	108	149

A total of 72 respondents said that they had supported themselves during training on the basis of other sources of income. Of this group, 22 had relied either fully or partially upon bank loans; 24 had received grants or scholarships, and 20 had supported themselves through part-time work.

Chapter 5

Why Law? - Motivations, Aspirations and Expectations



5

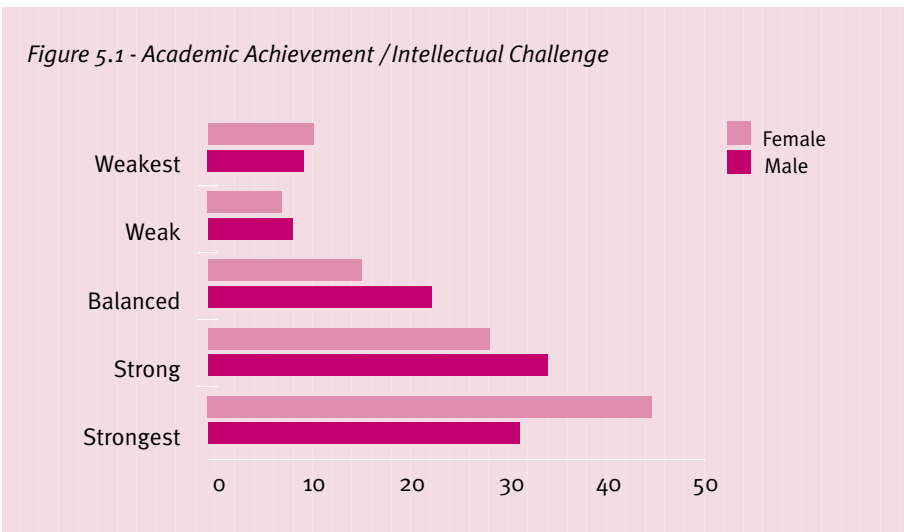
Why Law? - Motivations, Aspirations and Expectations

Respondents were asked to rank the factors that motivated their choice to be a barrister/solicitor. A strong gender difference was evident in the answers to this question, just as there was a gender difference in the motivations of male and female students (Chapter 3). Women ranked the 'academic achievement/intellectual challenge' factor markedly more highly than men. One might speculate that women rank this is because this factor relates to an objective way of measuring success, and women tend to do better in examinations. No one overriding motivation may be identified among men respondents (although the 'desire to work independently' factor was cited by more men than women). The 'desire to work as part of a team' was more likely to be cited as a weaker motivation by men than by women, and 'advocacy' was more likely to be cited as a stronger motivation by men.

5.1 Factors Motivating Respondents to Choose a Legal Career

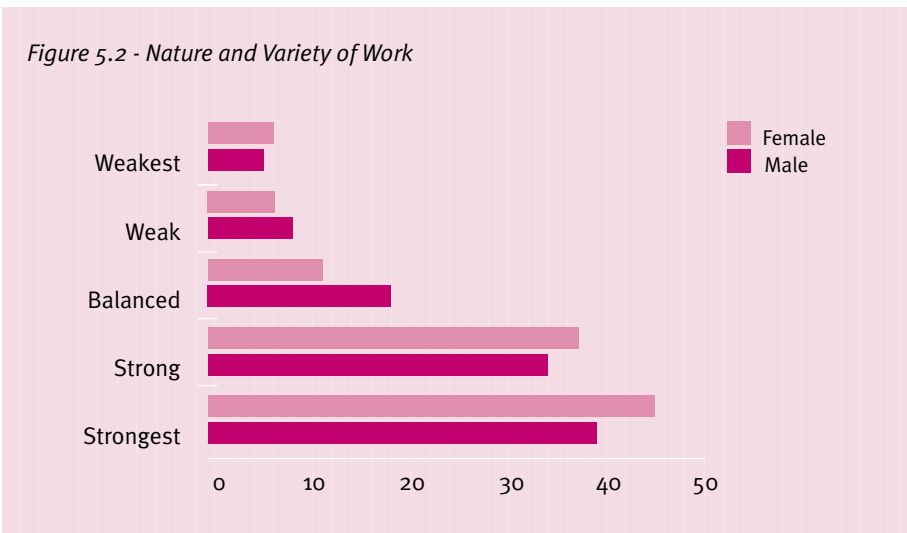
5.1.1 Academic Achievement/Intellectual Challenge

Academic achievement and/or intellectual challenge was rated a strongest motivator for female (45%) compared with male (31%) respondents. Nearly three-quarters of the women (72%) believed this was a strongest motivator compared with 64 per cent of the men surveyed (Figure 5.1).



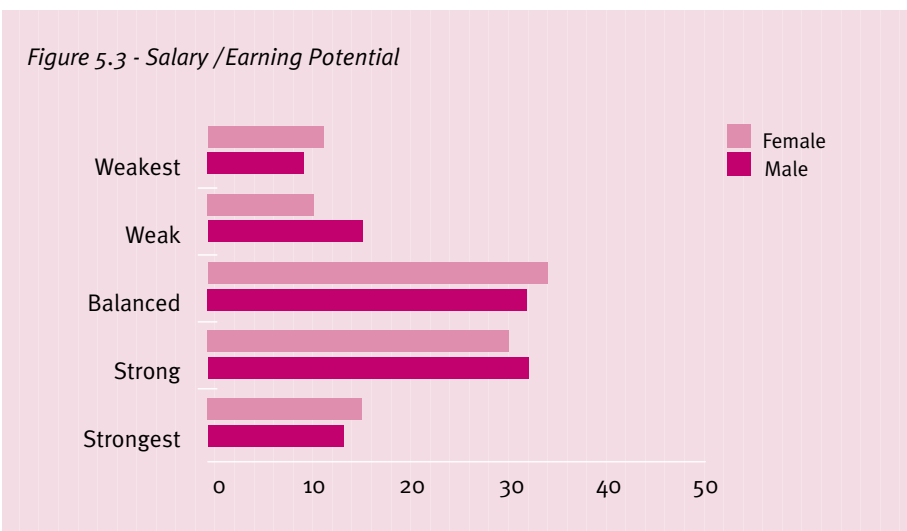
5.1.2 Nature and Variety of Work

The nature and variety of work was also a stronger motivator for more female respondents than male. Eighty per cent of the women rated this as a strong motivator, including 45 per cent who rated it as strongest motivation, compared with 72 per cent of the men, including 39 per cent who rated it as strongest (Figure 5.2).



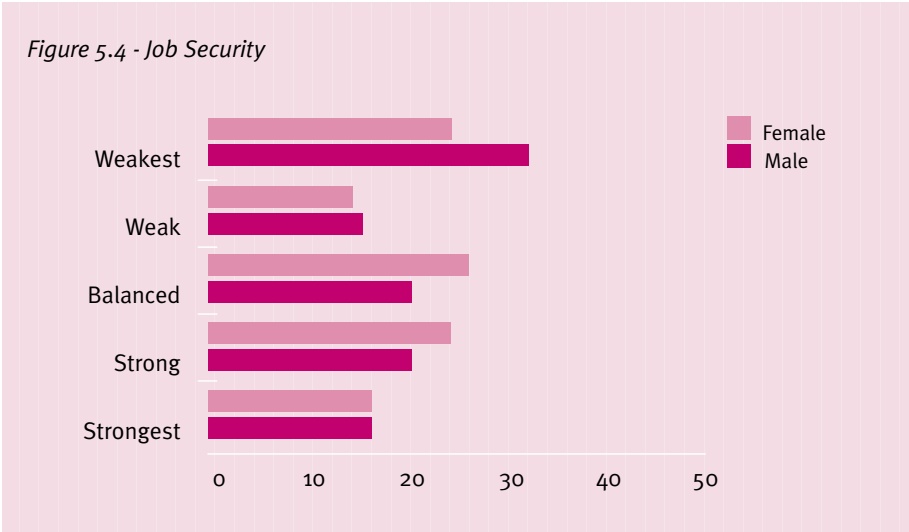
5.1.3 Salary level/Earning potential

There was very little difference in the rating of salary/earning potential as a motivator among women and men. Only a minority (45%) of men and women rated it as strong/strongest motivation (Figure 5.3).



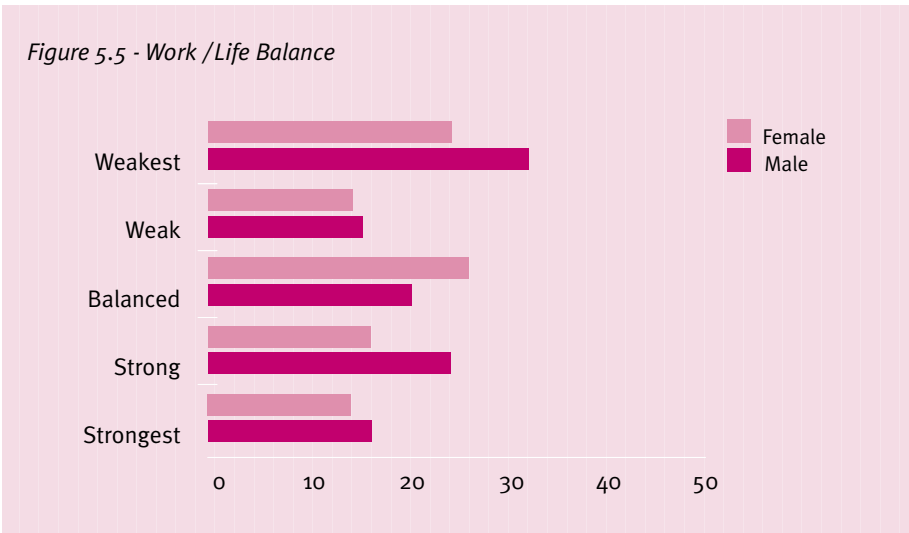
5.1.4 Job Security

Job security was not a key or strong motivator for women or men entering the legal professions. Only 37 per cent of women and 34 per cent of men rated it strong/strongest (Figure 5.4).



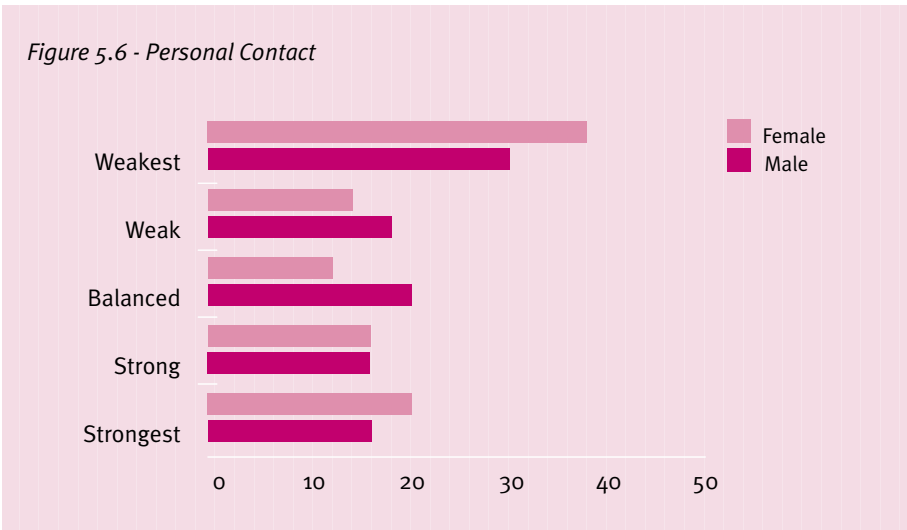
5.1.5 Work/life balance/Flexible working arrangements

More men (42%) ranked work/life balance as a strong/strongest motivator than women (32%) (Figure 5.5). Whilst it might have been expected to be the reverse, this response pattern is congruent with the findings in relation to work/life balance in this survey (see Chapter 7), in that it may reflect the difficulties for women associated with achieving work/life balance within legal practice.



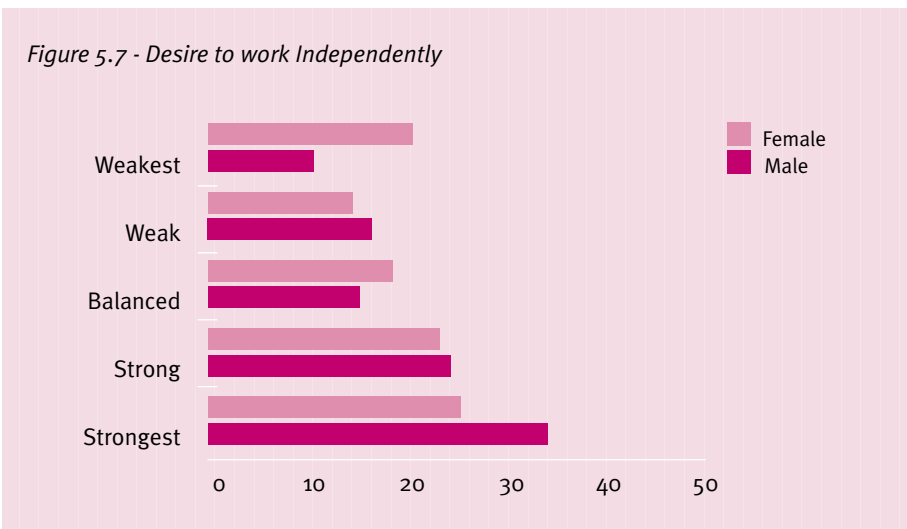
5.1.6 Personal contact with particular area of profession

Personal contacts within the legal professions was not an important or strong motivator for respondents, and was rated weakest by 38 per cent of the women, compared with 30 per cent of the men (Figure 5.6).



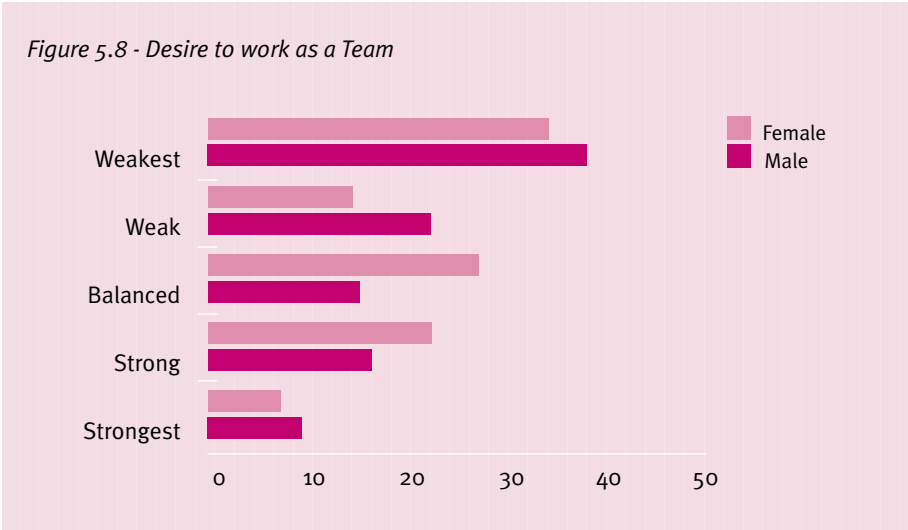
5.1.7 Desire to work independently

The desire to work independently was a strongest motivator for one third (34%) of men compared with 25 per cent of women and a strong motivator for almost one-quarter of men (24%) and women (23%). However for one-fifth of female respondents considered it was considered the weakest motivation, which applied to only 11 per cent of the men (Figure 5.7).



5.1.8 Desire to Work as Part of a Team

Working as part of a team was a strongest motivation for only a small proportion of women (6%) and men (9%), though more female respondents rated it as a strong motivation (22%) compared with male respondents (17%) (Figure 5.8).



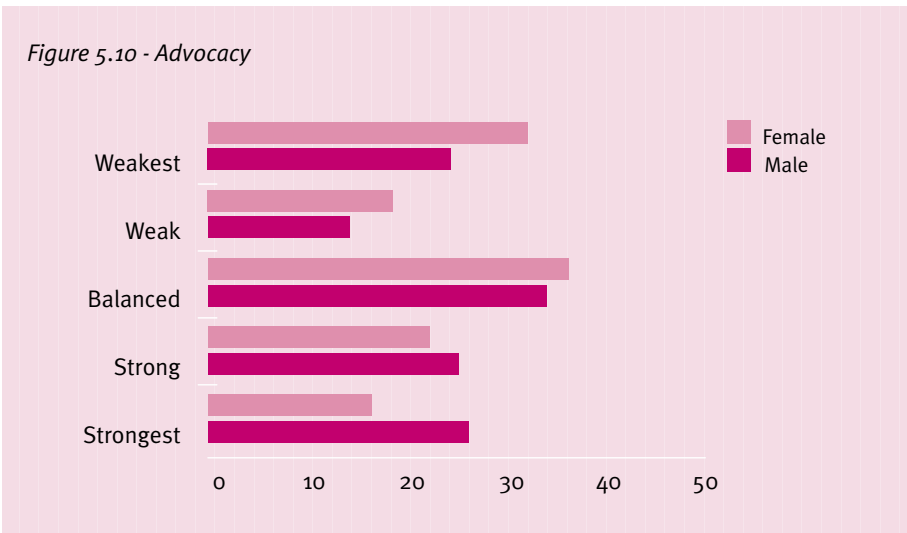
5.1.9 Prestige/Status

Only a minority of men (36%) and women (33%) ranked prestige/status as a strong or strongest motivation. However more women ranked this factor strongest (13%) than men (9%) (Figure 5.9).



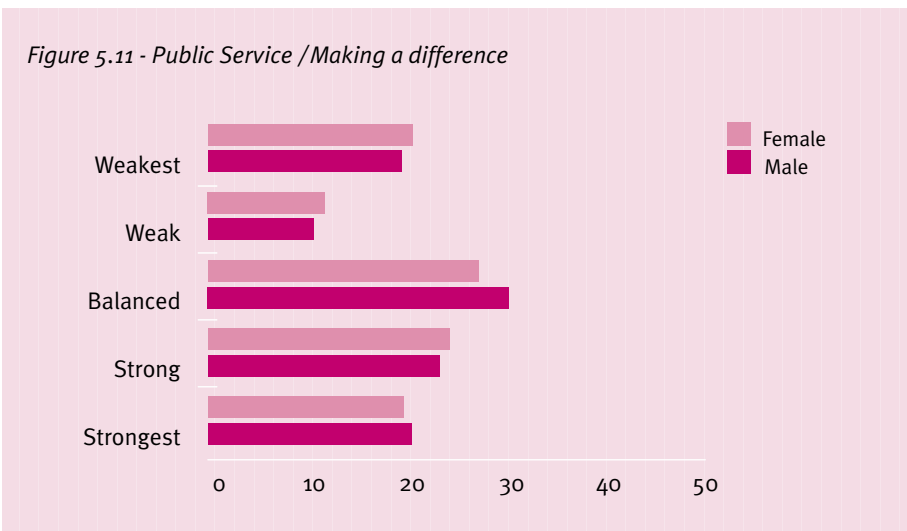
5.1.10 Advocacy

Advocacy was a strongest motivator for more than a quarter of the men (26%) and a strong motivator for a further 24 per cent. Among female respondents advocacy was a strongest motivator for 16 per cent and a strong motivator for 21 per cent. This suggests a clear difference in terms of gendered attractions of law for this factor (Figure 5.10).



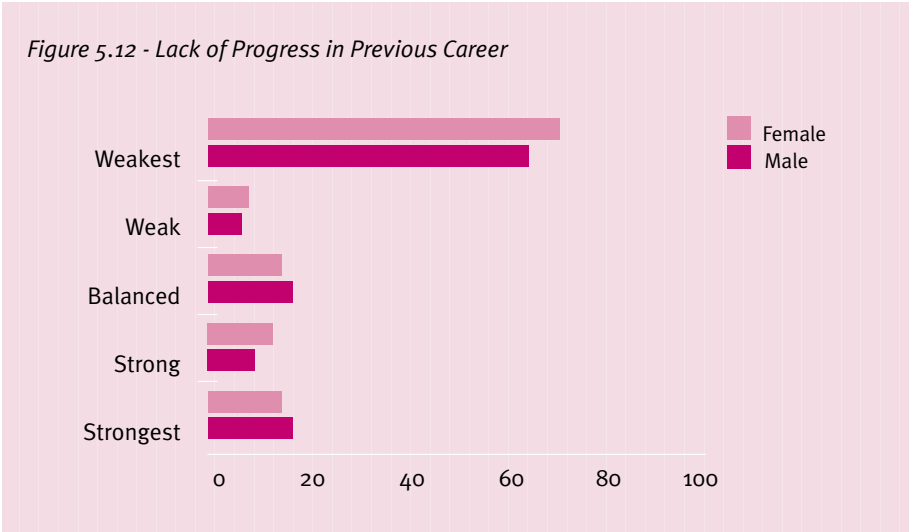
5.1.11 Public Service/‘making a difference’

There were no discernible gender differences in the rankings of public service/‘making a difference’ as a motivator. Forty-two per cent of men and 43 per cent of women ranked this either strongest or as a strong motivation (Figure 5.11.)



5.1.12 Lack of Progress in Previous Position/Career

Only a small proportion of male and female respondents ranked lack of progress in previous position/career as a strong/strongest motivator for entering the legal professions, 20 per cent of men and 21 per cent of women (Figure 5.12).



5.2 Role of Mentoring

There were no significant gender differences apparent from the responses under this heading, 36 per cent of men and 38 per cent of women had a role model or mentor during their career (Table 5.1). Proportionately more women than men cited a partner/close friend or manager/employer as a mentor. Among individual role models mentioned were Barry Scheck and Mary Robinson.

Table 5.1 Role Model/Mentor of Respondents

Mentor	Men	Women	Total
Parent	38	62	98
Partner	5	16	21
Close Relative	12	22	34
Close Friend	11	28	39
Manager/Employer	15	46	61
Other	18	21	39

5.3 Respondents' Previous Links with Legal Profession

A perhaps surprisingly high number of respondents of both sexes responded that they had no previous links with the legal profession. Dispelling any idea that women's progress is more likely to be due to family connections, female respondents were less likely than their male counterparts to have had previous links with the legal profession - 28 per cent had a connection, compared with 34 per cent of the male respondents. The commonest links for women and men were among solicitors, and women were more likely than men to have had a close relative, followed by a parent or close friend. Links with barristers were more common for men though 25 women cited a close relative who was a barrister. Almost equal numbers of men (11) and women (9) had a parent who was a judge, though again proportionately more women had a close relative who was a judge (Table 5.2).

Table 5.2 Links with Legal Profession

Links with Barrister			
	Men	Women	Total
Parent	12	13	25
Close Relative	17	25	42
Close Friend	7	15	22
Links with Solicitor			
	Men	Women	Total
Parent	43	53	96
Close Relative	23	58	81
Close Friend	8	30	38
Links with Judge			
	Men	Women	Total
Parent	11	9	20
Close Relative	3	8	11
Close Friend	1	2	3

5.4 Level of Satisfaction with Current Work/Professional Situation

Similar responses to the question on job satisfaction were offered by male and female respondents generally. However, a higher proportion of men recorded that they were fairly dissatisfied with their security of employment; presumably reflecting the higher proportion of men who are self-employed (often as barristers) (Table 5.3).

Table 5.3 Levels of Satisfaction

	Very Satisfied		Fairly Satisfied		Fairly Dissatisfied		Very Dissatisfied	
	M	F	M	F	M	F	M	F
Interesting and stimulating work	54%	45%	40%	49%	6%	6%	<1%	<1%
Flexible working arrangements	44%	36%	43%	44%	11%	14%	2%	6%
Prospects for advancement	35%	25%	44%	45%	15%	21%	6%	9%
Recognition of Professional Skills	29%	27%	44%	50%	19%	16%	8%	7%
Security of employment	42%	38%	34%	45%	16%	9%	8%	8%
Financially worthwhile/rewarding	35%	29%	47%	49%	14%	16%	4%	6%
Working to full capacity	40%	40%	42%	42%	15%	13%	3%	5%
Relationship with colleagues	44%	53%	47%	40%	5%	5%	4%	2%
Public service/‘Making a difference’	23%	16%	48%	48%	19%	24%	10%	12%

More men were very satisfied (54%) with their interesting and stimulating work than female respondents (45%). High levels of satisfaction were also recorded for flexible working arrangements (44% of men but only 36% of women). Women were very satisfied (53%) with relationships with colleagues compared with 44 per cent of men.



Chapter 6

*Uneven Career Progress -
Choice or Prejudice?*



6

Uneven Career Progress - Choice or Prejudice?

Having examined gender difference in career motivations and aspirations in Chapter 5, this chapter concentrates on career progression and experience. The aim was to examine, first, whether women and men have different career paths; and, if so, can this simply be attributed to the choices women make about their careers - or is it due to prejudice against women in the form of personal or structural gender bias? Respondents' answers clearly show a perceived difference between men and women in terms of career progression – and many of them believe the difference is due to their gender, which itself dictates in many cases the career choices that they have made.

6.1 Entry to Legal Professions

6.1.1 Decade Entered Legal Profession as Barrister/Solicitor

As the demographic section showed, the profile of women lawyers is younger than that of men, because the proportion of women entering the legal professions in the last decade is much higher than in previous decades. Thus 66 per cent of female respondents had entered since 1990, compared with 24 per cent of the male respondents (Table 6.1). Conversely proportionately fewer women than men had entered before 1980 (14% of women compared with 41% of men). This pattern indicated that there is a statistically highly significant difference between the entry dates of women and men.

Table 6.1 Entry to Legal Profession

	Men	% of Men	Women	% of Women	Total
<1970	34	15%	7	2%	41
1971-1980	59	26%	58	12%	117
1981-1990	57	25%	95	20%	152
>1990	78	34%	306	66%	384
Total	228	100%	466	100%	694

Chi-Square Test .000

6.1.2 Decade When Called to Bar

Similar differences exist in relation to the decades in which men and women were called to the Bar and Inner Bar, though these were not statistically significant (Table 6.2). Among the 131 women barristers, 59 per cent had been called since 1990, compared with 45 per cent of the men.

Table 6.2 Called to Bar

	Men	% of Men	Women	% of Women	Total
<1970	17	15%	1	<1%	18
1971-1980	13	12%	14	11%	27
1981-1990	30	27%	38	29%	68
>1990	50	45%	78	59%	128
Total	110	100%	131	100%	241

6.1.3 Decade When Called to Inner Bar

This pattern was replicated for the call to the Inner Bar, though the numbers are much smaller. Four out of the 5 women were called since 1990, compared with 36 per cent of men (Table 6.3).

Table 6.3 Called to Inner Bar

	Men	% of Men	Women	% of Women	Total
<1970	0	0%	0	0%	0
1971-1980	6	32%	0	0%	6
1981-1990	6	32%	1	20%	7
>1990	7	36%	4	80%	11
Total	19	100%	5	100%	24

6.1.4 Decade When Entered Onto Roll

Among solicitors, the same pattern is evident, and the gender differences are statistically highly significant. Nearly two-thirds of female solicitors (65%) had entered since 1990, while this applied to only 29 per cent of the men surveyed. Conversely only 15 per cent of female solicitors had entered the roll before 1980 while 44 per cent of male solicitors had done so (Table 6.4).

Table 6.4 Entry Onto the Roll

	Men	% of Men	Women	% of Women	Total
<1970	13	9%	6	2%	19
1971-1980	48	35%	45	13%	93
1981-1990	37	27%	68	20%	105
>1990	41	29%	222	65%	263
Total	139	100%	341	100%	480

Chi-Square Test .000

6.2 Career Moves

The majority of respondents have never experienced any career move - 199 of the men, 407 of the women (606 in total). Of the small number who had changed career, there was a disproportionate number of women (35) who had moved from being employed as an in-house lawyer to being a barrister/solicitor. Only 13 men had made this move. More men (22) had become judges compared with women (3). Both men and women made similar shifts to becoming an in-house lawyer and legal academic. However it was more common for men than women to switch between the barrister/solicitor professions (Table 6.5).

Table 6.5 Career Moves

Moves to/from:	Men	Women	Total
In-house Lawyer to Barrister/Solicitor	13	35	48
Barrister/Solicitor to employed In house Lawyer	8	22	30
Barrister/Solicitor to/from Legal Academic	10	18	28
Barrister/Solicitor to Judge	22	3	25
Barrister to/from Solicitor	11	8	19

6.2.1 Years in Profession (Post Qualification)

Further evidence of the gendered pattern of entry can be seen in the number of years women and men have spent in the profession. While only 30 per cent of the male respondents have entered in the last 10 years, this applied to 57 per cent of the women surveyed. This difference in the date of entry between women and men is statistically highly significant. It suggests that while women have been under-represented numerically in the past, recent intake, particularly in the last 10 years, is leading to a more even gender balance - assuming that women remain in the legal professions (Table 6.6).

Table 6.6 Years in Profession

Years	Men	% of Men	Women	% of Women	Total
<2	11	4%	28	6%	39
2-5	31	11%	124	24%	155
6-10	40	15%	136	27%	176
11-15	32	12%	61	12%	93
>16	122	45%	102	20%	224
No Response	36	13%	55	11%	91
Total	272	100%	506	100%	778

Chi-Square Tests: .000

Where respondents had not commenced practice immediately after qualification, they were asked to specify their reasons for not doing so. Sixty-three persons responded to this question, 18 men and 45 women. Four main themes emerged from among the reasons given:

- (a) family-related reasons;
- (b) desire to travel or work abroad;
- (c) financial reasons/job shortage;
- (d) undertaking postgraduate study.

In all, six respondents (all women) gave reasons related to family commitments or child-rearing. One woman solicitor simply said “*child rearing*”. Thirteen took time off to go travelling or working abroad before commencing practice; and ten referred to difficulties obtaining work or saving enough money to commence practice.

Within the legal professions, respondents were asked to state how long they had been in their current post or level. Reflecting their younger age profile and shorter career spans, proportionately more women were in their current post for less than 5 years - 51 per cent, compared with 33 per cent among the men. While over one quarter of the men (26%) were in their current position for at least 16 years, this was the case for only 11 per cent of the women. These differences between the men and women were statistically highly significant (Table 6.7).

Table 6.7 Years at Current Level

Years	Male	% of Men	Female	% of Women	Total
<2	28	10%	64	13%	92
2-5	63	23%	191	38%	254
6-10	44	16%	97	19%	141
11-15	38	14%	42	8%	80
>16	70	26%	55	11%	125
No Response	29	11%	57	11%	86
Total	272	100%	506	100%	778

Chi-Square Tests .000

6.2.2 Promotions/Career Moves

The major form of promotional career move for women and men was from associate solicitor to partner in a law firm. However in seeking to make this move, few men (3) stated that they had been unsuccessful, compared with 27 of the women. Similarly proportionately more men (52) than women (70) had successfully become partners (Table 6.8).

