

RAISING THE BAR
WOMEN IN LAW AND BUSINESS

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FOREWORD

Raising the Bar: Women in Law and Business documents the barriers women face to advancement in business and the legal world. Written in a style that is easy to read, Natalya systematically assesses the current situation, identifies key issues, focuses on what needs to change and how to start making that happen. The many personal stories also make for extraordinarily real and relevant reading.

What is remarkable is that this book has been written from the perspective of a recent university law graduate who is at the beginning of her career. One would normally expect to see a book which challenges the status quo to be written by someone in the middle or latter part of their career, who after observing and experiencing biases and barriers felt compelled to confront the current situation.

Raising the Bar started life as a Master's thesis, focusing solely on women in the legal profession. It was a result of Natalya questioning with other female law students about how their careers would map out and in particular, how they could combine career and family.

The reality is that while more women finish law school, are admitted to the Bar and fill junior roles in law firms, men dominate in the top levels such as partners in law firms and as Queen's Counsel, despite women making up the majority of law entrants (46 per cent of all practising lawyers and 36 per cent of barristers).

On entering professional life Natalya found that for many lawyers despite the rhetoric being touted by some large law firms about making life easier for women with flexible work, the reality was a deep-seated culture that young lawyers needed to do it tough, working long or at least inflexible hours because that was the way it had always been. Natalya found that many male lawyers were also questioning this unwritten rule.

Natalya also makes the comparison with women in business. It is indeed encouraging that many businesses have embraced the need to bring more women through to senior positions. However, these businesses are generally large organisations whose management understands that bringing women through and greater diversity improves business performance, innovation and creativity. The strong case for greater diversity and more women in senior decision-making roles in business applies to legal firms. Women bring different experiences to the table than men. Indeed diversity of thought is considered by many New Zealand businesses to give them the competitive edge.

I would like to congratulate Natalya on her first published book. I am certain it won't be her last. I will be following her career with great interest.

**Dr Jackie Blue
EQUAL EMPLOYMENT OPPORTUNITIES COMMISSIONER | KAIHAUTU ORITENGA
MAHI**

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that those findings had also been confirmed in a 2010 Harvard Business School study.²⁰

- (7) Finally, the authors posited that women were good for boards because they tend to be more risk-averse than men, so provide a kind of balance to risk-taking.

Most of these elements are discussed in detail below.²¹ While they do not definitively prove that an increase in women on boards will directly increase profitability, they do go some way to explaining why it might be that, overall and for a variety of reasons, companies with women in senior roles (including on boards) perform better than those without.

3.1.2 Diverse groups are smarter groups

It is widely-accepted in psychology study that having educational and/or occupational diversity in a group improves the group's performance.²² At its essence, that means that a group of mixed professions (for example, a group of lawyers, engineers, artists and doctors) will have greater success in problem-solving, both in terms of the time taken and the quality of the solution, than will an homogenous group (for example, a group of only lawyers). That is because groups that are too much alike find it harder to keep learning: each member brings less and less new information to the table, and the group becomes unable to investigate alternatives to their own conventional wisdom.²³

However, there are two significant qualifications to this principle. First, social identity theories suggest that people are drawn to people like them. The corollary to this, suggest some academics, is that "mixed gender and racial groups may divide, and diversity may elicit group conflict that interferes with efficacy."²⁴ So while a diverse group might bring a more creative approach to problem-solving, any benefits from that collaborative perspective may be outweighed by the negative effect of the conflict caused by having a diverse group (but as an aside,

20 Mary Curtis, Christine Schmid and Marion Struber *Gender Diversity and Corporate Performance* (Credit Suisse, August 2012) at 19.

21 Note that what is not discussed here is the idea that women bring different leadership skills to the fore, or that women take fewer risks. These topics are explored in a small way elsewhere in this book, but insofar as the topics go in relation to diversity, it is noted that a complementary mix of many types of diversity leads to better group decision-making, including cognitive diversity such as differences in attitudes towards leadership and risk.

22 Frances J Milliken and Luis L Martins "Searching for Common Threads: Understanding the Multiple Effects of Diversity in Organizational Groups" (1996) 21(2) *The Academy of Management Review* 402.

23 M Tamara Box, Lynne Freeman and Richard G Swinburn *Gender Balancing: It's Good Business* (Winmark and ReedSmith, 17 January 2013).

24 Frank Dobbin and Jiwook Jung "Corporate Board Gender Diversity and Stock Performance: The Competence Gap or Institutional Investor Bias?" (2011) 89(3) *North Carolina Law Review* 809 at 815-816.

and on a more positive note, academics also suggest that gendered relational skills (for example, women's supposedly better peace-making skills) may mean that having women in groups allows the group to overcome such conflict).

The importance of conflict in decision-making is a point acknowledged by Diverse New Zealand's project manager, Justine Munro. She notes that:²⁵

"... real diversity around the table can be uncomfortable, *should* be uncomfortable ... [but] surround yourself with diversity, with people who challenge you, ... who don't just think in the same groove as you do, and you're much more likely to get innovation, to get creativity. In the world we live in now, that's absolutely essential."

In essence, what Ms Munro is saying is that companies need diversity in order to have diverse ideas, and diverse ideas drive innovation.

The second qualification to the theory that diverse groups breed better ideas is the caveat that the diversity must not be token. That works in two ways. First, any attempt to increase diversity within a group cannot simply be exercised as window dressing; in order for it to be successful it must be genuine, so the organisation behind it must be able to demonstrate the business case behind increasing the group's diversity (read this book). Second, the theory of "stereotype threat"²⁶ suggests that when minority groups are increased within an organisation, members of that group feel that they are judged as a group rather than as an individual, and so underperform. The concept of stereotype threat is reinforced by the U-shaped relation between diversity and financial performance described above: there needs to be a critical mass of women in a group for their opinions to be heard.

All of which leads us in a rather circular way to a more recent study carried out by American Professors Anita Woolley and Thomas Malone.²⁷ Woolley and Malone's study found that having gender diversity on a team actually makes the team smarter. That is, not only does a gender-diverse group come up with better ideas, but gender-diverse groups have a higher collective intelligence than homogenous groups. Woolley and Malone's conclusion (replicated across two studies) was that group intelligence has less to do with the intelligence of

25 Justine Munro "Why is Diversity & Inclusion important for business?" (DiverseNZ Inc, 1 December 2013) <www.youtube.com/watch?v=PwVamW-lzWU>.

26 See, as examples, Steven J Spencer, Steele M Claude and Diane M Quinn "Stereotype Threat and Women's Math Performance" (1999) 35(1) *Journal of Experimental Social Psychology* 4; Claude M Steele and Joshua Aronson "Stereotype Threat and the Intellectual Test Performance of African-Americans" (1995) 69(5) *Journal of Personality and Social Psychology* 798 at 798.

