

Report on the Retention of Legal Practitioners

The Law Society of Western Australia
and
Women Lawyers of Western Australia

Final Report
March 1999

FOREWORD



John Ley
President
Law Society of
Western Australia

I am pleased to introduce the report 'The Retention of Legal Practitioners', a joint initiative of the Law Society of Western Australia and Women Lawyers of Western Australia.

The release of this report is particularly pleasing as it is the first study of the exiting trends of a legal profession to have been undertaken and documented, along with proposals to improve the retention of lawyers.

This study was proposed by the Law Society following recommendations made in the 1994 Report of the Chief Justice's Taskforce on Gender Bias, that the Society monitor and encourage the participation of women in the legal profession. After reports that there was a general shortage of practitioners in the 3- to 7-year post admission range, the proposed study was expanded to include both sexes.

The survey, which was funded by a grant from the Western Australian Public Purposes Trust, would not have been possible without the participation and support of Law Society Executive Director Alison Gaines, President of Women Lawyers of Western Australia Narelle Johnson QC and Clare Thompson, Convenor of the Law Society/WLWA Joint Committee.

It is important that the profession understands this report and contemplates acting upon its recommendations at a profession-wide and firm-wide level.

I commend this report to practitioners of all levels and areas of legal practice.

FOREWORD



Narelle Johnson QC
President
Women Lawyers of
Western Australia

This report, jointly published by the Law Society and Women Lawyers, is a major achievement for the legal profession in Western Australia. The rate of exodus of women practitioners from the profession has been a matter of considerable concern for some time. That concern was formally expressed in the Chief Justice's 'Gender Bias Task Force Report' in 1994 and has occupied Women Lawyers' agenda since at least that time.

As a profession we ought not be complacent about losing talented young practitioners of either gender early in their careers. However, the attrition rate for women practitioners is often given as an explanation or used as an excuse for the under representation of women at all levels and in most areas of practice.

It is imperative that the legal profession reflect the composition and address the concerns of the wider community. Yet despite over a decade of women outnumbering and often outperforming men at law schools, the number of women in the senior ranks of the profession, as partners of firms, at the Bar and in the judiciary, remain disappointingly low. In order to redress this imbalance, women must be encouraged to remain in the profession and advance their careers to senior positions.

This report is a major step towards identifying the issues which underlie the decision to leave the profession early. It provides a clear identification of the factors which work against all junior practitioners fulfilling their potential. Most importantly, it provides the legal profession with a number of recommendations which can readily be implemented to ensure that our best and brightest no longer leave at an early stage in their career.

Women Lawyers as an organisation is committed to assisting women practitioners to achieve their potential and will be working to ensure the key recommendations of this report are implemented.

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EXECUTIVE SUMMARY

The Task

In order to better understand the reasons for the apparently high rate of people leaving the legal profession, the Law Society of Western Australia contracted Nexus Strategic Solutions in September 1998 to collect and analyse exit data, and to make recommendations for improvement.

The consultants distributed an exit survey to about 150 individuals who had left the legal profession within the previous 5 years. There were 47 returns, a formal response rate of 32 per cent. They also conducted in-depth interviews with 21 of the respondents who had indicated a willingness to participate. Survey and interview data were analysed to identify the key reasons for leaving and to determine whether there were any significant differences related to gender.

The data from the survey and interviews were analysed and organised around issues identified in the relevant literature as influential in exit decisions. Five categories were identified for the legal profession.

- ❖ *Professional Growth and Development*

- ❖ *Career Improvement*

- ❖ *Quality of Life*

- ❖ *Organisational Culture*

- ❖ *The Legal Culture*

Comments from all interviewees and most surveys have been included in the report.

THE FINDINGS

In general women had taken the exit decision earlier in their legal careers than had men. The average age of women respondents was 31.6 and that of men 36.7. While women had enjoyed an average 3.5 per cent increase in salary upon leaving, male remuneration had increased on average by 37 per cent. More women than men had had their primary legal experience in small to medium sized firms rather than large firms.

The survey asked questions both about the legal environment in which the respondent had most recently worked and the legal profession in general. Most respondents were positive about certain features of their work in the legal profession, including opportunities to appear in court and the fact that they were encouraged to use their initiative. On the other hand, there were general concerns raised about a range of what might be termed 'management' issues. A number were frustrated with what they saw as a poorly articulated vision for the firm, lack of challenging work and, therefore, limited opportunities to use one's skills and abilities. There was a general view that good work by staff was often not recognised by supervising staff; some concerns were raised that the salaries were poor, for the level of responsibilities, particularly in the early years of practice.

Women, in particular, did not believe that their supervisors adequately clarified their work expectations. Although respondents generally agreed that they were given adequate opportunities to continue with their legal education it is nonetheless clear that young lawyers would benefit from more structured supervision including a formal induction. Ways in which young lawyers can be given opportunities for challenging work earlier in their careers and the need to reconsider the reward and recognition structures emerged as issues.

For the legal profession as a whole, survey respondents generally agreed they were working in the area of the law of most interest to them, and that they were paid equitably in relation to their peers. They also felt included in networking and social events; indeed there was often pressure to participate in these. A number of respondents expressed frustration with the workplace culture citing a lack of diversity, with very few women at senior levels. This was seen to have resulted in a closed narrow culture with the existing staff profile tending to be replicated in the recruiting process in the view of many.

Quality of life issues emerged strongly. Respondents generally did not agree that the legal profession was a supportive work environment. They did not see that the courts provided a constructive environment. Nor did they believe themselves able to manage the level of job stress and pressure or balance their work and family responsibilities. Those with young families, in particular, found the long hours stressful.

A number of respondents expressed concerns about the billing system, both in its perceived ineffectiveness as a management tool, and in terms of denying justice to many needing it. There were suggestions that many of the historical conventions associated with the law needed to be changed.

When asked for the main reasons why they had left the legal profession, the most highly ranked reasons were a desire to leave and to try something else.

There were statistical differences between men and women on six survey questions. On all six women were more likely to disagree with the question than men in each case.

1. *If necessary, other lawyers were available to talk about issues related to my work.*
2. *The expectations of me in my job were made clear to me by my supervisor.*
3. *My job provided sufficient variety.*
4. *I was able to adequately control the factors that impacted on my job.*

5. *Any instance of sexist language in the legal profession was quickly corrected.*

6. *Any instances of sexual harassment in the legal profession were dealt with promptly and professionally.*

THE CONCLUSIONS

It appears that a number of young people, disproportionately women, are leaving the legal profession early in their careers. Is this a real problem given the favourable supply and demand context in which the study and practice of law exists?

Where people leave the profession to confront new challenges this is generally a good thing. Flexibility and risk taking are highly sought attributes in a rapidly changing world. It is also a reasonably positive conclusion that, while there are some differences between men and women in their survey responses, these were fewer than might have been expected. Where there is a problem, however, is that a number of exiting staff felt 'pushed' into the decision. Many found their workplaces difficult environments; a number concluded that the law had been a poor career choice given their interests and aptitudes. These problems are largely ones that the legal profession can address in a positive way.

The recommendations of the report fall into two general categories. Firstly, it is important that the law profession be clear about the attitudes and aptitudes it believes are necessary for good lawyers. By introducing improved vocational counselling at school level and introducing more rigorous selection processes for entry to law school, it is anticipated that the profession could both improve its diversity and identify more successfully those young people most likely to enjoy the practice of law and to succeed at it.

Secondly, law firms can look at their own management practices. They can make their individual workplaces more diverse, inclusive, supportive and flexible through a variety of improvement strategies particularly in the area of people management (including training). Law attracts bright young people and challenge and autonomy are important features of a professional workplace. While very low salaries may detract from job satisfaction, research is quite clear that pay is not a significant factor for remaining with an employer. In one recent study it ranked 11th behind such factors as open communication with managers, ability to challenge the status quo and opportunities for personal growth. Importantly, money is especially weak when it comes to encouraging employees to think more creatively (Hays, 1999).

Quality of working life also includes issues of personal and professional balance. Ensuring that both men and women lawyers can choose to be fully participating parents and citizens, has ramifications beyond the efficiency of the workplace. One suspects that, over time, such changes would be reflected in changes in the broader legal culture itself.

It is clear that the legal profession has begun to address a number of these issues. For example, a number of firms have mentoring arrangements in place. Issues of sexual harassment are taken more seriously. This report suggests a number of additional directions that can be considered.