Seventeen men had become senior counsel, while only four women had made this move. Fifteen men who had been barristers became judges, compared with only three women; and a further nine male solicitors had also been appointed as judges, compared with only two women.

Table 6.8 Promotions/Career Moves

Moves to/from:	Unsuccessful			Successful		
	Men	Women	Total	Men	Women	Total
Associate Solicitor to Partner	3	27	30	52	70	122
Junior to Senior Counsel				17	4	21
Barrister to Judge	2	3	5	15	3	18
Solicitor to Judge	6	6	12	9	2	11
Other	11	10	21	22	45	67

The 'other' career moves refer to promotion, transferring to another department, geographical relocation, or horizontal moves between firms. Under this heading, eleven respondents said they had never attempted a career move. One female academic remarked *“Did not attempt as no real prospects.”* A female solicitor said *“Have never made attempts – not interested”*. Others among the eleven said the question did not apply to them; as another woman solicitor said: *“Never applied – set up in own practice 14 years ago.”*

6.2.3 Reasons for Not Being Promoted

Respondents were asked to rank the three most important reasons for not being promoted (or for making no change), if they had not succeeded in being promoted/made a career change. The overwhelmingly most important reason selected by 159 respondents was that they were 'happy in their present position'. The next 3 most important reasons were: 'no further promotion possible' (63), 'not ready' (57) and 'promotion/advancement procedures' (38). There were no differences in the proportions of women and men who offered these reasons.

However, proportionately more women than men cited 'less time for home or non-work interests' (35 women and 2 men), 'lack of encouragement from superiors' (18 women and four men), colleagues' attitudes (11 women and 2 men) and 'more pressure at work' (11 women and 1 man).

Table 6.9 Most Important Reason for Not Being Promoted

	Male	Female	Total
Happy in present position	69	90	159
No further promotion possible	20	43	63
Not ready for advancement	21	36	57
Promotion/advancement procedures	12	26	38
Less time for home or non-work interests	2	35	37
Other	15	23	38
Lack of encouragement from superiors	4	18	22
Colleagues' attitudes	2	11	13
More pressure at work	1	11	12
Fear of rejection	5	7	12
Need for further study/qualifications	3	4	7

Fear of rejection and the need for further study were mentioned by a small number of women and men. Only a small number (30 in total) gave more detailed responses to this question; three (all women) cited child/family reasons. One woman barrister responded:

“Questions make no sense in the context at the bar – the career advancements you identify do not reflect the realities of building a career at the bar. You can make significant advances before reaching the milestone you identify (becoming a judge). Equally the matters identified can slow your progress without affecting either the milestones relevant to a career at the bar.”

Among respondents who had been unsuccessful in advancing their careers in some way, 38 gave reasons (26 women and only 12 men). Six respondents (all women) cited work/life balance reasons: *“Not prepared to commit to the extent necessary because of life/family balance issues”*; *“Company I worked for did not want part-time workers so I left the company and do consultancy work for them on a part-time basis.”*

Eight respondents cited lack of political contacts or connections generally as the reason for their lack of success (three men, and five women): *“Lack of contacts and prejudice”* (male); *“Office politics. Fee income/work stream etc. No official reason ever given.”* (woman).

6.3 Factors Affecting Women's Chances of Being Promoted

6.3.1 “Good Old Fashioned Prejudice” or “Old Boys Club”

It is evident that men have much more positive expectations about women's chances of being promoted than women themselves. Sixteen per cent of men believe that women stand a better chance, compared with only 3 per cent of women. Likewise nearly two-thirds of men believe that women have the same chance of being promoted as men while only 35 per cent of women hold this view. In contrast 61 per cent of women think that women's chances of being promoted are worse than those of men, compared with one-fifth of the male respondents (Table 6.10). These differences are statistically highly significant.

Table 6.10 Women's Chances of Being Promoted

Rating	Men	% of Men	Women	% of Women	Total
Better	43	16%	16	3%	59
Same	168	64%	167	35%	335
Worse	52	20%	289	61%	341
Total	263	100%	472	100%	735

Chi-Square Test .000

The figures indicate that a significantly higher proportion of female respondents rate women's chances of promotion to be worse than men's, whereas higher numbers of men rated women's chances as the same or better. The qualitative responses to this question also betray a marked gender difference- and a pattern of similar gender difference may be identified generally from attitudinal questions such as this. The answers to this question might be summarised under the response used by one woman barrister to this question: “*Good old-fashioned prejudice.*” The reasons given for rating women's chances of promotion as worse than men's may broadly be grouped under two headings: (a) an ‘old boys club’ culture that works against women, and (b) allocation of childcare/family responsibilities to women.

Under the first heading, respondents frequently referred to a cultural or attitudinal problem with women's promotion. The phrase ‘boys’ club’ or ‘old boys network’ cropped up continuously; seventeen respondents used one of these phrases, or a variation of them. Respondents, male and female, at a range of different levels within both professions, made comments in the following manner:

“Old boys club: women not political enough: general misogyny”;

“I think the bar is still prejudiced against women”;

“Simply prejudice: it is felt that women will be pregnant or hormonal”;

“Because men don’t go off and have babies do they! No seriously, difficult for women to do all the male bonding/drinking ‘one of the lads’ types of hours intermingling/networking”

Attitudinal issues were very frequently mentioned by women solicitors, whose comments included:

“Men still prefer to have male partners”; “[Women] Perceived as not being rain-makers”; “Women are less prepared to put up with internal politics and structures particularly in big firms”; “Men more aggressive, presumed females practice merely a hobby” and “I believe that there is still the belief that women lawyers are not the best for the top jobs”.

Within the focus group discussions on this issue, attitudinal or cultural issues were similarly identified as barriers to women in achieving promotion. One participant explained: *“Most firms have male principals, it’s hard for women to make partner. That’s why so many women set up on their own.”*

Only ten people out of 332 qualitative responses rated women’s chances of promotion as better than men’s – four of whom were women! Few elaborated as to why, though one male judge responded: *“Better. Genuine desire. Positive discrimination.”* A male solicitor said *“Better. Bias towards promoting females,”* while a female solicitor gave a different reason for the same conclusion: *“Better. Fewer women apply for promotions.”* Seventy-one respondents felt that women’s chances of promotion are the same as men’s. Comments included those from two male barristers: *“Same because women would complain otherwise”; “Same balanced by positive discrimination”.* Similarly, a woman barrister said: *“Same where abilities are equal. There is no prejudice against women at the bar”.* But a female solicitor who said ‘same’ added *“I would make a distinction between solicitors and barristers here. I do not think women are perceived as of similar ability at the Bar. I’m afraid the “boys club” attitude still very much prevails at the bar.”*

6.3.2 Childcare/Family Reasons for Gender Discrimination in Promotion

The vast majority (251 out of 332) of those respondents who gave qualitative answers took the view that women’s chances of promotion are worse than men’s, and many attributed this to childcare/family responsibilities. One male barrister pointed out: *“Because we are self-employed, maternity leave creates a disproportionate disadvantage for women.”* A female solicitor said: *“Family commitments/most principals are male/I believe female solicitors are specifically employed because they are not considered a threat to existing partnership arrangements.”*

6.3.3 Differences Between Organisations

However, public sector employment was seen as fairer than that in the private sector, allowing more even access to promotion for both women and men. Even within the private sector, many participants referred to the significant differences between large

and small firms as far as promotional opportunities for women are concerned. As one male solicitor said:

“people higher up in law firms are predominantly male, and they might look to other men before women, particularly in smaller firms where profit/pure finance is less of a goal than in large commercial firms.”

Another said:

“In a large firm, everything is based upon merit, ability, fee generation – and personality. This is not quite the same in small firms, because often the partner set up the firm themselves, so it becomes a succession when he or she is choosing an employee, like a son or daughter.”

This personalised aspect to promotion was also seen as a more important factor in firms outside Dublin, particularly in reinforcing the ‘reduced hours’ issue for women: *“because if there are only two partners and one goes on maternity leave, the firm becomes impossible to manage; it is easier in large firms”*. As one man said, *“If you can’t satisfy clients, they drift away. Practical business issues are amplified the smaller the firm.”*

Similarly, it was agreed in several focus groups that women who work part-time or reduced hours may be disadvantaged in terms of promotion as a result. In some firms, within the last 2-3 years, partners have begun to work flexible hours, but it was pointed out that those partners were probably working full-time as solicitors, but only went part-time when they became partners.

Although this was seen as a potential problem for women’s promotion, many participants, particularly the men and the more senior women, felt that as partners retire and die, career progress within firms will become more merit-based. However, in the words of one participant, *“Discrimination was the norm, and will not change overnight”*.

6.3.4 Merit-Based Criteria for Promotion

In larger Dublin-based solicitors’ firms, the recent introduction of merit-based criteria for promotion or appointment to partnership and more structured mentoring systems within large firms were identified as factors in bringing about better opportunities for women. As one woman summed up:

‘There was no mentoring before,’ the cream floated to the top’ view prevailed, the rest disappeared...Now the place is bigger, there is less personal contact – no-one is watching, so we now have a structured appraisal system in place in the last 4-5 years. Files are kept now, comments are kept. Before there was no career path, the system is now fairer; ‘you’re a girl but your file seems to say you’re good.’

The new system of formalised promotion structures in the larger firms was introduced due to various factors; the employment of Human Resource managers by

firms, the return to Ireland of people who had worked in big firms abroad where these structures are well-established. One woman commented about the change:

“I am not sure if women would have come through quicker if the system had been in place earlier – it evens things out. Before, you needed a partner to be your champion, some good mentors, some were hopeless. The advantage of the appraisal system was to introduce .. an expectation of promotion – before you could be an assistant forever, if you were not pushy you would never progress. But all of this is a function of increased numbers, now there is a statement of policy as to criteria for partnership, before it was all ad hoc. With the growth in the economy, people saw their friends in the dotcom boom with share options, flying business class, company cars; they wanted to know when they would hit the jackpot. We were forced by practice elsewhere to change.”

6.3.5 Failure to Progress as Choice?

Finally, some female respondents expressed disillusionment with the sacrifices necessary to achieve promotion, particularly to partnership. One woman partner acknowledged that *“The added pressures of being partner are a challenge. Personnel, overheads issues – these are responsibilities, burdens in a way.”* The ‘long hours’ culture and added pressures that come with partnership were frequently cited as reasons for impeding progress in one’s career. In this context, a junior solicitor expressed her contentment with being employed in a firm, compared to being a partner, thus:

“An employed solicitor has less burden than a partner financially – you just get on with your work. You’re not so affected by upheaval or change. You have set hours for working, activities outside work might be threatened if you are self-employed, you don’t have as much time. There’s a lot of negativity about lack of time, people say they haven’t taken holidays in five years.”

Thus, some took the view that it that it is not a matter of gender discrimination, but rather a matter of choices made by women, that dictate women’s career progress or lack thereof:

“A lot of women make a choice. In the practice I left, men made partners much quicker than women; women in their early 30s were maybe taking their foot off the pedal, thinking of something else.”

Or, as another woman said, *‘It’s not seen as discrimination, it’s seen as choice. That’s how it works in practice.’* Another said *“..women pull back and opt out because of the way the system is – nobody forced me – I pulled back – that’s the way it is.”*

This perception that women’s failure to progress in their careers is due to choice rather than prejudice emerges strongly from international literature (see section 2.4.2). It ignores the structural constraints that operate upon women’s choices, and that equally prevent men from ‘choosing’ to take on some of the caring responsibilities typically seen as women’s issues.

6.4 Working Hours: 'Long Hours Culture'

The 'long hours' culture and the issue of working hours generally were emphasised in many of the responses, and in discussions relating to gender progress. Thus the question of actual hours worked assumes particular importance within the legal professions (Table 6.11). When asked to give an estimate of working hours, on average, men worked 47.8 hours per week while women worked 43.1 hours. These gender differences were significant (Chi-square .012).

Table 6.11 Average Weekly Hours Worked

Average Weekly Hours	Men	% of Men	Women	% of Women	Total
<21 hours	6	2%	20	5%	26
21-40 hours	67	28%	181	41%	248
41-60 hours	151	63%	222	50%	373
> 60 hours	17	7%	19	4%	36
Total	241	100%	442	100%	683

The range of hours worked was from a minimum of 3 hours to maximum of 90 hours. While 30 per cent of the men worked for 40 hours or less, this applied to 46 per cent of the women. Conversely, 70 per cent of men worked more than 40 hours, including 7 per cent who worked over 60 hours per week. Fifty-four per cent of women worked over 40 hours, but only 4 per cent worked over 60 hours.

These relatively high average weekly working hours for most male and female respondents reinforce the widely prevalent view, put forward at every focus group, that the law is a 'long hours' culture. This culture represents a big problem for many practitioners, particularly as it is seen as the most difficult issue to change. One participant pointed out that it is *"a fees issue, you've put so many hours into a file, it's open competition, you can't set your fees too high.. We're not commercially costing our time."* Fee targets were also identified as generating this culture: *"You make your fee target, but then it doubles. That's the male way of doing it, that's where the pressure is. There's a constant increase, you close files but then you open more."*

Others pointed out that the culture is simply due to the nature of the work, *"you have to work late if you are taking calls from the US, closing a deal late"*. The problem was seen to be particularly acute for those engaged in commercial or corporate law and transactional work:

"In law firms, the hours you work are ludicrous, especially in transaction work.. It's not a long hours culture, it's a function of the type of work. It's what you have to do. There's no other way to do transactions.... I'm not a freak – you see people in business working the same hours, law is a service industry – so you have to do it, if not some other firm would do it. You couldn't do transaction work 9 – 5, with US time zones for instance."

Participants agreed that because of the hours, some women do choose not to do transaction work, but: *“if you enjoy what you’re doing, the adrenalin is flowing, you balance everything else for that.”* And they agreed further that it would be worse to hate one’s work than to work long hours at an enjoyable job.

Clients’ high expectations were also identified as creating an ‘everything must be done now’ approach to legal work. One woman suggested: *“This is very aspirational, but we must learn to say no, develop proper communication [with clients] and manage expectations.”*

A similar view was expressed by a woman solicitor:

“...Even if my employer didn’t put me under pressure clients do. Pressure in this job is incredible. Flexibility, more time off, and clients not expecting everything done straight away, would help. We are our own worst enemies in trying to facilitate clients in every way. Faxes/emails etc mean that clients think everything can be done instantly”.

Nobody could suggest a solution to this problem or any way of remedying the culture. As one woman judge remarked, looking back on the problem of long working hours at the Bar:

“I don’t know what you can do, it’s not a question of the hours courts sit, it’s the work outside those hours. And if you get all the work done, then you wonder will you get any more....If you have a reasonable practice, the preparation work has to be done outside; drafting, opinion writing, consultations, all outside office hours, if you’re successful at all; and everyone’s afraid to turn down work, so you can’t do that.”

However, one woman described how the culture had caused her to take an individual decision to remedy her situation:

“I made the decision to move [to work as a lawyer outside Dublin] – I was in practice in Dublin, working towards partnership, then I would have waved goodbye to the rest of my life, I already gave 75% of my time and energy, it would have been 90% with partnership. I don’t know if men think of it like that.”

Another respondent was more sanguine about the problem:

“In private practice all solicitors are inclined to take on more work than they can deal with which clearly puts many under pressure.. this is partly because one is afraid that next year there will be no work. I am attempting to do this by taking much more holidays time off and engaging more staff and refusing to do work that I am not interested in and which is not financially viable”.

The difficulty with tackling the 'long hours' culture is discussed further in Chapter 10 (see sections 10.4.1, 10.4.2). It is clear that the dual burden of work and family responsibilities, combined with the long hours culture, is overwhelmingly seen as the biggest obstacle to women's career progress (see further Chapter 9, at 9.7.1).



Chapter 7

*'Having It All' -
Work/Life Balance*



7

'Having It All' - Work/Life Balance

This section further develops the theme that was central to Chapter 6 – the issue of combining work and other life aspects. Many women lawyers expressed serious doubt as to whether it is possible to 'have it all', to build a successful career while having children or family responsibilities. Others spoke of having been directly affected by, or having observed, the phenomenon of 'postponed parenting' referred to in Section 4.1.5 – whereby women tend to delay having children until they feel well established in their legal careers, since they fear that motherhood will adversely affect their progress in the workplace.

We therefore wanted to explore the possibility of 'having it all', and the extent to which women, and men also, feel disadvantaged because of parenthood. We sought information about the personal and home/family circumstances of women and men in the legal professions, and about the degree to which respondents have been able to access and achieve work/life balance. We were surprised at the markedly gendered nature of the responses to questions on work/life balance, and the fact that respondents overwhelmingly saw children as a women's issue. Throughout the survey, responses indicated that childcare responsibilities are an impediment to women's career progression. By contrast, parenthood generally did not register as impeding or even affecting the careers of men.

7.1 Working Patterns of Spouses/Life Partners

According to the demographic profile of the respondents, 64 per cent are married or living with a life partner (504 out of 788 - 194 men and 310 women). A total of 346 have children (43% of women and 67% of men). The proportion of women with children is markedly lower than that of men, a finding referred to in Section 4.1.4.

Distinct and statistically significant gender differences emerge from the responses relating to the working patterns of lawyers' life partners or spouses. Thirty-nine per cent of the men have a partner who is not in paid employment, and a further 22 per cent have partners working part-time outside the home (Table 7.1). Only 39 per cent of the men have partners working full-time outside the home. In contrast, 92 per cent of the women surveyed have partners working full-time outside the home. Only 4 per cent have partners engaged in unpaid work in the home and a further 4 per cent with partners working part-time outside the home.

Table 7.1 Working Patterns of Spouses/Life Partners

Partner's Working Pattern	Men	% of Men	Women	% of Women	Total
Working FT in home	84	39%	14	4%	98
Working FT Outside Home	84	39%	305	92%	389
Working PT Outside Home	45	22%	12	4%	57
Total	213	100%	331	100%	544

Chi-square .000

Thus there is a marked disparity between men and women lawyers, as regards the occupational status of their spouses or partners. This issue was raised in many focus groups. One woman commercial partner in a solicitors' firm noted that *"We are the first generation of women to work full-time all our lives, women in our forties. The men above us in their fifties all have wives at home."* She and others also remarked that until recently a higher proportion of women partners had remained unmarried, compared to male partners.

The need for men to take an equal share of responsibility in the home, where both partners are working, was also stressed by many. One woman said

"As for children, a lot depends on the other person, if there is one, in the relationship, and their job. For men it's the same, what is the woman in their life doing?"

Another said:

"It's fundamental that home life be more equally carried by men, so that your social life doesn't have to stop as well. The domestic burden must be spread more evenly. Women always assume the homemaking role, it's our own fault. It's up to us to get men on board."

However, this comment generated lively discussion as to why it should be up to women to change men!

7.1.1 Partners in Law

Of the 546 respondents with a spouse/Life partner proportionately more women have partners in the legal profession (31%), compared with only 21 per cent of men who answered this question (Table 7.2).

Table 7.2 Partners in Law

Have Partners in Law	Men	% of Men	Women	% of Women	Total
Yes	43	21%	109	31%	152
No	165	79%	239	69%	404
Total	208	100%	348	100%	556

Chi-square .006

7.2 Caring Responsibilities

7.2.1 Current Childcare Arrangements

The differences in the childcare arrangements for male and female respondents were statistically highly significant. Fewer than one in ten of the women with children (9%) can rely on childminding by their partner in their home, compared with two-thirds of the men (65%). Hence women are much more likely to use a childminder (61%), compared with 20 per cent of men. Men are less likely than women to use a crèche or relative (Table 7.3).

Table 7.3 Current Childcare Arrangements

Childcare Arrangements	Men	% of Men	Women	% of Women	Total
Cared for by partner	79	65%	13	9%	92
Cared for by other relative	5	4%	12	8%	17
Cared for by childminder	25	20%	93	61%	118
Cared for in crèche	7	6%	25	17%	32
Other	6	5%	8	5%	14
Total	122	100%	151	100%	273

Chi-square .000

Although only 14 respondents described themselves as having ‘other’ childcare arrangements, 67 people provided more detail as to their arrangements; these tended to be either those with adult children or children not requiring care; or those working at home or working part-time around school hours (10 respondents, all women, gave this answer).

The issue of good childcare came up frequently during focus group discussions. One woman summed up her solution: “*You need support – nannies.*” Others referred to the practice in some firms of offering childcare payments. But despite this emphasis, one

respondent explained: “No firms have crèches. [One firm] looked at it. .did a survey, but it would take years to build up enough children to fill a crèche, people already had childcare and didn’t want to change.”

7.2.2 Other Caring Responsibilities

A total of 42 men and 56 women had other caring responsibilities, hence proportionately more men have other caring responsibilities. The majority of those persons in need of care are elderly relatives (74), followed by adults with a disability (9) and children with a disability (6) (Table 7.4).

Table 7.4 Other Caring Responsibilities

Caring Responsibilities for:	Men	Women	Total
Elderly relative	35	39	74
Adult with disability	4	5	9
Child with disability	2	4	6

7.3 Leave Arrangements - “I don’t know why we employ women, they go off and have babies”

The results of this survey indicate that a large proportion of respondents (227 women and 169 men) have never taken any leave (see below). Of those who can avail of leave, the most important forms of statutory leave for women are fully paid maternity leave (available to 149 women) and compassionate leave (available to 117 women). These are followed by force majeure (emergency) leave (available to 94 women), maternity leave with statutory benefit only (available to 91 women) and unpaid parental leave (available to 81 women). It is of particular concern that so many women should be entitled to statutory maternity benefit only, rather than full salary, when best practice employers should pay full salary to staff on maternity leave as a matter of course. One woman partner in a commercial firm, herself a mother, told us that in her large firm “It is only in the last 2-3 years that maternity leave is paid, beyond the statutory minimum.” Only a very small number of men stated that they have entitlements to leave, though 35 could avail of study leave, compared with 66 of the women. It is surprising among lawyers that many men, and some women, were unaware of their entitlement to unpaid parental leave under the Parental Leave Act 1998.

The pattern of take-up of leave is also highly gendered (Table 7.5). Among male respondents, the maximum number availing of any form of leave was sabbatical study leave (20), followed by force majeure (emergency) (9 men) and compassionate leave (7 men). More women have availed of fully paid maternity leave (76) and an additional 43 women had taken maternity leave with statutory benefit only.

Table 7.5 Availability and Take Up of Leave Arrangements

	Available to you		Availed of by you	
	No. Men	No. Women	No. Men	No. Women
Fully Paid Maternity Leave	na	149	na	76
Maternity Leave (statutory benefit)	na	91	na	43
Paid Adoptive Leave	9	43	1	1
Paid Parental Leave	12	28	0	2
Unpaid Parental Leave	18	81	1	18
Paid Paternity Leave	16	na	3	na
Unpaid Paternity Leave	19	na	3	na
Paid Force Majeure (emergency) Leave	32	94	9	17
Paid Compassionate Leave	29	117	7	30
Paid Sabbatical/Study Leave	35	66	20	31

7.3.1 Reasons For Not Taking Leave

The large group of respondents who said they had never taken leave were asked to give reasons for this. Their responses fell into two broad categories. First, were those who gave relatively ‘contented’ responses, saying that they had not needed to because of vacations, or who simply answered “*Never required*” or “*no need*”. One respondent in this category remarked: “*Leave’ as defined never applied. For the avoidance of doubt I do not equate ‘leave’ with vacation*”.

The second group were those whose responses implied that they regretted not taking leave. Among this group were respondents who had not been allowed to take leave by their employer, or were unaware of its availability. Their responses included: “*Never encouraged in the workplace*”; “*Job doesn’t facilitate: working flat out*”; “*Not available to me*”; “*Unsure in fact which are available as never needed to enquire*”.

Other respondents could not take leave due to being self-employed. Their responses included: “*Feel that leave taking is a sign of weakness –of losing control. Also will need it at some future date re children*”; “*Without stating the obvious –it would be impossible to leave for any period beyond normal holidays*”; “*Took 6 weeks unpaid leave after birth of each child but worked from home. Very difficult for self-employed person to take leave*”; “*Self-employed so try to arrange leisure etc. to fit into vacation periods.*” A woman barrister said “*Not an option with a career at the Bar*”. a woman solicitor stated “*Never encouraged in the workplace*”.

7.3.2 Difficulty with Taking Maternity Leave – *“I ended up taking calls in the delivery room”*

This culture, for both employed and self-employed lawyers, can mean women simply do not take maternity leave. One woman solicitor said *“Returned to work 2 weeks after the birth of each child – did not feel leave was necessary”*. In the same vein, a woman barrister noted that *“due to the fact that I was self-employed I worked until the day my daughter was born and returned to work 3 days later.”*

The difficulty with taking maternity leave was emphasised further in focus groups. A real problem remarked upon by participants is that even where family leave is negotiated for all partners and/or employees in a firm, men do not take it in practice, so the pressure is on women either not to take it, or to cut it short. One participant said *“I know someone going on maternity leave was told to keep it short; this was upsetting, and made her angry.”* Another woman solicitor recalled being the first in her firm to take maternity leave some years previously, and being told by a male partner *“I don’t know why we employ women; they go off and have babies”*. At the beginning, she said, gaining acceptance for taking maternity leave *“was like pulling teeth”*.

The most extreme example of how difficult it can be to take maternity leave in a legal environment was as follows:

“On both occasions when I had my children I found what I could only term ‘discrimination.’ I was away from the office for 1.5 days when I had my first baby..my second baby was scheduled to be born on a Monday. I accordingly gave advance warning to my clients that I was taking 1 weeks holiday. Despite this I ended up taking calls in the delivery room as to ‘who will be dealing with the file while you are out’ - files that nothing was happening on at the time. I must say I could only think at the time if I was a man and was away having a disc out of whatever then ok, but it wasn’t acceptable to be away having a baby. Such was the pressure that I was back in the office again after 3 days.”

7.4 Flexible Working - *“For a guy, you have to prove you’re critically ill to get it”*

Clearly, it can be very difficult for women lawyers to avail of their statutory right to maternity leave. It is, if anything, more difficult to win the concession of flexible working arrangements from a legal employer - and here a double standard clearly operates, to the disadvantage of men who wish to work part-time or reduced hours. While it may be slowly becoming more acceptable for women to seek flexible working hours on the basis of their parenting responsibilities, it does not seem that there is any recognition in the legal workplace of the parenting role of men. Even those men who felt that there was no discrimination in law admitted that it would be almost impossible for a male lawyer to seek reduced hour-working in order to spend more time with his child or children.

7.4.1 Flexible Working Time Arrangements

It is predictable, therefore, that more women (128) than men (42) can avail of reduced hours. However, only 44 women and 6 men actually avail of such arrangements. Working at home is available to 150 women and 88 men, and take-up is higher than for reduced hours - 61 women and 32 men work from home. Fewer than 10 men have availed of flexitime/reduced or part-time hours, while 20 female respondents work flexitime and 11 more have a job-share or part-time arrangement (Table 7.6).

Table 7.6 Flexible Working Arrangements

	Available to you		Availed of by you	
	No. Men	No. Women	No. Men	No. Women
Reduced hours	42	128	6	44
Flexitime	40	73	9	20
Job-sharing/Part-time Working	9	39	2	11
Working from Home	88	150	32	61

This gender difference in the take-up of flexible working arrangements is borne out by discussions in the focus groups, where the male participants agreed that it would be difficult in practice for a man to avail of flexible work arrangements, even where these were made available: *“For a guy, you have to prove you’re critically ill to get it.”*

7.4.2 Difficulties in Availing of Flexible Working Arrangements

Respondents were asked if they had experienced any difficulty in availing of flexible working arrangements. Proportionately more women (25%) than men (13%) experienced difficulty in availing of these forms of leave/working arrangements (Table 7.7). This difference was statistically significant.

Table 7.7 Difficulties in Availing of Flexible Working

	Men	% of Men	Women	% of Women	Total
Yes	20	13%	75	25%	95
No	135	87%	227	75%	362
Total	155	100%	302	100%	457

Chi-Square Tests .003

Again, a gender difference emerges from the qualitative responses. Men tend to record that they had no problems, whereas women are more likely to have experienced difficulty. Of course, this may be because fewer men had tried to avail of flexible working arrangements in the first place.

However, answers fell into two broad categories. First were those who said their difficulty arose from being self-employed. The second group were those who said the leave was not made available to them by their employer. One female solicitor in the first group responded: *“This is normal consequence of being self-employed.”* Others said:

“Attempts to work both reduced hours and to work from home have proven difficult because of client requirements and requirements to meet fee targets”; “Please note that as a self-employed person, none and all of the above are available, but your business won’t make any money.”

One woman, interviewed about balancing family life with her career at the Bar, remarked that:

“It’s easier or more flexible at the Bar than in a 9 to 5 job, but if you take time off to have a child, you don’t get paid. It’s very difficult in the middle of a heavy consultation to say ‘I’ve got to go home and make dinner!’”

In the second group, typical responses included:

“Difficulty in negotiating financial arrangements for reduced hours”; “Endeavoured after birth of kids to take full period of maternity leave – unsuccessful. Also tried to work part-time for a short period i.e. 1 month – again unsuccessful”; “Part-time working/working from home – no one here knows the drill and some have different understanding from others. Poor admin and personnel/HR procedures”.

Finally, from a female academic: *“Not done. Shortage of staff would affect promotion.”*

7.4.3. Time out from Career for Other Reasons

A total of one in five women (21%) had taken time out from their career for another reason, compared with 16 per cent of men. Four main reasons were provided by respondents for taking time out for other reasons: (a) ill-health; (b) study; (c) travel; (d) children/family. More women (21%) than men (15%) had taken time out from their career generally, though the gender differences were not statistically significant.

Table 7.8 Time out from Career

	Men	% of Men	Women	% of Women	Total
Yes	37	16%	98	21%	135
No	200	84%	376	79%	576
Total	237	100%	474	100%	711

7.4.4 Impact on Career - "If a man did it you'd think he was a slacker"

Respondents were asked whether taking leave or availing of flexible working had affected their career. Significantly more women experienced an adverse effect on their careers when they had availed of forms of leave/flexible working arrangements - one-fifth considered that availing had affected them 'a lot' and a further 19 per cent stated 'a little' (Table 7.9). Hence two-fifths of the female respondents who availed of flexible working had perceived some adverse effect on their careers compared with only 13 per cent of the male respondents.