27 Of Carnegie Mellon University and MIT respectively. Anita Woolley and Thomas Malone "What Makes a Team Smarter? More Women" 2011 89(6) *Harv Bus Rev* (online ed, June 2011) 32 at 32–33; Catalyst Inc *Why Diversity Matters* (2013) at 32.

individual group members and more to do with the composition of the group in terms of diversity. As Woolley noted in the *Harvard Business Review*, “[i]n our study, we saw pretty clearly that groups that had smart people dominating the conversation were not very intelligent groups.”²⁸

As Woolley and Malone also noted, it is well known that the best groups are those with members who listen to each other with open minds, and challenge the dominant thinking. Their findings, then, appear to be a natural extension of that: people who listen to different opinions take on board those opinions and are able to come to creative solutions with more agility. The goal then is to achieve true balancing in diversity, to produce “a confluence of ideas, an exploration of different perspectives, and a collective intelligence that is far greater than that which even a very smart and experienced homogeneous group can attain.”²⁹

As Deloitte notes in a report on diversity, “[d]iversity, we argue, is best leveraged through ‘inclusion’ – the extent to which individuals feel valued”.³⁰ The report also cites F Miller and J Katz on inclusion: “Inclusion increases the total human energy available to the organisation.”³¹

3.1.3 Recruitment and retention

It is trite to note that one of the biggest costs in business is wages and one of the key foundations of good business is good people – recruitment and retention are obvious key costs drivers for a business. But gender diversity impacts these costs in two ways: reduction of the talent pool and attrition of female workers (or what gender consultant Wittenberg-Cox calls “gender asbestos”, that is, attrition of women at all levels of the workforce³²).

(1) *Reduced talent pool: Recruitment*

First, a failure to recruit female employees means a business is missing out on half of the talent available to it.

The statistics in terms of female talent are clear:³³

- in 2011, 26.5 per cent of girls sitting their General Certificate of Secondary Education (GCSEs) in the United Kingdom achieved at least one of the

28 Anita Woolley and Thomas Malone “What Makes a Team Smarter? More Women” *Harvard Business Review* (online ed, June 2011).

29 M Tamara Box, Lynne Freeman and Richard G Swinburn *Gender Balancing: It's Good Business* (Winmark and ReedSmith, 17 January 2013) at 6.

30 Deloitte *Only Skin Deep? Re-examining the business case for diversity* (Human Capital of Australia, September 2011) at 7.

31 FA Miller and JH Katz *The Inclusion Breakthrough* (Berrett-Koehler Publishers, CA, USA, 2002) as cited in Deloitte *Only Skin Deep? Re-examining the business case for diversity* (Human Capital Australia, September 2011) at 7.

32 Avivah Wittenberg-Cox *How Women Mean Business: A Step by Step Guide to Profiting from Gender Balanced Business* (Wiley, United Kingdom, 2010).

Chapter 4

EQUAL PAY AND PAY EQUITY

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“Undervaluing women damages organizations, communities, families and the nation”.¹

4.1 A basic guide to understanding equal pay and pay equity

The concept of pay equity is layered, and is sometimes difficult to understand. It is helpful to separate the concept into the following three layers:

- (1) Equal pay means paying the same wages to men and women who do the same job. By way of example, that means that all banking advisors at Kiwibank with two years’ experience should be paid within the same salary band, with some movement allowed for individual performance.
- (2) At the next level, pay equity extends beyond that, to ensuring that people who undertake *work of equal value* are paid equally. In a company, for example, that might mean that all employees, whose jobs are sized at a certain level, are paid the same amount, regardless of their job title. For example, the banking advisor’s role in the first example might be sized at the same level as a similarly experienced human resources advisor in the same company. So even though the jobs are not the same, the levels of skill, effort, responsibility and working conditions involved in the role may be the same. At a more macro level it might mean that, for example, all

1 Victoria A Budson, Executive Director of the Women and Public Policy Program (WAPPP) at the Harvard Kennedy School of Government.

occupational therapists working at hospitals within New Zealand are paid the same as physiotherapists working at hospitals in New Zealand (with appropriate scaling for experience).

- (3) Finally, pay equity also means looking at the way men and women participate in the labour force. A major problem in New Zealand in terms of pay equity is that women are more likely to be employed in lower-paying industries, and men are more likely to be employed in higher-paying industries. There are two ways to look at this problem.
 - (a) First, we need to look at whether the industries are appropriately remunerated. This is the heart of the issue in the *Service and Food Workers Union Nga Ringa Tota Inc v Terranova Homes and Care Ltd* (*Bartlett* case);² the plaintiffs say that aged-care workers are underpaid, because 92 per cent of the workers in the industry are women. As we know from research,³ industries where women dominate the workforce are often undervalued because the skills required are generally seen as being less important and less difficult than those used in traditionally male-dominated industries. So, in the example above (and as argued in the *Bartlett* case), aged-care workers are seen as less important and less skilled than gardeners (a male-dominated industry), and that is reflected in the pay rates of each industry. Note that men working in female-dominated industries are of course also adversely affected by gendered pay in industries.
 - (b) Secondly, we need to look at the barriers that stop women advancing in particular industries. As demonstrated in this book, there may be plenty of women in law as an industry, for example, but not as many women in the senior associate and partnership roles. This, then, is the focus of this book; how we can assist women who succeed at lower levels of the corporate industries to keep succeeding through the higher levels of their industries.

4.2 The business benefits of equal pay

Ensuring that female employees are being paid the same as their male counterparts is a fundamental step in working towards gender equality in a business.⁴ As is discussed later on in this book, part of the pay off in attaining

² *Service and Food Workers Union Nga Ringa Tota Inc v Terranova Homes and Care Ltd* [2013] NZEmpC 157; *Terranova Homes and Care Ltd v Service and Food Workers Union Nga Ringa Tota Inc* [2013] NZCA 575.

³ For examples, see Beth Bilson and others *Pay Equity Task Force Pay Equity: A New Approach to a Fundamental Right* (Pay Equity Task Force, Ottawa, 2004); Rania Antonopoulos *The unpaid care work – paid work connection* (Working Paper No 86, Policy Integration and Statistics Department, International Labour Office, Geneva, May 2009).

Commentators point out that a portion of the gap can be explained by the fact that women make up more than 72 per cent of part-time workers,¹⁷ but that does not explain the tendency for part-time work to pay less than full-time work, and it also ignores the bigger issue, being the accessibility of full-time work for women (particularly those with children). In other words, because more women than men combine primary care-giving with part-time work, their access to better paying jobs and positions is limited, “since part-time work is more readily available in lower-paid occupations and positions.”¹⁸ It also does not confront the key causes of the gender pay gap relevant to this book:

- that almost half the women workers in New Zealand are in occupations that are more than 80 per cent female, and that those female-dominated occupations tend to be lower paid; and
- that women are still grossly under-represented in higher-level jobs.

4.4 Next steps

New Zealand’s problems with equal pay have not gone unnoticed. Following its 2012 report to the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the Committee on the Elimination of Discrimination against Women recommended that New Zealand introduce legislation relating to equal pay for work of equal value. It noted its concern that “[r]ecalling its previous recommendation [in the sixth round of reports] ... there is still no explicit and comprehensive prohibition against direct and indirect discrimination against women”¹⁹ within New Zealand’s constitution or legislation. That is, despite its previous recommendations to New Zealand, “sufficient protection against direct and indirect discrimination by private actors regarding equal pay for work of equal value is not provided for by law.”²⁰ The Committee also wanted public sector CEOs to be held accountable for pay policies. These comments are not new. As Professor Judy McGregor identifies, the United Nations Committee has:²¹

“... noted retrogression relating to equal pay and pay equity in the second, sixth and seventh reports. In the second report in 1992, it noted the repeal of the short-lived Employment Equity Act 1990 that lasted only three

17 Statistics New Zealand *Quarterly Employment Survey* (June 2009).

18 Ministry of Business, Innovation and Employment “What is Pay and Employment Equity” <www.dol.govt.nz/services/payandemploymentequity/>.

19 United Nations Convention on the Elimination of All Forms of Discrimination against Women *Concluding Observations of the Committee on the Elimination of Discrimination against Women: New Zealand* CEDAW/C/NZL/CO/7 (2012) at [11].