THE RETENTION OF LEGAL PRACTITIONERS

THE LAW SOCIETY OF WESTERN AUSTRALIA

1.0 INTRODUCTION

The Law Society of Western Australia has been concerned about the rate at which legal practitioners are leaving legal practice; legal firms are reporting shortages of practitioners particularly in the 3- to 7-year post admission stage, with women seemingly more likely to exit. In order to understand better why this is occurring the Law Society of Western Australia contracted Nexus Strategic Solutions in September 1998 to collect and analyse data exploring this issue, and to make recommendations for improvement.

Specifically, then, the consultants were asked to:

Design an exit instrument to capture the data relevant to reasons for legal practitioners leaving the legal profession.

Conduct and analyse a survey of women and men legal practitioners in Western Australia who have recently exited the profession using the exit survey instrument.

Make comment on the similarities and differences in exiting motives of women and men.

Make recommendations about the conduct of legal practice and employment in the legal profession which may improve the retention of women and men in the legal profession.

Develop a simple exit document that can be administered by firms or by the Society with legal practitioners as they resign.

In the data collection process the consultants administered an exit survey and conducted interviews with a sample of respondents who had left the legal profession within the previous 5 years.

The data were then analysed to identify the key reasons for leaving and to determine whether there were any significant differences related to gender.

2.0 DATA COLLECTION AND ANALYSIS

2.1 Methodology and Literature Review

The consultants based their methodology on previous research they had conducted¹, supplementing an earlier literature review with information particular to the legal profession. A list of references is at Appendix 1.

2.2 Surveys

The survey instrument was adapted from a range of those commonly used in government and business. Prior to distribution the survey document was scrutinised by an academic from Murdoch University specialising in survey technique. Following minor amendment some 100 surveys were then distributed to a recipient list drawn up by the Legal Practice Board. Because of the poor response rate² to this initial mail out the consultants began to contact individual respondents directly to seek the names and contact details of others they might know who had left the practice of law. A further 50 surveys were distributed in this way. Time lines were also extended in order to encourage a higher response rate. By the middle of January 1999 some 47 completed surveys had been returned, a formal response rate of 32 per cent of the total distribution. This is an acceptable response rate that allows one to draw statistically valid conclusions. In fact, the response rate of those eligible to respond (i.e. having left the practice of law) is actually significantly higher; unfortunately, the methodology does not allow quantification. The respondents included 28 women and 19 men. From this a snapshot of the sample can be drawn.

A range of demographic information was sought from the respondents. The average age of women respondents was 31.6 and that of men 36.7. Not surprisingly, then, women had left the law at a more junior level than the men – 78 per cent of women were employed solicitors in contrast to 53 per cent of men at that level. About the same proportions of men and women had a degree only in law (42 per cent and 43 per cent) with the others having a range of additional qualifications. The most recent legal practice experience of most respondents had been in private legal firms as opposed to sole practice, government or community (95 per cent of men and 78 per cent of women). While women had enjoyed a 3.5 per cent increase in salary upon leaving, male remuneration had increased by 37 per cent. Similar proportions of men and women had moved into government employment but most remaining men had entered the private sector compared to women who had entered a diverse range of activities. The complete survey response tables can be found at Attachment 2.

2.3 Interviews

Semi-structured interviews were conducted with 21 survey respondents who had indicated a willingness to participate. The interviewees were assured that all identifying information would be confidential. The interviews were based on open-ended questions about issues identified in the relevant literature as influential in exit decisions. Interviewees were also asked to identify any other issues that were significant to their exit decisions.

1. Stuart J & Barrera S. No Regrets: An Examination of Reasons for Senior Staff Leaving the Western Australian Public Sector. *Proceedings of the Fifth International Women in Leadership Conference*, Edith Cowan University: Perth, Australia (1998), pp 178-91.

2. A number of individuals identified by the Legal Practice Board were, in fact, still practising law. They had moved either interstate or overseas.

The interviews focused on positive and negative aspects of the practice of law; they could comment on issues such as career prospects, work autonomy, recognition and reward, stress, work and family, harassment and organisational culture. The final question sought comment on what would have to change for them to consider a return to the law.

Each interview took about 1 hour though the range was 1/2-2 hours. The consultants took notes of the discussion and made these available to each interviewee for further amendment and comment after the interview.

2.4 The Interview Sample

The returned surveys indicated a greater willingness by women to be interviewed. Some 60 per cent of the survey responses came from women, and they comprised about 71 per cent of the interview group. The consultants do not believe that the larger proportion of female interview subjects compromises its findings particularly as gender concerns had been highlighted in the brief from the Law Society and the interview data from men reflected their survey responses.

2.5 Data Analysis – Interview Respondents

The consultants carried out a content analysis on the interview data. On the basis of previous research it was anticipated that at least three different categories of factors influencing exit decisions would emerge; the desire for career improvement, quality of life factors, and the organisation's culture. While this categorisation was true in general terms, two additional factors emerged strongly – concerns with professional growth and development and those relating to the legal system itself. The former may be seen as an extension of career concerns and the latter of cultural issues.

The following list summarises the issues discussed in the findings (Section 3).

Professional Growth and Development

- ❖ Readiness for Work
- ❖ Induction
- ❖ Supervision
- ❖ Opportunities for Re-entry

Career Improvement

- ❖ Need for Achievement
- ❖ 'Getting Ahead'
- ❖ Reward and Recognition

Quality of Life

- ❖ Working Conditions
- ❖ Working Environment
- ❖ Family and Social Life

Organisational Culture

- ❖ Systems and Processes
- ❖ History and Tradition

The Legal Culture

- ❖ Law or Justice
- ❖ The Legal Process

People leave their jobs usually for a combination of 'push' and 'pull' factors. Those pulled by new challenges and opportunities or choosing to stay are likely to be less critical of their experience than those leaving because of 'push' factors. Hence the views summarised in this report should not be assumed to reflect the views of all lawyers. It is the case, however, that we often learn most from our critics.

2.6 Demographic Characteristics of the Interview Sample

The tables suggest that the interview sample accurately represents the survey group.

Table 1: Demographic Characteristics of the Interview Sample.

	Male	Female	Total
No. of Respondents	6	15	21
Average Age	36	31.4	32.8
No. Years of Practice	7.2	3.3	4.4
Range of Years of Practice	2 to 18	1 to 6	1 to 17
Size of Firm	Small 16.7% Medium 33.3% Large 50%	Small 40% Medium 40% Large 13.3% Other 6.7%	Small 28.6% Medium 38.1% Large 23.8% Other 9.5%

Table 2: Demographic Characteristics of the Survey Sample.

	Male	Female	Total
No. of Respondents	19	28	47
Average Age	36.7	31.6	33.7
No. Years of Practice	6.9	4.1	5.2
Range of Years of Practice	1 to 18	1 to 10	1 to 18
Size of Firm	Sole practitioner 5% Small 38% Medium 19% Large 39%	Sole practitioner 11% Government 11% Small 30% Medium 24% Large 24%	Sole practitioner 9% Government 7% Small 33% Medium 22% Large 30%

2.7 Analysis of Survey Results

Statistical significance was calculated using the Student Two Tailed T-Test.

The results are summarised below³, both in terms of the views expressed by the total sample of women and men, and also where there are significant differences between women and men.

Views Generally Held by all Lawyers Sampled

The scale used was from 1 (always) to 5 (never). Thus the higher the average, the more the respondents disagreed with the survey statements.

For the legal firm in which they worked, respondents (women and men) generally agreed with statements such as:

I was given the opportunities I wanted to appear in court.

I had adequate opportunities for continuing legal education to help me with my job.

I was encouraged to use my initiative in my work.

Respondents generally did not agree (that is, the average response is greater than 3) with statements such as:

I was able to adequately control the factors that impacted on my job.

All the lawyers at the firm got their fair share of interesting work.

The expectations of me in my job were made clear to me by my supervisor (men were more likely to agree with this than women, a statistically significant difference).

I felt that the partners of the firm provided clear vision and direction.

I felt that the salary for my job was about right for the responsibilities that I had.

For the legal profession as a whole, respondents generally agreed (that is, the average response is less than 3) with statements such as:

I was included in the networking and social events which took place among my colleagues in the legal profession.

I was paid equitably in relation to my peers.

I was working in the area of the law of most interest to me.

3. Not all questions have been included in this summary — only those towards the ends of the scale.

Respondents generally did not agree with statements such as:

I found the legal profession to be a supportive work environment.

The courts provided a constructive environment in which to work as a lawyer.

I was able to balance work and family responsibilities to my satisfaction.

When asked for the main reasons why they had left the legal profession, the most highly ranked reasons were:

I wanted to leave the legal profession.

I wanted to try a new career in a different profession.

Differences Between Women and Men

For the six questions where the differences between women and men were significantly different⁴, women were more likely to disagree with the question than men in each case.