Table 7.9 Impact on Career of Leave/Flexible Working

	Men	% of Men	Women	% of Women	Total
A lot	10	8%	54	20%	64
A little	7	5%	51	19%	58
Not very much	10	8%	34	13%	44
Not at all	76	60%	84	31%	160
Don't know	24	19%	46	17%	70
Total	127	100%	269	100%	396

Chi-Square Tests .000

Three main adverse effects from the taking of such leave or flexible working arrangements were identified by respondents:

- Loss of promotional opportunity – *“any attempt to do less than full time work affects one’s promotional prospects”*;
- Loss of clients/earning potential – *“Lost clients because of maternity leave”*; *“As a part-time working mother the areas of law in which I was given work were limited due to my partial unavailability. My earning potential was reduced”*; *“Pay remained stagnant during periods of maternity leave. No proper mechanisms in force for take-over of workload during maternity absence”*; and
- Perceptions of colleagues – *“Now perceived as less committed to career and less likely to change jobs due to increased family related obligations ie perceived as willing to settle for less”*; and this comment from a woman barrister: *“When I decided to return to work full time about 9/10 years ago it took 4/5 years for solicitors and colleagues to accept that I was now taking the job more seriously”*.

Some however regarded these effects as short-term only: *“Maternity leave followed by returning to work part-time has probably affected my chances of partnership for the next few years but I don’t think it will long term be a problem”*; *“Halted career progression but hopefully will not result in permanent damage”*.

For others, the effect was more fundamental, for example the woman solicitor who said: *“I basically had to start all over again after returning to workforce”*. Another respondent, a woman barrister, similarly recalled:

“As a result of taking short periods of time out and then working part-time I was left behind by my contemporaries who continued to advance. Following my return to work full time I had to work very hard to attempt to make up lost time and found this task very difficult.”

Similarly, in focus groups it was agreed that the taking of leave or flexible work arrangements does impact adversely, particularly upon women, as men tend not to take such leave. One example commonly given was that few of those working part-time in solicitors’ firms are likely to become partner. Another was that of transactional work in corporate firms; if a solicitor is based in transactional work, participants pointed out that the same team is needed for each transaction. Thus, the nature of the job requires both long hours and continuity, so work cannot be delegated, and women partners on short time work find that they are often still working when they are supposed to be at home on a short-time week

The disadvantage suffered by women seeking to avail of shorter working hours was summed up by one participant who recalled:

“I was working on a transaction with another woman lawyer who was part-time and had to be out of the office every day at 3 pm, every time I spoke to her I could hear the fear in her voice about having to get out. It wasn’t fair on her or the firm to allow her to go flexi-time and stay in that line of work.”

The consensus across different groups was that the only way to manage reduced hours is to work a four day week, rather than to work shorter hours each day.

Most participants also agreed with the conclusion that even for salaried solicitors in firms offering the option of flexible working hours, only the women take advantage of this arrangement – and this fact adversely affects women, since they are not seen as being sufficiently committed to their career. As one male participant asked, *“..If someone is on shorter time, you ask how committed are they? How much can they achieve in four days? This is a practical question, not gender-related.”*

However, a difference of view emerged among the male participants as to the availability of shorter working time or flexible working arrangements for men. Some argued that a man could now say he wanted to work short-time, and it would be received as well as if a woman said it. But even where one man denied that availing of such arrangements disadvantaged women’s careers, he asked: *“Could we run a firm if all our partners did it? It would be difficult”* and he added: *“If a man did it you’d think he was a slacker.”*

Moreover, none of the male participants knew any man who had ever tried taking flexible work arrangements, although they pointed out some firms have male consultants who work shorter days than employees or partners – but they are not considered to be availing of ‘flexible work arrangements.’

Other participants noted that in many cases men actually take time off too, but on an informal basis; to play golf for example. The double standard this entails was summed up by one woman solicitor, who said (without irony): *“We don’t have flexible arrangements for partners, it’s not like taking a day off for golf; that’s managing time, not flexible arrangements.”*

7.4.5 Cover for Those Taking Leave

Respondents were asked whether their employer had engaged a locum/asked a colleague to cover work, normally done by them, while they took leave/time out. There was a significant difference in the experience of women and men when they availed of leave/took time out. Nearly half of the women had their work assigned to either a locum or colleague, compared with 31 per cent of the men (Table 7.10).

Table 7.10 During Leave/Time Out Locum/Colleague Assigned

	Men	% of Men	Women	% of Women	Total
Yes	23	31%	102	51%	125
No	52	69%	100	49%	152
Total	75	100%	202	100%	277

Chi-Square Tests .003

A further question was asked of respondents in relation to what happened to their work during their time out. Gender differences are not statistically significant. However, more women (36%) took the work home compared with men (20%). Sixty per cent of the men faced the work on their return compared with 45 per cent of the women (Table 7.11).

Table 7.11 Work Dealt with On Leave

	Men	% of Men	Women	% of Women	Total
Did it from home	8	20%	28	36%	36
New cases were not taken on	4	10%	6	8%	10
No progress until your return	24	60%	35	45%	59
Other	4	10%	9	11%	13
Total	40	100%	78	100%	118

For those who gave more detailed answers, a range of different responses was provided, from the more positive “*Delegation to other staff improved work practices*” to the philosophical “*Did the work irrespective*”; “*Attended office and court during maternity leave*”. Finally, there were downright bleak comments from two woman barristers: “*Work given to other barristers*”; “*I lost the work*”.

7.5 Problems with Achieving Work/Life Balance in Law – “*You can’t have it all*”

Focus group participants identified the achievement of work/life balance in the law as a major problem. Among women working in Dublin firms, it was agreed that “*work/life balance is the biggest issue in Dublin*” particularly due to the heavy workload. Childcare was identified as a particular problem by all participants, as was adult/elder care. This was also seen generally as an age-specific, as well as gender-specific, issue. It is not an issue specific to law, as one participant remarked: “*I don’t think legal work is so different; it’s the same as for clients in business. The work/life balancing act is a huge issue for all in employment*”.

Participants noted that more flexibility is sought for care reasons, and saw EC law as driving greater workplace recognition of this. But they agreed that it is often difficult even to get information on options such as part-time or term-time work, or use of flexitime such as the 4-day week approach. There is the challenge of creating precedents, especially for men who want time off. There is also the problem of who will cover for absences, although it was agreed that it is generally easier to work from home at the Bar. Women may re-enter the Bar after having children, but if legal practice is seen not as a career but as a job, this may be another reason to exit the profession.

Among many women solicitors with children, the issue of how to achieve balance was seen as especially problematic. One woman summarised her pessimism thus:

"I'm a bit negative – I think it's impossible. I think women can't have it all. It's something we bought into, talking about children. I knew it was going to be difficult, but for me it can't be done ... Even being there is difficult sometimes, always the time factor, conflict. I work four days now after the birth of my child, but I haven't got it right or figured it out. The price is high."

Another woman agreed with this view, saying she had asked herself recently:

"What did I do wrong? All our mothers were stay at home. We were carried by the feminist revolution, we got on this wave; house, job, children. Is it a myth, a chimera? It's very hard to balance."

And another said:

"I feel I work too hard... I am hoping to change that some day soon..... I try to manage work and children...It's giving giving giving, a constant juggle."

Finally, another said simply:

"I think it's a myth, you can't have it all and family or partner."

Many referred to the real difficulty of trying to fit in work, family life, and some sort of social life/holiday time or leisure activity of one's own. One woman said she could not achieve this sort of balance, and instead that "Now I don't take holidays because I'm trying to manage family, juggle days and hours." Others commented that men can maintain the work/family balance, and keep hobbies or leisure activities going as well, but this is because "I don't think things have changed since my parents' time." Some thought men are better at "compartmentalising" work and family life, but others felt men had the same difficulty as women due to the long hours and heavy workload.

Despite the negative views expressed by many rural solicitors as to the possibility of achieving balance, they agreed that "It's easier in the country than in the city to have it

all, commuting time is less; you have family around and support networks.” But conversely, it was pointed out that lack of community networks, particularly in Dublin, makes it difficult for women to stay at home full-time in Dublin too, because *“our expectations about raising children are higher, no-one says well done to mothers.”*

The physical bond of having children was seen as another factor that was difficult to adjust to, for new fathers as well as new mothers. Also, the issue of guilt was raised, for example where one woman partner said:

“We are the first generation of full-time working mothers, we’ve no idea of the effect this will have on the next generation... our mothers stayed at home, but didn’t have the pressure of trying to ensure intellectual stimulation for their children; engaging with them.”

Given all these factors, the desire to improve work/life balance and particularly to spend more time with children, was seen as a significant reason for exit from a legal career. However, once again, this was seen to be a reason more frequently cited for women than for men. One male solicitor noted that *“many talented women come up and drop out of firms due to relationships.”* He gave some examples of women colleagues who had left the firm because their husband or partner was moving to another location, but commented that this rarely works the other way round. He could not think of a male solicitor who had left the firm for a relationship.

However, where women leave legal careers ostensibly to care for children, some participants questioned whether this was their true motivation. Did they actually enjoy the work before? The things that motivate women working in law, according to one participant: *“Love of work/motivation/excitement/adrenalin/love of argument”*. These, said another, are *“why and how you manage the balancing. But if you don’t like the work, your family will take priority.”*

7.6 Improving Work/Life Balance

Given all the problems identified in seeking to achieve work/life balance, the questionnaire asked respondents to rank the importance of different measures that might improve work/life balance in their profession. Gender differences again emerged in the rankings offered. Women respondents generally found the adoption of a part-time or reduced hours scheme to be the most important of these measures. They also ranked the adoption of comprehensive maternity and related policies as important. By contrast, men found these measures less important. Perhaps surprisingly, the provision of a workplace crèche was not ranked highly by respondents of either sex.

7.6.1 Importance of Comprehensive Policies

Almost half the women (46%) who responded ranked the introduction of comprehensive policies (e.g. on maternity/adoptive/paternity/parental/force majeure leave) as 'very important' and a further 23 per cent ranked their introduction as

'important' (Table 7.12). Only 31 per cent of male respondents considered the introduction of such policies as 'very important' and 24 per cent as 'important'. These gender differences in responses are highly statistically significant.

Table 7.12 Comprehensive Gender Equality Policies

	Men	% of Men	Women	% of Women	Total
Very important	36	31%	152	46%	188
Important	28	24%	77	23%	105
Not very important	19	16%	61	19%	80
Less important	33	29%	40	12%	73
Total	116	100%	330	100%	446

Chi-Square Tests .000

7.6.2 Importance of Reduced Flexible Work

More than half of the female respondents (57%) ranked the adoption of a part time/reduced hours/flexible work arrangements scheme as 'very important' and a further 23 per cent ranked it as 'important' (Table 7.13). In contrast only 37 per cent of male respondents ranked such work arrangements as 'very important' and 26 per cent as important. These differences are highly statistically significant.

Table 7.13 Reduced/Flexible Work

	Men	% of Men	Women	% of Women	Total
Very important	44	37%	193	57%	237
Important	30	26%	77	23%	107
Not very important	18	15%	39	12%	57
Less important	26	22%	27	8%	53
Total	118	100%	336	100%	454

Chi-Square Tests .000

7.6.3 Importance of Provision of Locum/Substitute

The provision of a formalised locum/substitute scheme for those on leave/reduced hours received lower rankings by women and men and the differences between the rankings by men and women were not statistically significant (Table 7.14). Just under one-third of the female respondents ranked the provision of such as scheme as 'very important,' compared with 25 per cent of men. In addition a further 24 per cent of women and 22 per cent of men ranked this as 'important'.

Table 7.14 Importance of Locum/Substitute

	Men	% of Men	Women	% of Women	Total
Very important	30	25%	102	31%	132
Important	26	22%	79	24%	105
Not very important	21	18%	84	25%	105
Less important	42	35%	69	20%	111
Total	119	100%	334	100%	453

7.6.4 Provision of a Workplace Crèche

The provision of a crèche facility in the workplace was ranked as 'very important' by less than one-third of the female respondents (30%), and just over one-quarter of male respondents (26%). An additional 14 per cent of the women and 11 per cent of the men ranked a crèche facility as 'important'. There were no significant gender differences in the responses (Table 7.15).

Table 7.15 Workplace Crèche

	Men	% of Men	Women	% of Women	Total
Very important	29	26%	100	30%	129
Important	13	11%	49	14%	62
Not very important	16	14%	44	13%	60
Less important	56	49%	144	43%	200
Total	114	100%	337	100%	451

7.6.5 Other Measures to Improve Work/Life Balance

When asked what other measures could improve work/life balance, respondents gave many diverse answers. Some suggested extremely lengthy lists of potential measures. Many focused upon the lack of any provision for childcare/maternity facilities. Among barristers suggestions to remedy this included: "Provision of crèche facilities in or near the law library part subsidised"; "Maternity paid by Bar Council"; "Some kind of recognition that women should have at least 3 months leave when recovering from the birth of a child and that work and loyalty briefing should take this into account".

One barrister emphasised the importance of measures like these:

"There appears to be no system in place whereby 'temporary' or 'locum' barristers can be taken on in a case while the original barrister is on maternity leave. There should also be a formal system whereby cases are not set down for trial during a barrister's

maternity leave. There needs to be a new culture in the legal profession including the law library whereby pregnant women are respected and given certain rights."

However, the majority of answers fell into the general category of easing the pressure of work or changing the long hours culture thereby acknowledging and reinforcing the findings reported in section 6.4:

"Work/life balance within own control" "The ability to take leave for a year or two to have a family and then to be able to resume career at full speed";

or the following suggestion:

"Home working/annualised hours/term-time working/public transport it has a serious impact on hours. Electronic file/laptops enabling home working. Remembering that the whole person comes to work i.e. with the fact that they may have family commitments too"

This attempt to tackle the culture of long hours was echoed by others, some of whom took a particularly pessimistic view:

"The law is still a male-dominated area especially as they are normally 'partners'. Very few women in my area have been made 'partners'. V. inflexible hours. Huge pressure of work. Very hard on your own personal life. Very difficult life."

Some again took a different perspective upon lawyers' leave, as one exasperated woman solicitor commented:

"The biggest stress for me is employees taking maternity leave. It is impossible to get good staff on a temporary basis to cover the employee's maternity leave as this is a small firm employees taking maternity leave cause huge disruption and there is no assistance available from any source to help us get temporary replacement staff"

Finally, there were many innovative solutions offered from within the solicitors' profession: *"Refresher courses targeted at persons wishing to return to work after some years absence"; "Options for leave during school holidays even unpaid"; "Job sharing. Colleagues in Law Centres can avail of this and it seems to work very well"; "Law Society to promote technology awareness to provide for more flexible routine e.g. parent can work more effectively from home..."*

Barristers also offered some creative suggestions: *"Proper insurance for time out"; "Paid devilling from a central fund of the bar..."; "A chance to get reasonable affordable desk/office facilities and an improved communal computer room.."; "Increased use of IT throughout courts system to reduce outdated work practices"*

7.7 'Struggling with Juggling'

A marked gender difference is evident in the questionnaire responses on work/life balance. The majority of men respondents have a spouse or life partner available full-time in the home, whereas the majority of women do not. Similarly, men's spouses/life partners are much more likely to be working part-time whereas only a very low proportion of women have a spouse or life partner in either of those categories. Of those women who have a spouse or life partner, the majority of their partners are in paid full-time employment. More women than men have a partner working in the law. When the responses are analysed according to professional status, an interesting difference also emerges; of the professional groups, barristers are least likely to have partners.

Again, a marked gender difference may be observed in terms of children. Female respondents are less likely to have children than men. Of those women who do have children, the norm is to have only one or two; whereas the tendency among male respondents is towards larger families. As regards childcare arrangements, men are more likely to have their children cared for by their life partner, whereas women are more likely to use a childminder or crèche.

Gender differences also emerge from other findings relevant to the achievement of work/life balance. Men tend not to avail of leave or flexible working arrangements for family-related reasons; but when women do, it tends to impact adversely upon their careers, since colleagues or superiors may question their commitment to their professional role. Double standards thus apply, to the detriment of women within the professions. As a result, many women are struggling with the impossible task of trying to balance a busy working life with the raising of children and the running of a household – and are selling themselves short in terms of social life, holidays or leisure pursuits. Creative solutions were suggested by some participants as to how pressures might be eased in legal work – but many others saw the struggle as an inevitable part of a legal career.

Chapter 8

Short-Changed? - Gender Segregation and Pay Gap



8

Short-Changed? - Gender Segregation and Pay Gap

This Chapter examines the gendered nature of legal specialisation, gender disparity in pay and income, and gendered pension entitlements of women and men in the legal professions.

8.1 Gender Segregation in Legal Work Specialisation

Respondents are involved in a wide range of legal areas of work, the most important of which are personal injury/negligence, property and family law. Female respondents were over-represented among those working in family law, while male respondents were over-represented in commercial/competition/EU law and criminal law.

8.1.1 Involvement in Legal Areas

This suggests that there are some 'gendered' work areas within the legal profession, though the remainder have a fairly balanced representation of women and men. Respondents were also asked to rank the time they spend on these legal areas (Table 8.1). For men, the most time-consuming was personal injury/negligence; while for women it was property (including conveyancing/probate). Again, women spent more time on family law than men. There were no other major differences in the time spent on work in these areas by male and female respondents.

Table 8.1 Involvement in Legal Areas

Legal Areas	Male	Female	Total
Personal Injury, negligence	154	282	436
Property (inc. conveyancing/probate)	117	260	377
Family Law	96	239	335
Commercial/Competition/EU Law	136	150	286
Criminal law	104	118	222
Commercial property	75	136	211
Employment/social welfare/ disciplinary tribunal	84	115	199
Constitutional/planning/ environment/judicial review	78	101	179
Other	62	97	159
Asylum/immigration law	23	53	76

Aside from these areas, respondents also referred to other areas, and some noted that they spend a good deal of their time dealing with “*non-legal administration*.” Six respondents said they were spending a large portion of their time on tribunal-related work, while others referred to debt collection; commercial litigation; arbitration; licensing; District Court work; landlord and tenant; and coroners practice.

8.1.2 Gendered Division of Legal Work

Being male was seen as an advantage in terms of getting better or more lucrative types of legal work. One male solicitor remarked that “*Insurance companies seem to favour males (in allocating business) as do auctioneers. Females seem preferred in family law business*”. A woman barrister said “*Females usually given family cases – males given crime*” and another remarked “*Men tend to be trusted at the law library with more intellectual work.*”

A woman solicitor said that: “*Men hog the lucrative areas of work. It is difficult for women to secure equal partnerships particularly where they have family responsibilities,*” while others summed up: “*Women end up in less well-paid areas*” or said “*Some women are not paid as well as their male colleagues*”.

The figures highlight the disproportionate numbers of women working in family law. Focus groups participants concurred that women had tended to become “*pigeonholed*” into family law. It was accepted that this had come about partly for historical reasons, since at the same time that legislative changes introducing legal separation and other family law remedies in the 1970s and 1980s began to generate a great deal of litigation in this area, the numbers of women entering legal practice began to increase significantly. However, the global tendency for family law practice to be dominated by women, referred to in Chapter 2, suggests a gendered explanation.

Some of the male participants felt that this sort of pigeonholing could have a negative effect for women, but others, particularly those women who had entered legal practice at the relevant time, saw it in a much more positive light. One interviewee explained that things had been very different when she had commenced practice at the Bar in the late 1970s:

“It was accepted then that the only thing women would make a living at was conveyancing, although there was not much court appearance in conveyancing, but one woman was already very successful in that field. It was thought of as respectable for a woman to do conveyancing, although this had begun to change by the late 1970s. A relative at the bar said ‘You’ll get on alright if you just stick to conveyancing!’ But this was the beginning of family law, the 1976 Act, there was a package of reliefs available for marriage breakdown. All of this was in the High Court until 1981, so this brought women into the High Court. It wasn’t exactly that I chose to do family law, it chose me. It was a growing area of the law, you had a chance to come in a bit nearer the top, people didn’t resent you as much as if you were trying to get in on personal injury practice, for example.”

The same interviewee noted however that *“One thing that was difficult to crack was the Personal Injury Bar – not so much the discrimination by solicitors, as by insurance company personnel. But colleagues clung on so hard to PI, getting high up the PI bar was very closed.”* When asked to consider why personal injury litigation appears to be dominated by male barristers, she surmised: *“There’s not a lot of law in PI. Women tended to do well at areas involving a bit of law, maybe they are more hesitant about engaging in ‘hustling’”.*

8.1.3 Type of Work Given/Access to Promotion

Respondents specifically mentioned the most ‘gendered’ areas of legal work as being: criminal, family, personal injury and corporate/commercial law. For example, a number of women barristers made comments like *“Criminal work excluded to women.”* and *“Difficulty in getting indictable criminal work on circuit as woman.”* One woman barrister wrote,

“... Noticeable that men seem to get circuit/central criminal work earlier and in greater amounts than women. My response to this has been to stick with the district court work on the basis that I will only get the better quality work in crime if I remain willing and available to do the work that is available to me - oops typical feminine attitude!”

Other women solicitors concurred: *“Certain work is pushed my way e.g. family law because I’m a woman”;* *“Difficulty in obtaining certain commercial work due to the lack of female networking in a predominately male sphere”* and *“As a conveyancer I need to battle for commercial work as people feel women are more suited to residential.”* For solicitors, the area of litigation was particularly ‘gendered’, with women recording comments like *“No opportunity given to undertake court work”.*

As one woman solicitor concluded, “*Discrimination is insidious -difficult to specifically identify but only need to look at fact most family lawyers women and most commercial lawyers and senior counsel and judges men.*”

8.2 Income and Fees

It is generally difficult to obtain detailed statistical information on lawyers’ fees and incomes. The 2003 Indecon Report for the Competition Authority sought information on fees and incomes, but was unable to produce data on specific earnings levels. They found, however, that the vast majority of practitioners, both barristers and solicitors, who responded to their survey had experienced an increase in average annual fee income between 1999 and 2001. Only 7 per cent of their respondents said that their average annual fee income had fallen in that period. They did not present a gender breakdown of these findings.

The absence of data in this area makes the findings of this study all the more relevant. While only 14 per cent of the male respondents have incomes of €35,000 per annum or below, this applied to 23 per cent of female respondents. In contrast 42 per cent of the men earn over €100,000 while this applied to only 19 per cent of female respondents. Three men earn more than €500,000 but there were no women in this income bracket. These pay differences between men and women were statistically highly significant (Table 8.2).

Table 8.2 Income Levels of Respondents

Income Levels	Men	% of Men	Women	% of Women	Total
<= € 20,000	19	7%	43	9%	62
€ 21,000 - 35,000	18	7%	71	14%	89
€ 36,000 - 50,000	32	13%	120	24%	152
€ 51,000 - 75,000	36	14%	110	22%	146
€ 76,000 - 100,000	42	17%	57	12%	99
€ 101,000 - 200,000	72	28%	67	14%	139
Eur 201,000 - 500,000	34	13%	24	5%	58
> Eur 500,000	3	1%	0	0%	3
Total	256	100%	492	100%	748

Chi-Square Test: .000

Pay was mentioned by many respondents as part of a more general pattern of discrimination. Most of the respondents who raised the issue of pay were women solicitors, although one woman barrister noted: “*When in practice at the bar I found*

it difficult to get work in criminal law. I also found that my level of earnings were lower than an equivalent male colleague”. Of the women solicitors, one said simply: “Level of earnings – males are pushier. Social functions exclusion (not one of the lads). Inappropriate comments – usual ‘putdowns’...”

Another also said: *“Level of earnings: unpaid for the first 2 and a half years of apprenticeship. Inappropriate tasks: required to do office Hoovering..”* and a third said *“In early years had to press to receive appropriate level of remuneration.”*

One bluntly remarked: *“Difference in salary between male and female solicitors..”* and another wrote similarly that *“Yes I get paid less than a male associate of equal standing and experience”*. However, another reported *“Paid less due to age and perhaps gender discrimination from equity pool. Fighting well on issue.”*

8.2.1 Impact of Age and Gender on Earnings

Since age, as well as gender, is likely to affect incomes, the survey data were analysed to control for the effect of age on the earnings of women and men in the legal professions. Using the chi squared test and PLUM Ordinal Regression model the results confirmed that there were statistically significant differences in the earnings of male and female respondents, even when they were in the same age groups. This gender difference is more clearly demonstrated in Table 8.3.

Table 8.3 Gender, Age and Earnings among Legal Professionals

Gender	Age Group	Earnings		
		<€50,000	€50,001-100,000	>€100,001
Men	20-29 years	0.83	0.14	0.04
Men	30-39 years	0.34	0.39	0.27
Men	40-49 years	0.15	0.34	0.51
Men	>50 years	0.12	0.29	0.59
Women	20-29 years	0.76	0.18	0.06
Women	30-39 years	0.48	0.35	0.17
Women	40-49 years	0.27	0.39	0.34
Women	>50 years	0.44	0.37	0.20

This table uses age and gender as factors to construct predicted probabilities for a person falling into different salary ranges. Hence a man aged 20-29 years has an 83 per cent probability of earning less than €50,000 and only a 4 per cent probability of earning more than €100,000. A woman aged 20-29 years has a 76 per cent probability of earning less than €50,000 and a 6 per cent probability of earning more than

€100,000. With the exception of this age group, the table illustrates that a serious gender pay gap exists and this increases with age. By their 30s, male legal professionals are more likely (27%) to earn €100,000 or more, compared with 17 per cent of their female counterparts.

Among the age group 50 years and older, there is a 59 per cent probability of a man earning more than €100,000. The comparable figure for women in the same age category earning more than €100,000 is 20 per cent. This reinforces the pattern already noted that gender is a key determinant of potential earnings in the legal profession, even when age is controlled for.

8.2.2 Who Pays Solicitors' Fees?

A survey carried out by the Law Society in April 2000 and cited in the Indecon Report showed that personal injury and conveyancing constituted the largest practice areas of solicitors' firms in Ireland in 1999, accounting for 33 per cent and 31 per cent of fee income respectively. Trust/probate services and criminal/litigation work accounted for a relatively small proportion of the fee income generated in that year, amounting to 10 per cent and 3 per cent respectively.

At least one-quarter of solicitors' fee income on average is derived from corporate/institutional clients, while between two-thirds and three-quarters is derived from personal clients, members of the general public. When Indecon surveyed the general public, they found that 51 per cent had not accessed the services of a solicitor in the past five years, whereas by contrast 69 per cent of insurance companies had used a solicitor more than twenty times per year in the previous five years.

8.2.3 Who Pays Barristers' Fees?

The Indecon Report found that, on average, 52 per cent of barristers' fee income is generated by clients who are members of the general public, but 48 per cent comes from business/corporate or government/institutional clients. They found that some barristers work exclusively for corporate or government clients, while others focus equally exclusively on work from the general public. Indecon also found, by conducting a representative national survey of 1,008 adults, that 90 per cent of the public have not used the services of barristers in the past five years; and just 2 per cent of the respondents to that survey had engaged the services of barristers between 1-5 times per year in the last five years. By contrast, Indecon found insurance companies to be 'relatively intensive users of barristers', with 54 per cent of these corporate users reporting that they have engaged the services of barristers more than 50 times per year during the past five years.

8.3 Pensions

There were also statistically significant differences in the proportions of men and women who have pensions. In total, 82 per cent of the men have a pension arrangement, compared with only two-thirds (66%) of the women (Table 8.4).

Table 8.4 Pension Arrangement

	Men	% of Men	Women	% of Women	Total
Yes	220	82%	331	66%	551
No	50	18%	170	34%	220
	270	100%	501	100%	771

Chi-Square Test: .000

There were no significant differences between the men and women in terms of the type of pension arrangement they hold. Nearly half the female respondents (49%) and 41 per cent of the male respondents are in individual pension schemes, while 30 per cent of women and 36 per cent of men are in contributory schemes (Table 8.5). Similar proportions of women and men are in group pension schemes.

Table 8.5 Type of Pension

Type of Pension	Men	% of Men	Women	% of Women	Total
Contributory	71	36%	94	30%	165
Non-contributory	10	5%	12	4%	22
Individual scheme	80	41%	150	49%	230
Group scheme	31	16%	45	15%	76
Other	4	2%	7	2%	11
Total	196	100%	308	100%	504

8.4 Briefing Practices – How Barristers Get Work

In relation to the work of barristers, this study identified a widespread concern among women at the Bar about the perceived lack of transparency and potential gender bias among certain of the bigger clients in terms of their briefing practices. A survey of the largest institutional clients of the Bar was therefore undertaken, since they control such a sizeable proportion of the market for legal services. The aim was to try and establish what criteria, if any, are employed by these large clients in selecting who they brief. This was especially important, given the findings of the Indecon Report that almost half of barristers’ fee income is generated by business/corporate or government/institutional clients.

8.4.1 Survey of Barristers’ Institutional Clients

Health boards, other public sector boards and institutions, tribunals and enquiries, and insurance companies, were surveyed, with the guarantee that their offices or

institutions would not be identifiable. The questions asked of each institution were:

- How many barristers do you brief directly on an ongoing basis?
- What proportion of these are women?
- On what basis do you choose whom to brief/what are your briefing criteria?
- Do you have a gender or equality policy in relation to briefing barristers?

Apart from the Attorney-General and Director of Public Prosecutions (DPP), the survey responses do not refer to specific institutional clients.

8.4.2 Briefing Practices of Public Sector Institutions

One public sector board explained that they employ a firm of solicitors which chooses the barristers to brief. Currently they brief 12 barristers, five of whom are women, chosen on the basis of their knowledge and experience on a particular issue. Another public sector board explained that services of barristers are provided under statutory authority. They have a list of solicitors and barristers that an individual can choose from. On that list, 13 out of the 93 senior counsel are women and there are 295 out of 713 junior counsel who are women on the list. A third board informed us that it has a legal services manager on staff who is a female barrister. In the past barristers were selected by law agents, but the board has now become more active in nominating junior and senior counsel. Currently the board briefs 16 barristers, five senior counsel (four men and one woman) and 11 junior counsel (six men and five women). Barristers are chosen on the level of experience they have.

One public tribunal of inquiry stated that it currently engages 12 barristers and solicitors; that 75 per cent of these are women, that recruitment is based on ability, experience and qualifications; and that it applies an equal opportunity policy. A second tribunal stated that it employs 12 staff, six of whom are female. The breakdown was that four out of six general staff are women. There is one male solicitor; and five barristers, of whom two are women. The enquiry response added:

“The issue then primarily arises in the context of the engagement of barristers, and whilst in this sphere an explicit gender/equality policy has not to date been thought necessary, the general intention to secure the best candidate for positions arising must necessarily acknowledge the quality and quantity of women barristers in practice, as it is to be hoped is shown by the present 40% barrister ratio, and a somewhat higher ratio among our overall workforce.”