20 United Nations Convention on the Elimination of All Forms of Discrimination against Women *Concluding Observations of the Committee on the Elimination of Discrimination against Women: New Zealand* CEDAW/C/NZL/CO/7 (2012) at [11].

21 Judy McGregor “Gender equality and social justice - progress, paradox and promise” (address to the Workers’ Educational Association, Christchurch, 7 November 2013) at 4.

weeks before being repealed by an incoming National Government. In the sixth report it was concerned about the abolition of mechanisms, namely the Pay and Employment Equity Unit and two pay review investigations in the public sector, one involving education support workers.”

In an attempt to remedy the gap, both the Human Rights Commission and the Green Party have drafted Bills allowing employees to require their employer to provide them with information about pay gaps within their company. In addition, the Green Party’s Equal Pay Amendment Bill (a member’s Bill still awaiting consideration at the time of writing) requires every employer to deliver, on a yearly basis, the information they collect under s 130 of the Employment Relations Act 2000 to the Ministry of Business, Industry and Employment.²² The purpose for doing so is so that those statistics can then be published and so that cases where pay discrimination persists can be clearly identified. The Green Party also proposes establishing a Pay Equity Commission and requiring state sector employers to undertake pay audits and job evaluations of all occupations within five years.

Not surprisingly, neither of those options is favoured by the current Government. In an interview with the *New Zealand Herald*, Prime Minister John Key noted that, in his view, the principle of the Bill is already reflected in the Equal Pay Act 1972 and the Human Rights Act 1993.²³ As at the time of writing, the Bill had not been adopted.

In any event, and as the Equal Employment Opportunities Commissioner (and former National Party MP) Dr Jackie Blue noted, the private sector is leading the way in closing the gender pay gap:²⁴

“Big businesses understand that if you increase your diversity and bring women through, you will actually improve your bottom line, so there’s a strong business case for increasing diversity.”

Dr Blue plans to work with smaller businesses to assist them in achieving pay equity, but without legislation demanding pay transparency, and without any real action as the public service continues to flaunt its 40 per cent gender pay gap, there appears to be little incentive for businesses to make changes.

In any event, as Dr Blue recognises, the outcome of the *Bartlett* case²⁵ may have some impact on issues of pay equity in New Zealand. Until then, for many

22 Employment Relations Act 2000, s 130 requires employers to keep a record showing, among other things, the employee’s name, the type of work they do and the wages they are paid.

23 Derek Cheng “Key shies from wage equity bill” *New Zealand Herald* (online ed, Auckland, 5 July 2011).

24 Patrice Dougan and Matthew Backhouse “Bridging the gender pay gap: Pay up time at public service” *New Zealand Herald* (online ed, Auckland, 2 April 2014).

25 *Service and Food Workers Union Nga Ringa Tota Inc v Terranova Homes and Care Ltd* [2013] NZEmpC 157.

women the key to better pay is in having access to better jobs – a wider range of jobs and a higher-level job.²⁶ The second part of that is, of course, the focus of this book.

4.5 Steps to equal pay

The National Advisory Council on the Employment of Women and the Human Resources Institute have published a very helpful guide to assist businesses in ensuring that women are paid fairly.²⁷ The guide is relatively simple and would be helpful for both small and larger businesses as a diagnostic tool to decipher whether there are any gender pay gap issues in their organisations. The following paragraphs are summarised from that guide.

4.5.1 Step 1: Understand your business data

Start by increasing your understanding of the overall picture of remuneration system outcomes for male and female employees. Gather information on male/female remuneration outcomes, as well as the remuneration and rewards policies and practices you use. Work out the best way to organise the information.

Once you have accessed this information, consider how you might look for patterns and trends. Examples of categories could be: by business group or department, by region, by management level, by part-time or full-time employment or by employment status (casual, permanent etc).

4.5.2 Step 2: Identify the key differences between women and men

(1) *Decide whether a representation and distribution difference is important*

As a rough rule of thumb, representation and distribution differences of more than 20 per cent may warrant further examination (for example, if 65 per cent of senior management are men and 35 per cent are women).

(2) *Decide whether a pay difference is important*

Pay differences of more than five per cent may warrant further examination. In some situations, it may also be important to understand pay differences between three and five per cent.

(3) *Decide on which key questions are most important*

Using the results of the preliminary scan and the key representation, distribution and pay data, decide which key areas are the most important for your

26 Ministry of Business, Innovation and Employment "What is Pay and Employment Equity" <www.dol.govt.nz/services/payandemploymentequity/>.

27 National Advisory Council on the Employment of Women and the Human Resources Institute of New Zealand *Play Fair – Guide 1: Remuneration and Rewards* (2012).

Chapter 7

WOMEN IN NEW ZEALAND'S LEGAL PROFESSION

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“Since the last Census report in 2008 there has been glacial progress of less than 2% increase in the number of women partners in some of New Zealand’s biggest law firms. Women represent 18.24% of partners in these law firms and none of the 28 law firms with more than 10 partners has achieved gender parity. This is despite the increasing numbers of women graduating in law.”¹

7.1 Background

In early 2014, the New Zealand Law Society published its annual *Snapshot of the Profession* which details, among other things, the proportion of male and female lawyers, barristers, sole practitioners and partners. In 2014:

- overall, just under 46 per cent of practising lawyers were female;
- women made up 46 per cent of lawyers in law firms and 58 per cent of lawyers in in-house roles;
- women were heavily under-represented in sole practices (making up just over a quarter of sole practitioners) and as barristers (at 36 per cent);
- it was in partnership where women were noticeably absent; women made up only 24 per cent of partners in small law firms (those with between 2–5 partners) and only 20 per cent in big law firms (those with over 20 partners).

Those statistics were not surprising: the past few years of the Law Society’s *Snapshot* series has demonstrated the very slow rate of female progression in law firms. In 2013 the publication noted that women made up 45.6 per cent of practitioners in total, but only 22.3 per cent of partners.² In 2012 the statistics showed women made up 42.4 per cent of practitioners, but only 15.9 per cent of female practitioners were partners or directors, compared with 42.5 per cent of male practitioners.³ The New Zealand Law Society’s 2011 survey did not collect partnership data, but recorded that women made up 44.2 per cent of the profession overall, and “[i]f the number of women in the legal profession continues to grow at the same rate, our typical lawyer will change gender in 2018.”⁴ In 2010, a *Law Fuel* study found that of the 611 partners across the nation’s top 26 law firms, only 17 per cent of those partners were female.⁵

1 Human Rights Commission *New Zealand Census of Women’s Participation 2010* (November 2010) at 40.

2 New Zealand Law Society “A Snapshot of the New Zealand Legal Profession” (2013) 815 LawTalk 4 at 7.

3 New Zealand Law Society “A Snapshot of the New Zealand Legal Profession: As at March 2012” (2012) 792 LawTalk 10 at 12.

4 New Zealand Law Society “News and Communications: April 2011 – Typical New Zealand lawyer is male – for now” (press release, 26 April 2011).

5 “Study suggests ‘glass ceiling’ for women lawyers” *The New Zealand Herald* (online ed, Auckland, 4 February 2010).

The slow rate of career progression for women in the law has not gone unnoticed by lawyers; it has been a cover issue for *LawTalk* once a year for the past four years, and during that time the magazine has also published around two dozen articles on women in law. In 2014, the New Zealand Law Society established a website specifically for women in the profession, noting:⁶

“The Law Society recognises that the underrepresentation of women in senior legal roles is a real issue for the profession. We have made the subject of the retention and advancement of women lawyers a key focus for 2014.”