The statements where this significant difference occurred were:

If necessary, other lawyers were available to talk about issues related to my work.

The expectations of me in my job were made clear to me by my supervisor.

My job provided sufficient variety.

I was able to adequately control the factors that impacted on my job.

Any instance of sexist language in the legal profession was quickly corrected.

*Any instances of sexual harassment in the legal profession
were dealt with quickly and promptly.*

3.0 THE FINDINGS

This section summarises the information from the exit survey and the interviews. Issues raised are grouped into categories reflecting the themes that emerged. The report authors decided to allow the respondents to speak for themselves in the text. *Comments are included from all interview subjects and most of the survey responses.* In order to maintain confidentiality, however, they are identified only by M or F as an indication of gender. All but one of the interviewees had completed their articulated clerkships and/or restricted practice year (and early years of practice) in private law firms. The findings in this report, therefore, relate almost exclusively to that environment.

4. Findings that are statistically significant mean that it is unlikely that the result would have arisen from chance.

3.1 Professional Growth and Development

Respondents made numerous comments about access to what might be termed professional growth and development, particularly for those newly entering the workforce.

Readiness for Work

There are significant issues of transition for law graduates entering full-time work. Many found the work experience quite different to what they had expected following law school.

Entry to a law program is highly competitive and it would be expected that, in general, law graduates would be high achievers, highly ambitious, with considerable self-motivation. A need for and expectation of early success would not be surprising.

The data suggests considerable disappointment about their entry to the legal workforce. This should not be unexpected. Over time research has shown that there is a high turnover amongst young people in their first jobs reflecting, to some extent, the need to adjust expectations to the realities of work. While it is not clear whether this is more true for young people in the law, it must be considered as a factor.

Some respondents concluded after a period practicing law that they were unsuited to the legal profession. While they might have enjoyed the law school experience, the reality of legal work made them realise that their interests lay elsewhere.

I loved law school but perhaps there wasn't a good match between my skills and interests and the realities of practising law. (F)

It is not the fault of the legal profession. Young people need to be directed correctly into the profession at the outset. (F)

Was this a problem with the law school curriculum? One male interviewee suggested the need for "more variety in education ... I believe the process does not prepare lawyers for future careers in law or otherwise, particularly in this era". Another respondent who had commenced her degree at UWA and finished at Murdoch found the latter a more stimulating program. Perhaps the fundamental question, however, is 'what makes a good lawyer?'

Entry to law school on the basis of a TEE mark alone is inadequate. Law requires a lot more than a high TEE score which normally comes from science subjects. Being a good lawyer requires you to have people management skills and be able to understand that there is no right answer; it depends on who can present the case better on the day and other factors. (F)

Subjects indicated they were generally happier in their new occupations but acknowledged that legal training and practice had been useful in their subsequent career (if only for status reasons). Making a vocational choice at the age of 17 was seen as problematic.

School leavers are too young to know what they want. (F)

I felt carried along by the process – getting the degree, then doing the articles, then practising. I didn't know any better. (F)

Suggestions emerged, therefore, about the need for better selection processes to law school together with improved vocational guidance at the school level. "School career counselling needs to be more knowledgeable about the law" (F). Others proposed that law be a post graduate qualification, giving young people valuable growing-up time. This was seen as appropriate particularly in view of the on-going difficulty in providing all graduates with opportunities to do their articles year in a 'buyer's' market. "Getting articles was ... badly organised, and only happened through my informal networks" (F). Another remarked that "legal training should be a combination of academic work and practical involvement melded together" (M).

It was also suggested that law should be seen more as a generalist qualification with many options after graduation, other than legal practice, being available.

People should realise that a law degree gives you other career options. This needs to be publicised and encouraged more actively to students. Doing something other than articles after your degree should not be looked upon as second best. It should be encouraged as a first option for many people who have other talents and strengths. This is particularly important given the difficulty many graduates have in obtaining articles. (F)

The shock of the workplace was something that respondents remarked upon frequently. There was concern that law school did not adequately prepare one for work in legal firms, particularly the practical issues – how a particular form was to be completed, for example, or how to appear in court. There was inadequate knowledge about the working environment in a private law firm. Others commented, however, that conveying this reality would be an impossible task. "Nothing can really prepare you for the experience of being a new lawyer – you have to be there" (F). Students heard the stories about hard work and long hours, for example, but discounted these.

When I was a law student there would be talk about life in a private firm; we'd hear the stories. But there was a tendency to discount them, particularly the younger students with no experience of the work force. They thought that they could manage – only losers couldn't make it. (F)

One young woman who came from a legal family commented "Before they join a firm people don't really know what it's like. My father is a [lawyer] and I probably knew more than most but I still didn't KNOW" (F).

Induction

It seems clear that formal induction was a rare experience although it was acknowledged that 'things might have changed'. *"When I arrived I was given a desk and a couple of files and told to see how I went" (F)*. Comments emerged that the articles year, in particular, appeared to be 'trial by fire', a 'sink or swim' exercise, perhaps arising from a view by older lawyers that all lawyers need to go through this experience as they had done. In particular, some respondents had been distressed that they had been required to attend their first court appearances inadequately prepared because no one had discussed these things with them. Neither was information provided to induct them into efficient office procedures. *"Firms should have a program to manage their articulated clerks" (F)* commented one respondent.

Supervision and Feedback

Inadequate or absent induction flowed into generally poor supervision practices. Both the quality of direct supervision and more formal training programs were criticised. Interview respondents talked about their wish to have been set clear expectations, given clear instructions, together with regular feedback. *"When you are first working full-time you need regular and some positive feedback" (F)*. The survey responses indicate that women felt this lack of clear expectations more strongly than the men, a statistically significant response, although men, too, rated this question poorly.

Many noted a need for other forms of support such as mentoring and networks. It appears that young articulated clerks were frequently given files with no accompanying instruction; they would then resort to wandering the corridors looking for a more senior staff member to offer assistance, to provide a starting point.

There were very few checks on the work I did. If you wanted help you had to go and see the partner of the section, who was always busy. (F)

The partners would give me a file at the last minute. (F)

The poor supervision was blamed, in part, on the billing system. *"A senior person has to get the billable hours up and so doesn't have time to assist a junior lawyer" (M)*.

A common attitude appeared to be *"just deal with it" (F)*.

Again, women reported more frequently that other lawyers were unavailable to assist, a statistically significant difference.

Early court appearances were particularly difficult.

*The court work was horrible because no one told you what to do.
Law school did not prepare you in any way for working in legal practice.
You didn't know how to act in court and had to copy what other people were doing.*

It was the same with everything.

The partner I was working for would give me a file and say 'have a go'.

He was so busy that he would rarely have time to explain anything.

If I insisted he only had 5 minutes before rushing off somewhere else. (F)

Young lawyers who felt hesitant about asking for assistance could soon get into difficulties. "Those people who couldn't stand up for themselves were not given any work. People ignored them and waited for them to resign – a terrible waste" (F). Combined with a culture that frowned upon those unable to cope, this might well lead to further problems, particularly for clients.

... inadequate supervision ... was an important failing as there could be severe consequences for the client if you didn't get it right. (F)

Because of the lack of a proper professional development process, I had to find things out by trial and error and often this could be inefficient and expensive for the client. (F)

The articles year is meant to assess a graduate for formal registration and entry into a highly regarded profession. It seems important that graduates be provided with access to a range of experiences, both to develop their skills and knowledge as lawyers and to help them make a choice about those things of particular interest to them. Small firms, in particular, were less able to provide this choice.

I never wanted to be a litigator but got 'stuck' in the area despite requesting a move to a commercial area. (F)

You had no say in what kind of work you were given. (F)

Even larger firms, however, did not always ensure a well-structured rotation for articulated clerks – it was termed 'haphazard' by one person. One older respondent also commented that it was difficult to change one's orientation from, say, corporate to family law, once one had gained a few years experience. The provision of regular training opportunities, designed with employee needs in mind, and based on performance review, was ad hoc although some respondents commented that they believed there had been improvement in recent years. "There was very little done about training or staff development. Once a week someone was supposed to present a seminar, but no one looked at individual employee's needs" (F).

Opportunities for Re-entry

One respondent expressed concern about returning to the legal profession after a period away for family responsibilities. "Having been out of day to day practice I would see the need for refresher courses or the opportunity of a 'work experience' period in a firm to ensure my legal skills are up to standard" (F).

3.2 Career Improvement

Need for Achievement

Most of those interviewed saw issues of career improvement primarily in terms of a sense of achievement. Particularly in the first years of practice, legal work was often characterised as mundane, boring, trivial, repetitive or menial. *"[It was] derivative and essentially uninteresting work ... [it] did not have a high intellectual content ... it was mainly managing the set process with a few variations depending on the circumstances" (M)*. The survey results show women, more than men, felt the lack of variety, a difference that was statistically significant.