The Attorney General’s Office provides its briefing policy on its website, at www.irlgov.ie/ag. This newly introduced briefing system is that barristers apply to be nominated as counsel by the Attorney General, who requires details of the applicant’s third level qualifications, and a summary of their experience at the Bar and of doing

State work. Applicants are not asked to give their gender. There are 240 barristers on the panel, representing approximately 20 per cent of the junior Bar. There are also 105 Senior Counsel on the panel, and some briefing of barristers is also done on a case by case basis.

8.4.3 The Director of Public Prosecutions

The Director of Public Prosecutions (DPP) provided the most detailed answers about briefing practices. The DPP at present retains 150 barristers on various panels, 34 of whom are women. Forty-two Senior Counsel are briefed by the DPP, of whom only three are women, but as they point out, this ‘reflects the fact that there are far fewer women among the senior bar than in the profession as a whole.’ The bail panel (the list of barristers who will prosecute when a defendant applies for bail in the High Court) is drawn from the most junior members of the Bar, on which nine out of 20 barristers are women. In relation to Dublin Circuit Court work, there is a panel of 44 members, of whom 13 are women.

The DPP’s office also provided an analysis of the fees they paid to counsel. Of their top ten earners in 2002 at the senior bar, eight were men and two were women. In relation to junior counsel, there were three women among the top ten earners. Under section 7 of the Prosecution of Offences Act 1974, the DPP is required to ensure that barristers ‘retained to act or advise on his behalf are chosen from amongst those barristers who have indicated their willingness to so act or advise, in such manner as to effect a distribution of retainers among them in a way that is fair and equitable, having regard to their suitability in relation to any particular retainer, to the public interest and to the distribution of retainers by the Attorney General’.

Outside Dublin and Cork, it is the DPP’s practice to appoint one barrister to prosecute in each county (some larger counties are divided into two). Of the 32 barristers who are county prosecutors, eight are women. With regard to the appointment of county prosecutors, it has been the practice, when vacancies arise, to advertise in the Law Library and Circuit Bar rooms. Applications in writing are sought, and a selection of counsel is made based on the application and on the assessment of the local state solicitor and the DPP’s own officers. It has not been a practice to interview applicants. Some of the applicants may have already worked on another panel for the DPP.

In relation to the Dublin and bail panels, there is no fixed number on these panels, and persons are appointed from time to time, either because they have written to the DPP asking to be considered, or because their track record in criminal cases has brought them to the attention of the DPP’s office. The views of the Chief Prosecution Solicitor’s Division are sought before an appointment is made, because of their familiarity with the work of barristers practising criminal law. The DPP is currently reviewing these arrangements in the light of the recent changes in the Attorney-General’s briefing procedures.

In terms of selection for individual cases in the Dublin Circuit Court, generally

barristers are nominated on the basis of a decision taken by the professional officers of the directing division (of whom 11 are men, and seven women) or by the criminal trials section of the Chief Prosecution Solicitor's Division (three out of eight solicitors in this section are women). Where Senior Counsel are briefed, the decision as to whom to brief is taken at a senior level in the DPP's office, either by the DPP himself, the Deputy Director or another senior officer.

The criteria used by the DPP in appointing barristers to panels are dictated by the objective of appointing, in every case, the barrister who is judged to be the most suitable to conduct the prosecution, on the basis of:

- The length and breath of experience in advocacy
- Experience and knowledge of criminal law
- An ability to perform effectively in contested hearings, in particular criminal trials

In addition to these, account will be taken of any special factors that arise in particular cases.

In relation to gender or equality policy generally, the DPP regards section 7 of the 1974 as requiring him to treat barristers equally without discrimination on the basis of sex. Nor can the DPP adopt a policy of positive discrimination. In this context he has stated:

"I am, however, conscious that the Bar can be a particularly difficult environment for female barristers starting their career who may have to contend with various types of prejudice in addition to the normal difficulties which any newly-qualified barrister encounters. Until relatively recently, I believe there was a degree of prejudice against women at the criminal bar and a feeling that this was an area of law which was not particularly suited to women. This attitude seems to me to be much less prevalent in the last few years, and it is certainly the case that there are now a significant number of very prominent and successful women barristers engaged in both criminal prosecution and defence work."

8.4.4 Briefing Policies in the Private Sector

Less detailed responses were received from insurance firms than from public sector bodies. One insurance company responding simply by saying: *"We do not brief barristers in Ireland direct and therefore collect no data that would enable us to respond to the questions you pose."*

Another advised that the barristers they brief fluctuates on a day to day basis, but they normally brief seven Junior Counsel and five Senior Counsel. Half of the Junior Counsel and none of the Seniors are women. As to criteria, they said: *"Barristers that we choose to brief are people who we have come to view as competent to deal with the*

work that we wish them to deal with. The criteria is that they are capable of providing a speedy and efficient service to us as customers.” They do not have a gender or equality policy on briefing barristers: *“the decision is made by the legal department. It comes to a view on each and every case as to who should be briefed given the subject matter of the problem and the complexity thereof.”*

A third insurance company explained that all selections of barristers are conducted through their solicitors, in light of their recommendations on individual cases. They said that there are 100 barristers on their panel, of whom 18 per cent are women, and all barristers are chosen according to their competence and experience as considered relevant to the particular case. They do not have any policy, written or otherwise, regarding gender or equality.

8.4.5 Can Briefing Practices be Changed?

This small study covered some of Irish barristers’ most significant institutional clients, and the results show the difficulty with making any changes in briefing practices. Inevitably, it would be difficult to seek to impose any conditions upon solicitors’ firms and companies and individuals in the private sector in making their briefing decisions. However, there is a stronger case for imposing conditions upon public sector institutions. The need for greater transparency in the briefing process has already been recognised by the DPP, as outlined above, and by the changed practices of the Attorney-General’s office, also described above.

However, the Bar Council has resisted a suggested further change in the form of a tendering process for State work. In its response to Indecon, the Council stated that

‘A tendering process by individual members of the profession would not appear appropriate in cases where the relevant office of the State has all the necessary information concerning the services offered by individual barristers and can set the fees which it is prepared to offer to the barrister selected for the particular work. A competitive tendering process would not only be cumbersome but would be difficult to operate successfully where decisions in relation to the skills of particular barristers are very much a matter of judgement in relation to a particular case... Furthermore, given the case by case appointment of Counsel by the State, the application of competitive tendering/EU public procurement procedures, would not appear appropriate from an economic point of view.’

This response raises some of the difficulties involved in establishing a tendering process for public sector work for barristers. However, experience elsewhere suggests that once more transparent and purely meritocratic methods of barrister selection are put in place in the public sector, such as those currently being developed by the Attorney General’s office, then women will benefit from these. It would also be possible to require private sector clients to insist on the application of an equal opportunities policy by the solicitors whom they instruct to brief

barristers. Through these more creative measures, present perceptions of certain briefing practices as amounting to 'jobs for the boys' may be overcome.



Chapter 9

*'Good Girl' and 'Old Boys' -
A Culture of Discrimination?*



9

'Good Girl' and 'Old Boys' - A Culture of Discrimination?

In conducting this study, perhaps the most critical question was the extent to which gender discrimination actually exists within the legal professions. From an examination of the collective experiences and perceptions of women lawyers, is there a culture of discrimination within the law? The survey questionnaire thus asked respondents (female and male) about any experiences they may have had of gender-related disadvantage or discrimination.

A strong gender difference emerges from the responses to this question - a significantly higher proportion of women than men had experienced disadvantage under each of a number of headings. Many of these women's responses were highly detailed in describing particular instances of discrimination. Through their experience, many female respondents had also come to believe that the law represents an 'old boys network' - this phrase, or a variation on it, cropped up a significant number of times in the answers. Although many expressed this general view about the culture of discrimination, some individual forms of discrimination were found to be particularly prevalent.

9.1 Experience of Discrimination

The major forms of discrimination that mainly female respondents experienced were in relation to 'inappropriate comments' (36% of all women surveyed); 'network exclusion' (31% of all women surveyed); 'level of income/earnings' (30% of all women surveyed); 'not getting certain work' (28% of all women surveyed) and being given 'inappropriate tasks' (19% of all women surveyed). Hence at least one-fifth to one-third of women had experienced at least one of these forms of discrimination (Table 9.1).

Thus the most common form of discrimination experienced by women lawyers is inappropriate comments - over one-third of all women surveyed had experienced that of such comments. It is especially ironic that this experience is so widespread in a professional environment in which great care must always be taken with language. Far greater sensitivity around language should be expected of lawyers.

The two other forms of discrimination most often encountered were network exclusion and level of income/earnings. The issue of network exclusion is undoubtedly very serious, and also very difficult to tackle, since it is part a general

culture of discrimination that appears to operate at an insidious level within the professions, manifested in subtle ways, through exclusion from sporting events, for example. The perception that discrimination exists in income levels is also very serious –this could be more easily tackled were reliable data on legal pay and earnings more readily available. It reinforces the finding in relation to the gender pay gap identified in Chapter 8 at 8.2.

Other forms of discrimination that affected more than 10 per cent of female respondents were 'sexual harassment/bullying' (14% of all women surveyed); 'parenting arrangements' (13% of all women surveyed); 'not being placed on panels' and 'area/quality of work' (12% of all women surveyed). More than one in ten of each woman surveyed had experienced harassment; a worrying figure, that indicates some action on the part of the legal professional bodies is required in order to address this issue.

By contrast, fewer than 10 per cent of all the men surveyed had experienced *any* of these forms of discrimination.

Table 9.1 Experience of Discrimination

Grounds	Men	% of Men in survey	Women	% of Women in Survey	Total
Inappropriate Comments	13	5%	180	36%	193
Network Exclusion	15	6%	158	31%	173
Not getting certain work	18	7%	144	28%	162
Level of earnings/income	8	3%	151	30%	159
Inappropriate tasks	6	2%	96	19%	102
Not being placed on panels for work	12	4%	62	12%	74
Sexual Harassment /bullying	5	2%	69	14%	74
Parenting/maternity arrangements	2	<1%	67	13%	69
Area/Quality of work	6	2%	62	12%	68
Difficulty in getting First Legal Job	4	2%	39	8%	44
Promotion	3	1%	39	8%	42
Lack of Permanent Job	3	1%	17	3%	20
Other	2	<1%	5	<1%	7
Judicial Appointment	0	0	0	<1%	4

9.2 Source of Discrimination

Out of the total of 506 women respondents to the survey, 21 per cent had experienced discrimination from a colleague (104) and 29 per cent from a superior (149), compared with 8 cent of women respondents who had experienced discrimination from a subordinate (39). Only 14 male respondents out of 272 stated the source of discrimination, representing under 5 per cent of the total.

Table 9.2 Source of Discrimination

	Men	% of Men	Women	% of Women	Total
From Colleagues	6	2%	104	21%	110
From Superiors	6	2%	149	29%	155
From Subordinates	2	<1%	39	8%	41

9.3 Nature of Discrimination

9.3.1 Practice on Circuit

Many respondents mentioned discrimination that they had experienced on Circuit rather than in Dublin, as one woman solicitor reported:

“.. I noticed in provincial towns that a boys’ club exists - men look out for each other but women tend to be the backbone of the offices- working full hours whilst their male colleagues are out golfing/socialising. Often encountered situations with clients/colleagues/counsel would remark -not always inappropriately - but often gender based”.

One male focus group participant, while denying that discrimination existed, commented that in the past, very few women barristers would go on Circuit, while most male barristers started there. He felt that this was due to a barrier in the minds of the women, and remarked that:

“The ones that did go on Circuit were part of the gang. Being women didn’t make any difference to us, but may have to them...Possibly the Bar suits men more, there’s a ‘club’ atmosphere on Circuit. But in [in a named rural county], two lady barristers took part very much in the life of the Circuit.”

9.3.2 Discrimination a Fact of Life – for Men Too

A number of respondents simply dismissed their experience of discrimination as a fact of life, or said they had tried to ignore the experience: *“As a sole practitioner you just get on with it”* and *“Ignore it and put up with it usually”*.

Only twelve of these detailed responses were from men, one of whom described the experience of being discriminated against on the basis of gender stereotyping:

“As I am male it was felt by a previous employer that I should be a binge drinker like the rest of the ‘lads.’ When it was discovered I was not..my work position suffered. ‘Men’s work’ was taken from me ie commercial/conveyancing/personal injury/criminal...”

9.3.3 Multiple Forms of Discrimination

In terms of the types of gender discrimination suffered, these may generally be grouped under the seven broad headings discussed below. However, many respondents reported having experienced multiple forms of discrimination, for example: *“Difference in salary between male and female solicitors. Inappropriate comments and bullying by male partner. No paid maternity leave”, “Sexual harassment from superiors. Less interesting cases given to me. Comments on personal appearance. Asked to perform inappropriate tasks i.e. make and bring coffee etc.”*

One woman solicitor listed a range of experiences (for other examples of the sort of social exclusion she describes, see Section 9.4.4):

“Not invited to rugby/football with clients-male colleagues invited instead. Asked in front of clients to get tea/ashtray etc. Asked to book things rather than male colleagues. Minimum statutory maternity entitlement ... Comments about appearance – unsettling. Comments like ‘good girl’.

One respondent summed up: *“Details of all the above would require a separate booklet to complete”*. A number of women respondents mentioned particular problems with the behaviour of subordinates, often themselves women: *“Difficulty with female support staff”; “...Subordinates-female staff unwilling to take orders from another female. Response – give orders anyway and accept unpopularity as part and parcel of the package”*.

9.3.4 Discrimination as a Thing of the Past

Another theme was related to time. Many respondents expressed the view that things had changed, referring to incidents of discrimination in the past while emphasising that they might not happen now. As one woman solicitor wrote:

“The ‘pattern’ in private practice in the 1980’s was that women tended to be “directed” into conveyancing. The men did the litigation. The higher fee income areas were dominated by men. There was very little turnover in this area. This “system” of the man doing the lucrative work with female assistants doing the labour intensive but less lucrative work (this has changed to some extent as a result of the “celtic tiger”) is a recipe for inequality.”

Similar views were expressed by a woman barrister: *“On circuit, work is clearly passed from male colleague to male colleague. Networking can occur on the golf course. Comments are still made re gender but this is far rarer than, for example, five years ago”*.

9.4 Particular Forms of Discrimination

Proportionately more women (60%) than men (31%) said that gender makes a difference in their career, profession or job. Only 23 per cent of the female respondents believed that gender makes no difference compared with 59 per cent of the male respondents. These gender differences were highly statistically significant.

Table 9.3 Gender Makes a Difference in Career/Profession/Job

	Men	% of Men	Female	% of Women	Total
Yes	77	31%	287	60%	364
No	149	59%	109	23%	258
Don't know	25	10%	83	17%	108
Total	251	100%	479	100%	730

Chi-square .000

When asked to explain in what way gender makes a difference, the vast majority of respondents stated that being female is a disadvantage. Seven particular forms of discrimination were identified.

9.4.1 Inappropriate Comments – “Good Girl”

More than one-third of women (36%) had experienced discrimination in the form of inappropriate comments. Being called a “good girl” was mentioned by a number of respondents as a particular form of discrimination that rankled with them, although presumably those men who used this phrase did so unconscious that it would cause any kind of offence.

Other types of inappropriate comment mentioned by respondents were however often intended by their maker to be funny. As one woman solicitor wrote, “*If attending meeting where all other participants are men - there might often be crude inappropriate jokes - while perhaps not consisting of discrimination are not appropriate and make you feel out of place*”. Another went into more detail:

“Sexual innuendo/sexual comments/uninitiated compliments ... It doesn't generally upset me although at first it was a bit shocking. I think a bar room on a country circuit is one of the most intimidating places to be when the “chat” gets going. A regular occurrence in my experience. The Bar Room at Circuit Time is quite another experience. It is definitely a boys club and women are the butt of most of the comments/jokes etc. I cannot say that I personally have felt disgruntled enough to do anything about it but if I did I know I'd be seen as a whinger who couldn't hack it. I have a friend who has had incredibly personal remarks made to her at Court... In my view - this is probably the worst offence - women at court are definitely treated

differently. Court seems to turn men into little boys who forget all their principles”.

A third woman solicitor simply said: *“Inappropriate comments – girl/love/honey”*. Some described a great difficulty with knowing how to respond to such comments: as one woman barrister said, *“Feel helpless/unable to respond without becoming known as overly sensitive or risking becoming the butt of jokes/further exclusion”*.

9.4.2 Inappropriate Tasks

Among the inappropriate tasks allocated to women were: *“Being asked initially on starting to make tea or even fetch files etc that a male would not necessarily be asked”*; *“Treated like secretary during apprenticeship. Still given inappropriate tasks as a qualified solicitor in comparison to male colleagues.”*

Several women solicitors mentioned being given such tasks in conjunction with other forms of discrimination: *“Bullying by head of department (increased workload etc.) Classified with admin. Staff. Asked to buy wedding present etc. for department personnel. Obstruction of development plans”* and:

“Asked at interview why I should be given a job when women only went into law to find husbands. During my career I have been asked to do domestic type tasks e.g. shopping cleaning etc.”

9.4.3 Family Responsibilities – *“On the ‘mommy track”*

The issue of family responsibilities brought forward a number of different responses with similar points, like this comment from a woman solicitor:

“I was told that I was on the ‘mommy track and that I wouldn’t be expected to put in as many hours as others and wouldn’t be entitled to the same salary increase as others”.

Similarly, another wrote:

“Statistics of our firm show that women do not progress to equity partner level. Promotional aspects for men are not impeded by marriage or childbirth. In fact they may be enhanced but the reverse is true for women – women in highest positions .. are generally single or childless”.

The perception that women will inevitably carry a dual work/family burden was seen to impose a disadvantage on women’s career progression. Comments in this context included:

“I think that an employer is likely to prefer a male candidate over a female where all else is equal if she is of child-bearing age”;

“Being a woman solicitor would mean trying to prove that you are fully committed to

career – now and in long term – to detriment of family life”.

This was often made explicit to women: *“Lack of promotion due to my gender, advised ‘won’t make you a partner you will get married and have babies.’”*

At the Bar, similarly, one woman barrister pointed out that it is *“harder for women to establish themselves at the Bar. More difficult to maintain position due to family”*, and another said that the *“law library is very patriarchal in nature and no allowance is made for parenting either professionally or on a personal basis.”*

Within the focus groups, the adverse effect of family responsibilities on women’s career progress was also particularly noted. Where women availed of flexible working arrangements in order to cope with family responsibilities, this tended to reduce their promotional and career advancement prospects (see Chapter 7, at 7.4.4).

9.4.4 Exclusion from Social Events/Functions/Networking

Almost one-third of all women respondents (31%) had experienced some form of social exclusion. One female solicitor described her experience as follows:

“Networking/social functions seem to be predominately a male domain e.g. golfing outings -a ‘boys day out’. As a woman I feel sometimes I am asked to do things by male colleagues that I would not be asked to do if I were male. Similarly with regard to inappropriate comments ‘good girl’ and comments like this are often heard. Male colleagues can sometimes be patronising -not offensive - as indeed can clients by using terms of endearment.”

Another woman solicitor said *“Not invited to rugby/football with clients-male colleagues invited instead..”* and another: *“I work in a very male dominated area and my male colleagues tend to get on better with the ‘boys’. As a result you find yourself excluded from client functions which may consist of a few pints or golf etc.”*

Indeed, golf outings appear to be particularly gender-exclusive; other women solicitors referred to:

“Main networking opportunity seem to be golf outings which exclude women” and “Not invited to office sponsored golf outings even though I play (male subordinate invited instead)”; *“Not being invited to golf outings – wouldn’t go anyway...”*

9.4.5 Sexist Culture in the Workplace

Many respondents referred to the fact that being male is an advantage in social networking, especially through sports: *“Law is still in many ways an ‘old boys club’. The road to advancement is via rugby tours or drinking stories.”* *“There are still elements of the ‘old boys school’. Golf and rugby clubs which exclude women but these are becoming anachronistic.”* *“I think insurance panels are male dominated. Golf is the major*

networking method."

Another woman barrister noted generally: "Women are not part of male power system, ie schools/clubs/networking etc." One woman barrister wrote that "Judges treat female juniors on my circuit with more derision than the males"; another said that "Some judges regard female barristers with an air of scepticism and patronise". A male barrister agreed: "Some judges do not like female advocates".

Women solicitors wrote variously that:

"Attitudes towards females can be quite patronising- bullish"; "Attitude problems. Exclusion from conversation/consultation"; "General attitude in workplace that promotion and advantages will not be received by women first"; "General discrimination. Superior made gender based jokes regularly".

Many respondents noted a general attitude or culture that favours men for work, advancement or promotion. Woman solicitors said:

"being a woman is less favourable generally";

"I think women have to work or push harder just to be regarded as 'as good as' male colleagues";

"I believe women need to work harder especially in litigation or negotiation circles and dealing with some male colleagues and barristers";

"At highest levels promotion is more difficult – perceived 'glass ceiling' which no woman has broken, ie equity partnership";

"People think they can walk over women and put them under a lot more pressure than men".

One woman solicitor summed up the reasons why being female is a disadvantage as follows:

"1. Social networking – men often network by playing golf and 2. Male solicitors can be quite condescending towards their female colleagues. 3. Women who have children tend to have less chance of promotion unless they work harder than men."

A woman barrister said that being female "continues to be more of a negative factor due to the residual 'old boys club' nature of the bar and predominance of male partners in solicitors firms," and another used the same language, in stating simply: "Old boys club/glass ceiling very secure."

9.4.6 Harassment or Bullying

Sexual harassment or bullying was experienced by 14 per cent of all women respondents – an alarmingly high figure indicating that over one in ten women lawyers have had experience of this. The types of harassment or bullying experienced ranged from actual sexual assault, to being molested or experiencing attempted molestation, to sexually loaded comments. Among the more serious examples given were the following (both from women barristers):

“numerous sexist remarks/sexual assault on one occasion by senior colleague in aftermath of social function. Judges’ sexual remarks including from bench. Subordinates – inappropriate sexual remark. Managed to fend off sexual assault – depending on situation – silence may be only option”;

“Former colleague continually made comments of inappropriate nature in public and at functions and attempted on a number of occasions to molest.”

Other women barristers had similar experiences: *“One incident of being ‘felt up’ by a colleague whereupon I left the premises. Numerous comments about female barristers which I tend to ignore and sometimes reply to in a joking manner”;* *“Physical sexual harassment by a colleague: reprimanded him; he apologised”.*

Women solicitors had similarly been harassed:

“I was bullied by my boss during my apprenticeship and he made inappropriate comments all of the time. I was too young/scared and inexperienced to do anything about it at the time.”

Another woman solicitor described her experience of ongoing harassment:

“Bookkeeper who would not write cheques and continually made degrading and hurtful remarks. Superior who continually put his hand on my head and arms..”

Finally, one woman solicitor explained the particularly gendered nature of the bullying she had experienced:

“Discrimination/bullying with one male partner only not from other colleagues. Discrimination takes the form of fairly constant jibes on working hours/interjecting when I am advising clients on telephone/constant questions of work and advice given/listening to personal calls and commenting on them. Digs here and there on personal matters. My difficulty is that I share a small room with this person. The reason I feel this is gender based is because I see him doing something similar to other female colleagues but not to male colleagues. Also male colleagues at my level are invited by him on marketing and networking junkets whereas females are never considered.”

9.4.7 Client Bias

Client bias was frequently mentioned as a problem in this context, one saying for example: *“majority of clients are male”*. A male solicitor commented *“Clients of my practice are substantially male farmers: these feel better understood on milk quotas etc by male solicitors”*; and a woman solicitor similarly said *“Clients particularly rural men prefer ‘The Man’”*.

Another wrote:

“Profession is male dominated at top levels. Many clients like men to act for them as they’re perceived as tougher and more able to argue a case.”

Client bias was also raised as an issue during the focus groups and interviewees, although few thought this was a problem any longer. One interviewee recalled: *“A solicitor would sometimes say ‘I’m really sorry, it’s very stupid but the client won’t have a woman’, but this didn’t apply in family law.”*

A woman solicitor thought that: *“Once clients know you’re capable they’ll settle down, there’s very little of that now.”* But she added: *“I remember some instances, eleven or twelve years ago, when I was starting out; one/two were because I was a woman, also I was very young, maybe an apprentice, one client said they didn’t want to deal with a ‘girl’.”*

A more junior solicitor agreed: *“I find that, maybe it’s an age thing. One elderly male client wouldn’t see me, he would wait an hour to see a man. I’m not sure if that was age or gender. But I would always introduce myself as a solicitor.”* The others agreed that a young man her age would not have to introduce himself as a solicitor: men *“look older in suits”*.

9.5 Experience of Gender as an Advantage

Respondents were asked if there had been occasions within their career/profession/job when gender worked in their favour in their career or profession. Perhaps surprisingly, a significantly higher proportion of women (43%) believed that it had, whereas men (19%) generally answered that it had not (Table 9.4).

Table 9.4 Gender an Advantage

	Men	% of Men	Female	% of Women	Total
Yes	35	19%	187	43%	222
No	150	81%	247	57%	397
Total	185	100%	434	100%	619

Chi-square .000

Generally, five reasons were advanced by women respondents and focus group participants when asked to describe how gender had worked to their advantage. These are outlined below.

9.5.1 Advantage in Certain Types of Law

Several woman solicitors said that they were preferred by some clients or were more useful in certain areas of law (notably family law): *“Some clients prefer to talk to a lady solicitor-particularly in areas of family law”*; *“I consider my gender a benefit in the practice of family law. Some clients appear more comfortable because I am a woman, whether they are male or female”*.

This applied also to woman barristers: *“Solicitors thinking I am ‘good’ with elderly/female/nervous clients”*. However, this had the negative effect of concentrating women in particular areas of work, as one woman barrister summed up: *“refugee cases/rape/minors”*.

9.5.2 Advantage with Gardaí or Judges

Some woman solicitors said that it was easier for them as women to deal with gardai or judges: *“Sometimes easier to get concessions from guards”*; *“As an apprentice or young solicitor would often be treated well or ‘hand held’ by judges. Also women tend to be more efficient and this helps with clients”*; *“As a litigator I tend to be treated more respectfully by judges.”*; *“Being treated more favourably by certain judges than male colleagues”*.

9.5.3 ‘Feminine’ Attributes

Other respondents took the view that their ‘feminine’ attributes had worked in their favour, because they were more charming, less competitive, or less threatening, than their male counterparts. One woman referred to the *“Perception by male employers that women are not as aggressive nor as ambitious as men”*. Others said that *“Women have better people skills/better emotional intelligence and can use these skills in the workplace to get result for client and create good work environment”*; that *“Women can be charming and more in-tuned to social graces than men”*, and as one woman barrister said *“..in most cases I find that being a young woman has worked to my advantage (by using feminine charms)”*.

However, a less benign view of ‘feminine’ attributes was offered by one woman solicitor who wrote *“I think that sometimes where acting for successful business men who relate well to women that it is easier and the atmosphere is less competitive. I think that women can be very competitive towards each other and very bitchy”*.

And several women alluded specifically to being conscious of using their femininity as a tool within their profession: *“Short skirt can work wonders sometimes”*; *“People do not expect a little girl to serve summons”*. However, this was also seen as a disadvantage, in one wry response from a woman solicitor: *“Mostly men are not adverse to a pretty face – unfortunately the opposite also applies”*.

9.5.4 Women are More Focused

Among male participants in the focus groups, women lawyers were seen to possess certain advantages by virtue of being more focused. One male solicitor felt that women tend to present better at interview at age 20-22, as they are “*more mature*”, and more likely to describe a “*team-based approach*” as an objective. Another participant commented that at law school, women “*appeared to be more focused, knew why they were there*”. Men were there because they “*happened to be bright*”, but were likely to be “*less focused*”. Others in the group agreed that: “*Guys more likely to do law for negative reasons, because they didn't want to do engineering*”. “*Women have more sense of responsibility*”.

Another participant who attended law school in the 1980s agreed that: “*Women had something more to prove, had to do really well, they were not wastrels at the time*.” A participant trainee solicitor remarked that even now, “*the way women interact indicates that they want to show they're doing a really good job. Men feel they can coast along more*”. There was much discussion and some disagreement as to whether this was true, with some participants unwilling to believe that women feel now they have anything to prove. The consensus was that things had changed, but that back in the mid-80s it was different, although the view from the trainee level was that women were still more very focused, and very driven.

9.5.5 Positive Discrimination

Four women respondents said they perceived that positive discrimination had worked in their favour. One woman barrister stated:

“Disproportionately fair representation for women on state panels in what I assume is an attempt to redress existing imbalances as I do a lot of this kind of work I have benefited directly”.

Another said “*Positive discrimination in favour of women in securing work which is prevalent for the first no. of years*”. However, two other women mentioned specifically that women colleagues had briefed them or helped them with work, like the woman barrister who said: “*Female friends recommended me for briefs when over-loaded*”. This may indicate some emergence of a collective women's challenge to what was describe in responses to other questions as a ‘boys club.’

A small number of (male) respondents said that being female is an advantage, as one male barrister wrote “*Positive discrimination in many areas. Favour women*”, while a male solicitor said “*Judges favour women as advocates*” and a male academic wrote “*Gender balancing: women more likely to get promoted*.” A female academic pointed out that “*There are no female associate professors or professors of law in my workplace*.”

9.5.6 Being Male as an Advantage

Finally, fewer men were willing to admit to gender having worked in their favour. Five mentioned that being male had worked overtly in their favour in the past but that this had now changed, for example: “*Got job because I was male*”;

“For the first 15 years public attitudes in a provincial practice favoured males. This is only the case now in rare exceptions – probably with older and/or less educated clients”;

“In the 70s and early 80s it was an advantage to be a male when doing criminal law in particular”.

Another said:

“I work on Circuit and I have been aware of the practice of some practices not instructing women based on the perceived preference of their clients and this resulted in female colleagues losing work which then came to the male barristers – including me. I believe this situation has now changed significantly”.

Another man observed similarly that:

“As a male solicitor starting 20 years ago there was a clear tendency to have men do litigation or commercial with women steered towards the less glamorous conveyancing/probate etc”.

Only two men said they were aware of their gender working to their advantage on an ongoing basis, and both gave quite specific reasons for this. One said “*When visiting prisons or garda stations to interview people in custody, not subjected to abuse*”, while the other remarked “*More men in my profession – paternal approach to me*”.