Earlier, in a two-part series on gender equality published in *NZLawyer* magazine, barrister Jane Glover had identified part of the problem. She wrote:⁷

“There is a disturbing lack of recent research concerning women’s experiences in the legal profession in New Zealand. In 1992, a national survey was conducted entitled ‘Women Lawyers in New Zealand’ (Gill Gatfield, *Without Prejudice* (Brookers Limited, Wellington, 1996)). This survey updated a 1982 survey carried out by the Wellington District Law Society and a 1987 survey carried out by the Auckland District Law Society. It provided a wealth of detailed information, but unfortunately has not been updated.

“Until such time as gender equity is achieved within the New Zealand judiciary, regular research should be conducted to identify the barriers which are preventing this from occurring, and to assist with the development of policies to overcome those barriers.”

This book began as a paper intended as a contribution to that research recommended by Jane Glover. This book is thereby a contribution to that research,⁸ focusing particularly on the following four things:

- to provide an overview of Gatfield’s study and the overview of the status of women in the legal profession gleaned from the survey undertaken in 2012 in order to provide some context to the issues for today;⁹
- to provide an historical background to the legislative and societal developments that have affected the female legal profession in New Zealand during the twenty years since Gatfield’s study;
- to provide an overview of some of the experiences of other countries, and the initiatives and recommendations of those countries;

6 Chris Moore “About NZLS: Women in the Legal Profession – Message from the Law Society President” (2014) New Zealand Law Society <www.lawsociety.org.nz>.

7 Jane Glover “Addressing the Imbalance” (2010) 135 *NZLawyer* 16.

8 The author is indebted to the Wellington and Auckland District Law Societies’ studies from the 1990s, and to Gill Gatfield’s study, examined in her book *Without Prejudice* (Brookers Limited, Wellington, 1996), for the foundation of the survey questions.

- to present personalised accounts of the female lawyer's experience in New Zealand, resulting from interviews held with female (and male) lawyers across New Zealand, and to publish recommendations for change from female lawyers themselves.

It is hoped that the information contained in the following pages will go some way towards recording and explaining women's experiences in the legal profession, and provide some guidance for the continuing advancement towards gender equality, both within the legal profession and within the wider corporate environment.

7.2 Women in the Legal Profession: Recent statistics and participation

In April 2011 the New Zealand Law Society published its annual snapshot of New Zealand's legal profession, showing that of the 11,585 lawyers who then held practising certificates, 55.8 per cent were male.¹⁰ The Society's summary showed a dramatic increase in the proportion of women who held practising certificates over the past 21 years; from 20.8 per cent in 1990 to 44.2 per cent in 2011.¹¹ The graphs in the summary give a clear visual, both of the growing number of female lawyers in New Zealand and the dominance that male lawyers have as senior practitioners. The stark lack of senior female practitioners in the law is still a cause for concern; on the numbers given in the New Zealand Law Society's report, fewer than 20 per cent of female lawyers have been in practice for longer than 20 years, as against almost 50 per cent of male practitioners. That imbalance indicates that employment policies before the 1990s simply did not encourage women to stay in the law, and it is also a concern for younger female practitioners, who lack mentors ahead of them.

Positively, the figures reflect some change since Gatfield's survey. In 1992, 73 per cent of women surveyed had been admitted in the past 10 years, compared with 52.7 per cent in 2011, suggesting that numbers of senior female

9 Note that this research does not purport to present any direct statistical comparison of women's participation or experiences in the legal profession between 1992 and 2012. In addition, the technological and legislative advances since the 1992 study mean that many of the assumptions that formed the basis of the 1992 questions are no longer relevant. The purpose for using this snapshot of women in the legal profession in 2012, and making general comparisons to Gill Gatfield's findings, is to put forward recommendations for further change today, in an environment where many of these issues covered in 2012 still need addressing.

10 New Zealand Law Society "A Snapshot of the New Zealand Legal Profession: As at 1/4/2011" *LawTalk* (online ed, New Zealand, 22 April 2011). Note that these figures have been updated for 2014, see New Zealand Law Society "A Snapshot of the New Zealand Legal Profession" (2014) 836 *LawTalk*.

11 New Zealand Law Society "A Snapshot of the New Zealand Legal Profession: As at 1/4/2011" *LawTalk* (online ed, New Zealand, 22 April 2011).

practitioners are increasing (and perhaps that factors causing “leaky pipe” syndrome, or life-cycle attrition are decreasing). A similar trend is shown in relation to male practitioners, with 36 per cent of male practitioners in 1992 having been admitted in the past 10 years, compared with 28.5 per cent of male practitioners in 2011.

7.3 Remuneration

There is little data in New Zealand on salaries for individual industries, and in particular on salaries in the legal profession.¹² The Australian-based recruitment firm, Hays, issues a salary guide each year, which in 2014 included data for “top tier private practice”, “mid tier private practice” and “small practices”, as well as for in-house roles.¹³ Its 2014 figures (outlined below) show an increase in earnings for lawyers at the bottom of the pay scale (compared to Gatfield’s 1992 figures), although earnings for partners are difficult to compare.¹⁴ The Hays guide does not examine earnings for lawyers in rural or regional practices, in government agencies or for barristers. It has recently expanded to include information on salaries in roles commonly seen as alternatives to partnership, such as special counsel or consultant roles. Crucially, for the purposes of this book, it does not distinguish between gender. Nevertheless the figures provide a helpful guide for expectations in the marketplace.¹⁵

12 This section focuses on remuneration in terms of earnings only, and does not consider fringe benefits or additional parts to salary packages such as mobile phones, car parks and health insurance schemes, all of which are commonly (but not always) provided to senior lawyers in larger firms in New Zealand.

13 *2014 Hays Salary Guide: Keeping Track of the Trends – Insights from the Experts* (2014).

14 The upper income bracket in Gatfield’s study (Gill Gatfield *Without Prejudice: Women in the Law* (Brookers, Wellington, 1996)) was “above \$150,000”, which in today’s terms is about \$230,000. The *2014 Hays Salary Guide: Keeping Track of the Trends – Insights from the Experts* (2014) at 97–98 notes that salaried partners in New Zealand can expect to be paid more than \$180,000 and equity partners more than \$300,000 in top-tier private practice, and more than \$150,000 and \$200,000 respectively in the mid-tier private practice range.

15 The author and Thomson Reuters would like to thank and acknowledge Hays for their kind permission to use statistics extracted from the *2014 Hays Salary Guide: Keeping Track of the Trends: Insights from the Experts* (2014) at 97–100.