People were looking for greater challenge, particularly intellectual challenge. Even among more experienced lawyers the practice of law was seen as narrow in focus and they were looking for professional growth that required developing a broader perspective.

Achievement was occasionally described as helping people, of doing something 'worthwhile' or 'valuable' in a broader community sense. Some respondents felt that life in a private law firm made this more difficult (see Section 3.5).

'Getting Ahead'

For a large proportion of those interviewed promotion (or lack of it) was not a serious concern as they were still rather junior staff. It was generally believed, however, that law firms exhibited strong hierarchical characteristics and *"promotion was through serving out your time" (M)*. Long hours were assumed as critical to success. *"Partnership was the carrot dangled to get people to work so hard – but you had to pay your dues first" (M)*.

For those entering the legal profession as mature people with a range of other skills and experiences, starting at the bottom again was frustrating. *"Everyone was treated as a raw beginner, regardless of their background" (M)*.

The question of whether promotion occurred on the basis of merit also arose.

The inequitable division of the 'spoils' between partners and employed staff are particularly large in law firms. Rewards should be based on productivity not longevity. (M)

Law firms are not structured to recognise individual performance as well as they might be. (M)

In any case there was a strong view, particularly from women, that they were less likely to make partner. There was a perception that men usually received more interesting and important work that made them more 'promotable'. Another view was expressed that promotion only meant more of the same, in any case, with the additional responsibility of bringing in new clients.

Reward and Recognition

Rewards can be seen as both extrinsic, usually salary and/or promotion, and intrinsic – a sense of achievement (that may or may not be recognised by the organisation). The data suggests that extrinsic rewards were of greater importance to men. Extrinsic rewards appeared closely linked to succeeding in a highly defined hierarchy. While financial rewards for partners were seen as enormous, these were seen to have accrued from the labours of hard-working junior staff. For many of those interviewed the journey to a partnership was not worth the destination given the expenditure in long hours required (see Section 3.3). One male respondent spoke about the need to have an *"improved dollar return on hours invested"*. One woman suggested that *"the salaries in law are poor until you are a partner"*.

Future prospects were important. *"I did not have capital in the firm. As the years progressed and my income increased, I (like most others) lived to the full extent of my income. I was not, however, building up a capital base which would support me in later years"* (M).

Intrinsic rewards for most of the respondents also appeared minimal, particularly for those who had a sense that the law was not particularly helpful in delivering justice to the community. *"I didn't feel there were enough 'wins' or rewards in the work"* (F).

Day to day recognition of a job well done was variable, depending on the situation. Some felt that senior staff acknowledged good work; others said they only knew when they had made a mistake and were verbally abused, often in front of other people.

No one was very forthcoming in giving feedback or recognition for work well done. (F)

People were treated the same regardless of how hard they worked. (F)

Occasionally the client said good things but not usually the partners. (M)

You only knew you had done a good job when you didn't get yelled at or chastised. (F)

One young woman remarked that she was told by the partners, only after her resignation, of their regrets, that she *"was a good lawyer and would be a loss to the profession"*.

When one considers that many of those leaving the law are young people with a long experience of achievement in their studies, and the security of regular feedback through examination and essay results, a dearth of such feedback can be disheartening to say the least. The level of recognition seemed to be dependent on the interpersonal skills of the supervising partner. Lack of recognition can contribute to job dissatisfaction and the exit decision. In the words of one interviewee – *"job satisfaction is more important than a high salary"* (F).

3.3 Quality of Life

Working Conditions

Some of the respondents spoke of life as junior clerk or solicitor in a private legal firm as "sweat shop conditions" (M). Hours could be very long with some reporting 12 hours a day or more – frequently working to midnight and back in the office by 7 am – in order to achieve their quota of billable hours, as many as 7.5 per day. Administrative work, chatting with colleagues and the like, cannot be billed to a client and therefore becomes additional time that has to be made up. The extra time required by new lawyers to do a task would often need to be discounted to bring it in line with standard charges and this created the need for additional hours. Combined with the pressure to stay late to 'impress the partners', work could easily become all consuming. *"While I was at the firm I was 'chatted' about not staying at work longer"* (F).

This was not always the case, however. One respondent pointed out that *"the culture of long hours depends on the firm"* (F) and some respondents reported that hours were manageable although, in a couple of instances, this was because the firm was experiencing financial problems at the time and there was insufficient work.

Poor salaries in the early years of practice were not mentioned as a decisive reason for leaving⁵. It was apparent, however, that salaries for articled clerks were low and had dropped in recent years according to a couple of respondents. One woman reported receiving \$12,000 in her articles year and had needed to work at another job in order to pay her living costs. As she commented, *"\$12,000 per annum is not an incentive to stay in the legal profession – this is less than minimum wage"* (F). Other firms, however, paid as much as \$20,000. There must be some concern in the profession, however, that some firms are paying less than the minimum wage and are not complying with the Minimum Conditions of Employment Act 1993 – in other words, breaking the law through an exploitation of young people's desire to complete their articles.

There were frequent references to the lack of flexibility in firms. Not only did the long hours inhibit living a well-rounded life with family, friends and other interests, but work autonomy was compromised by the billing system requiring an accounting of time for each 6 minute period during the day. Many respondents found working by the clock in this way very restrictive.

Others, too, were frustrated by an office environment in which one felt 'tied' to a desk, a dictaphone and an ever-growing pile of files. There was frustration with the view that lawyers should always be available to clients. *"Clients expect you to be available anytime, anywhere. Only people with no family responsibilities or a full-time at home partner can do this – largely men"* (F). Women with children saw this expectation of private legal firms as making part-time or job share arrangements as difficult or impossible.

The way law is practiced is also very demanding on your time (and in this respect, modern communications – e-mail, fax, mobile telephones – have worked against lawyers, by ensuring that they CAN work 24 hours a day, wherever they are!) because clients have become used to getting the service when they demand it –

5. Indeed there were a number who left without a clear idea of their future employment.

and if you can't service them, they will go elsewhere. If you wish to have a balanced life, with adequate 'private' time, as well as time for sleeping, you cannot work 'full-time' as a lawyer. (F)

For women with children, particularly, flexibility was seen as the critical factor in determining their return to the profession.

I will return to the profession when and if my firm is able to accommodate part-time work which suits my family responsibilities. (F)

I really enjoyed practice and would like to go back, provided that it was understood that it was a job of so many hours, and that you would give it all you could while you were at work, but that after that you would go home. (F)

The possibility of job sharing or part-time work, while desirable, was seen by one woman as difficult – "Given the hours that full-time people have to work it is hard to see how part-time work could be kept to reasonable limits". On the other hand, however, a man believed that "a part-time practice in law is quite practical, even as a partner, provided that you are prepared to be flexible, and you organise things well. You have to accommodate court appearances and keep your colleagues and clients informed". It needs to be queried whether this level of flexibility is a possibility for women needing to make child care arrangements.

Working Environment

There was a wide ranging set of comments about the working environment itself. While some were frustrated by the seeming ad hoc allocation of work (see Section 3.1 on Supervision) others, particularly women, found the lack of human contact, the isolation in a clock driven environment almost unbearable and suggested a need for structural support such as mentoring programs. "Young lawyers need good support mechanisms when they are faced with hard stressful work, low pay and often difficult partners to deal with" (F).

The isolation was accentuated for women who felt there were few people they could relate to in largely male dominated firms. At least two mentioned that they enjoyed court work as an opportunity to get out of the office and be with people.

The right to choose how to get to an outcome, was very important to some. But, in a law firm, controlled by the ticking of the clock, autonomy seemed difficult to achieve. "I had very little autonomy. Everything went through the partners" (M). In combination with other factors it became critical in the exit decision. "I find my [present] work more intellectually stimulating and human interaction more rewarding. It is much less competitive. There are no time sheets and billing requirements. Most important is having more choice in the work you do – feeling more in control" (F).

The interview question on this issue, however, achieved mixed responses, possibly because of differing understandings of the term 'autonomy' with some equating a lack of supervision with autonomy. One mature woman suggested that "People who like the law tend to be straight from school and not realise what autonomy is in a work environment. The lack of autonomy is part of the

culture and the billing system" (F). It is to be noted that there was a statistically significant difference between women and men on the survey item relating to autonomy, with women perceiving a greater lack of autonomy than men.

Another respondent complained that the emphasis on cost cutting had resulted in the loss of administrative support, pushing these unbillable tasks, onto the junior solicitors. He argued that this was a poor long term business decision for the firm.