9.6 Experience of Discrimination Against Women

Respondents were next asked how common it would be for discrimination against women to occur in their career/profession, based on their own knowledge and experience. Women were more likely than men to say that discrimination against women is common or very common (Table 9.5).

Thirteen per cent of women believe that discrimination is very common (compared with 3% of men) and a further 17 per cent believe that it is common (compared with 8% of men). Just over a quarter of the women thought it 'normal' compared with 14 per cent of men. In total 56 per cent of men feel that such discrimination is uncommon or very uncommon, compared with less than a quarter of the women (24%). The gender differences in relation to discrimination against women in the law were statistically significant. This suggests that men are less aware of gender as a source of discrimination against women, and that gender differences are statistically highly significant.

Table 9.5 Discrimination Against Women

	Men	% of Men	Female	% of Women	Total
Very Common	7	3%	63	13%	70
Common	20	8%	81	17%	101
Normal	36	14%	124	26%	160
Uncommon	51	21%	66	14%	117
Very uncommon	87	35%	47	10%	134
Don't know	47	19%	95	20%	142
Total	248	100%	476	100%	724

Chi-square .000

9.6.1 Discrimination Against Women in Court Work

Respondents who are engaged in court work were asked if they observed certain behaviours and, if so, their source. In total almost three-quarters of respondents are engaged in court work (76% of the men and 74% of the women). It is evident that women who are involved in court work are subject to a number of negative and discriminatory behaviours from a range of sources, including judges, barristers, solicitors, court staff and clients. In many cases this behaviour was observed not only by women but also by men involved in court work. In relation to women being addressed differently to men, this was most often noted in the behaviour of judges, clients and barristers (Table 9.6).

Table 9.6 Women Addressed Differently

Women Addressed Differently by:	Men	Women	Total
Judges	60	143	203
Barristers	31	109	140
Solicitors	28	85	113
Court Staff	15	33	48
Clients	58	133	191

Where respondents noted that women were subject to 'terms of endearment' towards women lawyers, this behaviour was more commonly associated with clients, followed by barristers and solicitors (Table 9.7).

Table 9.7 Terms of Endearment Used

Terms of Endearment by:	Men	Women	Total
Judges	24	67	91
Barristers	29	104	133
Solicitors	23	93	116
Court Staff	5	25	30
Clients	39	135	174

Comments on women's personal appearance were noted as mainly emanating from barristers and then solicitors, followed by clients (Table 9.8).

Table 9.8 Comments on Appearance

Comments on Appearance by:	Men	Women	Total
Judges	31	51	82
Barristers	44	144	188
Solicitors	41	124	165
Court Staff	8	23	31
Clients	34	100	134

Respondents, female and male, were slightly less likely to observe different reactions to arguments by women lawyers, though these were evident in the behaviour of barristers, followed by judges/solicitors (Table 9.9).

Table 9.9 Different Reaction to Arguments

Different Reaction to Arguments by:	Men	Women	Total
Judges	34	86	120
Barristers	20	99	119
Solicitors	18	86	104
Court Staff	3	13	16
Clients	21	71	92

A total of 80 respondents (27 male and 53 female) had observed other forms of gender bias against women or men in court procedures. When asked to describe what these were, a range of answers emerged, indicating a seriousness lack of awareness as to appropriate use of language among the judiciary.

9.6.2 Judges' Attitudes to Women – *"You're far too pretty to be taking this action"*

Respondents identified a different approach taken by judges to women lawyers compared to men, ranging from *"more courtesy"* to *"patronising silliness"* or *"Judges tend to be more 'matey' with males"*.

The patronising of women by judges is also seen as taking many forms, some of them highly embarrassing for the women involved. One woman solicitor reported that *"Male judge once said from the bench 'you're far too pretty to be taking this action'"*. In a similar vein, a woman barrister recounted: *"Totally inappropriate comments in open court by a judge re whether or not my husband .. and I had any children and why we had not"*. Another woman solicitor observed: *"Sometimes people can be more condescending towards women in court – also gardai"*, while a woman barrister said: *"On one occasion male colleague on the opposing side and the judge colluded in a patronising attitude towards me"*.

Other respondents said women were simply not taken as seriously, often with very serious consequences:

"I have seen male judges on occasion give more attention to the evidence of a male witness than that given to female equivalent witness";

"Resistance to facilitating pregnant women in listing dates. Males facilitated";

"Judiciary frequently making appalling comments re women litigants/women complainants";

"Often – in relation to criminal legal and dock briefs in court. It appears that most such dock briefs are given to male colleagues";

"Derision by judges".

Others again said that women were not as aggressive as men in court, and that this could be a disadvantage: *"Very aggressive men are sometimes given more credence by judges in the district court"*; *"Loudest voice is heard first. Men are more senior"*.

However, some saw women as having an advantage in court: *"Judges flirting with female barristers"*; *"I've seen gender bias towards women clients in the criminal law"*; *"Presumption in family law in favour of female"*.

In the focus groups, when judges' attitudes were discussed, one solicitor referred to the practice of a particular Judge who:

"makes women solicitors sit down, the male solicitor stands, when we're in chambers. But you don't experience blatant discrimination, it's his age, he's being chivalrous, but you're at a disadvantage."

Another said she found practice in the District Court generally: *“intimidating. Sometimes I am the only woman solicitor, and the only one under 30. There are so many gardai – there’s a very male atmosphere. I like to see another woman solicitor there.”* It was suggested that a woman judge would probably have a harder time than a male one, she would have to be tougher, but *“then people would give out about her being tougher”*.

9.7 Obstacles to Women’s Career Advancement – “Children”

Having considered attitudes towards women in the legal professions, respondents were asked to identify the main obstacles to women’s career advancement. A total of 400 respondents provided qualitative responses to this question. Three general themes emerged from their answers: family issues; the ‘old boys network’, and women’s lack of confidence. Of the three, one was predominant: the obstacle chosen by far the most people (237) was family commitments/children/pregnancy or maternity. Once again, this indicates the huge problems there are for women ‘having it all’, and the failure of the legal professions to address the serious difficulty with combining work and family life that clearly affects so many lawyers.

9.7.1 Family Issues

Thirteen respondents (including some men) simply wrote *“children”*. The word *“family”* or phrase *“family commitments”* also appeared repeatedly. Others elaborated further on the difficulty for women of balancing work and family life, some raising very practical concerns:

“The struggle to keep home and family going with unsatisfactory childcare arrangements. Having to go home and make dinner.”

“The difficulty/expense in organising creche facilities and long hours expected in the legal profession.”

“No support from the Bar in relation to child support/creches etc and other difficulties that only arise towards women”;

“Loss of practice due to absence after childbirth.”

The reality of trying to juggle children and a career, particularly in a long hours work culture, was noted. One respondent said *“Family life/sense of responsibility/guilt in availing of childcare.”* Others remarked *“Children! And endeavouring to develop a client base in a social world orientated towards men”* and *“Family/child commitments. Long hours sometimes required. Old boys network – golf outings etc.”*

Many referred to the difficulty of giving sufficiently to the job to be promoted or to progress in their careers: *“Mostly family commitments and inability to give a 100% to the job at the expense of family.”*

“To advance one has to give 100% commitment to your clients and to your profession. This is difficult for a woman who is married and has children. Time has to be devoted to children in their formative years.”

Some pointed out that even if women did not have childcare commitments, the perception that they might some day could itself be an obstacle in the workplace, due to the *“Perception that women are more family orientated”*. Another (judge) said *“Male dominated at my level. Children seen as obstacles.”* A solicitor claimed *“Perception they (women) will be less committed with children. Long hours culture,”* while another stated:

“Juggling career and home life but more significantly traditional views/roles in legal profession. Women are not taken as seriously and are not viewed as having ambitions.”

Yet another felt perceptions created a double bind for women:

“Marriage and being of child bearing age – also getting older and being past child bearing age.”

9.7.2 The “Old Boys Network”

The second most common obstacle mentioned was the culture of the profession, summed up by many respondents through the use of the phrase *“old boys network”* or *“old boys club”*. These phrases come up constantly when women discussed their chances of promotion (see Section 6.2.9). Under this heading, one respondent simply said: *“men”*. One woman solicitor summed it up more carefully: *“Attitudes/historical perceptions/childcare facilities/lack of flexi-time/consequences of career breaks.”* Another said *“Cultural prejudice. Old fashioned traditional male views.”*

Attitudes of partners in solicitors' firms were often singled out as responsible for this culture: *“Old boy network and chauvinistic male partners in law firms”*; *“Men of a certain age are mainly partners and hold old-fashioned views regarding women in workplace.”* But these attitudes were not limited to partners: *“Sexist prejudices of superiors/endemic sexism in broader social structure. Responsibilities of women to families seen as ‘anti-business’”*.

Nor were such attitudes seen as being confined to those in superior positions in the workplace. One woman barrister referred to *“The attitude of many male colleagues/solicitors/persons in authority re instruction of counsel”*, and a male barrister wrote of:

“Old fashioned attitudes, the culture of gossip at the Bar and the inability of male barristers to accept the fact that not every female barrister wishes to be with them.”

Among the focus group participants, the men generally did not accept the idea of an ‘old boys’ network’, although one admitted that *“Men still have conversations they*

wouldn't want women to be part of." A woman participant recalled being told when she started work in a particular firm, that *"the beauty of working in [the named firm] is they treat you like a man."* She said this 'men's club' atmosphere had now changed, but even then, *"I said I didn't want to be treated as a man!"*

9.7.3 Women's Lack of Confidence

Some respondents described lack of confidence as the greatest obstacle for women. One woman solicitor said *"Lack of self-esteem/researching answer before speaking. Not putting themselves forward."* Another said:

"Lack of suitable role models and mentoring among women. Lack of assertiveness/confidence and interpersonal skills in women."

Others referred to *"Women's ambivalence towards pushing for the top jobs.."* or said: *"Primarily a lack of confidence in themselves which is not discouraged by their male colleagues. Family and other commitments often take priority."*

9.7.4 Denial of Obstacles - "Are There Any?"

There were only a small number of respondents (20), 16 of whom were men, who could not identify any obstacles to women's career advancement. One male solicitor merely asked *"Are there any?"* Another said *"I don't believe there are obstacles."*

Some were downright hostile to the idea that obstacles might exist, and felt it was women's fault for believing that they did. One said that *"Feminist delusions"* created the main obstacle for women, while others said it was women's *"own aggression"* or *"own feeling of prejudice toward them."*

This view was also expressed by a number of participants within the focus groups. The male participants all agreed that barriers were simply not an issue anymore for women, because, in the words of one participant, *"You can think of a woman in every area who's on a par or higher than a male...across the board women are busy and sought after."*

When asked whether discrimination existed anymore, another said: *"Maybe it did when Ireland was less busy – now we're more mature. From a financial point of view, we have to be gender-neutral. Merit is our base."* As the discussion progressed, it was also conceded that there are *"Some people in the professions for whom the 80s and 90s passed them by."* Or, as one participant said:

"Clearly individual men are scattered around the system who will have prejudices against women or other prejudices. There are still plenty of those – but they are not characteristic of men in the profession as a whole."

And another said:

“Structural discrimination must be got rid of – I don’t think there is any but others may think there is. There may well be personal discrimination, but for most people, especially solicitors, they want to get the work done and if the person has the knowledge, gender is not an issue. Other issues may be more important, like the area you are from, whether you went to UCD/TCD. The structural problem is because we’re not used to the idea of mothers working outside the home. Is Ireland catching up?”

The idea of an ‘old boys’ club’ as a barrier to women was also denied, although one man accepted some elements might remain:

“This is more a product of this country with a small population, in Dublin people know each other. You could call it old school tie, but it’s largely due to smallness, people naturally give a leg up to someone they know.”

Another said by way of justification:

“We grew up with predominantly segregated schools, so a lot of the people we know, if we’ve been to an all-male school are men, we learn to look on women as ‘the other’, out there somewhere, maybe we’ll meet one! So clubs grow because men know each other, in other countries there is less segregation, so people are more likely to have friends of both sexes.”

However, the view that there is no ‘boys’ club’ was not confined to men; one woman commercial partner took a robust view, commenting:

“There is no old boys’ network, that’s completely a dead duck. Not any longer... Clients want the best advice they can get in a cost-effective way. Once you can deliver the client doesn’t give a damn. People have to justify the legal fees, people don’t bring all their business to one law firm, they go to individuals who are the best in the area.”

9.8 Sport as a Source of Discrimination - “Golf Without a Doubt”

Respondents were asked if they played or followed any of a selection of six different sports. The most popular sport for women was tennis, followed by golf, with the others coming far behind (Table 9.10). For men, by contrast, the two most popular sports were rugby and golf, followed by soccer, GAA and tennis.

Table 9.10 Sport Played or Followed

Sport Played/Followed	Men	Women	Total
Tennis	77	176	253
Golf	105	107	212
Rugby	115	46	161
GAA	87	64	151
Soccer	97	35	132
Sailing	49	68	117

Respondents were then asked if they believed that an interest in any of these sports would be helpful in furthering a legal career. A marked gender difference emerged in the answer to this question, with 79 per cent of women believing that it would be, compared to 64 per cent of men (Table 9.11). The differences were statistically significant.

Table 9.11 Sport Helpful in Furthering a Legal Career

Sport Helpful	Men	% of Men	Women	% of Women	Total
Yes	164	64%	374	79%	538
No	92	36%	102	21%	194
Total	256	100%	476	100%	732

Chi-Square Test .000

When asked which sport was perceived to be the most important in furthering a legal career, it is evident that golf is a clear first, having been identified repeatedly by women respondents as having an adverse and discriminating effect on their own professional lives. Golf appears to be such a major cause of social exclusion for women in the legal professions that one might well query whether women should be trained to play golf as students. It appears that this might well be more useful to them than academic qualifications in obtaining work.

A selection of observations from women solicitors on golf bear out this conclusion:

“Golf without a doubt”;

“Golf is the biggest client entertainment area at present. It also is a major topic of conversation at a lot of meetings”;

"Women are frequently excluded from client entertaining because of the fact that less of them play golf";

"Probably necessary to play golf for socialising";

"Golf!! Rugby!!"

One male barrister had a slightly different angle on the issue:

"Golf would be but I detest it".

However, several respondents, including some women, had no difficulty with the emphasis on golf within the profession *"I personally find that golf helps in mixing and mingling"* and *"Golf breaks down hierarchical structures, equally available in firm to women"*.

Other sports were also rated as important, particularly rugby. As one woman solicitor put it *"Rugby seems to be an 'old boys network' and they stick together"*. Sailing was also included, and GAA was mentioned frequently *"Golf is part and parcel of the male network. GAA sport is now superseding that and is more appealing to men and women alike"*; *"I think a high GAA profile is very helpful in a rural practice"*.

One woman barrister noted that *"Golf soccer and rugby"* were important, and that *"most teams sports at the bar are male oriented"*. However, a male barrister noted that *"Yet to receive a brief based on a sport contact – in my experience this is a myth."* Finally, some respondents commented on the absence of certain sports from the question: *"Hilarious there isn't a box for hockey!"*; and one woman lecturer commented: *"How about some female sports? Dance? Gymnastics?"*

However, within the focus groups, the men did not see sporting events operating as a barrier to women anymore. One said that:

"A huge number of our clients now are women, in commercial law, many general counsels in companies are women, as their hours are more circumscribed; so we directly work for many women. This changes the way we network, it has to be more balanced. A whole lot of different things are done now for social networking – we organise things that reflect our clients' interests, most firms do sports but also cultural events, so for example [one named firm] sponsors concerts."

9.9 Non-Gender Discrimination

Finally, while the focus of the survey and of this study is on gender, respondents were also asked for their experience of other forms of discrimination. This question was based upon the eight other grounds of discrimination besides gender included in the equality legislation (the Employment Equality Act 1998 and Equal Status Act 2000).

The results suggest that gender is the main ground of discrimination at issue in the legal professions. Experience of non-gender discrimination in the course of a legal career was relatively low (Table 9.12). Only 11 per cent of women had experienced discrimination on the grounds of family status and age during the course of their legal career. A further 7 per cent had experienced discrimination on the grounds of marital status. Nine per cent of men had felt discriminated against on the grounds of age, followed by religion (5%), sexual orientation/race/ethnicity (4%).

Table 9.12 Non-Gender Discrimination

Discrimination Grounds	Men	% of Men	Women	% of Women	Total
Marital Status	5	1%	35	7%	40
Family Status	6	2%	53	11%	59
Sexual Orientation	10	4%	4	<1%	14
Religion	13	5%	9	2%	22
Age	25	9%	55	11%	80
Disability	8	3%	1	<1%	9
Race/nationality/ethnicity	11	4%	8	2%	19
Traveller Community	9	3%	2	<1%	11

Of the relatively small numbers outlined above who responded that they had experienced discrimination on any of these other grounds, 89 gave more detailed responses, most of which related to experiences of discrimination on grounds of either age or family/marital status.

9.9.1 Age

On the age ground, many respondents, particularly women solicitors, felt their relative youth had worked against them in different ways “Age: not so much now but as a younger woman sometimes created problems”; “Discriminated against for being too young.”; “Not expected to know anything because I was young even though I had two degrees”;

“Perceptions that if you are younger than a colleague you are dealing with you will not be able to do as good a job as them due to lack of experience etc and tendency for older colleagues to use this to their advantage rather than assist you in business dealings.”

“Young solicitors tend to be dismissed out of hand by older solicitors on the opposite side of transactions and occasionally by older barristers to whom one actually instructs”.

One woman barrister agreed *“Considered too young to be a barrister at age 27 years.”*

However some respondents considered that being older could equally be a disadvantage: *“Older people excluded.”* A woman barrister wrote similarly:

“Older women in particular appear to be given less opportunity of advancing career at the bar. That is if they enter the bar at a more mature age. The same opportunities do not appear to arise for them to progress at an equivalent rate to either young women or men.”

9.9.2 Family/Marital Status

On the family/marital status ground, a range of different experiences emerged. Some felt it would be easier if they were married. As one respondent said *“It is simply better to be married at the bar than not – due to its history and culture. Single women generally are not trusted.”* Another, a woman solicitor, said *“You are considered ‘hard’ if not married by a certain age.”*

Some however had experienced a negative attitude towards them due to being married in the form of *“Change of attitude after marriage;”* and as one woman solicitor recalled:

“..I believe that for some years I was not paid the going rate as I had a husband who could provide for me. My superiors then were all men and their wives did not work. There was also discontent when I claimed certain perks for my working spouse which had always been given to their spouses.”

Comments from women barristers included: *“Solicitors repeatedly make reference to the non-essential requirement of my practice due to having a husband. Nothing has changed in this remark in 25 years!”* and *“Some solicitors were more prepared to give me work when I was not married and therefore dependant.”*

For other women, their marital status or family plans had been put at issue very specifically and had worked against them in the workplace: *“Future marriage/pregnancy plans were questioned at initial job interview”* and:

“I was 6 years qualified and married. A member of the panel asked me if I intended making law my career as I was married. I laughed as I could not imagine this being asked of any male married participant. The person asking was female! I did not get the job.”

“On becoming engaged I was asked by my boss if I saw myself continuing in practice in 4 to 5 years time. The question was raised during a salary review and I found it totally inappropriate and told him so..”

Some had experienced discrimination on the family/marital status ground because of having children. One respondent recalled that *“When applying for a job I later found out I was ruled out on the grounds that I had too many family responsibilities i.e. handicapped child to care for.”*

9.9.3 Religion

Religious discrimination had also been experienced by a number of the respondents: *“Several firms refused even an interview, one of which admitted they don’t trust ‘Prods’!”*; *“Verbal abuse from colleagues/not being briefed, both as a result of not being RC”*. One respondent had even had the experience of having had comments made in front of him, about *“Fenian scum”* in the profession, which he described as making him *“angry/humiliated and very frightened and shocked.”*

However, in one case this sort of discrimination was identified as being based upon both religious and political grounds: *“In early years certain solicitors briefed only Protestant and TCD graduates. Some companies and banks also. Fine Gael solicitors briefed only barristers who had been to Clongowes.”*

9.9.4 Other Grounds

Finally, experiences of being discriminated against on the grounds of both disability and sexuality were also raised by a few respondents. On the disability ground, one solicitor referred specifically to the *“four courts building”* as a source of difficulty; another respondent referred to being disabled as *“a huge problem with solicitors and clients and barristers.”*

On the sexuality ground, one respondent summed up: *“gay/lesbian solicitors are in the closet in work for fear of discrimination”*, while another said similarly:

“There is a culture of homophobia towards gay and lesbian members of the bar with the result that most gay and lesbian barristers are completely ‘in the closet.’”

While gender remains the primary ground on which lawyers feel they are discriminated against, from this overview of lawyers’ experiences of discrimination on grounds other than gender, it appears that further research may be necessary to try and develop a more detailed picture of the extent to which such discrimination is an issue. In any equality policies or codes adopted by the professional bodies, for example as a result of this study, reference should also be made to grounds of discrimination other than gender.



Chapter 10

Improving Opportunities - Remedies, Redress and Enforcement



10

Improving Opportunities - Remedies, Redress and Enforcement

Respondents and participants were asked to describe their own experience of using complaints procedures or routes for securing redress within their professions, where they had experienced discrimination. The findings show a general lack of faith in the use of such procedures, and a particular hostility towards using legal procedures to secure redress. The whole question of how best to obtain remedies for discrimination within the legal professions is then discussed, in the context of an environment where lawyers often feel they cannot use the law themselves— this is what has been called the ‘lawless domain’ (see Chapter 2). Finally, by way of preventing discrimination from occurring in the first place, respondents were asked to suggest the sort of measures that could be adopted to improve opportunities for women in law.

10.1 Experience of Complaints Procedures/Remedies

A significantly higher proportion of women (21%), compared with men (4%) are aware of formal complaints procedures available to them within their profession or career (37 men and 106 women). However, few respondents have availed of such a procedure. A very small number (3 men and 17 women) said they had made a formal complaint. Of these 20 formal complaints, half were dealt with effectively (one man and 9 women).

10.1.1 Problems with Complaints Procedures

However, the attitude of most respondents who gave details about their experiences with, or views of, complaints procedures was either dismissive or negative. Some respondents stated simply “*Self-employed*” – thus, the issue was not relevant to them. Broadly, apart from these, the responses fell under five headings.

The first group felt that their complaint had not been worth taking, or that it was too trivial: “*No need to make a mountain out of a molehill*”; “*I felt that to do so would be an over-reaction*” (woman barristers); “*easy life attitude: more things to be troubled with*”; “*problem not worth making complaint*”; “*Did not think it was worth my while to waste time on ignorant old men*”.

A second set of respondents said no procedure for complaints was available. Some women solicitors wrote: “*No procedure in place*”; “*Just not available and not done in this very large and prestigious firm- regarded as part of the job*”; “*Because employer is not open to having a procedure*”. In a similar spirit, a woman barrister noted: “*No*

recognition in the bar for the necessity of such a system.”

A third group of respondents took the view that their organisation was too small to have procedures or remedies. While some were sanguine about this - *“The organisations that I have worked for have been too small so while not having a formal complaints procedure would certainly deal with a complaint if it arose”* - others expressed this view in a more negative way. *“Small office - no procedure in place and to make such complaint anyway would be detrimental to my prospects long-term both in current job and elsewhere”*.

Fourth, the negative attitude taken towards procedures and remedies in many cases might be attributed to a fear of victimisation or ridicule, as in: *“Complaint would have been counterproductive”*; *“Who would want to take on a big firm? I acted by leaving”*; *“Did not want to show weakness”*; *“Felt would be viewed as a crank”*; *“professional death”*.

This fear appeared justified in some cases, as one woman solicitor wrote:

“Made an informal complaint and then formally wrote to the partner in question. It has not helped my career prospects.”

Fifth, even where the issue of victimisation was not raised, many respondents displayed a general lack of faith in any form of redress being achievable (again apparently often justified). One woman solicitor wrote *“Not relevant to type of discrimination since happens on an ongoing basis everywhere.”* Another said *“I was asked to get on with things and put it behind me”*, and a third said her complaint was *“not followed up because the perpetrators were partners.”*

A woman barrister pointed out *“No provision for having complaints of ‘personal’ and not ‘professional’ nature dealt with when made against judges. Also convinced that no action would be taken and could possibly make matters worse”*. Finally, a woman solicitor wrote bleakly *“Why rock the boat? Who listens?”*

10.2 Legal Proceedings

If gender discrimination amounted to legal treatment, respondents were asked whether they had instituted legal proceedings. None had, and discussion of the idea of seeking redress through a formal route elicited overwhelmingly negative responses in focus groups and at interviews. Two principal reasons were given, both inter-related. First, many simply thought that the profession is too small - *“No point in getting a name for yourself as the profession is too small”*; *“I would have hindered my future prospects - Ireland is too small”*;

“No guarantee of success. Legal profession is very small and would undoubtedly come across my assailant in future.”

Second, several explained they had not instituted legal proceedings because of the fear they had that it would affect their career; *“It would not do one’s career progression any favours”*; *“Still wanted a career”*; *“Too afraid”*; *“Did not wish to be seen as a troublemaker.”*

This negative reaction exemplifies the problem of the ‘lawless domain’ discussed in Chapter 2. It also explains why there are so few reported legal cases taken by lawyers in Ireland alleging discrimination (see Appendix 7).

10.3 Formal Structures for Securing Redress

Respondents were then asked to say what they felt would be the most appropriate mechanism for securing legal redress for gender discrimination in the professions. The answers to this question displayed a real tension between the desire for self-regulation and the need to ensure effective external enforcement. There was also ambivalence about the role, and indeed effectiveness, that the professional bodies could take in securing redress.

10.3.1 Specific Structures Within the Professional Bodies to Deal with Gender

When asked should the professional bodies have specific structures to deal with gender issues, a total of 77 said no; 158 said yes, and 30 were unsure or expressed doubts about the idea. Excluding the undecideds, the idea of such structures was supported by a majority of over two to one of those who responded to this question.

The respondents who fell into the undecided category did so for many different reasons. Some felt unsure about whether there was any need for such structures. Others were sceptical about the prospects for change: *“Would it make a difference?”*; *“Don’t know if they would be effective”*; *“Women would be reluctant to use them;”*

“Structures may assist females in specific cases but any complaint made while it may result in redress may affect future career – will be seen as troublemaker-whinger.”

10.3.2 Opposition to Specific Structures

Those who opposed the idea of such structures also outlined a variety of reasons for their opposition. Some disagreed with the idea, on the basis that existing procedures are adequate. For example, one woman solicitor said

“Existing laws should be enough – professional education and general education is redressing balance for younger members.”

The view that things would change with time, or had already changed, was expressed by many of the undecideds, like the woman solicitor who wrote

“No – I’m a pragmatist and think that the professional landscape has changed in recent years and will continue to do so. Women should just get out there and work and push

ahead – I don't believe in 'ghettoising' through highlighting gender issues in this way."

Similarly, a woman barrister agreed

"Used to think so but huge improvement in attitude since 1977."

Some emphasised the potential for seeing such structures as being counter-productive and/or discriminatory against men *"If special steps are taken then the risk is that men are discriminated against"* and *"No- women often come out looking worse from these."*

Other respondents who opposed the idea, expressed outright hostility to it in principle, like the male solicitor who wrote *"No – The country is already awash with structural bureaucratic twaddle breeding an appalling political correctness."* Others took a similar view, although not so strongly expressed, saying for example *"No – we are not an ethnic minority."*

10.3.3 Support for Specific Structures

Of those who supported the introduction of specific structures, many simply said *"Yes"* without further elaboration. Of those who explained why they agreed with the idea, some were positively enthusiastic, like the woman solicitor who wrote:

"Most definitely! In a gender discrimination case courts should be able to seek discovery of incomes of all other fee earners with similar ppe. To compare fee income and billable time to assess if there is discrimination based on gender..Women still get paid far less than men for equivalent work."

Others recognised the need, but were less optimistic, like the woman solicitor who said:

"Yes –there may in fact be a committee which deals with discrimination and harassment in the Law Society but I am not aware of it. In any event I wonder if it would be taken seriously. I did not feel that I have been discriminated against but I do not have much faith in the profession to be of assistance if I was."

Another solicitor similarly said

"Yes – I think the Law Society needs to be far far more proactive in the entire area from education through to enforcement."

This feeling that little is being done at present was reflected in many answers. As another woman solicitor wrote

"Yes. I consider the legal profession to be very discriminating especially when it comes to sexual harassment/comments etc."

Even some of the respondents who supported the idea, like many of its opponents, expressed anxiety about how it would be seen in practice:

“Yes – but the difficulty is that by doing this women who do succeed to top are somehow seen as less worthy;”

“Yes – but low key to avoid over reaction by men and over zealalousness by women.”

Finally, one woman summed up her (cynical) view thus:

“It would be treated as a joke at the Bar.”

10.3.4 Appropriate Mechanism for Securing Legal Redress

Respondents were also asked to say what they saw as an appropriate mechanism for securing legal redress for discrimination. Perhaps surprisingly, only a small minority saw litigation as the appropriate way to deal with discrimination. Some respondents were not even sure of the relevant legal route, or of the name of the body before which discrimination cases might be taken.

Given the responses to the two previous questions and the widely expressed concern about being seen to be *“a troublemaker”*, it is less surprising that respondents would not be willing to take litigation to secure redress. Moreover, it is understandable that so many respondents emphasised the need for confidentiality in any process.

In terms of the mechanisms themselves, many respondents preferred informal routes of redress: a confidential support and advice network; the provision of training and education to change attitudes; the appointment/promotion of more women to senior positions; and the issue of guidelines or codes of practice by the professional bodies. Solicitors referred to the need for adequate complaints procedures within firms. Others called for the professional bodies to provide an internal procedure to resolve complaints within professions.

Those who advocated more formal routes of redress referred to the need for an independent complaints or arbitration body. Some (all barristers) called for the appointment of an Ombudsperson. Others argued for the need to make gender discrimination ‘professional misconduct.’ The involvement of the Equality Authority was also raised in this context.

10.3.5 Formal Legal Institutions

Finally, a minority advocated the use of the formal legal institutions: the courts, the Employment Appeals Tribunal or the Labour Court. Only two mentioned the Equality Tribunal by name. As explained earlier, respondents generally were dismissive of the idea of securing redress through legal proceedings. Two main reasons were given for this negativity.

First, they argued, there is immense difficulty in proving any claim, and it is nearly impossible to prove that discrimination has occurred, in circumstances where promotion is often not based on clearcut criteria. As one woman solicitor said

“There’s nothing you can do if you can’t get partnership.” A woman barrister commented similarly “[There is] no way to combat gender discrimination in law library - impossible to prove, solicitors can brief who they like”.