Table 7.1 Salary guides

Years of post admission experience	Typical salary	Salary range	Typical salary	Salary range	Typical salary	Salary range	Typical salary
	Top Tier Private Practice		Mid Tier Private Practice		Small Practices		In house
Graduate	\$40,000	\$35,000 – \$45,000	\$40,000	\$35,000 – \$45,000	\$40,000	\$35,000 – \$45,000	Not available
0–1 years	\$45,000	\$40,000 – \$50,000	\$45,000	\$40,000 – \$50,000	\$42,000	\$38,000 – \$45,000	\$40,000 – \$50,000
1–2 years	\$52,000	\$42,000 – \$55,000	\$48,000	\$40,000 – \$55,000	\$45,000	\$40,000 – \$50,000	\$50,000 – \$65,000
2–3 years	\$65,000	\$53,000 – \$75,000	\$65,000	\$55,000 – \$75,000	\$55,000	\$40,000 – \$58,000	\$60,000 – \$80,000
3–4 years	\$75,000	\$62,000 – \$85,000	\$70,000	\$60,000 – \$76,000	\$65,000	\$45,000 – \$70,000	\$70,000 – \$90,000
4–5 years	\$90,000	\$80,000 – \$110,000	\$75,000	\$65,000 – \$85,000	\$70,000	\$50,000 – \$75,000	\$80,000 – \$100,000
5–6 years	\$105,000	\$80,000 – \$130,000	\$85,000	\$70,000 – \$95,000	\$75,000	\$55,000 – \$80,000	\$90,000 – \$130,000
6 + years	\$120,000	\$100,000 – \$140,000	\$100,000	\$80,000 – \$115,000	\$90,000	\$70,000 – \$110,000	\$100,000 – \$140,000

Years of post admission experience	Typical salary	Salary range	Typical salary	Salary range	Typical salary	Salary range	Typical salary
	Top Tier Private Practice		Mid Tier Private Practice		Small Practices		In house
Senior Associate	\$140,000	\$110,000 – \$175,000	\$120,000	\$100,000 – \$120,000	\$95,000	\$85,000 – \$110,000	Senior Legal Counsel
Special Counsel	\$150,000+	\$150,000+	\$140,000+	\$140,000+	\$120,000+	\$120,000+	\$110,000 – \$155,000
Salaried Partner	\$180,000+	\$180,000+	\$150,000+	\$150,000+	\$120,000+	\$120,000+	General Counsel
Equity Partner	\$300,000+	\$300,000+	\$200,000+	\$200,000+	\$140,000+	\$140,000+	\$150,000+

In 2011, the Ministry of Education released a study analysing male and female earnings in the first four years after graduating.¹⁶ The study reported that, for young lawyers, women's median earnings increased faster than men's earnings. That is, although female lawyers, in the first four years of their careers, were paid less than male lawyers (\$36,530 to \$39,710 in the first year, and \$54,000 to \$58,150 in the fourth year), after four years of working, female lawyers were paid 93 per cent of what their male counterparts were being paid, compared to 91 per cent during their first year.

There are both positive and negative conclusions to be drawn from this study. Firstly, male law graduates still earn more than female law graduates. In New Zealand, the "big firms"¹⁷ pay equal rates to all graduates, both as between their own graduates and almost equal as across the firms. Similarly, government departments such as Inland Revenue or the Department of Labour pay their graduate solicitors set rates, irrespective of gender or qualification. In this

16 Paul Mahoney *What do men and women earn after their tertiary education?* (Ministry of Education, Tertiary education occasional paper 2011/02, September 2011).

17 This term is used throughout this book to mean the eight largest firms in New Zealand: Bell Gully, Buddle Findlay, Chapman Tripp, DLA Phillips Fox, Kensington Swan, Minter Ellison, Russell McVeagh and Simpson Grierson.

respect, then, graduate pay appears to be more of an issue for lawyers starting out in small- to medium-sized private practices or as corporate counsel.

Positively, although female graduates still lag behind male graduates in terms of pay, the disparity appears to decrease within the first five years.¹⁸ The difficulty is that there is not enough salary information to ascertain whether that disparity narrows or widens as their careers progress.

The traditional view supported by Gatfield has been that women's salaries fall behind after the first few years in practice and as so-called life-cycle factors come into play. The New Zealand Law Society's *Snapshot* reports simply do not provide enough data to confirm whether that remains the case. As is shown elsewhere in this book, there are a number of other factors that come into play.

7.4 Women in New Zealand's Legal Profession in 2012: The Survey

From the research outlined elsewhere in this book a survey was developed (2012 Survey) consisting of a selection of questions, some influenced by the expected foundation questions seen in Gill Gatfield's study and elsewhere (the answers to which remain relevant to today's practitioners) and a selection of questions based on those issues identified as important in overseas jurisdictions, or by virtue of the developed legislation (for example, the Employment Relations (Flexible Working Arrangements) Amendment Act 2007).

In carrying out the survey it was not intended to update the Gatfield study in its entirety, but instead to:

- gain some insight from members of the legal profession as to the degree of progress made since Gatfield's study;
- gain some insight from men and women in the legal profession as to the recommendations made in other jurisdictions (in terms of gender equality within the profession); and
- hear recommendations for change from the profession in New Zealand.

7.4.1 Survey methodology and response rate

The original proposal was to select 800 female lawyers and 200 male lawyers from the New Zealand Law Society online database, and to ensure that the sample was relatively representative in terms of practice area, experience and geographical spread (details of which are apparent from either the New Zealand

18 Note, however, that a recent survey of Auckland practitioners in the biggest 11 firms found a gender pay gap of 10 per cent in its survey sample. See Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 19 (report commissioned by the Auckland Women Lawyers' Association).

Law Society online database or from the relevant lawyers' own websites). An email was sent to each practitioner selected, inviting the practitioner to participate and enclosing the participant information sheet, the link to the electronic survey and a password for completion.

The intention was that the invitations to the survey would be emailed in tranches, several days apart, so that the survey itself would not be overloaded. However, an unanticipated side effect of inviting participants in this manner was that invitees forwarded the link to their friends and colleagues, inviting them to also partake. The implications of this snowballing were threefold:

- First, it made it more difficult to monitor both the number and the demographics of people invited to take part in the survey (although those who forwarded the link were encouraged to copy the author into the forwarded emails and/or to provide the demographic details of those to whom they had forwarded the link).
- Secondly, it somewhat skewed the representative nature of the sample. That is, those who did forward the link were more likely to be people for whom women's participation in the legal profession was a topic of interest, and they forwarded it to lawyers who were similarly interested in the topic.¹⁹ In a more simple sense, participants who forwarded the email tended to send it to colleagues from similar demographics; that is, who shared a similar level of experience or were located in the same geographical region. Those in private practice forwarded the link to lawyers in all practice areas, but in-house counsel, barristers and sole practitioners were more likely to forward the link to other in-house counsel, or to barristers and sole practitioners in their practice area.
- Thirdly, as far as can be ascertained, only one male practitioner forwarded the link. That practitioner forwarded it to his wife (also a practising lawyer). The women who forwarded it to other practitioners by and large forwarded the link to other women, with one or two exceptions. The relatively low response rate from male practitioners (proportionately) may therefore be attributed in part to the fact that more than 80 per cent of those asked to participate in the survey were female.

A further, and anticipated, issue with the survey was that the questions focused largely on firms and corporate organisations, rather than individual practitioners

19 This conclusion is drawn largely because many of those who did forward the link to the survey also emailed the author on their thoughts about the topic and the research in general, and noted that they had forwarded the link to others they thought may be interested. For example, one participant copied the author in to an email to friends whom she considered to be "enlightened males"; another noted in the email to friends that it was "an interesting survey and worth participating in." Others advocated their positions, such as one participant who wrote to friends "Every piece of research into women in the profession has to help us get more senior representation from women, so please have a go if you have time."

or barristers. This was largely to do with the fact that the survey focused on issues that naturally arose in workplaces of more than one person.

7.4.2 Statistical data

Because of the snowballing effect, it was difficult to accurately record exactly how many practitioners were invited to take part in the survey. Records show that approximately 991 practitioners were invited to take part. Of those, 300 practitioners accessed and began the survey, but not all completed the survey.²⁰

Of those who participated in the survey, 82.3 per cent were female, 13 per cent male, and 4.7 per cent chose not to divulge their gender.²¹ The highest level of respondents had fewer than five years post-qualification experience (PQE) (23.5 per cent) or between 10–15 years PQE (again, 23.5 per cent). Nineteen per cent of respondents had between 5–10 years' PQE, and 11 per cent had between 15–20 years' PQE.