Another factor in the environment for some was the discomfort of dealing with angry clients who were often frustrated with or lacked understanding of time delays in the legal process. These young lawyers felt they lacked the necessary skills to deal with confrontational situations.

In litigation, for example, you feel pressured from the client, the clients from the other side, your boss, the overall firm expectations and peer expectations. These are all pressures that you have to control and manage. (F)

Clients became impatient and did not understand that court procedures could take a long time. They tended to blame me, and it was difficult to explain to them what the delays were caused by. Clients sometimes got hostile because they felt they were forking out money for little result. (M)

Stress and Illness

Stress, derived from a wide array of workplace factors, was identified by most of the interviewees – and had been manifested in both mental and physical forms. A number of respondents mentioned being unhappy and miserable, crying, being cranky and irritable, or depressed. Some had been on anti-depressants. They mentioned losing their confidence and sense of self-worth during their employment in a law firm. Physical symptoms were also mentioned – exhaustion, decline in general physical health, ulcers, weight loss, stomach tension and broken sleep.

*I developed a stress related illness and was worried about breaking down.
... There was nowhere I could turn for help. (F)*

By mid Sunday afternoon, for example, after a certain time, I would switch off from my personal life to anticipating what would be on my desk on Monday morning. This probably made me tired and cranky, irritable and self occupied. (F)

*I would get a sick feeling whenever I opened another urgent file.
... Work intruded on everything I did – thinking, dreaming of work.
I would wake in a cold sweat. ... I would cry most mornings
before work and force myself to go. (F)*

I became depressed and took medication during my articles year. (F)

I became physically and mentally sick; I couldn't sleep. This built up over time and I was on anti-depressants for the last 6 months of legal practice. (F)

My 'stress tanks' were empty. ... I was irritable with the children. (M)

The work was too much to handle, late nights, weekends, a lot of responsibility to clients, fear I would slip up. After all, my time was being billed out at \$180 per hour and so clients demanded a lot. (M)

The need to do something to redress issues of stress was seen as critical.

The only way to address this is for lawyers to wean clients off the 24 hours a day responsiveness they are used to, and that's not going to happen. As a result, casualties will occur – people dying young or suffering health breakdowns, simply because they don't have the time to look after themselves. (F)

Partners need to acknowledge the pressure and stress and realise that work isn't everything. (F)

One woman expressed her concerns as follows:

I think there is a lot of unhappiness with young lawyers about the law, a lot of negative publicity. The assumption by the public is that lawyers get rich but they merely make the partners rich. People are making themselves sick and getting nervous breakdowns with the workload. It needs to be recognised that the law requires specialised skills but not your whole life.

Family and Social Life

While most of the interviewees did not have partners or children during the period of their legal experience, the long stressful hours put pressure on their social life. Those with young families felt under particular pressure and did not see that 'making partner' would necessarily change things. This was the case for both men and women.

It is unreasonable to suggest that practitioners work for between 9 and 14 hours per day, being told that it is all part of 'paying your dues'. It is not family life to say 'goodnight' to a 4 year old on the phone at night because, like most nights, you have to work late. Even partners are forced to do this. If that is what being a partner is about why would you want to do it? Life is too short to want to spend it in the legal profession. (M)

[There needs to be] more genuine (cf rhetorical) commitment to 'family friend' practices. (M)

Fathers and mothers increasingly find the draconian/Victorian expectations of the private profession impossible to balance with modern day shared and quality parenting. (F)

Certainly a number of the women commented that they did not see how they would have been able to combine children with a full-time career in a private law firm. *"Now that I have three small children it would be impossible to practise law" (F)*. For this reason government positions were seen as highly attractive with their regular hours and competitive salaries.

Even those without family responsibilities were unhappy with the expectations of the workplace. *"[I have] a right to have a life and not be viewed as eccentric and inadequate for wanting a life outside work" (F)*.

3.4 Organisational Culture – the Management Culture of Law Firms

Systems and Processes

Leadership and Management Systems

A comment was made by a number of respondents that management practices in private law firms were out of step with the rest of the world. *"It is such a traditional profession – they are 50 years behind the rest of the world" (F)*. Although some specialists were more recently being brought into the larger firms, there was a long way to go. In any case this approach was no panacea. *"Although some firms have hired professional managers this doesn't usually work – the senior lawyers are disdainful and the juniors distrustful" (F)*.

Poor management was blamed on the senior members of the firm.

[The profession needs to] overcome the problem of senior lawyers or partners who have absolutely no idea of how to manage staff. ... [we have to] wait for all the pompous, self-interested, conservative old men who currently control the profession to pass away so that the profession can actually catch up with what is happening in the rest of the business world". (M)

The narrow focus of law firms was seen as problematic in a business sense. *"I had little sense of what else was happening in the firm. I did not see this as good from a business point of view, in building relationships" (M)*.

Management systems and processes were criticised. Because the system was time driven there was no real focus on outcomes and quality.

I disliked the [management] culture, the time sheets and the manner of working – its inflexibility. There was no focus on outcomes but how you bill the minutes, and the constancy of the billing, rather than the quality of the outputs. Billing was used as a management tool for junior solicitors". (F)

Indeed 'management by the clock', the billing system common to legal firms around the world, was frustrating to most respondents – *"I disliked having to bill every 6 minutes on the time sheet. You need a measure of time but this was ludicrous" (F)* and actually created a disincentive to be efficient. Why take a short cut when the long way round can be billed to the client – *"better to spend 10 hours in the library researching something than getting advice from a partner for 10 minutes" (F)*. It was suggested that the disincentives built into the billing system could encourage unethical behaviour.

Archaic practices compounded the problem.

Lawyers are bound by the Legal Practitioners Act, much of which is archaic (for example, you can charge by folio and this includes a lot of fat). Because lawyers focus on time not the outcome it means they are less creative. It becomes absurd – it is the world's worst way of coming up with what a job is worth. It should be focused on value added". (M)

Not surprisingly, then, there was a view that law firms have a limited understanding of customer service. For example;

I learned to use plain English at law school but then the partners wanted the waffle approach. (F)

The culture was lacking in morale and any sense of team spirit. There was no sense of customer service. (F)

One male respondent argued that the poor management of law firms could be attributed to what he called 'stakeholder management'.

Unlike large businesses (which large law firms are) the stakeholder and management are the same people. Every decision is therefore a calculation of how much will come into/out of the individual's pocket. This is a completely inadequate management process and leads to very poor decisions.

A woman expressed a similar view:

A partnership leads to partners thinking in terms of take home profit (billings minus expenses) whilst managers think in wider terms of business profit combined with staff morale, customer satisfaction and company reputation as their salary is set and is not solely based upon profit.

People Management

People management in private law firms was roundly criticised, both in its practice and in its absence. Poor supervision and lack of feedback was attributed to generally poor interpersonal and communication skills in the legal profession.

... senior lawyers ... have absolutely no idea of how to manage staff. (M)

Law firms need to recognise that lawyers make terrible managers ... the profession is OK – the problem is how law firms are managed. (M)

This led to a variety of weaknesses in the human resources processes in the firms that most of the respondents had worked for. For example, it appeared that instances of harassment were not always well handled. *"A secretary was being harassed by one of the other employees. She took a complaint to the partners but it was not handled at all well. Nothing happened to the person doing the harassment" (F).*

It was suggested that lip service only was paid to anti-discrimination and sexual harassment requirements. While there were not many instances of sexual harassment (see Section on Dealing with Difference) abusive language and other unprofessional behaviour was not uncommon. *"My principal had poor interpersonal skills; when I asked him for advice he either threw up his hands in the air or asked me what I expected him to do about it. On one occasion he threw a chair" (F).*

Harassment was largely in the form of verbal abuse. One young woman indicated that *"On one occasion I was called a 'stupid slut'. And when I complained to the managing partner I was told I was 'too sensitive'. On another occasion I had a stapler thrown at me".* Not unreasonably she suggested that *"You should expect not to have obscenities screamed at you".*

These views support a recent American study which found that women lawyers *"who had experienced or observed sexual harassment ... reported lower overall job satisfaction than did those who had not, as well as a greater intention to quit"* although the forms of harassment were not necessarily sanctionable (Laband, 1998, 594).