The main reason, however, is the fear that taking a case would have a negative impact on one’s career and indeed one’s professional reputation. As one respondent (woman solicitor) put it:

“The damage making a claim would cause would prevent me from taking any action – Ireland is too small especially within the legal profession”.

Similar views were expressed within focus groups and interviewees. One interviewee (a judge) simply remarked *“It’s terribly difficult to take legal redress!”* A solicitor remarked bluntly: *“If you sued a firm in Dublin, you wouldn’t get employed again.”* All participants agreed that the real issue is not the adequacy of legal remedies available, but the fact that it is so difficult to invoke them, particularly in small firms. As one woman said:

“It would be very difficult if you were discriminated against to bring a claim; we’re a small country, word would get out. If you took a claim that you were not getting the same pay as a man – even the chance of finding that out would be slim.”

10.4 Improving the Position of Women in the Law

Since the difficulty with securing redress where discrimination has occurred was acknowledged by so many respondents, it is important to see how they thought discrimination could be prevented in the first place, and what steps they thought most important to improve the position of women lawyers. Under this heading, they were asked to rank six specific named measures in terms of their effectiveness in improving women’s opportunities.

The results indicated agreement on the two most important remedies among both female and male respondents – the need to improve work/life balance, and change in the long hours culture. These were followed in terms of popularity by the proposal to have more women on councils of professional bodies; the introduction of codes of conduct on gender issues; the promotion of suitable role models or mentors, and women lawyers’ groups or networks. Many respondents offered other ideas for improving opportunities, some very creative.

10.4.1 Greater Facilitation of Work/Life Balance

There was a great degree of agreement among men and women on the need for greater facilitation of work/life balance, which was seen as most/very important by 73 per cent of female and 67 per cent of male respondents. Together with change in the long hours culture, this was the highest ranking option from among the specific measures suggested to improve opportunities for women in law. Only 5 per cent of male and female respondents saw this as less/least important (Table 10.1).

Table 10.1 Greater Facilitation of Work/Life Balance

	Men	% of Men	Women	% of Women	Total
Most important	67	42%	221	52%	288
Very important	41	25%	90	21%	131
Important	29	18%	45	10%	74
Moderate	9	6%	28	7%	37
Not important	6	4%	21	5%	27
Less important	4	2%	16	4%	20
Least important	5	3%	6	1%	11
Total	161	100%	427	100%	588

Under this heading, suggestions ranged from the general, such as *“Better creche facilities and more flexible work arrangements,”* to the very particular, such as *“A more structured/reliable court calendar.”* Many wrote variations on the theme of *“More flexible work arrangements.”* Some added other suggestions: *“More flexible working hours – better clerical assistance in terms of legal executives/pa’s.”* The need for greater supports for working parents, especially mothers, was emphasised, although some respondents also noted the need to make provision for working fathers: *“Introduce statutory paternity leave and then employers would view all people of childbearing age in the same light.”*

Paid leave was mentioned often, and the introduction of structured locum schemes also recommended, for barristers as well as solicitors:

“There appears to be no system in place whereby ‘temporary’ or ‘locum’ barristers can be taken on in a case while the original barrister is on maternity leave. There should also be a formal system whereby cases are not set down for trial during a barrister’s maternity leave.”

The practical provision of creche facilities by the professional bodies was raised: *“Better childcare facilities eg crèche in four courts/law society;”* *“Provision of childcare facilities in/near law library. Why not make it a law library facility – paid for along with fees? And part subsidised.”*

Finally, some saw this as part of a bigger neglect of childcare in society, and suggested “*Tax deductible childcare*” and “*Better childcare facilities also for older children. A national issue!*”

10.4.2 Change in the 'Long Hours' Culture

A change in the 'long hours' culture was considered most/very important by 70 per cent of women surveyed, compared with 57 per cent of the men (Table 10.2). Again, this indicates a consensus among women and men that the need to tackle the long hours culture and to improve work/life balance should be the priority for improving the position of women in the law. Gender differences were statistically highly significant.

Table 10.2 Change in the 'Long Hours' Culture

	Men	% of Men	Women	% of Women	Total
Most important	51	35%	194	49%	245
Very important	31	22%	83	21%	114
Important	16	11%	38	10%	54
Moderate	15	10%	28	7%	43
Not important	14	10%	20	5%	34
Less important	4	3%	27	7%	31
Least important	13	9%	9	2%	22
Total	144	100%	399	100%	543

Chi-square is .000

Many respondents referred to the long hours or old school culture of the legal profession, and the need to change that, usually through education: “*Change in attitudes required*” and “*Old school mentality’ must be broken’. Superiors’ approach to children/family concerns etc and flexible time, creche organisation and working from home needs to be changed.*” As some pointed out, such change could benefit both sexes: “*Education of children to respect both sexes*” and “*Long hours are bad for both men and women.*”

10.4.3 More Women on Councils of Professional Bodies

More than half of the women (55%) who responded rank the appointment of more women to the councils of professional bodies as most or very important, compared with 47 per cent of the men. One fifth of men (20%) consider this to be less or least important while this applied to only 6 per cent of the women (Table 10.3). This gender difference was statistically significant.

Table 10.3 More Women on Councils of Professional Bodies

	Men	% of Men	Women	% of Women	Total
Most important	52	34%	157	41%	209
Very important	20	13%	53	14%	73
Important	24	16%	67	17%	91
Moderate	14	9%	58	15%	72
Not important	14	9%	26	7%	40
Less important	15	10%	14	3%	29
Least important	13	9%	11	3%	24
Total	152	100%	386	100%	538

Chi-square .002

10.4.4 Guidelines or Codes of Conduct on Gender Issues

Similar proportions of women (40%) and men (36%) rank the provision of guidelines on Codes of Conduct on gender issues as most or very important. However a higher proportion of men (22%) consider such guidelines to be less or least important compared with only 15 per cent of women (Table 10.4).

Table 10.4 Guidelines or Codes of Conduct on Gender Issues

	Men	% of Men	Women	% of Women	Total
Most important	29	22%	86	25%	115
Very important	19	14%	51	15%	70
Important	24	18%	65	19%	89
Moderate	20	15%	46	14%	66
Not important	13	10%	44	13%	57
Less important	13	10%	30	9%	43
Least important	16	12%	20	6%	36
Total	134	100%	342	100%	476

Chi-square .001

The need for standards to be established by the professional bodies was raised by several respondents, one of whom simply said “*Guidelines and codes of conduct.*” Others were more specific:

“Scrutinise the gender profile of the larger solicitor firms and publicise them”;

“Openness and accountability in use of panels. Proper audits as to earnings.”

10.4.5 Promotion of Suitable Role Models/Mentor Programmes

The promotion of suitable role models/mentor programmes was considered most/very important by only a minority of both female respondents (37%) and male respondents (27%) (Table 10.5).

Table 10.5 Promotion of Suitable Role Models/Mentor Programmes

	Men	% of Men	Women	% of Women	Total
Most important	19	16%	73	23%	92
Very important	13	11%	42	14%	55
Important	30	25%	51	16%	81
Moderate	17	14%	42	14%	59
Not important	10	9%	50	16%	60
Less important	10	9%	37	12%	47
Least important	19	16%	16	5%	35
Total	118	100%	311	100%	429

Chi-square .001

10.4.6 Women Lawyers' Groups and Networking on Gender Issues

The establishment of women lawyers' groups or networking on gender issues was deemed most/very important by 34 per cent of female and only 12 per cent of male respondents. A total of 53 per cent of the men regard this option as less/least important, which was the case for only 25 per cent of the female respondents (Table 10.6).

Table 10.6 Women Lawyers' Groups and Networking on Gender Issues

	Men	% of Men	Women	% of Women	Total
Most important	7	7%	60	19%	67
Very important	5	5%	49	15%	54
Important	5	5%	43	14%	48
Moderate	14	14%	45	14%	59
Not important	16	16%	42	13%	58
Less important	29	29%	60	19%	89
Least important	24	24%	20	6%	44
Total	100	100%	319	100%	419

Chi-square .000

Some respondents referred to the need for greater unity among women to counter the legal culture they had experienced, stating, for example “*Women should take care of women.*” One asked “*Are there any forums available where women in the law can meet and share experiences and thus gain some insight?*” Others specifically mentioned women’s lack of confidence as part of the cultural problem “*Confidence courses for women/dilution of egos/supremacy of male counterparts*”; “*Women should be given confidence and recognition that we have something unique to bring to the legal profession and its practice of law.*”

10.4.7 Changes in Appointments/Promotions/Distribution of work

Many respondents emphasised the need to improve the visibility of women in positions of influence and authority within the professions. As one woman wrote “*More women must be elected to serve on professional bodies.*” Others referred specifically to the need for more female judges, saying “*For judicial appointments the politics should be removed. Women should try to set up a network i.e. through socialising and seminars*”; “*Educate the men! Appoint more female judges*” and “*More women judges! Publicity about clear anti-women bias by insurance companies and banks in allocating business.*”

This problem with distribution of work was referred to by many, particularly woman barristers, who argued that “*DPP’s briefs and AG’s briefs should be distributed fairly on basis of experience and not on ‘pals in pub’ system as at present*” and “*System that wasn’t based on briefing cronies might help women get on.*”

10.4.8 Other Measures to Improve the Position of Women in the Law

In addition to the measures specifically suggested, many respondents mentioned other measures that would help to improve the position of women. Many added little in substance to the specific measures suggested, but confirmed the importance of the work/life balance issue. Several simply said *“Childcare facilities”* or *“Crèche facilities and end to long hours for both sexes.”* Many were pessimistic about the capacity for change *“For as long as women are the only sex capable of having children inequality will exist. One or other partner must prioritise the family, usually the woman.”*

Some respondents gave very practical answers, suggesting alternative measures that could be adopted, like *“Audits as to earnings”* and *“Requirements that firms self-audit and adopt diversity programmes – based on findings, to be reviewed every two years.”* Several referred to the need for more women role-models within the professions: *“More women friendly women in positions of authority”*; *“More women becoming partners in legal practices”*; *“Promotion of women.”* The issue of lack of support staff was also raised. One woman focus group participant said *“There were law clerks when I started off, but these are gone now. Now there’s no-one between the typist and the solicitor. It comes back to costings.”*

The introduction of merit-based criteria for promotion or appointment to partnership, and more structured mentoring systems within firms, were identified as other practical measures that have already helped to bring about better opportunities for women where they had been introduced. There were many other miscellaneous suggestions for improving the position of women, including *“Job sharing for judges/call over of cases twice per day”* and *“Scholarships to law schools and universities – to gain entry. Law schools/profess bodies to provide support to family arrangements.”*

Finally, some solicitors thought that change would not occur until women took control of legal workplaces: *“Women led firms with quality of life based ethos”* and *“Women need to set up their own firms.”*

10.5 Passage of Time – the ‘Trickle-Up Effect’ or ‘Pipeline Fallacy’

The idea that much positive change for women had already occurred was expressed frequently – but so too was the notion, described in Chapter 2 as the ‘trickle-up fallacy’, that further positive change would occur inevitably over time, as more women enter the legal professions. This idea assumes therefore that no positive measures need to be adopted in order to bring about such change, since it will happen anyway *“I believe passage of time and increasing confidence will bring about greater opportunities in time”* and *“I don’t think any steps are necessary. Women are very prominent in the solicitors profession and becoming more prominent every year.”*

The ‘trickle up’ view was expressed with particular frequency by male respondents:

“I don’t see the point of this – women will soon be a majority of solicitors if they

continue to work full-time and do not choose to stay at home to mind children. The 'long hours' culture is not a culture but rather a demand of the marketplace applicable virtually to all who are self-employed in any profession."

The bias against women was described by another male participant as being similar to racism, in that it *"gets sorted out over time through integration"*.

However, some respondents who adhered to this view also recognised that change could take many years: *"Until women are partners and have their own firms which takes another 20 years – nothing."* It is also noteworthy that individuals' views as to when change had occurred, or would occur, for women, depended on their gender and the stage that they had reached within the professions. The men who participated in the focus group thought that discrimination had ended and change had occurred ten years previously. By contrast, those women who had become partners felt that the change had happened for women within the previous five years, and that it had *"happened naturally, very quickly, suddenly. Older partners have children now working in double income couples. People now have more understanding of this – they are affected by friends and family balancing work and family."* When asked why this had happened within the previous five years, the same woman said: *"It's the boomtime. People are crying out for more lawyers, the increase in the numbers of solicitors is enormous, compared to the preceding 20 years."* But this view was not shared among women professionals at an earlier stage of their careers, who thought that change is only happening now.

While it is undoubtedly true that much has changed for women in the legal professions, particularly within the last decade, the assumption that change occurs inevitably is not borne out by the empirical data. If the assumption was accurate, then change should have occurred for women more quickly, given that women and men have been entering law schools in equal numbers for nearly twenty years. Nor does this view of inevitable change take into account the real concerns of, and difficulties faced by, the many women who responded to this survey with their personal accounts of discrimination experienced in their careers. In particular, both men and women lawyers agree that more needs to be done to provide greater work/life balance within the workplace. It is thus clear that some positive actions must be taken in order to address these concerns and difficulties, improve the work/life balance of lawyers generally, and provide further improvement in the position of women in the law.

Chapter 11

An Agenda for Action - Key Findings and Recommendations



11

An Agenda for Action - Key Findings and Recommendations

11.1 Key Findings

This chapter draws upon the key findings covered in earlier chapters. These encompass the statistical and historical research, comparative literature review, surveys of legal professionals and law students, focus groups and interviews undertaken for this report.

11.1.1 Chapter 1, *Setting the Scene – From Pioneers to Presidents*

No previous study of this kind has ever been undertaken in Ireland. Yet it was long overdue, given the dramatic change in the gender breakdown of the Irish legal professions in the last thirty years. Legal education has become increasingly feminised, so much so that women now outnumber men at entry level to the professions. However, at the upper end of the professions women have failed to break through, despite their increased numbers at entry to legal practice since the 1970s. There are clearly multiple causes for the low levels of women's participation at senior levels in professional practice. Before examining these, it is instructive to review the historical emergence of women lawyers, and landmark developments for women in law in Ireland.

- The Irish constitutional equality guarantee in Article 40.1 is weak and has not secured equality for women [1.1.4]
- Despite the difficulties with using Article 40.1, litigation based on a range of other legal arguments was successfully used as a tool by women to achieve greater equality from the 1970s onwards [1.1.4, 1.1.5]
- Women were excluded from Irish legal practice until the 1920s, largely due to the interpretation of 'persons' in legislation as meaning men; women like Georgina Frost challenged this interpretation in litigation [1.2.2]
- Very little research has been conducted into the women legal pioneers –the first women to qualify as lawyers in Ireland [1.2.2]

- Landmarks for women lawyers in Ireland occurred when the first women:
 - graduated in Law, 1888 [1.2.2]
 - qualified at the Bar, 1921 [1.2.2]
 - qualified as solicitors, 1923 [1.2.2]
 - became Professor of Law, 1925; Senior Counsel, 1941 [1.2.2]
 - became judge of the post-1924 courts, 1963 [1.2.2]
 - became High Court Judge, 1980; Supreme Court Judge, 1993 [1.2.2]
- Women now constitute just over one in five (21%) of judges in Ireland, the second highest proportion in any common law jurisdiction studied (Canada has the highest proportion) [1.3.1, 2.2.2]
- Women first started entering the Irish legal professions in significant numbers in the mid-1970s [1.3.2, 1.3.3]
- Over half of those students taking the professional courses at King's Inns and Blackhall Place are now women [1.3.2, 1.3.3]
- Thirty-four per cent of barristers, and 41 per cent of solicitors, are women [1.3.2, 1.3.3]
- Only 9 per cent of all Senior Counsel are women; 5 per cent of women barristers are Senior Counsel, compared with 22 per cent of all male barristers [1.3.2]
- Only one Managing Partner from 13 larger solicitors' firms in Dublin is a woman, and in only two of those firms do women make up more than 30 per cent of the partners [1.3.3]
- Women constitute 39 per cent of full-time legal academics, but only 17 per cent of law professors, and only one university offers a stand-alone course on gender issues and law [1.3.4]
- Two-thirds of all full-time undergraduate enrolments in Law at university are now female; women have made up half of all Law enrolments since the mid-1980s and more than 30 per cent since the mid-1970s [1.3.4]
- The legal professions are largely self-regulated, and lawyers are reluctant to take discrimination claims through those formal routes for redress available to them, for fear of reprisal or victimisation [1.4.1, 1.4.2, 1.4.4 Appendix 7]

- The new EC Gender Directive amending the Gender Equal Treatment Directive, due to come into effect on 5 October 2005, could offer enhanced protection against discrimination through its application to the self-employed [1.4.3]

11.1.2 Chapter 2 Literature on Lawyers – A Comparative Perspective

A number of similar themes emerge from the studies examined in the review of comparative literature (concentrating on common law jurisdictions). First, there are gender disparities at entry to the professions, and in the career prospects, specialisation, and income differentials of men and women. Second, the culture of the legal professions has had an exclusionary effect for women. Globally, women have had to adopt strategies of ‘superperformance, subordination, separatism and innovation’ in order to succeed as lawyers.

Third, the dual burden of work and family life is a significant factor which impedes women’s career advancement. Fourth, an assumption has emerged, with the increase in women entering the professions in the last two decades, that women’s progression is inevitable with time (the ‘trickle-up fallacy’). Similarly, gender difference tends to be construed by many as being due to choices women make, rather than to any prejudice, barriers, or discrimination against women. Finally, the self-regulating character of the legal professions, and the resistance among lawyers to invoking their legal rights, tend to make legal practice a ‘lawless domain.’

- Although no study of this kind has ever been undertaken in Ireland before, there are numerous examples of similar research in other countries, often conducted either by feminist scholars or by lawyers’ professional bodies [2.1, 2.1.1, 2.1.2, 2.1.3]
- The Law Society of England and Wales has supported several different studies into discrimination in the solicitors’ profession, and adheres to the ‘business case for equality’ approach that advocates gender equality policies as sound business practice, required in order to enhance profitability [2.1.3]
- From the late 1980s on, numerous studies on women in the legal professions have been undertaken in North America, very many under the aegis of the professional bodies [2.1.3]
- Anti-discrimination law has been exposed as being based upon a limited model of equality, that has been of limited effectiveness in redressing gender imbalance in the legal profession [2.1.4]
- Historically, women were excluded from legal practice through the device of the ‘persons cases’, in many jurisdictions including Ireland. Judges interpreted the word ‘person’ in legislation to mean only men, so that women were effectively excluded from entering the legal professions [2.2.1]

- Common law countries continue to lag behind civil law countries in the proportions of women judges appointed. Canada is the common law country with the highest proportion of women in the (federal) judiciary (26%) [2.2.2]
- In virtually all jurisdictions, women have made uneven progression in appointment to the judiciary. Often highly visible women ‘trailblazers’ have not been followed by other women. Canada is the exception to this trend, where a ‘second generation’ of women judges has now been appointed at the highest level [2.2.2]
- Judicial appointments processes have been subjected to a great deal of scrutiny in other countries, and strong proposals for their reform have been made, notably in the UK and in Canada. The judicial appointment process in Ontario represents a good practice model [2.2.2]
- Women now make up a sizeable proportion of practising lawyers in all the jurisdictions examined, although numbers have generally only increased notably since the 1970s [2.2.3]
- In several countries, as in Ireland, the current intake of law students is predominantly female, although women remain a small proportion of senior academics/law professors [2.2.4]
- Professional training for lawyers has been the subject of much analysis and critique in other countries, with particular criticism of the more archaic traditions, such as dining [2.2.4]
- Women face barriers in making two key advances in their legal careers: making partner as solicitors; and taking Silk as barristers. They tend to move jobs more frequently and are more likely to work as employed lawyers than their male counterparts [2.3.2]
- Women globally tend to be less specialised than men, and where they do specialise, gravitate towards areas with individual rather than corporate clients, for example family law [2.3.3]
- Gender differences in pay have been found consistently elsewhere, with women tending to earn less and to receive smaller income premiums than men for the same work [2.3.4]
- Women tend to suffer professionally, compared with men, as a result of having less ‘social capital’ through being excluded from the sort of sports or social networking essential to furthering a legal career (the ‘fraternal contract’) [2.3.5]

- The long hours culture of the law, and the difficulty in carrying the dual burden of work and family commitments, tend to weigh disproportionately upon women [2.3.6]
- Due to the long hours culture and the emphasis upon billable hours and ‘commitment’ as the measure of one’s worth, it is harder for women than men to succeed in their legal careers [2.3.6]
- In other jurisdictions, as in Ireland, women who take leave for family reasons find that their commitment to their legal career is questioned [2.3.6]
- There is a powerful misperception that women’s progress as lawyers is simply a matter of time, and that any gender imbalance will therefore rectify itself without the need for intervention (the ‘trickle-up’ or ‘pipeline’ fallacy) [2.4.1]
- Many hold the view that women’s lack of career progress is attributable to the choices they have made. This view overlooks the nature of choice, and the reality that juggling family responsibilities with paid work remains a ‘women’s issue’, since most men do not exercise their choice to take on a caring role [2.4.2]
- The legal professions remain a ‘lawless domain’ due to the heavy reliance upon self-regulation, and the fact that legal remedies are often either formally or informally unavailable to lawyers who experience discrimination [2.4.3]

11.1.3 Chapter 3 *Learning to Lawyer – Students’ Views*

This chapter presents the findings from a survey of undergraduate Law students, and focus groups involving those studying on the professional courses to become barristers (King’s Inns) and solicitors (Blackhall Place). It sets out the motivations, aspirations and experiences of these students and trainees.

- Similar motivations in studying law were expressed by male and female students, but women were more likely to cite getting the requisite CAO points as a strong motivation, whereas men were more likely to cite being able to practise advocacy as a strong motivation [3.4]
- More female than male students aspired to become solicitors, but more males than females aspired to become partners in firms [3.5]
- Female students are more likely than males to believe that women are not equal to men in getting top legal jobs, and that women should not express feminist views in order to succeed in law [3.6]
- Among those studying to be barristers and solicitors’ trainees, many women believe that it is difficult to combine a career in legal practice with having a family [3.8, 3.9]

- Women in professional training courses have gained a negative perception of working in law, due to a long hours culture and lack of flexibility [3.8.2, 3.9.2]
- There is a marked contrast between the experience of studying at Blackhall Place and at the King's Inns, with the solicitors' course at the former institution being praised for its relevance and practicality, while the bar training course was perceived as old-fashioned and hierarchical [3.8, 3.9]
- Women students at undergraduate level are perceived to lack confidence compared to their male colleagues [3.8, 3.9]
- Students have many innovative ideas on how to improve opportunities for women lawyers, but are pessimistic about the ability of the legal professions to change to facilitate greater work/life balance [3.10]
- Students appear to lack awareness of the generations of women who have progressed through the legal professions before them, and they tend to see work/life balance as a problem for individual women, rather than as an issue that demands a collective response [3.11]

11.1.4 Chapter 4 *Lawyers' Lives – Survey of Legal Professionals*

In this chapter, key gender differences in the demographic characteristics of the 788 lawyers, male and female, who responded to the questionnaire, are outlined.

- Of the respondents to the survey, female lawyers tend to be younger than male lawyers, with more than two-thirds (67%) aged under 40, compared with 40 per cent of men. This points to the increasing feminisation of the legal professions [4.1.2]
- Among respondents, male lawyers are more likely than female lawyers to have children: two-thirds of male respondents are fathers compared with only 43 per cent of women, and male lawyers are more likely to have larger numbers of children than their female colleagues [4.1.4]
- There is a tendency among women lawyers to defer having children until they feel well-established in their career – the phenomenon of 'postponed parenting' [4.1.5]
- Male lawyers are more likely than women lawyers to have attended fee-paying schools [4.2.1]
- Women respondents are more likely to hold a II.1 degree than male colleagues [4.2.2]

11.1.5 Chapter 5 *Why Law? – Motivations, Aspirations and Expectations*

Under this heading, the motivations and expectations of lawyers in practice are examined, and again some key gender differences are highlighted.

- Women ranked the ‘academic achievement/intellectual challenge’ factor as a stronger motivation for entering a legal career than men [5.1.1]
- The nature and variety of work is a stronger motivator for women than for men [5.1.2]
- More men ranked work/life balance as a strong or strongest motivator than women, perhaps reflecting the difficulty in achieving this for women in legal practice [5.1.5]
- The desire to work independently is a stronger motivator for men than for women, as is the ability to practise advocacy [5.1.7, 5.1.10]

11.1.6 Chapter 6 *Uneven Career Progress – Choice or Prejudice?*

This chapter seeks to discover whether women and men have different rates of career progression, and to examine possible causes for difference in career paths, where they exist.

- Women tend to be more junior on average than male lawyers, with 66 per cent of female respondents having qualified since 1990, compared to 24 per cent of male respondents [6.1.1]
- While 57 per cent of female respondents had entered the professions in the last 10 years, this applied to only 30 per cent of male respondents, indicating the increased intake of women to the professions in the recent past [6.2.1]
- Men were more likely than women to have been successfully promoted, and among the reasons given by women for failure to be promoted were the fact that it would lead to less time for home/non-work interests [6.2.2, 6.2.3]
- Men have much more positive expectations of women’s chances of being promoted than women have about their own chances [6.3]
- Many women believe that an ‘old boys club’ operates in relation to promotion within their professions, and that their lack of promotion is due to ‘good old-fashioned prejudice’ [6.3.1]
- Many respondents, male and female, believe that women have less chance of promotion than men because of childcare or family responsibilities [6.3.2]

- Promotional opportunities for women are perceived as being better in the public sector, and in larger firms, than in small firms [6.3.3]
- The introduction of merit-based criteria and more structured mentoring systems in some firms has led to increased promotion rates for women [6.3.4]
- Women's failure to progress or be promoted is often seen as being due to a choice they have made [6.3.5]
- Lawyers tend to work long hours, an average of 47.8 per week for men, compared with 43.1 hours per week for women. On average, women work fewer hours than men. Seventy per cent of men, compared with 54 per cent of women, work for over 40 hours a week [6.4]

11.1.7 Chapter 7 'Having it All' – Work/Life Balance

The critical question as to whether women, like men, can 'have it all,' by combining parenthood with a successful legal career, is addressed in this chapter.

- Disproportionately more men than women have a partner/spouse working full-time in the home; 39 per cent of men, compared with only 4 per cent of women [7.1]
- Fewer than one in ten of women with children (9%) rely on a partner in the home for childminding, compared to 65 per cent of men [7.2.1]
- Half of respondents (50%) have never taken any leave, other than holidays [7.3]
- A high proportion of women are only entitled to statutory benefit when they take maternity leave, rather than having access to maternity leave with full pay (in accordance with best practice) [7.3]
- Women lawyers tend to experience serious difficulties in seeking to take even statutory maternity leave, with many suggesting that taking such leave is seen as a form of weakness. Some returned to work only days after giving birth [7.3.2]
- One-fifth of women considered that availing of leave had affected them 'a lot' in the workplace, and a further 19 per cent stated 'a little' [7.4.4]
- Men tend not to take any form of family-related leave, in many cases because it would simply not be seen as acceptable for them to do so [7.4.4]
- Although nearly half of women who had taken leave had cover assigned (either a locum appointed or a colleague filling in for them), only 31 per cent of men had this experience [7.4.5]

- Women lawyers felt that the adoption of a part-time or reduced hours scheme would be advantageous to them in the workplace, and that it was easier to juggle home and work responsibilities by working a four-day week, than by working reduced hours every day [7.5]
- There is a strong prevailing view among women lawyers that, unlike their male counterparts, it is not possible for women to 'have it all' (a successful legal career and a family) [7.5]
- While many respondents suggested creative ways to improve work/life balance, many others see it as an inevitable struggle [7.6, 7.7]

11.1.8 Chapter 8 *Short-changed – Gender Segregation and Pay Gap*

The related issues of gendered legal specialisation, and pay gaps between women and men in terms of income and pension entitlements, are examined here.

- Within legal practice, the most 'gendered' areas of work are: personal injury, criminal, family and corporate/commercial law, with women particularly more likely to be involved in family law than men (47% of women practise family law compared with 35% of men) [8.1]
- For male lawyers, the most time-consuming area of legal work is personal injury/negligence, while for women it is property (including conveyancing/probate) [8.1]
- There is a significant gender gap in income levels of men and women, with 42 per cent of men earning over €100,000 p.a. compared with only 19 per cent of women [8.2]
- Conversely, 28 per cent of men have incomes of €35,000 p.a. or less compared with 35 per cent of women [8.2]
- This gender gap remains even when figures are controlled for age. The disparity actually increases with age; a male lawyer who is aged 50 years or over has a 60 per cent probability of earning in excess of €100,000 p.a., while this is the case for only 20 per cent of women lawyers aged 50 or over [8.2.1]
- Significantly more men (82%) have a pension arrangement compared with only 66 per cent of women [8.3]
- There is widespread concern among women about the lack of transparency and potential for gender bias in the briefing practices of some of the larger institutional clients, like insurance companies. A survey of briefing practices shows that public sector organisations like the office of the Director of Public Prosecutions are making efforts to address this perception, but that private companies are less aware of the problem [8.4]

11.1.9 Chapter 9 *'Good Girl' and 'Old Boys' – A Culture of Discrimination?*

Women and men have very different perceptions as to whether a culture of discrimination exists in the legal professions. For women respondents, the phrase 'old boys club' or 'network' arose frequently, while men were more likely to see discrimination as 'a thing of the past'.