The fact that over two-thirds of respondents had less than 15 years PQE had a direct result on the data. Issues such as retirement were raised by one respondent only, and participants' answers focused on "younger" issues, such as age discrimination (against young practitioners), a working practitioner's ability to take time to care for young children and, in many cases, young practitioners' relationships with their female supervisors.

Overall, 77.9 per cent of respondents had fewer than 20 years' PQE, meaning that they would not yet have been admitted at the time of Gatfield's study.

7.4.3 Participation

Gatfield's survey showed that female lawyers had very different experiences from their male counterparts, both in terms of their participation in the legal profession and in terms of their outside responsibilities. Her sample size was five times as large as that of the 2012 Survey, of course, but the following responses to the 2012 Survey nevertheless indicate some interesting changes:²²

- female lawyers were one and a half times as likely as men to be single in 2012 (compared to twice as likely in Gatfield's time). The 2014 Gender & Diversity Research Group's report, commissioned by the Auckland

20 While some of the participants undoubtedly chose not to complete the survey, emails were received from some practitioners advising that the electronic survey had become overloaded and had closed mid-way through completion. At least one practitioner failed to complete the survey for both of those reasons. He wrote: "Tried to complete survey but it shut down on me. Haven't got the time or inclination to do it all again."

21 This meant that, where comparisons were made between male and female participants' answers, these responses were omitted from consideration. The fact that only 39 survey participants identified as male means the validity of any comparative data is relatively limited, but is nevertheless of some interest.

Women Lawyers' Association, found an even proportion of single male and female practitioners (around 13 per cent);²³

- male lawyers were one and a half times as likely as female lawyers to have children (compared again to twice as likely in Gatfield's time). In the 2014 Gender & Diversity Research Group's report, those numbers were again more evenly balanced, with 55 per cent of female respondents having children compared to 48 per cent of male respondents;²⁴
- of the female practitioners who had children in the 2012 Survey, 43.2 per cent took sole or main responsibility for childcare. Gatfield's 1992 results showed that over half of the female practitioners who had children were also the main caregiver; and
- only two per cent of the female respondents to Gatfield's survey had been admitted 20 or more years before the survey. Twenty years later, 20 per cent of the female respondents to the 2012 Survey had at least 20 years of PQE.

The volume of hours that women worked also changed. Gatfield's study showed that women worked harder than their male counterparts. But the 2012 results also noted that similar proportions of men and women worked between 40–50 hours per week (43.6 per cent of male respondents and 46.7 per cent of female respondents). Unsurprisingly, one and a half times as many female practitioners worked part time as male practitioners. But men who worked full time were far more likely to work long hours than women who worked full time (45 per cent of male respondents who worked full time worked more than 50 hours per week, as compared with the 34 per cent of full-time female practitioners who worked more than 50 hours per week).²⁵ On a lighter note, and as demonstrated in the following graphs, men were far more likely to take lunch breaks than women.

Figure 7.1 - Men who lunch

²² See also the sections above, which address participation in the legal profession based on the New Zealand Law Society's data. In addition, this section refers to some findings made by the Gender & Diversity Research Group, in their 2014 report commissioned by the Auckland Women Lawyers' Association, in relation to selected Auckland lawyers. That sample size was much smaller (142 practitioners) and also limited both in a geographic and demographic sense (to Auckland lawyers in 11 large firms), but provides some helpful comparisons. See Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014).

²³ Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 7.

²⁴ Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 7.

²⁵ That is perhaps likely to be influenced by the degree to which female practitioners have child-caring responsibilities as compared to male practitioners (discussed below).

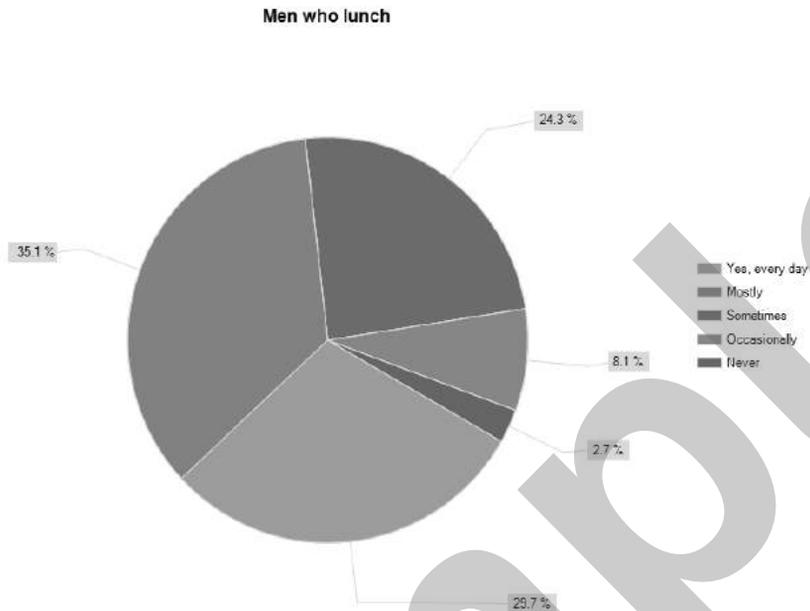
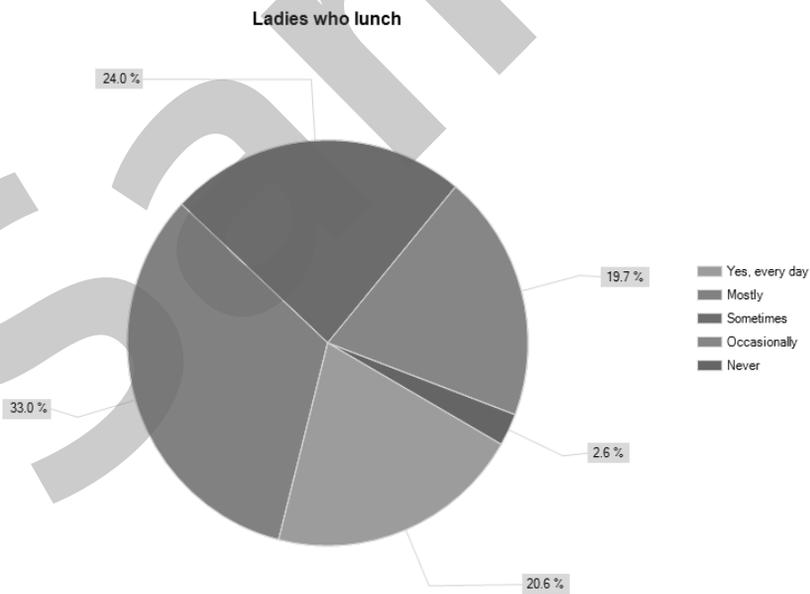


Figure 7.2 - Ladies who lunch



7.4.4 Remuneration

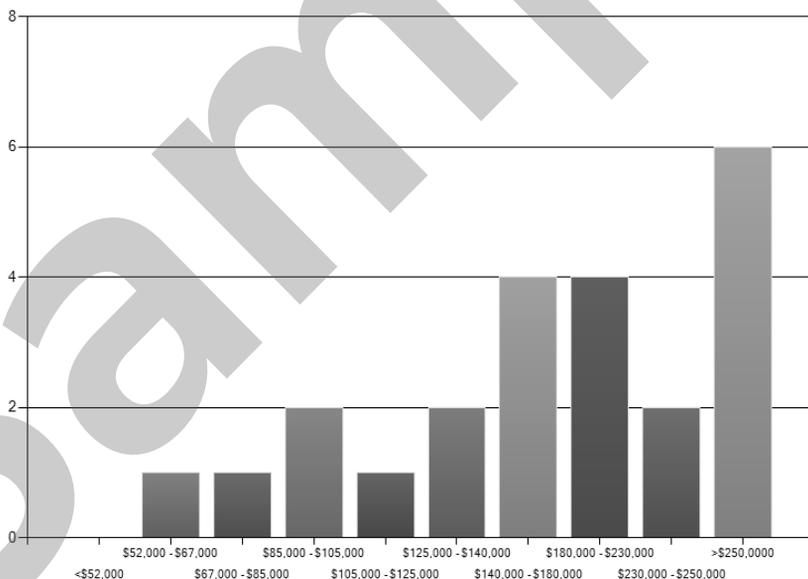
Mirroring Gatfield's findings, the 2012 Survey showed that women across the board earned less than men, and were less likely to be represented in the upper income bracket, which in the 2012 Survey was defined as \$250,000 per year or more. The 2012 Survey showed that while 26.1 per cent of male respondents earned over \$250,000 per year, only six per cent of their female counterparts did the same.