In general, an arrogance towards young solicitors was perceived. *"Articled clerks tended to be treated in a condescending manner by the partners" (F).*

There were expectations, for example, that they would do discounted work on behalf of a partner (often as a favour to a friend) and still make their billable hours. One respondent termed it a lack of respect for junior colleagues –

Some senior lawyers are very difficult to deal with – this seems to be part of the culture of the profession which condones abuse of young lawyers. (M)

In my present job people behave reasonably. The working environment is much more respectful. ... I am treated as though I have something to contribute professionally and my skills are valued. (F)

There was a frustration expressed by respondents that there was no real team orientation or sense of common purpose. *"I prefer working in teams as is the case in my current job, where there is greater scrutiny of work and you can use the collective experience of a group rather than relying on one person" (M).*

Poor supervision practices lead to poorly managed workloads and were exacerbated by lack of a coherent approach to training including management training.

The ability for partners to wring every last billable hour from a practitioner does not necessarily mean that they are good managers. This is especially true of human resources management. There is very little focus on management training in the profession and when it is provided, it is invariably dismissed as being of little practical significance to the practice of law. (M)

Trial and error was seen to be the primary methodology for learning.

This flowed into poor and inconsistent performance management techniques.

I found that performance reviews in law firms tended to be a negative experience. Too often the partners would talk about how well they were doing financially – the new boat, house, car – due to the sweat and toil of the associates. (M)

The firm did not work in a structured way in assessing people's performance; it was impressionistic and based on personal whim. (F)

History and Tradition

A Closed Culture

The defining characteristic of private law firms as expressed by most of the respondents was a lack of diversity that then manifested itself in a closed culture.

Currently [the legal profession is] a self perpetuating cycle of self congratulatory middle class kids who have a narrow frame of reference leading to a set of values commonly held, but which are out of touch with the community – thus maintaining elitism. (F)

A variety of descriptors were used – Boys Club, Land of Make Believe, Anal Retentive. These terms were different ways of describing what most respondents saw as a hierarchical system with men commonly in the senior roles. Women, indeed anyone seen as 'different', had to conform in order to succeed. *"It is a closed culture, a boys' club although not primarily gender based. ... it has patriarchal structures perpetuated by both men and women. There is a strong class thing. ... It's a way of life, a way of being that excludes a lot of people" (F).*

One respondent believed that the culture was a carry over from what she had seen in law school. *"I felt excluded at the UWA law school. Everyone else seemed to know each other; they are all the same and acted as though they had a right to be there ... I did not feel comfortable or included" (F).*

In some firms the culture was seen as fuelled by ambition and highly competitive between staff, although it could also be friendly. In others, however, *"The culture was extremely aggressive and competitive to the point where friendly conversations just didn't take place because of the time involved and people being precious about information" (F).*

The level of competition also resulted in lengthy hours and a view that successful law firms could not be family friendly. Yet staff felt compelled to stay silent. *"I said nothing about my frustration because agitators would get blacklisted" (M)*. One woman saw law firms as *"a culture in which there is no room for argument"*.

Dealing with Difference

As noted above most legal firms were seen to present a largely white male face and little was being done to alter this lack of diversity.

There is a problem with the promotion of women in law firms.

Most firms are run by males who have a similar socio-demographic profile.

They tend to come from traditional/conservative backgrounds and it is hard for them to be progressive. There are few female partners and few initiatives in place to encourage women to become partners. Many firms claim to offer opportunities and flexibility but few have the numbers to prove it. (F)

The law firms were very 'blokey'. This atmosphere perpetuates itself since those people (often women) who do not feel comfortable leave and the ones who fit in stay. (F)

Men and women saw these issues differently. Women disagreed with men that any instance of sexist or racist language in the legal profession was quickly corrected. Neither did women agree that instances of sexual or racial harassment were dealt with promptly and professionally. These differences of perception were statistically significant. In general, however, discrimination, against women in particular, was seen to be covert rather than overt – more a question of double standards.

Men in the legal profession are sexist but not necessarily more than the average man in the street. (F)

There was less harassment and more double standards – paternalism. Sometimes the middle aged partners (30-50) were worse than the older men. (F)

Girls would be left to wilt and die. (F)

... the partners, all males, were much more inclined to promote and hire men if they could. (F)

What made it difficult for women, however, was the lack of role models. It was perceived that those few who existed had had to play the game better than the men. *"I concluded that no female would ever make partner. ... To survive women have to be smarter and tougher than the men" (F).*

One woman's desire for flexibility was seen as too difficult to accommodate.

When I was pregnant with my second child I tried to get flexible working hours. I accepted one third of my salary which was equivalent to child care and transport to get this. They wanted to pay me nothing on the basis that the experience was valuable. I should be grateful. (F)

One male respondent believed that law firms were unlikely to change in regard to women.

Women will always be at a disadvantage since they are the ones who have to have the babies. At that stage in their lives they won't be seriously considered for promotion in a law firm. This is despite the fact that women make better lawyers since they pay more attention to detail and are not impressed by the bullshit. (M)

Difference was perceived not only about women. A couple of comments were made that less well off clients, such as those on Legal Aid, were not extended the same courtesies as regular clients. *"The senior people would speak abusively to people in the office and on the phone. Legal Aid clients were treated poorly – not offered a coffee when other paying clients were" (F).*

Clients with financial problems who were slow in paying had their files set aside, no matter how important the legal issue.

The Players

It is not surprising, then, for a culture seen as closed and lacking diversity, to have the majority of its players described as narrow. *"One needs to be careful not to make the mistake that a law degree is an education. ... They were like high school boys with degrees. They lacked depth and sensitivity" (F).*

At one end the comments were scathing – *"With few exceptions, people who have succeeded in law are not 'normal'. They are a rude, revolting bunch, threatened by anyone different, by anyone who doesn't play the game" (F).*

A less dramatic conclusion – “Most of the partners were men. They did not have rounded lives; they worked long hours to the exclusion of other things in their lives. By and large they were pleasant, but seemed to be of a certain personality type – perhaps a little slick, political, salesmen types” (F).

One woman felt that “Working in the firm was like being in a land of make believe, like being in a world of school boys in suits”. Another suggested that “Most people who enjoy the law are male”. A man commented that “[The culture was] anal retentive. Very sexist, bad attitudes towards minority groups, very WASPish. Everyone lived between the river and Cottesloe”.

There was general agreement that lawyers tended to be conservative – coming from privileged private school backgrounds, often demonstrating an attitude of ‘insufferable arrogance’. One woman suggested that “They didn’t have a clue about ordinary people” (F).

Law firms were seen as generally unhappy places.

I have never met a happy lawyer – there are usually lots of affairs and divorces, a poor family life. They hardly ever take holidays. (F)

Some lawyers like the status and prestige of the profession and the rest are miserable. (F)

Notwithstanding these rather negative comments, there was also a view that life in a law firm could be sociable and people were friendly (although one woman cricket fan found that her male colleagues were less than interested in her views on the game).

Cloning Behaviour

Private legal firms are very focused on maintaining the status quo – the position, profits and prestige of the firm and its partners. In order to do that they tend to attract and promote others like them – and as a result of the historical development of law, it is a male dominated environment. So naturally men (and women prepared to act as men) get employed first and promoted first. There doesn’t seem to be room for people who just want a job as a lawyer, and who don’t want to get involved in all the backstabbing and politics that it takes to climb the ladder within the firm. But if you are not wheeling and dealing and seeking to promote yourself you aren’t respected and will be sidelined, because you aren’t like them. (F)

Strong views were expressed about law firms as political environments – the need to impress the partners by putting in the hours, playing by the unspoken rules of the firm. Largely these rules were focused on fitting in with the rest of the group, having the right image and socialising with other lawyers.

Working as a lawyer means that you have to keep up the right image to impress people and demonstrate that you are doing well. (M)

There was pressure to stay around for Friday afternoon drinks. (F)

The clock was always running and there was pressure to make an impression. (F)

I couldn't see myself becoming a partner. It would have taken too much kicking and screaming and 'playing the game'. (F)

There is an expectation that you have to want the same as everyone else wants, to climb the ladder to become a partner, and become 'successful', where successful means making lots of money and having all the trappings of success – a house in Floreat and a showy car. (F)

If I had wanted to succeed in law I would ... have had to ... change who I was. (F)

It is difficult in the legal profession for women, especially those with children. You would be expected to go to Friday afternoon drinks. This was essential to progress through the firm, to show that you fitted in well, that you could pick up the right signals and act accordingly. (F)

Being a lawyer was seen as a way of life – "I was expected to make the law my life" (F). Particularly for those who are already mature, with clearly held values, this can present a significant dilemma. Do you change who you are in the race to succeed? "You have to leave so much of yourself behind" (F).

One woman concluded:

Private legal firms prefer new practitioners to be unformed. The year of articles is a way to personally de-construct them and recast them in the mould of the firm. This is very difficult for mature aged people and people whose personalities are already formed. (F)

The Bottom Line

Respondents made comments about their frustrations on the bottom line focus of legal firms.