- A significantly higher proportion of women than men have experienced gender discrimination in their legal career; at least one-fifth to one-quarter of women respondents had experienced at least one form of discrimination [9.1]
- Fewer than 10 per cent of all men surveyed had any experience of discrimination [9.1]
- Three out of every ten women (30%) have experienced discrimination in their level of income or earnings and 28 per cent have experienced discrimination in 'not getting certain work' [9.1]
- The most common forms of discrimination experienced by women are 'inappropriate comments' (36% of all women surveyed) and 'network exclusion' (31% of all women) [9.1, 9.4.1, 9.4.4]
- Out of the total of 506 women respondents, 21 per cent have experienced discrimination from a colleague, and 29 per cent from a superior [9.2]
- Discrimination appears especially common in practice on Circuit, compared with practice in Dublin [9.3.1]
- Many women described being subjected to multiple forms of discrimination, and used the phrase 'old boys club' or 'old boys network' to describe their experience of sexist workplace cultures [9.3.3, 9.4.5]
- Some respondents, mainly men, felt that discrimination had occurred in the past, but was unlikely to happen now. They tended to be hostile to the view that obstacles might exist for women's career progression [9.3.4, 9.7.4]
- Proportionately more women (60%) than men (31%) said that gender makes a difference in their career, profession or job [9.4]
- Over one-third of women respondents (36%) had experienced the use of inappropriate comments in the workplace. Some had been called 'good girl' by colleagues or superiors, or had been otherwise belittled through language [9.4.1]
- Nearly one in five women respondents (19%) had been assigned 'inappropriate tasks' such as making tea or doing other 'domestic' jobs for colleagues [9.4.2]

- The adverse effect of family responsibilities and parenthood on women's career progress was particularly noted [9.4.3]
- Golf outings are seen as being particularly gender-exclusive by those women who have experienced network exclusion as a form of discrimination [9.4.4]
- More than one in ten women (14%) have experienced sexual harassment or bullying in the workplace [9.4.6]
- Types of harassment or bullying reported ranged from actual sexual assault, to being physically molested or experiencing attempted molestation, to sexually loaded comments [9.4.6]
- Fifty-six per cent of women, compared with 25 per cent of men, felt that, based on their own knowledge or experience in their legal career, discrimination against women was either normal, common or very common [9.6]
- Several instances of discrimination against women lawyers in court were provided, including the use of sexist or inappropriate language by judges [9.6.1, 9.6.2]
- Respondents, both male and female, overwhelmingly cited family commitments/children or pregnancy as the most significant obstacle to women's career advancement [9.7]
- Seventy-nine per cent of women and 64 per cent of men believe that an interest in sport is helpful in furthering a legal career, and golf was identified as being the most helpful sport [9.8]
- Gender is the most common ground of discrimination, with fewer respondents reporting any experience of discrimination on other grounds [9.9]

11.1.10 Chapter 10 *Improving Opportunities - Remedies, Redress and Enforcement*

- More women than men (21% compared with 4%) are aware of formal complaints procedures available to them in their career, but few have availed of any such procedure (only 20 in total or 3%) [10.1]
- The reasons given by respondents for not using complaints procedures or legal remedies were: the complaint was too trivial; there was no clear procedure available; they lacked faith in any form of redress; the workplace was too small; they feared victimisation or an adverse effect on their career as a result [10.1.1]
- No respondent had instituted legal proceedings in respect of any experience of discrimination [10.2; see also Appendix 7]
- Many said simply that 'Ireland is too small' for a lawyer to take any formal steps to obtain redress in an individual instance of discrimination [10.2]

- The idea of having specific structures within the professional bodies to deal with gender was supported by a majority of respondents who answered the relevant question, although many expressed scepticism as to the likely effectiveness of such structures [10.3.1]
- Only a minority of respondents advocated the use of formal legal institutions to remedy discrimination, and just two mentioned the Equality Tribunal by name [10.3.5]
- Both male and female lawyers agree that the most important way to improve opportunities for women in law is to achieve a greater facilitation of work/life balance and change the ‘long hours’ culture [10.4, 10.4.1, 10.4.2]
- Many respondents stated their belief that the position of women lawyers would improve naturally over time, as more women enter the legal professions (the ‘trickle up’ or ‘pipeline’ fallacy) [10.5]

11.2 Recommendations

The findings of this study establish that structural gender discrimination exists in the legal professions. Despite the many advances made by women lawyers over the past decades, barriers to women’s career progression remain, particularly in the form of: exclusionary practices, structures that impede work/life balance, and pay inequity.

Many women believe that an ‘old boys club’ exists within the professions. They feel excluded from sporting and social networks and events that are highly influential in furthering a legal career. Disproportionately it is women who have experienced the use of inappropriate language in the workplace, while harassment and bullying occur at an unacceptable level. However, the greatest obstacle to women’s career progression is the difficulty of achieving work/life balance within the ‘long hours’ culture that respondents overwhelmingly agreed exists in the legal workplace. This culture impacts particularly upon women where men are not taking on an equal caring role.

It is thus incumbent upon the professional bodies, in particular, to take preventive action to remedy the culture of discrimination experienced by many women lawyers. Responsibilities for furthering equality within legal practice also need to be borne by other bodies and institutions, including the State.

Accordingly, based upon our findings, we present below a set of numbered recommendations (1 – 50), aimed at improving gender equality in the law. In making these recommendations, we are aware that equality policies can easily remain purely aspirational. In order for policy to inform practice, the following principles or values must guide the reform process.

Commitment and Leadership

To achieve equality, institutional commitment is required. While women have adapted to professional roles, the professions have not adapted to the presence of women. Individual women are agents of change, but collective responses are now required, and it is time for a commitment to institutional change. Such change requires leadership, in order to build a moral and pragmatic case for gender equality, and to translate this case into reality.

Accountability, Transparency and Participation

Equality commitments and goals must be explicit and transparent. Only then can professional bodies and employers be held accountable. Processes must be transparent, and those affected given a role both in drafting policies and in ongoing monitoring.

Effectiveness and Enforcement

The limits of the effectiveness of individual enforcement are acknowledged, and it is recognised that a comprehensive range of strategies must be employed in order to make policies effective and achieve goals. As well as traditional judicial enforcement of individual rights, other regulatory tools should also be employed (including education and training; voluntary codes; equality auditing; and economic incentives).

Gender Neutrality in Work/Life Balance

Barriers to women's career progression will remain as long as work/life balance is seen as solely a 'women's issue'. All of our recommendations are based on the premise that any flexible working arrangements introduced to foster such balance should be strictly gender neutral, available on the same conditions (in policy and in practice) to men and women.

Other Grounds of Discrimination

The focus of this study is on equality between men and women. However, attention should also be given to discrimination in the legal professions on grounds other than gender [9.9.4], and these should be acknowledged in the new equality structures advocated in these recommendations.

Legal Education

The survey and focus groups among those taking undergraduate and professional law courses demonstrate the following changes that should be made to improve the experience of legal education.

University Law Schools

1. Gender issues should be mainstreamed through their inclusion on the curriculum and incorporation into law teaching generally, and stand-alone courses in feminist theory of law encouraged [1.3.4]
2. In their introductory courses in first year, law students should be made aware of

women's historical exclusion from legal practice, in particular the role of the 'persons' cases in ensuring male hegemony within the law professions [1.2.2]

3. First year courses should also include a discussion of contemporary gender issues in law [1.2.2, 1.3.4]
4. Law schools should be aware of the need to foster confidence among students and encourage class participation in a gender-sensitive way [3.7]
5. Structured programmes to address lack of confidence among students should be introduced, for example: through a mentoring system; by requiring all students to make class presentations; by incorporating mootings into the curriculum; and/or by offering communications skills courses or modules [3.7]
6. The low number of women professors in academic law schools should be addressed through positive action, by adopting existing best practice models [1.3.4]

Professional Training: Blackhall Place and King's Inns

7. A comprehensive strategy needs to be developed to include gender on the curriculum in each subject taught on the professional training courses [1.3.4]
8. A structured career guidance programme should be introduced at the professional training stage to assist students setting out on legal practice in order to reduce gender segregation in choice of specialisation, and to address gendered career paths in the longer term [3.10, 8.1]
9. The professional training institutions should adopt clear policies and procedures on sexual harassment, harassment and bullying, modelled on existing codes used in the university system [3.10]
10. The structure of the barristers' training course at King's Inns requires revision and reform, on a similar model to those reforms conducted already at Blackhall Place [3.9.3]
11. Networks need to be developed between generations of women lawyers, to provide role models, mentoring and support to students embarking upon a legal career [3.11]

Professional Bodies: Law Society and Bar Council

The professional bodies should bear greater responsibility, on behalf of their increasingly female membership, to ensure gender equality. In particular, the existence of gender discrimination within the legal professions must be acknowledged. At present, the legal professions remain largely self-regulated (the 'lawless domain'), and the disciplinary codes currently in force appear to offer

inadequate routes of redress to those who have experienced discrimination.

Equality Policy and Promotion

12. Each professional body should adopt an Equality Statement and/or Code, to be incorporated into their rules of professional conduct, governing relations among members as well as between members and third parties. These statements/codes should include reference to the legislative framework; procedures for harassment/bullying, and monitoring/implementation practices [1.3.2, 1.3.3, 1.4.1]
13. An Equality Committee needs to be established under each professional body in order to promote equality and monitor practices [1.3.2, 1.3.3, 1.4.1]
14. The functions of the Law Society Equality Committee should include the drafting of Model Policies for firms and solicitor-employers to adopt, addressing in particular: (a) harassment and bullying; (b) work/life balance and the long hours culture; (c) pay equity; and (d) gender-sensitive evaluation methods and promotion criteria. The Committee should also organise the provision of training for members on gender equality issues [1.3.3, 1.4.1, 7.4.4, 9.4.6, 10.4, 10.4.1, 10.4.2]
15. The functions of the Bar Council Equality Committee should include the drafting of equality policies for the Bar to adopt in General Meeting, particularly on: (a) harassment and bullying; (b) work/life balance; and (c) the devilling relationship [1.3.2, 1.4.1, 9.4.6, 10.4, 10.4.1, 10.4.2]
16. Women should be encouraged to run for election to the councils of professional bodies [10.4.3]
17. Women lawyers' groups (like the Irish Women Lawyers' Association) and networking on gender issues should be actively encouraged by the professions [10.4.6]
18. Disparities in pay and pension arrangements between women and men, and the lack of transparency around pay levels, need to be addressed as a matter of urgency. The professional bodies should conduct equality audits on earnings to ascertain the true extent of the gender pay gap, and seek to remedy it [8.2, 10.4.7]
19. The use of inappropriate and/or sexist comments in the legal workplace needs to be challenged through the provision of information on and training in appropriate language use and language sensitivity [9.1, 9.4.1]

Monitoring

20. The professional bodies need to take responsibility for monitoring their membership according to gender. Data must be kept on applications for membership; entrants to the professions, career progression; and attrition rates [1.3.2, 1.3.3]

21. In light of the reluctance of lawyers to make formal complaints, structured confidential exit interviews aimed at establishing individuals' reasons for leaving legal practice should be introduced. Individual firms and employers should be encouraged to adopt the practice of conducting such interviews [1.3.2, 1.3.3]

Enforcement

22. The professional bodies should ensure their members are aware of the existing external mechanisms for redress under the relevant statutory provisions [1.4.2, 10.3.5]
23. Greater supervision of the self-regulatory practices of the legal professions should be considered, for example through increased participation by laypersons in professional disciplinary processes or the establishment of a Legal Ombudsperson to whom complaints could be made in confidence by those experiencing discrimination [1.4.1]

Work/Life Balance

24. The professional bodies should adopt policies on work/life balance, and encourage employers to be more flexible in accommodating and facilitating homeworking, reduced hours and other flexible working arrangements [2.1.3, 7.5, 7.6]
25. Each professional body should develop a policy providing for cover, preferably through the appointment of a locum or substitute, for both men and women who wish or need to take leave from work [7.4.5]
26. Standard and statutory maternity, parental and work/life balance policies should be publicised by the professional bodies and employers to ensure a greater level of awareness about entitlements [7.5]
27. Practical assistance in childcare provision must be considered, either through the introduction of crèches at the Law Library or larger workplaces, or the granting of concessions to those with childcare costs [7.5, 7.6]
28. The Law Society should ensure that maternity leave is always paid by firms at full salary, and that employees do not suffer disadvantage to their careers in taking statutory maternity leave, other forms of leave or reduced hours arrangements [7.3, 7.3.2, 7.4.4]

Solicitors' Firms

29. Each firm and solicitor-employer should introduce a statement/code on equality, harassment and bullying, including reference to relevant procedures and monitoring practices. Firms and employers should make clear through codes, training and practices that the use of inappropriate language is not acceptable in the workplace, and that solicitors should not be assigned inappropriate tasks or victimised for unwillingness to perform such tasks [9.4.1, 9.4.2, 9.4.6]
30. The career ladder widely evident in solicitors' firms needs to be restructured to facilitate reduced working time arrangements and leave, and to ensure that uptake does not impact adversely upon solicitors' careers [7.4.4]
31. Parental leave and flexible working arrangements should be made available to all solicitors, men as well as women, and men should be encouraged to take up leave and flexitime options, to end the double standard where such arrangements are seen as available only to women [7.4]
32. Practical assistance by solicitor-employers in the provision of childcare support or facilities should be considered [7.5, 7.6]
33. Support staff and locum cover should be provided where necessary to ease the pressures of the 'long hours' culture upon employees [7.4.5, 10.4.8]
34. Firms need to introduce greater transparency and objectivity in their partnership selection process. All processes by which solicitors become partner should be based on objective criteria relating to merit [1.3.3, 6.3.4]
35. The introduction of structured role model or mentoring systems by firms could encourage women's progression to partnership [10.4.5]

State Interventions

Judicial Appointments

In recent years the number of women judges has increased significantly, and the process of judicial appointment has become considerably more transparent since the establishment of the Judicial Appointments Advisory Board ('the Board'). The opening up of judicial appointment at all levels to solicitors is also to be welcomed. However, a number of key changes need to be made, and the role of the Board enhanced and strengthened, in order to increase the transparency of the process, and to ensure that women make up a higher proportion of the applicants for appointment at all levels.

36. Gender balance should be sought when members are appointed to the Board. Increased participation by laypersons on the Board should also be considered, in accordance with the Ontario judicial appointments model [1.3.1, 2.2.2]
37. All vacancies for judicial office should be widely advertised by the Board [1.3.1]
38. The Minister should no longer have discretion to appoint a person who is not on the panel of names recommended by the Board, since the retention of this power has the potential to undermine the entire consultation process [1.3.1]
39. The Board should have a role in all judicial appointments, even where an existing judge is promoted. The Board must also be given the power to recommend candidates in order of preference, so as to make its input more meaningful, particularly where there are a small number of candidates for one vacancy [1.3.1]
40. The criteria for appointment themselves should be reviewed, since they are ill-defined and open to an overly subjective interpretation at present. Considerations like 'character' and 'temperament' should be replaced with criteria or competencies that are transparently meritocratic (like those adopted in the Ontario model, and as recommended by the N.I. Commissioner for Judicial Appointments), in order to guard against gender bias [1.3.1, 2.2.2]
41. Consideration should be given to making judicial appointments from among the Bar without requiring that applicants be Senior Counsel [1.3.1]
42. The appointment of judges on a part-time basis should also be considered as a way of ensuring better gender balance [1.3.1]

Legislative Change

The forthcoming implementation of the new EC Equality Directive (in October 2005) will extend protection against discrimination to the self-employed, and this will have the effect of placing new duties upon professional bodies and others. If a wide interpretation of the Directive is adopted, it would place a positive duty on the professional bodies to promote gender equality, for example in the Master/Devil relationship at the Bar. However, even before implementation of the Directive, the State should intervene to regulate instructing and briefing practices, to ensure greater gender equality in their application.

43. State bodies and public sector institutions should promote gender balance in the instructing and briefing of lawyers. Many such bodies are already aware of the perceived lack of transparency and potential for gender bias in present practice, and have made changes in the manner in which they distribute legal work [8.4]

44. Positive obligations should similarly be placed upon private sector clients, like insurance companies, to apply equality policies in their instructing and briefing practices [8.4]
45. Tax relief on childcare should be introduced to facilitate parents working outside the home [10.4.8]

Consumers of Legal Services

46. Regardless of legislative change, state bodies and private companies should seek gender balance in distributing legal work. Clients and consumers of legal services, both public and private sector, should seek gender balance in their instructing and briefing of solicitors and barristers [8.4]

Further Research

This study has raised many issues, some of which inevitably require further research and analysis before more substantive recommendations may be made.

47. More research is needed into the histories of the ‘pioneers’, the early women lawyers who paved the way for future generations [1.2.2]
48. The professional bodies should institute further research into the extent of gender disparity in lawyers’ pay [8.2]
49. Longitudinal research, based on cohort studies, is needed to provide a fuller picture than could emerge from a questionnaire survey, as to disparity in the career progression of women compared with men [6.3]
50. Where particular problems or issues are identified through monitoring data on a gendered basis, the professional bodies should sponsor further research into potential gender differences in legal practice [1.3.2, 1.3.3]

The Culture of Discrimination - An ‘Unfinished Agenda’

Structural discrimination is difficult to address, since it is insidious, manifesting itself through practices such as the use of inappropriate language and informal social exclusion. Apart from the structural or cultural discrimination, however, overt instances still remain, through pay inequity, harassment and bullying, for example. Both structural and overt discrimination must be addressed through a range of measures. While the 50 recommendations made above, if adopted and implemented, could lead to a significant improvement in the position of women lawyers, and indeed an enhanced quality of life for all legal practitioners, there are some ingrained cultural attitudes that will take time to change. First, the prevailing view among women lawyers that it is not possible for women to ‘have it all’ must be dispelled [7.5, 7.6]. Second, the ‘long hours culture’ must change to allow for greater facilitation of work/life balance [10.4, 10.4.1, 10.4.2].

Conclusion

What should happen next? It is important that these findings and conclusions be disseminated and debated widely, and that responsibility be taken for moving forward with the recommendations. Legal education can be a powerful catalyst for change, but substantive changes in legal practice are also necessary if women are to progress within the legal professions on the same basis as men. Further research also needs to be undertaken in some areas before significant advances can be made.

Progress has however already been made in other countries, like Canada, through the adoption of positive interventions by the professional bodies and the State. The advancement of women lawyers in Ireland has only occurred through the achievements of women pioneers and activists who used litigation, lobbying and sheer hard labour in order to pave the way for others. In recognition of their struggle, we trust that others will act upon this report to instigate further changes, thereby ensuring real progress towards gender justice.

Appendix 1

*Questionnaire for
Legal Professionals*

*Survey:
Careers in the Legal Professions*



*Law School
Trinity College Dublin*



This Project is funded by the Equality for Women Measure of the Regional Operational Programmes of the National Development Plan, 2000 - 2006

Questionnaire for Legal Professionals

Table of Contents

Section A	Current Legal Career
Section B	Educational Background
Section C	Career Development
Section D	Work / Life Balance
Section E	For Solicitors, Apprentices and In-house Counsel ONLY
Section F	For Barristers ONLY
Section G	For Judges ONLY
Section H	Gender-related Attitudes & Experience
Section I	Background Information

Section A

Current Legal Career

A.1 What is your current professional status? (Please tick one only)

- ¹ Judge
- ² Solicitor
- ³ Barrister

If *Judge*, please specify at which level:

- ¹ European/Supreme/High Court
- ² Circuit Court
- ³ District Court

If practising *Barrister*, please specify your status:

- ¹ Senior Counsel
- ² Junior Counsel
- ³ Devil

If practising *Solicitor*, please specify your status:

- ¹ Apprentice
- ² Associate
- ³ Partner

A.2 In which of the following is your primary professional work undertaken?

- ¹ Self employed in private practice (Skip to B.1)
- ² Employed in private practice (Skip to B.1)
- ³ Employed in academe (Skip to A.4)
- ⁴ Employed in public sector
- ⁵ Other (e.g. In-house legal counsel) (Skip to B.1)

A.3 If employed in the public sector, within which organisation?

¹ Dept of Justice, Equality & Law Reform

² Legal Aid Board

³ Attorney- General's Office

⁴ DPP's Office

⁵ Chief State Solicitors' Office

⁶ Other

(Please specify)

A.4 If you are a *full-time* legal academic in which capacity do you work?

¹ Professor

² Senior Lecturer

³ Lecturer- permanent

⁴ Lecturer- temporary

Section B

Educational Background

B.1 Which academic route did you take to a legal career? (Please tick one only)

- ¹ Law Degree- single honours
- ² Law Degree (+ other disciplines)
- ³ Non-Law Degree, Please specify subjects _____
-

B.2 If you hold a Degree please specify:

Class of Degree?

- ¹ First
- ² Upper Second
- ³ Lower second
- ⁴ Third

Was your degree?

- ¹ Full-time
- ² Part-time

Year in which you graduated?

B.3 Do you hold a postgraduate qualification?

- ¹ Yes
- ² No

If Yes, please indicate which qualification you acquired? (Please tick each that apply)

- ¹ LLM or equivalent
- ¹ MLitt or equivalent research masters
- ¹ PhD

If Other, please specify:

Postgraduate area of specialisation, if any:

B.4 In which year did you qualify as a solicitor or barrister? (Please specify each that apply)

Call to Bar

Call to Inner Bar

Entry onto Roll

B.5 In which year did you commence practice as a barrister/solicitor?

If you did not commence practice immediately after qualification please specify your reason(s):

B.6 Prior to qualifying, did you have any previous links with the legal profession?

¹ Yes

² No

If Yes, please tick each that apply:

	Barrister	Solicitor	Judge
Parent	¹ <input type="checkbox"/>	² <input type="checkbox"/>	³ <input type="checkbox"/>
Close relative	¹ <input type="checkbox"/>	² <input type="checkbox"/>	³ <input type="checkbox"/>
Close friend	¹ <input type="checkbox"/>	² <input type="checkbox"/>	³ <input type="checkbox"/>

B.7 How did you pay fees/support yourself during training stage?

Please tick each that apply:

¹ Parents

² Partner

³ Own income from work outside the profession

⁴ Firm/Employer

⁵ If Other, please specify:

Section C

Career Development

C.1 Please rank any of the following factors that may have encouraged you to choose to be a barrister/ solicitor:

(1 = Strongest motivation to 5 = weakest motivation, leaving blank any that did not apply)

Academic achievement/intellectual challenge

1 2 3 4 5

Nature and variety of work

1 2 3 4 5

Salary level/earning potential

1 2 3 4 5

Job Security

1 2 3 4 5

Work/life balance/Flexible working arrangements

1 2 3 4 5

Personal contact with particular area of profession

1 2 3 4 5

Desire to work independently

1 2 3 4 5

Desire to work as part of a team

1 2 3 4 5

Prestige/Status

1 2 3 4 5

Advocacy

1 2 3 4 5

Public service/"making a difference"

1 2 3 4 5

Lack of progress in previous position/career

1 2 3 4 5

C.2 Did/do you have a role model or mentor in your career?

¹ Yes

² No

If Yes who was s/he (Please tick each that apply)

¹ Parent

⁴ Partner

² Close relative

⁵ Close friend

³ Manager/Employer

⁶ Other

(Please specify)

C.3 Have you ever made any of the following moves at any stage during your career?

¹ Barrister to Solicitor/Solicitor to Barrister

² Barrister/Solicitor to Employed/In-house Lawyer

³ Barrister/Solicitor to Judge

⁴ Barrister/Solicitor to Legal Academic/Legal Academic to Barrister/Solicitor

⁵ Employed/In-house Lawyer to Barrister/Solicitor

⁶ Have never made these moves

C.4 Please rank any of the following factors that may have influenced your decision to move/change during your career?

(1 = Strongest motivation to 5 = weakest motivation, leaving blank any that did not apply)

Academic achievement/intellectual challenge

1 2 3 4 5

Nature and variety of work

1 2 3 4 5

Salary level/earning potential

1 2 3 4 5

Job Security

1 2 3 4 5

Work/life balance/Flexible working arrangements

1 2 3 4 5

Personal contact with particular area of profession

1 2 3 4 5

Desire to work independently

1 2 3 4 5

Desire to work as part of a team

1 2 3 4 5

Prestige/Status

1 2 3 4 5

Advocacy

1 2 3 4 5

Public service/"making a difference"

1 2 3 4 5

Lack of progress in previous position/career

1 2 3 4 5

C.5 How many years have you been in professional practice post-qualification, where relevant?

years

C.6 For how many years have you been at your current level/in your present position?

years

C.7 Have you ever attempted to make the following promotions/career advancements or changes? (Please tick each that apply)

	Unsuccessfully	Successfully
Junior Counsel to Senior Counsel	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Barrister to Judge Solicitor to Judge	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Associate Solicitor to Partner	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Never attempted unsuccessfully	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Other (<i>e.g. promotion, move to another department</i>)	1 <input type="checkbox"/>	2 <input type="checkbox"/>

If Other, please specify:

- C.8** Where you were unsuccessful, why do you think you were unsuccessful?
(Please specify)

- C.9** If you have not been promoted or not made any career advancement or change in the last five years, please rank from the following list the 3 *most important reasons* (1 = **most important** 3 = **least important**) why you believe you were not promoted or made no change:

- ¹ Happy in present position
- ² Feeling not ready for advancement
- ³ Fear of rejection
- ⁴ Colleagues' attitudes
- ⁵ Need for further study/qualification
- ⁶ Lack of encouragement from superiors
- ⁷ Promotion/advancement procedure
- ⁸ More pressure at work
- ⁹ Less time for home or non-work interests
- ¹⁰ No further promotion possible
- ¹¹ Other

Please specify:

- C.10** How would you rate women's chance of achieving promotion/advancement in your profession/career compared with men of similar ability?

- ¹ Better
- ² Same
- ³ Worse

Why do you think this is the case?

C.11 What is the average number of hours you work per week?

hours per week

C.12 What proportion of your time is spent on the following areas of work (approximately)?

Commercial/ Competition/EU Law	_____%
Criminal law	_____%
Employment or social welfare law/disciplinary tribunal	_____%
Family Law	_____%
Housing/residential property/conveyancing/probate	_____%
Commercial property	_____%
Personal Injury, negligence	_____%
Constitutional/administrative/planning/environment/judicial review	_____%
Asylum/immigration law	_____%
Other, please specify _____	_____%
Total	100%

C.13 Please give your opinion on your level of satisfaction with your current work/professional situation: (Tick one of the four boxes for each statement- if you have no views please leave box(es) blank)

	<i>Very Satisfied</i>	<i>Fairly Satisfied</i>	<i>Fairly Dissatisfied</i>	<i>Very Dissatisfied</i>
Interesting and stimulating work	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Flexible working arrangements	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Prospects for professional advancement	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Recognition & valuing of professional skills	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Security of employment	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Financially worthwhile and rewarding	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Working to full capacity	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Relationship with colleagues	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Public service/ "Making a difference"	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>

Section D

Work/Life Balance

D.1 Do you have a spouse / life partner?

¹ Yes

² No

If Yes, is your partner:

¹ Working full time in the home/not in paid employment

² Working full time outside the home

³ Working part time outside the home

Is your partner working in the law?

¹ Yes

² No

D.2 Do you have a child/ren?

¹ Yes

² No

If Yes, How many?

No, go to D.3

How many children in the following age categories are dependent/living with you?

0 - 5 years

6 years -12 years

13 years -17 years

>17years

Which of the following best describes your current childcare arrangements:

¹ Cared for in working hours by partner

² Cared for in working hours by other relative

³ Cared for in working hours by childminder

⁴ Cared for in crèche

If Other, please specify:

D.3 Do you have other family caring responsibilities?

¹ Yes

² No

If Yes, for whom do you care ?

¹ Elderly relative

² Adult with disability

³ Child with disability

⁴ If Other, please specify:

D.4 Of the following forms of leave, which (a) are available to you and (b) have you availed of personally during your career?

	Available to you	Availed of by you
Fully Paid Maternity Leave	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Maternity Leave with statutory benefit only	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Paid Adoptive Leave	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Paid Parental Leave	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Unpaid Parental Leave	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Paid Paternity Leave	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Unpaid Paternity Leave	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Paid Force Majeure (emergency) leave	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Paid Compassionate Leave	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Paid Sabbatical/Study Leave	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Have never taken any leave	1 <input type="checkbox"/> <i>If not, why not?</i>	2 <input type="checkbox"/>

- D.5 Of the following forms of flexible working arrangements, which (a) are available to you and (b) have you availed of personally during your career?

	Available to you	Availed of by you
Reduced hours	¹ <input type="checkbox"/>	² <input type="checkbox"/>
Flexitime	¹ <input type="checkbox"/>	² <input type="checkbox"/>
Job-sharing/Part-time Working	¹ <input type="checkbox"/>	² <input type="checkbox"/>
Working from Home	¹ <input type="checkbox"/>	² <input type="checkbox"/>

- D.6 Have you ever experienced any difficulties in availing of/getting any of these forms of leave/working arrangements?

¹ Yes

² No

If Yes, please specify the type(s) of leave and give details of your experience:

- D.7 Apart from any of the forms of leave/working arrangements listed above, have you ever taken time out from your career for any reason?

¹ Yes

² No

If Yes, please give details:

- D.8 Do you think that taking any of these forms of leave/flexible working arrangements/time out affected your career/promotional prospects adversely?

¹ A lot

² A little

³ Not very much

⁴ Not at all

⁵ Don't know

If taking any of these forms of leave etc. adversely affected your career/promotional prospects, please specify the form of leave etc. and the way(s) it/they affected you:

Section E

To be Completed by those currently in practice or employed as Solicitors/ Apprentices/In-house Counsel ONLY

E.1 In what year did you enter into practice?

E.2 Was this your first profession?

¹ Yes

² No

If No, please give details of previous employment/profession:

E.3 How many applications did you make to different organisations before you were successful in securing an apprenticeship?

applications

E.4 How many months were you trying before you succeeded in obtaining an apprenticeship?

months

E.5 In selecting a firm with whom to train, what factors influenced your choice?
(Please tick any that apply)

¹ Personal contact/family connection

¹ Size of firm

¹ Prestige/Reputation

¹ Gender of master/partners in firm

¹ Experience of other trainees

¹ Remuneration

¹ Specialisation in a particular area

¹ Availability of flexible work arrangements

¹ Quality of training

¹ Client base of firm

E.6 Where relevant, were you kept on by the firm with which you did your apprenticeship?

¹ Yes

² No

If No, why not?

E.7 Did you experience any difficulty securing employment as a solicitor once you qualified?

¹ Yes

² No

If Yes, what form did that take?

E.8 Are you employed or self- employed?

¹ Employed in a firm/salaried partner

² Self-employed in a partnership/equity partner

³ Self-employed as sole practitioner

⁴ Employed - other (e.g. Legal Aid Board)

E.9 How many years post qualification experience did you have prior to your partnership offer as:

An Equity Partner

years

A Salaried Partner

years

E.10 In your firm, how many of each of the following staff are there?

	Number of Women	Number of Men
Equity Partners	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
Salaried Partners	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
Associates	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
Solicitors not in other categories	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
Apprentices/ Trainee Solicitors	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>

Which of the above best describes your own professional status

E.11 Are you responsible for recruitment of apprentices/legal professionals in your firm?

¹ Yes

² No

If Yes, please rank (1 = most important to 5 least important) any of the following:

Academic achievement

1 2 3 4 5

Relative/other personal contact

1 2 3 4 5

Personality/sociability

1 2 3 4 5

Networking ability

1 2 3 4 5

How they would 'fit' into firm

1 2 3 4 5

E.12 Is your remuneration?