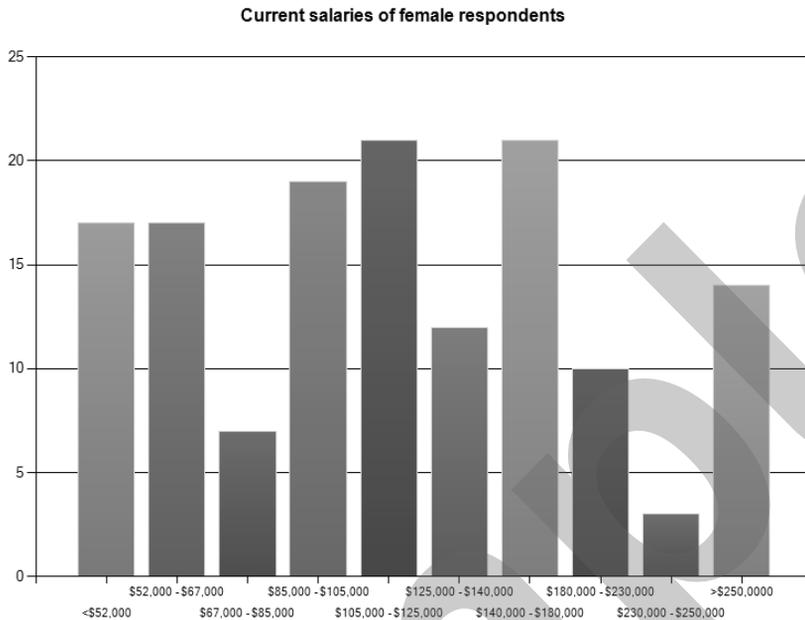
Far more women were represented in the lower salary brackets than men in both the 2012 Survey and Gatfield's studies. In the 2012 Survey, over a quarter of the female respondents earned \$67,000 per year or less, compared with 4.3 per cent of male respondents.

The graphs below demonstrate the discrepancies in salaries for male and female respondents.

Figure 7.3 - Salaries

Current salaries of male respondents





The recent findings are of course impacted by both the low level of male respondents to the 2012 Survey, and also by the fact that over 45 per cent of female respondents had fewer than 10 years' PQE, compared to only 30 per cent of male respondents (that is, the higher concentration of junior female respondents naturally lends itself to a higher representation in the lower income brackets). However, even allowing for those factors, there are significant unexplained discrepancies in remuneration levels between the genders. That finding reflects the data revealed in the Ministry of Education's study discussed above.²⁶

Gatfield's figures showed that female partners earned less than male partners in that, first, female partners were far more highly represented than men in the *lowest* income bracket, and secondly, far less highly represented than male partners in the *highest* income bracket. The 2012 Survey had very different results. It showed that 10 per cent of female partners earned under \$67,000 per year compared with 17 per cent of male partners, and that 29 per cent of female partners' earnings were in the highest income bracket (over \$250,000) compared with 24 per cent of male partners' earnings. Further, for partners, the genders were fairly evenly represented throughout the salary brackets, with female partners slightly more likely to be represented in the higher salary brackets. That suggests that, in terms of remuneration, once women reach partnership, they are

²⁶ Paul Mahoney *What do men and women earn after their tertiary education?* (Ministry of Education, Tertiary education occasional paper 2011/02, September 2011).

unlikely to face the same difficulties (in terms of achieving a remuneration equal to their male counterparts) that they experienced in earlier years.

The results of the 2012 Survey, combined with the changes discussed above,²⁷ depict a very different landscape to the one portrayed in Gatfield's study, both in terms of women's participation in the legal profession and in terms of the way women are commensurated in comparison to male practitioners.

7.4.5 Lifestyle factors: Childcare, career breaks and flexible working arrangements

While Gatfield's study only dealt lightly with the issue of childcare, career breaks and flexible working arrangements, the overseas research and the more recent research undertaken for this book in terms of the wider corporate professions suggest that these are some of the more fraught issues for lawyers (and in particular, for female lawyers). The 2012 Survey included six questions about children and childcare responsibilities, and the results clearly indicated that although lawyers of both genders have difficulty in balancing their childcare commitments with work, female lawyers retain far more caregiving responsibilities than their male counterparts.

(1) *Childcare*

Of the male respondents to the 2012 Survey who were parents, not one reported being the main caregiver for their child, and fewer than 20 per cent shared childcare responsibilities equally with their partner. Half of those male practitioners with children did not identify any challenges in balancing their jobs with their childcare responsibilities.²⁸

About half of the male respondents who had children that required caregiving (that is, who had not yet left home themselves) reported that the children's mother was the primary caregiver and either did not work for a salary or a wage, or worked part time. A significant number of male respondents also noted that they relied on grandparents for afterschool care. Others relied on older siblings, crèche or nannies.

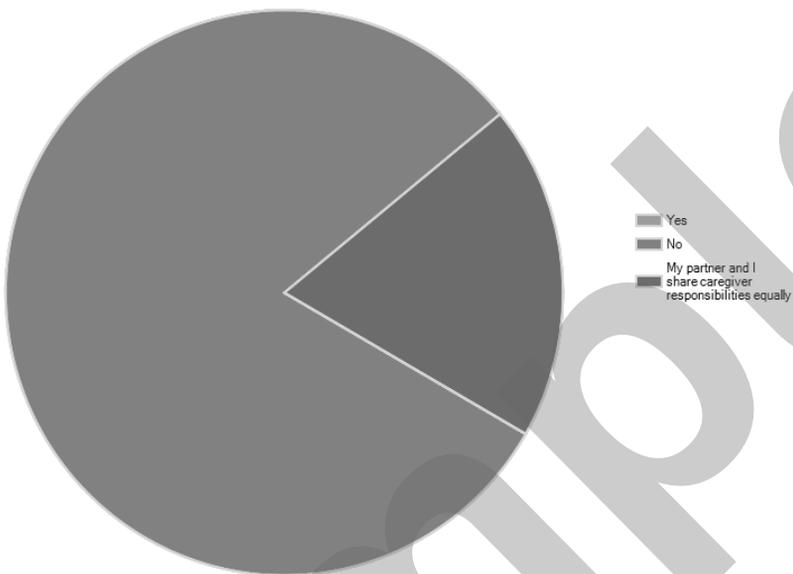
Conversely, 43.2 per cent of female parent respondents reported that they were the main caregiver for their child or children, and 37.3 per cent reported that they shared childcare responsibilities equally with their partner. The graphs below show the stark difference in childcare responsibilities:

²⁷ At [7.3].