The main reason that I decided to pursue an alternative career path was the profession's fixation on billing and earning. Often to the detriment of the client's interests and the staff's well being. (F)

Some suggested there was a 'focus on dollars not justice', that law firms were 'money making machines'.

I had problems billing people who couldn't really afford it; this was a conflict for me. (F)

And again, "I felt uncomfortable with the high charge out rate" (F).

There was also concern that this narrow approach, on occasion, led to unethical behaviour. "Sometimes a partner would ask you to do work and then charge the client the partner's rate for the work. I saw this as being unethical" (F).

3.5 The Legal Culture

Law or Justice

A number of those exiting the legal profession had concluded that the law was not about justice. "I didn't plan to change the world but the law was not used to make things better but to make an elite group richer" (F).

It was seen by some as not particularly useful to people. Its capacity to help was limited, and the outcomes were questionable. "I found it difficult to justify or defend the high costs and long delays that are inherent in the legal system" (F).

Truth and justice in the courts, while an interesting intellectual game for some, was seen as an unlikely outcome. One respondent commented that "I was told I had to be in the system in order to make a difference but I felt I was gradually losing the context, becoming more concerned with the process than the real issues" (F).

One woman suggested that the law has become largely irrelevant and is now trying to protect itself. A man was concerned that the long term future of the law is being compromised.

The pressure to achieve 'billable hours' adversely affects the profession's reputation, by encouraging unnecessary 'over-servicing' and preoccupation with an adversarial approach. This in turn also tends to lead to the withdrawal of lawyers from the community roles which many used to take on and further erodes the general perception of lawyers.

The Legal Process

While a number of the respondents enjoyed court work, particularly as a way of having people contact, both law firms and the courts were seen, to some extent, as being out of touch.

Court culture was very restrictive. Looking around, the barristers, the judges – all old men. Work practices were very inflexible, certain hours maintained regardless. (F)

I disliked having to conform with what the firm wanted, like women not allowed to wear trousers. It was a good firm but the expectations about behaviour were old fashioned. (F)

I strongly believe changes are needed including abandonment of rigid adherence to English tradition (wigs and gowns) and a greater commitment to make the legal system accessible to all sectors of the community. (M)

It could be enjoyed as a game but not as an effective way of achieving justice.

Many respondents also saw the legal process as too adversarial or litigious, marked by questionable ethics on occasion. Litigation could be confrontational and emotionally charged – and some lawyers were less able to cope with this. “[The law] was litigation bound. ... [but] it wasn’t cutthroat – it was as fair as you could be in that environment” (F).

Some saw opportunities for creativity in legal interpretation.

I was excited by studying the law. It gives you precise tools for the measurement of problems; it gives insight and ways by which you can construct the boundaries of a problem. This can be important and powerful. I wanted some power to change things, to be part of the solution. (F)

Others saw the law as not particularly creative but rather like a formula – finding the right rules and precedents for the particular problem.

You need to write and speak well but everything you say or write must be backed up by a fact or case or a piece of legislation which you need to look up in a book – like a formula. ... Nothing could be based purely on common sense, gut feel or what was the best or most logical solution. (F)

Perhaps the clearest exposition of frustration with legal process came from a woman who had come to the law later in life.

The adversarial system means you take no responsibility for the other side, just acknowledging their right to a defence. There is an assumption that the truth will come out but this is not true. I think this is a problem for many women. It is a male way of constructing things. I think women are more socialised to look at the consequences of their actions on others. Men are less concerned about these impacts. ... [Appeal Tribunals] get better results, are more fair and clients more satisfied. These forums are fantastic because people can give their story. Cross examination is a hideous experience for most people; it’s all about power. (F)

3.6 Summary

In both the survey and during interview respondents were asked what would have to change for them to return to the legal profession. Most saw this prospect as highly unlikely and their reasons covered the range of issues that have emerged in the discussion above. Some of the more 'pithy' statements are included below.

Hell would have to freeze over. (F)

Money. (M)

Unethical lawyers disbarred. Law firm integrity. Justice in the courts. (M)

One thoughtful young woman commented:

I was ambitious; I wanted to make partner by 30. I liked the people but it was awful.

*And it just wasn't enough. I didn't leave because of a cloud over
my head but it just wasn't enough.*

It was a quality of life issue – I needed to feel fulfilled.

And further:

*I felt I needed to get out before the money got too good. ... Some of the
senior staff came to my office before I left; they were envious but felt they couldn't
do the same thing because of family and other commitments. ... I would contemplate going
back in a consulting role, being paid a set fee to provide an opinion.*

This would allow me to indulge my need for 'perfection'. (F)

Women, particularly, spoke of balance – "[I needed to] have a more rounded life, to continue having control over my work" (F).

It appears, then, that those leaving the legal profession have as wide an array of reasons for doing so as there are motivations for entering it to begin with – intellectual challenge, money, status, to help others, and so on. After a time in practice, some come to believe they were unsuited to the law. Others find the requirements of the workplace too onerous in the context of other interests and commitments they may have, and there are those who believe that the law is not the tool for social improvement they had hoped.

Given these differing motivations, then, there can be no simple solution as to what might be done to redress the turnover problem.

4.0 SOME STRATEGIES FOR IMPROVEMENT

While many of the comments made in the course of this study appear critical of the legal profession respondents made a number of suggestions for improvement. Although the majority of those responding to the survey indicated they were not interested in returning to the law, they had found their legal training (with one exception) had been valuable in their current career direction. In that sense, then, their experience cannot be seen as 'wasted'.

4.1 Professional Growth and Development

Significant concerns arose about readiness for practice and the adequacy of supervision of new graduates. But, it appears that the problem, to some extent, occurs prior to entry to the profession. It is important that young people wishing to enter the law have made their decision on the best available information about the profession.

Law schools, too, need to ensure an adequate selection process, using a range of selection tools, including interviews⁶. A recent article in *The Australian* quoting Professor Greg Craven from Notre Dame University suggests that law students should be selected "on personality and aptitude as well as exam score". NDU uses "a piece of written work, an interview, personal references and reports from the students' high schools" (Egan 1999).

It is recommended that the legal profession, through the Law Society:

- 1. work with secondary schools to ensure that students are well informed about the role and experience of lawyers prior to making their higher education course choices;*
 - 2. work with the law schools to:*
 - (a) broaden the selection process and criteria for law students; and*
 - (b) consider the practicality of making the law degree a post graduate qualification;*
 - 3. work with the law schools to market a legal qualification to students as a generalist qualification useful for a range of career choices in addition to legal practice;*
 - 4. discuss with the law schools the possibility of combining articles with the final year of study over a 2 year period;*
 - 5. develop a more comprehensive range of structured work experiences for law students during holiday periods.*
6. It is interesting to note that the medical and dental schools at the University of Western Australia have recently introduced an aptitude test and interview process for applicants as one means of broadening the diversity of the intake and ensuring a better match of skills, interests and aptitudes.

There are significant responsibilities for law firms taking articled clerks and their approach to supervision needs review.

It is recommended that legal firms, working with the Law Society, where appropriate:

- 6. institute formal induction for new staff which incorporates training on the practical knowledge needed for court appearances, commonly required legal processes, and basic administrative functions;*
- 7. ensure that all staff in their early years of practice:*
 - (a) have access to a comprehensive training program including conflict resolution, and*
 - (b) have their training needs identified through regular performance review;*
- 8. negotiate with the Legal Practice Board some way of ensuring that articled clerks have access to the appropriate range of experience considering, for example, exchange of clerks between firms where necessary;*
- 9. encourage the introduction of mentoring programs for graduates in their first 2 years of practice in those firms where they do not currently exist;*
- 10. give greater support to and encourage graduates to participate in existing networking and support programs such as the Law Society's Young Lawyers Committee;*
- 11. establish the position of coordinator to take responsibility for junior staff;*
- 12. offer secondment opportunities to more senior staff in order to broaden their understanding of their specialty area beyond its legal boundaries (e.g. real estate, insurance, etc).*

It is also recommended that:

- 13. the Legal Practice Board require that partners supervising articled clerks be required to undergo appropriate training and be formally accredited for their supervision role;*
- 14. a formal agreement between the articled clerk and the firm include a minimum amount of time weekly for instruction and feedback.*

4.2 Career Improvement

There was considerable frustration about the lack of intellectual challenge in the early years of practice and this was particularly acute for the women. When one considers that law graduates

tend to be highly motivated, high achieving young people this appears to be counter-productive to their longer term involvement in the law. It would be hoped that accreditation of supervisors (Rec 13) and formalisation of a training program (Rec 7, 8) would address this problem, to some extent.