¹ Flat salary

² Salary + Profit share

³ Other (*Please specify*)

E.13 Do you generate fees personally?

- ¹ Yes
- ² No

If Yes, do you:

- ¹ generate new work
- ² carry out work resulting in the generation of fees

(Please tick both if relevant)

Do you keep track of the amount of fees which you generate personally?

- ¹ Yes
- ² No (Please skip to E16)

E.14 Is keeping track of personally generated fees something which?

- ¹ The organisation requires you to do
- ² You do for your own purposes

E.15 How many chargeable/billable hours would you say you have amassed in the past twelve months? *(If you cannot estimate this, please leave blank)*

- ¹ < 1000 hours
- ² 1001 - 1200 hours
- ³ 1201 - 1500 hours
- ⁴ 1700 +

Please describe the percentage of your time on:

- ¹ client work
- ² non-client work

Please give details of the non-client work which you carry out

E.16 Is your level of remuneration?

- ¹ Reviewed at fixed intervals
- ² Only reviewed when you raise the subject
- ³ Other (*Please specify*)
-
-

E.17 How are revisions to your remuneration determined?

- ¹ Individual negotiation
- ² Set procedure within the organisation
- ³ By reference to other comparable firms & individuals
- ⁴ Other (*Please specify*)
-
-

Section F

To be Completed by those currently in practice as Barristers ONLY

F.1 In what year did you enter into practice?

F.2 Was this your first profession?

¹ Yes

² No

If No, please give details of previous employment/career:

F.3 How many years did you spend devilling?

years

If more than one year, what influenced your decision to devil for a second year?

¹ Increase exposure to other area of practice

² Practice on another circuit

³ Lack of confidence in ability to secure instruction in practice

If Other, please specify:

F.4 In selecting a Master, what factors influenced your selection?

(Please tick any that apply)

¹ Personal Contact/Family Connection

² Specialisation in particular area of law

³ Prestige/Reputation

⁴ Gender

⁵ Experience of other devils

⁶ Age/length of time in practice

¹⁷ Availability of flexible work arrangements with a particular Master

F.5 Did you have any difficulty finding a Master?

¹ Yes

² No

If Yes, what form did this difficulty take?

F.6 In your first three years of practice, which of the following categories of solicitors instructed you? (Please tick any that apply)

¹ Relatives

² Those who had instructed your Master(s)

³ Friends

⁴ Political contacts

⁵ Others (*Please specify*)

F.7 Are you in regular receipt of work from any of the following:
(Please tick each that apply)

¹ Attorney General

² Tribunals

³ DPP's Panel

⁴ Refugee Panel

⁵ Legal Aid Panel

⁶ Insurance Companies

F.8 Have you ever, or do you now, supplement your income from the Bar through any of the following means? (*Please tick any that apply*)

¹ Family/parents/partner

² Lecturing/teaching/tutoring

³ Journalism/editing/research

⁴ Political representative

⁵ Do not/ have not ever supplemented income (please skip to F. 11)

⁶ Other (*Please specify*)

F.9 For how long have you supplemented your income?

years

F.10 Where relevant, how many years were you in practice before being able to live exclusively off your income from the bar?

years

Not yet able to

F.11 Where relevant, how many years practice did you undertake before you sought admission to the Inner Bar?

years

F.12 What factors influenced your decision to seek admission to the Inner Bar?
(Please tick any that apply)

¹ Status/Prestige

² More control over working hours

³ Greater financial reward

⁴ Type and nature of work

⁵ Other

(Please specify)

F.13 If you have had or currently have a devil, what factors influenced your selection?
(Please tick any that apply)

¹ Academic achievement

² Personal contact/Relative

³ Sociability/Networking ability

⁴ Selection on a "first come first served" basis

⁵ Other

(Please specify)

F.14 Do you believe you are:

¹ Overworking/working to full capacity

² Just right

³ Underemployed at the bar

Section G –

To be Completed by Judges ONLY

G.1 In what year did you first become a judge?

G.2 What was your previous qualification?

¹ Barrister

² Solicitor

G.3 How many years were you in practice as a barrister/solicitor/judge of lower courts?

G.4 Please tick any of the following factors that may have influenced your decision to become a Judge:

¹ Public service/'making a difference'

² Status/prestige

³ More control over working hours

⁴ Greater financial security

⁵ Type and nature of work

⁶ Other

(Please specify)

G.5 In your view, does gender discrimination exist in judicial appointments?

¹ Yes

² No

Section H

Gender-Related Attitudes and Experience

To be answered by ALL respondents

H.1 Have you ever experienced disadvantage or discrimination within your profession/career on the grounds of your gender in any of the following areas?
(Please tick any that apply)

- ¹ Difficulty in getting apprenticeship/Master/initial job
- ² Not getting permanent employment where relevant
- ³ Area/quality of legal work/teaching
- ⁴ Level of earnings/income
- ⁵ Not getting certain types of work
- ⁶ Not being put on panels for work
- ⁷ Being excluded from networking/social functions
- ⁸ Inappropriate
- ⁹ Inappropriate comments
- ¹⁰ Promotion/partnership/Call to inner Bar
- ¹¹ Parenting/maternity/childcare arrangements
- ¹² Judicial appointment
- ¹³ Sexual harassment/bullying
- ¹⁴ Other
(Please specify)

H.2 Have you experienced gender discrimination from any of the following?
(Please tick any that apply)

- ¹ Colleague
- ² Superior
- ³ Subordinate

H.3 If Yes to any of the forms of discrimination in H.1 or H.2, please give details of the nature of discrimination and your response(s): *(If No, skip to H.7)*

H.4 Was there a formal complaints procedure available to you within your profession/career?

¹ Yes

² No

If Yes, did you make a formal complaint within your profession/employment?

¹ Yes

² No *(If No, skip to H.6)*

If Yes, was it effectively dealt with?

¹ Yes

² No

If No, why not?

H.5 If you did not bring a complaint, what was the reason(s)?

H.6 If the gender discrimination or disadvantage amounted to illegal treatment, did you institute legal proceedings?

¹ Yes

² No

If Yes, were they effectively dealt with?

¹ Yes

² No

If they were not effectively dealt with, what was the reason(s)?

If you did not institute legal proceedings, why not?

- H.7** From your knowledge and experience, what do you think would be the most appropriate mechanism for securing legal redress for gender discrimination in your profession/career?

Please specify:

- H.8** Have there been occasions within your career/profession/job when gender worked in your favour?

¹ Yes

² No

If Yes, please specify how:

- H.9** Do you think that gender makes a difference in your career/profession/job?

¹ Yes

² No

³ Don't know

If Yes, please specify how:

- H.10** From your knowledge and experience, how common would it be for discrimination against women to occur in your career/profession?

(Please rank: 1 = Very common to 5 Very uncommon)

1

2

3

4

5

⁶ Don't know

H.11 Do you do court work?

- ¹ Yes
- ² No

If Yes, have you observed any of the following behaviours and if so please indicate by whom (*Tick as many as applicable - if you have not observed such behaviour please leave box(es) blank*)

	Judges	Barristers	Solicitors	Court Staff	Clients
Women addressed differently by:	1 <input type="checkbox"/>	1 <input type="checkbox"/>	1 <input type="checkbox"/>	1 <input type="checkbox"/>	1 <input type="checkbox"/>
Use of terms of endearment towards women lawyers by:	2 <input type="checkbox"/>	2 <input type="checkbox"/>	2 <input type="checkbox"/>	2 <input type="checkbox"/>	2 <input type="checkbox"/>
Comments on personal appearance of women lawyers by:	3 <input type="checkbox"/>	3 <input type="checkbox"/>	3 <input type="checkbox"/>	3 <input type="checkbox"/>	3 <input type="checkbox"/>
Different reaction to arguments of women lawyers by:	4 <input type="checkbox"/>	4 <input type="checkbox"/>	4 <input type="checkbox"/>	4 <input type="checkbox"/>	4 <input type="checkbox"/>

H.12 Have you observed any other forms of gender bias either against women or against men in court procedures?

- ¹ Yes
- ² No

If Yes, please give details.

H.13 Please give your opinion on the following statements: (*Tick one of the four boxes for each statement- if you have no views please leave box(es) blank*)

	<i>Disagree Strongly</i>	<i>Disagree</i>	<i>Agree</i>	<i>Agree Strongly</i>
Men and women do not get treated equally when it comes to being appointed to top jobs	1 <input type="checkbox"/>	2 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
The culture of the legal profession suits men better than women suits men's careers	1 <input type="checkbox"/>	2 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
For a woman to reach the top she has to behave like a man	1 <input type="checkbox"/>	2 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Women are primarily responsible for looking after the home	1 <input type="checkbox"/>	2 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
People who have taken career breaks are less likely to progress in their careers	1 <input type="checkbox"/>	2 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Women are more likely to be absent from work because of family responsibilities	1 <input type="checkbox"/>	2 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Women's work performance is more closely scrutinised than that of men	1 <input type="checkbox"/>	2 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
It is important for women's success that they do not make an issue of being a woman /express feminist views	1 <input type="checkbox"/>	2 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

H.14 What are the main obstacles to women's career advancement?

H.15 What steps should be taken to improve opportunities for women in the law?

H.16 Do you think that the professional bodies should have specific structures to deal with gender issues?

H.17 Please rank the following measures that you think would be effective in improving the position of women in the law (**Please rank 1 = Most Important 7= Least important - if you have no views please leave box(es) blank**)

- More women on councils of professional bodies
- Guidelines and codes of conduct on gender issues
- Promotion of suitable Role Models/Mentor programmes
- Change in the 'long hours' culture
- Women lawyers' groups or networking on gender issues
- Greater facilitation of work/life balance
- Other
(Please specify)

Section I

Background Information

The information sought in Section I is for analysis purposes only and not to identify individuals

I.1 Are you?

- ¹ Male
 ² Female

I.2 Which of the following age groups do you belong to:

- ¹ 20 - 29 years
 ² 30 - 39 years
 ³ 40 - 49 years
 ⁴ 50 - 59 years
 ⁵ Over 60 years

I.3 Which one of the following best describes your current marital status?

- ¹ Single
 ² Married
 ³ Widowed
 ⁴ Separated
 ⁵ Divorced
 ⁶ Living with partner

I.4 Do you have a pension arrangement?

- ¹ Yes
 ² No

If Yes, please indicate the nature of the pension:

- ¹ Contributory
 ² Non-contributory
 ³ Individual scheme

⁴ Group Scheme

⁵ Other

I.5 Which one of the following income groups best represents your aggregate annual income:

¹ < € 20,000

² < € 21,000- 35,000

³ € 36,000-50,000

⁴ € 51,000- 75,000

⁵ > €76,000- 100,000

⁶ € 101,000-200,000

⁷ € 201,000-500,000

⁸ > € 500,000

I.6 When you were 14 years old, what was the occupation of your:

Mother _____

Father _____

I.7 Did you attend a secondary school that was:

¹ Fee-paying

² Non-Fee-paying

I.8 Do you play or follow any of the following sports:

¹ Golf

² GAA

³ Rugby

⁴ Soccer

⁵ Sailing

⁶ Tennis

Do you think that an interest in any of the above sports is/would be helpful in furthering an individual's legal career?

¹ Yes

² No

If Yes, please specify the most important sport(s):

I.9 During the course of your legal career, have you experienced discrimination on any of the following grounds? *(Please tick any that apply)*

- ¹ Marital Status
- ² Family Status (e.g. pregnancy/caring responsibilities)
- ³ Sexual orientation
- ⁴ Religion
- ⁵ Age
- ⁶ Disability
- ⁷ Race/nationality/ethnicity
- ⁸ Membership of the Traveller Community

If Yes, please give details (please continue on a separate sheet if necessary):

Thank you for taking the time to complete this questionnaire -

All Responses will be treated in total confidentiality

Please forward your completed questionnaire in the FREEPOST envelope (no stamp is required) to:

Industrial Statistics Unit,
Trinity College, Dublin 2.

If you have any queries on any aspect of the survey, please do not hesitate to contact

Ms Catherine Finnegan
Administrator
'Careers in the Legal Professions' Survey

Tel: (+353 1) 608 2367

Email: womeninlaw@tcd.ie

Appendix 2

Questionnaire for Students

Women in Law project, TCD

- Law Student Survey

For Students in Final Year Only

1. Did you enter Law School through (please tick relevant box):

- CAO/Leaving Cert
 A Levels/other equivalent
 Mature student/other route

2. Before commencing your legal studies, did you have any links with the legal profession? Please tick relevant box:

- ¹ Yes
 ² No

If Yes, please tick each that apply

	Barrister	Solicitor	Judge
Parent	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Close relative	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Close/Family friend	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>

3. Can you identify with any role models associated with Law?

- ¹ Yes
 ² No

If Yes, who?

4. Please rank any of the following factors that may have encouraged you to choose Law: (1 = **Strongest motivation** to 5 = **weakest motivation**, leaving blank any that did not apply) Tick each box with an "X"

Intellectual challenge	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Employment prospects	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Points level	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Family pressure	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

Potential earning levels	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Having a relative in the profession	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Desire to work independently	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Desire to work as part of a team	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Prestige/status	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Ability to practise advocacy	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Public service/ "making a difference"	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

5. Where do you see yourself being in 15 years' time? Please tick one box:

- ¹ Practising Solicitor
- ² Legal Academic
- ³ Practising Barrister
- ⁴ Partner in Law firm
- ⁵ Senior Counsel
- ⁶ Judge
- ⁷ Other
(please specify)
-

6. Please give your opinion on the following statements:(Tick “X” in one of the four boxes for each statement- if you have no views please leave box(es) blank)

	<i>Disagree Strongly</i>	<i>Disagree</i>	<i>Agree</i>	<i>Agree Strongly</i>
In my department/course, male and female students appear to be treated equally	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Men and women do not get treated equally when it come to being appointed to top jobs	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
The culture of the legal profession is one that better suits men’s careers	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
For a woman to reach the top she has to behave like a man	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Women are primarily responsible for looking after the home	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Female students generally do not participate as much as male students in lectures or seminars	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Male students tend to do better than female students in essays and exams	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Women’s work performance is more closely scrutinised than that of men	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
It is important for women's success that they do not make an issue of being a woman/express feminist views	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>

7. What steps, if any, should be taken to improve opportunities for women in the law?
-
-
8. When you were 14 years old, what was the occupation of your:
- Mother _____
- Father _____
9. Did you attend a secondary school that was either:
- (a)
- ¹ Fee Paying
- ² Non-Fee paying
- (b)
- ¹ Single Sex
- ² Co-ed
10. Are you?
- ¹ Male
- ² Female

Thank you for taking the time to complete this short questionnaire -
All Responses will be treated in total confidentiality

If you have any queries on any aspect of the survey, please visit the Women in Law website on the Law School webpage:

<http://www.tcd.ie/Law/WomeninLaw.html>

do not hesitate to make contact via the following telephone number or email address:

Catherine Finnegan @ (+353 1) 608 2367

womeninlaw@tcd.ie

Appendix 3

Letter to Solicitors' Firms on Partnership



Tel: (01) 608 2367
Fax: (01) 677 0449

'Women in Law' Project

School of Law
House 39,
New Square
Trinity College, Dublin 2

Email: womeninlaw@tcd.ie
<http://www.tcd.ie/Law/WomenInLaw.html>

SAMPLE LETTER TO MANAGING PARTNER OF LARGER FIRM

20 June 2003

Dear

I am writing to you in relation to the Women in Law project.

The project is the first major empirical study of the lives of lawyers in Ireland, and the role of gender difference in the professions. The authors are Professor Ivana Bacik, Reid Professor of Criminal Law, and Dr Eileen Drew, Department of Statistics and I. The Department of Justice, Equality and Law Reform are the funders of the study, with the support of the Law Society of Ireland.

The study is based on empirical findings from surveys, interviews and focus groups with women and men in different areas of the legal professions and the judiciary. We surveyed several thousand solicitors (women and men) and also held interviews and focus groups with women and men in the solicitors' profession. At this stage, we are particularly interested in enhancing our knowledge and understanding of the practices of large commercial firms. As such we are writing to you in order to clarify the following issues in relation to your firm:

- Number of partners, equity and non-equity and years of making partnership of each;
- Number of women partners, equity and non-equity and years of making partnership of each;
- Promotional procedures and criteria;
- Employment / partnership policies (if any) on the following issues:
Maternity leave, paternity leave parental leave, and flexible working arrangements (part-time or job-share);
- Internal complaints procedures.

Your responses will be treated with the utmost confidentiality and your firm will not be identifiable from the material used. We appreciate that some of these matters are highly sensitive, but your input will be most valuable in enhancing the accuracy and cogency of our study, and the information will be handled in a rigorous and responsible manner. In particular, we are interested in developing recommendations based on current good practices within firms.

If you would like to hear more about the project, please do not hesitate to contact me, or consult our website at www.tcd.ie/Law/womeninlaw.html. I appreciate that there are many demands of your time, and am available to meet with you to discuss the study at your convenience.

Yours sincerely

Cathryn Costello, BCL, LLM, BL
Lecturer in European Law
Director, Irish Centre for European Law

Appendix 4

*Letter to Institutional Clients
on Briefing Practices*



Tel: (01) 608 2367
Fax: (01) 677 0449

'Women in Law' Project

School of Law
House 39,
New Square
Trinity College, Dublin 2

Email: womeninlaw@tcd.ie
<http://www.tcd.ie/Law/WomeninLaw.html>

LETTER TO INSTITUTIONAL CLIENTS ON BRIEFING PRACTICES

Dear

We are writing to you in connection with the Women in Law project.

The project is the first major empirical study of the lives of lawyers in Ireland, and the role of gender difference in the legal professions. It is co-ordinated by Professor Ivana Bacik and Cathryn Costello of the Law School, and Dr Eileen Drew of the Department of Statistics, in Trinity College Dublin. The study is funded by the Department of Justice, Equality and Law Reform, and is supported by the Law Society of Ireland and the Bar Council. A major part of the study is based on empirical findings from surveys, interviews and focus groups with women and men in different areas of the professions.

At this stage, we are particularly interested in enhancing our knowledge and understanding of the briefing practices of institutions like your own. As such, we are writing to you in order to clarify the following four issues in relation to your office:

- How many barristers do you brief directly on an ongoing basis at the moment?
- What proportion of these are women?
- On what basis do you choose whom to brief/what are your briefing criteria?
- Do you have a gender or equality policy in relation to briefing barristers?

We are writing to a number of institutions and organisations like your own, and your responses will be treated with the utmost confidentiality. Your office will not be identifiable from our report.

If you would like to hear more about the project, please do not hesitate to contact us, or consult our website at www.tcd.ie/Law/womeninlaw.html.

We appreciate that there are many demands on your time, and would be greatly appreciative of your assistance in this matter.

Yours sincerely

Appendix 5

*Letter to Law School Deans
on Staff and Curriculum*



'Women in Law' Project

School of Law
House 39,
New Square
Trinity College, Dublin 2

Tel: (01) 608 2367
Fax: (01) 677 0449

Email: womeninlaw@tcd.ie
<http://www.tcd.ie/Law/WomeninLaw.html>

SAMPLE LETTER TO DEAN OF LAW SCHOOL

13 August 2003

Dear

I am writing to you in relation to the Women in Law project.

The project is the first major study of the lives of lawyers in Ireland, and the role of gender difference in the professions and legal academia. The authors are Professor Ivana Bacik, Reid Professor of Criminal Law, and Dr Eileen Drew, Department of Statistics and I. The study is funded by the Department of Justice, Equality and Law Reform. We are reaching the final stages of the project, and are anxious to refine some of the information we have in relation to law faculties in Ireland.

There are two issues on which we require further information. The first relates to the breakdown of men and women full-time staff. In particular, I would be most grateful if you would provide us with the following information pertaining to your institution, so that we may complete the table below. The table was compiled using information from faculty websites.

University	Professors	Lecturers (Permanent)	Lecturers (Temporary)	TOTAL Full-Time Staff	Professors	Lecturers (Permanent)	Lecturers (Temporary)	Total Women	% Women
DIT				7				2	29
DCU				3				0	0
NUI(G)				27				11	41
TCD				16				6	38
UCC				20				11	55
UCD				22				6	27
UL				8				3	38

The second issue relates to 'gender on the curriculum.' In this respect, we would be grateful if you would let us know whether you offer any courses considering law from a gender / feminist perspective, either in full or in parts. Below is a sample of a completed table:

Undergraduate course considering law from a gender / feminist perspective:

None

Undergraduate course considering law from a gender / feminist perspective in parts:

Jurisprudence (contains a component on feminist legal theory)

Criminology (contains several components on feminist criminology)

Postgraduate course considering law from a gender / feminist perspective:

Women and the Law

I appreciate that there are many demands of your time, but your input to the study will be invaluable. I look forward to hearing from you at your convenience. If you require any further information, please do not hesitate to contact me.

Yours sincerely

Cathryn Costello

Appendix 6

*List of Professional
Bodies Contacted*

Advocatsamfundet, Denmark
Alabama State Bar, USA
Arizona State Bar, USA
Arkansas State Bar, USA
Association of the Bar of the City of New York, USA
Association of Women Barristers, UK
Atlanta Bar Association, USA
Bar Association of Alberta, Canada
Bar Association of British Columbia, Canada
Bar Association of India, India
Bar Association of Manitoba, Canada
Bar Association of New Brunswick, Canada
Bar Association of Newfoundland, Canada
Bar Association of Nova Scotia, Canada
Bar Association of Ontario, Canada
Bar Association of Prince Edward Island, Canada
Bar Association of Prince Edward Island, Canada
Bar Association of Quebec, Canada
Bar Association of Saskatchewan, Canada
Bar Association of the Northwest Territories, Canada
Bar Association of Yukon, Canada
Bar Council of England and Wales, UK
Barreau de Paris, France
Canadian Bar Association, Canada
Chambres des Notaires du Quebec, Canada
Colorado Women's Bar Association, USA
Confederation Nationale des Avocats, France
Conseil des barreaux de l'Union europeenne (Council of the Bars and Law Societies of the European Union)
Consiglio Nazionale Forense, Italy
Delaware State Bar Association, USA

Deutsche Bundesanwaltskammer, Germany
District of Columbia Bar, USA
Equal Opportunities Commission, Australia
Federation of Law Societies of Canada, Canada
Federation Suisse des Avocats, Switzerland
Finnish Bar Association, Finland
Florida Bar, USA
Georgia State Bar, USA
Icelandic Bar Association, Iceland
Idaho State Bar, USA
Illinois State Bar, USA
Indiana State Bar, USA
International Bar Association
Kwa-Zulu Natal Law Society, South Africa
Law Council of Australia, Australia
Law Institute of Victoria, Australia
Law Society of Alberta, Canada
Law Society of British Columbia, Canada
Law Society of England and Wales, UK
Law Society of Newfoundland, Canada
Law Society of Nunavut, Canada
Law Society of Queensland, Australia
Law Society of Saskatchewan, Canada
Law Society of Scotland, UK
Law Society of South Africa, South Africa
Law Society of South Australia, Australia
Law Society of Tasmania, Australia
Law Society of the Australian Capital Territory, Australia
Law Society of the Northern Provinces, South Africa
Law Society of the Northwest Territories, Canada

Law Society of Upper Canada, Canada
Law Society of Western Australia, Australia
Law Society of Yukon, Canada
Maryland Bar Association, USA
State Bar of Michigan, USA
Minnesota State Bar, USA
Mississippi Bar, USA
Missouri Bar, USA
Natal Law Society, South Africa
National Association of Women Lawyers, USA
National Bar Association, India
National Women's Law Center, USA
Nederlandes Orde van Advocates
New South Wales Bar Association, Australia
New Zealand Law Society, New Zealand
North Carolina Bar, USA
Nova Scotia Barristers' Society, Canada
Ohio State Bar, USA
Ohio State Bar, USA
Oregon State Bar, USA
Osterreichischer Rechtsanwaltskammer, Austria
Pennsylvania Bar, USA
Philadelphia Bar Association, USA
Pretoria Bar Association, South Africa
Rhode Island Bar Association, USA
South Carolina Bar, USA
Standing Committee on Equality, Canadian Bar Association, Canada
State Bar of California, USA
Connecticut Bar Association, USA
State Bar of Montana, USA

State Bar of Texas, USA

State Bar of Wisconsin, USA

Swedish Bar Association, Sweden

Tennessee Bar Association, USA

Utah State Bar, USA

Victoria Bar Association, Australia

Victorian Law Foundation, Australia

Virginia Bar Association, USA

Wellington District Law Society, New Zealand

West Virginia State Bar Association, USA

Western Australian Bar Association, Australia

Wyoming State Bar, USA

Appendix 7

*Reported Discrimination
Cases Taken by Irish Lawyers*

Reported Discrimination Cases Taken by Irish Lawyers

In the legal academic context, there is one well known case, *Patricia Conlon v University of Limerick*,¹¹ which was taken by a woman law lecturer, challenging the University's choice of criteria for appointment to the position of Law Professor under the Employment Equality Act 1977. The plaintiff argued that the requirement that a successful applicant should have several years experience at a senior academic level was indirectly discriminatory against women, since there were so few women at senior academic level that far fewer women would be capable of qualifying for the post. She lost before the Labour Court, and also on appeal before the High Court, on the basis that the requirements were objectively essential in the particular circumstances of the post that the University sought to fill. More recently, in *Ailbhe Smyth v University College Dublin*,¹² a similar claim relating to academic promotion, albeit in a different discipline than law, was also lost on the grounds that considerations other than gender justified the university's decision. The Equality Officer recommended however that UCD take specific measures to ensure gender balance on future selection panels, and retain relevant marking records for at least a year or until the outcome of any complaint.

In a second case taken by a female law lecturer, this time before an Equality Officer, *Leon v IPA*,¹³ the claimant alleged discrimination on the grounds of gender and family status when she was unsuccessful at interview for a lectureship with the Institute of Public Administration (IPA). She claimed that her experience was superior to that of the successful childless male candidate, and that an enquiry she made at interview regarding availability of family friendly work practices resulted in her being told she was unsuitable. The Equality Officer found that the assessment of candidates at the interview was not influenced by gender, and was satisfied that the complainant had failed to establish a prima facie case of gender discrimination. The complaint on family status was also rejected on the grounds that the complainant had made a genuine mistake regarding the requirement of full time attendance.

Apart from these cases taken by legal academics, there have been a number of discrimination claims in recent years made by employed lawyers, almost all in the

¹¹ {1999} 2 ILRM131.

¹² DEC-E2002-030.

¹³ DEC-E2002-047.

public sector, and most unsuccessful. In *Sheehan v DPP*,¹⁴ the complainant was a male solicitor. He claimed that he was discriminated against by the Director of Public Prosecutions (DPP) on the grounds of gender and age, contrary to the Employment Equality Act, 1998, when he was unsuccessful in a competition for appointment to the position of Solicitor to the DPP. The successful candidate was a younger woman, with less experience. The complainant said his treatment was discriminatory because of the seven-year post-qualification experience requirement, the manner in which the interview was conducted, the make-up of the Interview Board and improper observations by a Board member regarding his "maturity". He failed, however, because the Equality Officer held that eligibility criteria were a matter for an employer to establish, that the seven-year requirement did not exclude the complainant and that the other matters complained of provided no evidence of discrimination on grounds of gender or age.

In *Forde v Revenue Commissioners*,¹⁵ the claimant had been employed as a law clerk since 1974, and had commenced job-sharing in 1994, when she was the first of four on the seniority list. A vacancy was filled the following year, and she argued that she was not considered for the post because she had dropped down the seniority list as a result of her job-sharing. But the Equality Officer concluded that there was no direct discrimination, as the post was filled by another woman with the same marital status as the claimant; and that the requirement imposed on those seeking promotion applied regardless of employment status.

In *Clarke & ors v Min for Justice Equality and Law Reform*,¹⁶ the claimants, employed as examiners in the Land Registry, alleged that the poor performance of female candidates in a promotional competition was due to gender discrimination. Of the 39 candidates in the competition (27 men and 12 women), 8 were successful (7 men and 1 woman). Women scored average marks of 69.73% overall, whereas men scored an average of 76.90%, a difference of 7.17. However, the Labour Court found against the claimants, concluding that although the statistics showed an imbalance between women and men, the numbers involved were too small to be sufficiently reliable to establish a *prima facie* case of discrimination.

In one successful claim, *McCarthy v Dublin City Council (Corporation)*¹⁷, the claimant was a law officer with the local authority, who alleged gender discrimination against her in a competition for Senior Legal Assistant. The Labour Court in DEE6/1998 upheld the finding of discrimination and awarded her €1270 compensation. The claimant then alleged that she was victimised in a number of ways as a result of taking the claim by her employer. The Chief Clerk refused to acknowledge or speak to her;

¹⁴ DEC-E2002-047.

¹⁵ EE10/1999.

¹⁶ EE/00/14/LCD 2001/015.

¹⁷ ADE/02/11 LCD 2002/022.

the Labour Court determination was inaccurately reported in the internal newspaper; and an internal investigation was conducted in a particular way. This complaint was upheld both by the Equality Officer and on appeal to the Labour Court, which found the victimisation to be ongoing, and awarded the claimant €25,000 as a result of distress suffered (a reduction of approximately 50% from the sum originally awarded by the Equality Officer).

These cases were all taken by persons employed in legal posts in the public sector; but in the private sector there has been one striking age discrimination dismissal case before the Labour Court in 2001 involving a firm of solicitors; *A Firm of Solicitors v. A Worker*.¹⁸ The complainant, employed as a legal secretary, claimed her dismissal resulted from the firm's decision to employ a younger person, and that this constituted age discrimination. The Court found that the senior partners of the firm had decided to engage a young person who could be trained to provide quasi-legal services, together with secretarial services. The complainant was never considered for the redesigned position, despite her prior experience both as a legal secretary and in undertaking quasi-legal functions in conveyancing and probate. There was a conflict between the complainant and the partner who dismissed her, on what was said at the meeting where she was informed of her dismissal. The complainant said the partner told her it had been decided to 'take on a young girl who could be trained to do her job'. The partner in question strenuously denied saying that the new appointee would be trained to do the complainant's job. However, the Court found that the complainant's version was supported by other correspondence, and concluded that notwithstanding her apparent suitability for training in quasi-legal functions, the firm never considered redeploying the complainant into the redesigned post. The Court held further that this was because the firm had decided to reserve the redesigned post for a young person, and that the complainant, by reason of her age, did not meet this requirement. Thus the dismissal amounted to age discrimination, and the complainant was awarded IR£6,000 in compensation.

¹⁸ ED/00/13.

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