It is more difficult, however, to address concerns about promotion opportunities given that the unofficial criteria (long hours and 'fitting in') are largely embedded in the organisation's culture. Clarifying the notion of merit through thorough discussion and debate might be an important first step in re-conceptualising what is important for a successful lawyer.

It is recommended that legal firms, with the assistance of the Law Society:

- 15. debate the need for and establish clear criteria for promotion, based on competence and productivity, and fully accessible to all.*

4.3 Quality of Life

The concerns about workplace stress appear to arise from a range of reasons – poor supervision, limited autonomy and flexibility and a restrictive billing system. While this affects both men and women it appears that women feel the lack of autonomy most acutely.

These can be considered management issues and need careful consideration (see Section 4.4) although they are unlikely to be resolved in the short term. Improvements to the quality of supervision (see Section 4.1) should assist significantly. But more is needed. In order to protect the interests of law graduates in their first 2 years of practice some further changes are put forward for consideration.

It is recommended that legal firms:

- 16. limit the working hours for articled clerks;*
- 17. ensure that they comply with the Minimum Conditions of Employment Act 1993 in regard to salaries;*
- 18. provide opportunities for all lawyers at less than partner level to gain an understanding of the strategic issues for the firm;*
- 19. consider ways in which staff can work together productively as teams;*
- 20. endeavour to improve flexibility for staff that allows them to balance work and family to their satisfaction.*

4.4 Organisational Culture

It is always more difficult to change when you are successful. And, historically, law firms have generally been successful organisations. Law is a high status profession. There are always more high quality students wanting to study law than there are places for them, despite a trebling of places in law and the legal studies area in Australia since 1983. Obtaining an articled clerkship is also highly competitive. One seemingly reasonable response by the profession, therefore, might be to ask whether higher turnover⁷, in the context of a good supply, is a major concern. After all, it would appear that qualified young people keep knocking on the door. This report suggests that there are two supply-side factors operating in the wider context of law firms that need to be seriously considered in their assessment of the turnover problem.

Women and the Law

For a number of years women have formed an increasing proportion of law graduates. The 1998 DEETYA statistics indicate that 52.6 per cent of all higher education students enrolled in law and legal studies were women. It seems essential, therefore, that law firms wishing to retain the services of highly qualified young people, need to retain the services of women. Given that it appears that long standing management systems and processes are detrimental to that outcome, this should be reason enough to reconsider those traditional behaviours. It is clear that this is happening to some extent already, particularly in the larger firms. But, is it enough – particularly given the differing career priorities of the so-called Generation X?

Generation X

Throughout the world the pressures of globalisation and rapid technological change has forced dramatic and continuous change onto most workplaces. One might conclude that the legal profession has been less affected by change than many other industries. We are now approaching, however, a time where there may be less choice about this if the industry is to thrive. New lawyers now come from that demographic cluster commonly known as Generation X. It is a group of people that many would argue have very different expectations of the workplace than their Baby Boomer parents. As one study reported:

They are more diverse and more accepting of diversity. ... [they] express a reluctance to make personal sacrifices for the sake of a career. ... They dislike overstatement, self-importance, hypocrisy ... [and] ... they also reject the concept of conspicuous consumption. ... [they] have a decided preference for the ordinary. (Ritchie 1995)

A recent *Time* article has suggested that the byword for Generation Xers is "Never confuse having a career with having a life" (Hornblower, 1997).

To remain competitive for the best intellectual skills law firms may have to reconsider their recruitment and training approaches. It is quite possible that, in so doing, they will have to make considerable adjustments to their assumptions about human motivation and how to best manage their workforces.

7. It should be noted that the way in which records are kept there is no clear understanding of what the turnover is or was in the past. Anecdotal evidence suggests an increase.

One recent article offered the following advice (O'Connor).

Help them 'train for another job'. ... the way to keep them is to help them acquire skills that will make them more marketable later on.

Give them responsibility for projects. Younger workers have more of an independent spirit than 'Baby Boomers' or older workers. ... Give them clearly defined goals – and the freedom to achieve them in their own way.

Offer constant informal feedback rather than periodic performance reviews. Younger workers expect a lot of feedback from managers.

Offer them access to many different kinds of information. ... Managers who hoard information are stifling the greatest resources younger workers bring to the table. Assuming that legal firms wish to recruit and retain the best young minds, they need to consider re-conceptualising their management practices and traditions in terms of future needs and the likely desires of the future workforce. Flexibility and autonomy are key among these. While very low salaries will detract from job satisfaction, research suggests clearly that pay is not a significant factor for remaining with an employer. In one recent study it ranked 11th behind such factors as open communication with managers, ability to challenge the status quo and opportunities for personal growth. Money is especially weak when it comes to encouraging employees to think more creatively (Hays, 1999).

The change approach might be two-fold – introduction of modern business systems together with a high quality human resource capacity that recognises people as the key strategic asset in a high quality service industry. A number of suggestions have already been made in Section 4.1 in terms of professional development.

Diversity is another important issue – for bottom line profit reasons – in addition to whatever impact it makes on social justice. Research has demonstrated clearly that diverse organisations are more profitable organisations (Glass Ceiling Commission).

It is recommended that legal firms:

- 21. consider introduction of a strategic planning approach that focuses on outcomes, quality and customer service criteria;*
- 22. consider the effectiveness of the existing billing system in the context of future business needs;*
- 23. consider the practicality of maintaining partner-style arrangements in preference to incorporation;*

- 24. ensure that all senior staff are provided with relevant management development programs that includes a focus on communication skills and team building;*
- 25. in concert with the Law Society, develop a Code of Conduct and Customer Charter in regard to their relationships with staff and customers;*
- 26. develop recruiting strategies aimed at broadening the diversity of their staff in a way that more accurately reflects the general community and their client base;*
- 27. conduct exit interviews with departing staff to obtain information helpful in management improvement.*

4.5 The Legal Culture

A sense emerged from this study that the practice of law has become increasingly estranged from the interests of the community it is intended to serve. While this is an important social and political issue, there are also important considerations for the management of legal firms if young lawyers are becoming disillusioned about their capacity to contribute on a broader scale to the community of which they are part.

While these, too, are issues that need considerable community debate, it might be possible for law firms to become more relevant through ensuring that staff with an interest in so doing, have opportunities, for example, to engage in pro bono work, either with individual cases, or with community organisations.

Remarks about ethical behaviour arose during the course of this study. A few respondents were concerned that some practices they had observed in private law firms could be considered unethical. It is not the purpose of this report to comment on this issue other than to suggest that improvement of some management processes, such as billing and customer service practices, could well redress some of the concerns raised.

5.0 CONCLUSIONS

Within Western Australia a larger than expected number of lawyers are leaving the legal profession, particularly early in their careers. It appears that a disproportionate number of these are young women. Is this a real problem given the favourable supply and demand context in which the study and practice of law exists? This study suggests that a problem does exist.

Given that law continues to attract some of the nation's finest young minds, it must be considered a waste of young talent if individuals are leaving the law for what might be called the 'wrong' reasons. That is, their frustrations with the workplace, rather than a recognition that law was a poor career choice given their interests and aptitudes. This is a loss both for the profession and for the young people involved. It is a loss, too, for the wider community if the legal profession continues to reflect a rather narrow segment of society.

It is likely that the argument will be made (and quite legitimately) that legal firms in Western Australia manage their activities in a similar way to law firms across the world – the journey to partnership is defined by long hours and a time driven billing system. While women are less likely to be promoted than men, it appears from American research that the gap is closing (Spurr, 1994). It is also the case that there is a gap between male and female turnover rates and this does not appear to change over time (Spurr, 1994).

While that might well be the case and enormously difficult to change, there are, nonetheless, things that can be done.

Firstly, the legal profession can be clear about the attitudes and aptitudes it believes are necessary for good lawyers and ensure that prospective law students demonstrate these through improved vocational counselling and selection processes.

Secondly, it can undertake to make individual workplaces more diverse, more inclusive, more supportive and more flexible through a variety of management improvement strategies particularly in the area of people management (including training). Ensuring that lawyers can choose to have balance in their lives, that both men and women can be fully participating parents and citizens, has ramifications beyond the efficiency of the workplace. One suspects that, over time, such changes would be reflected in changes in the broader legal culture itself.

What is required first, however, is an acknowledgement that a problem exists. The changing demands of the new workforce suggest that, perhaps, there is little choice.

APPENDIX 1: REFERENCES

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"I was ambitious; I wanted to make partner by 30. I liked the people but it was awful. And it just wasn't enough. I didn't leave because of a cloud over my head but it just wasn't enough. It was a quality of life issue – I needed to feel fulfilled."

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