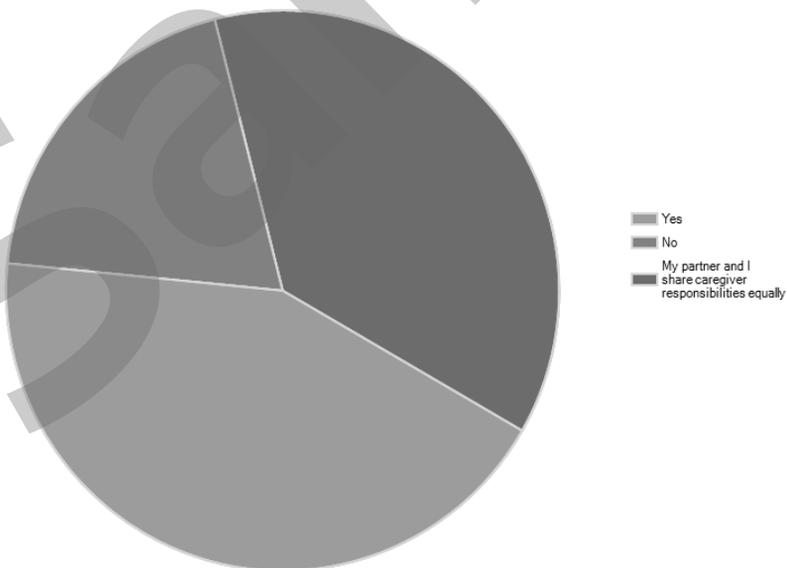
²⁸ Many of the figures and studies noted in this book reflect the impacts of heterosexual relationships on women's advancement in law. The fact is, of course, that many female lawyers are in homosexual relationships, not in relationships, or are in relationships that otherwise differ from those described in these studies (as are many male lawyers). This book does not address this issue in great detail, but acknowledges the limitations of many of its findings in that respect.

Figure 7.4 - Caregivers

If you have children, are you the main caregiver for your children?
(Male practitioners)



If you have children, are you the main caregiver for your children?
(Female practitioners)



(2) *Balancing childcare and working responsibilities: Male practitioners*

For those male practitioners who did identify challenges in balancing their jobs with their childcare responsibilities, the key concerns were the difficulties in getting away from work in the evenings to spend time with their children and families, and the inability to be available at short notice and in emergencies. By and large, the responses indicated that male practitioners' difficulties revolve around spending quality time with their children, and being available as a secondary resource, rather than providing active or sole care, or carrying out chores. For example, male respondents wrote that the challenges in balancing childcare responsibilities with work included:²⁹

"Going home early to attend to after school activity pickups; and coaching soccer."

"Unexpected events are particularly challenging – both at work and at home."

"Although I am not the main caregiver, work often interrupts time to spend with my children in the evenings."

"Being a taxi service!!! Being available in emergencies (earthquakes, snow etc)."

"Childcare responsibilities when wife and child are sick."

"Seeing children before they go to bed is always a challenge."

"It can be very difficult, even with my wife at home. If she is sick, or has something else she has to do, then I have to try and work from home as we don't have childcare or family around that can help. I also have a lot of family commitments in the weekend (kids' sport/swimming lessons etc) and try to be home in the evening to help with dinner/baths/bed."

There was also a clear indication from the male respondents that client demands override childcare and family responsibilities.

Some men also responded positively to this question, with one explaining that there were "very few" challenges in balancing his parenting and work commitments, the main issue being "when I am required to be in court or travel." One other respondent wrote that:

"Overall, I'm happy with the balance that I've achieved and I feel that my kids get both quality and quantity time and that I still do a damn good job for my employer."

²⁹ The responses to the 2012 Survey, initiated and compiled by the author, are not published in their entirety and can only be accessed with the author's permission (noting that they were largely provided confidentially).

(3) *Balancing childcare and working responsibilities: Female practitioners*

In comparison, almost 85 per cent of the female respondents with children identified challenges in balancing their jobs with their childcare responsibilities. Commonly, responses from female practitioners included comments such as: "There are too many to list" or "How much room do you have in the survey?" or "I could write a book on this topic!".

Female practitioners referred to similar difficulties as those expressed by male practitioners, such as looking after children when they were sick, or trying to get home on time to see children before bed. However, female respondents also referred to challenges *within* the working day (difficulties that were not identified by the male practitioners). For example, women wrote that they faced challenges such as:

"Attending meetings which are scheduled in the middle of the day prior to my husband being able to take over care for our child."

"Expectations (more from clients, than colleagues) that [you are] available all the time. iPhones make it difficult as even when not working [there is an] expectation that [you are] contactable/ responsive to emails."

"I made it clear that [there] were times when I would expect to be able to go to child activities, and would make up the time. But I did feel I missed out."

Many of the female respondents also recorded difficulties in maintaining the part-time hours they were employed under (so that they could care for children the remainder of the time), and in managing client and supervisor expectations of availability:

"[It is difficult to] keep work within the hours I am contracted for (being 9–3 Mon–Fri). My supervising partner is very accommodating but colleagues can, at times, be less than accommodating."

"[A challenge I face is] managing clients' expectations for your availability. Managing partners' expectations of your requirements to be in office."

"Often I am required to attend to work (either in the office or from home) on the days I do not work. Every week it is necessary for me to do work in the evenings to meet [a] client's timeframes. I often have to stay after my finishing time (4pm) to complete a job."

"Work doesn't respect that I have Mondays off and I frequently have to arrange alternative care so that I can attend meetings on what is supposed to be a day off. Work also expects me to attend functions etc in the evenings so that I miss out on spending the hour a day in the evening I get

with my son and by the time I get home he is already in bed and I don't get to see him until the next morning."

There was a clear divide between those who felt that their employers simply did not understand the difficulties in balancing childcare responsibilities with practising law, and those who acknowledged they worked in a unique environment. Compare, for example, the following range of responses:

"My youngest child was 8 when I started [working as a solicitor]. It was very hard to manage child care and work. My employer did not understand what a mother who works has to do."

"My employers are very understanding and allow me to work from home during the school holidays and if my son is unwell. I can have extended lunch breaks to watch sporting or cultural activities. There are other working Mums here so we are all very supportive in covering each other for court appearances if we have family commitments etc."

"I rely on the support of my team and partners I am working for and their understanding that I have children – and I rely a lot on grandparents' help. I am fortunate to be in a supportive working environment and to have hands-on grandparents."

Many of the respondents referred to a decision to reduce working hours and to engage outside help. For example, one practitioner wrote:

"I have found a very good balance with working about 30 hours/week and eliminating my commute (one of the best decisions we made was to move close to my work). I also have an excellent team that supports me and helps everything run smoothly – my husband, supervisors, co-workers, and secretary. I consider myself very lucky!"

Another wrote that she shared responsibilities with her husband, but also employed a gardener and housekeeper.

The overwhelming response was that law was a difficult career for any person who also had child-caring responsibilities. Many were blunt about what they saw as the incompatibility between child-rearing and practising law. For example, responses included the following comments:

"Being a lawyer is extremely demanding – I do not think it fits well with being the main caregiver for children – even working part time – you feel pulled in all directions."

"I don't believe I would be able to make the commitment necessary to succeed in my legal career if I was the primary caregiver. I suspect the majority of women partners in major law firms have husbands or partners who keep the home fires burning. If more men were willing to

contemplate a role reversal I suspect we would see more women partners in law firms!"

"[It is] very challenging to balance [the] job with caring for young children as [I] can only work part-time and it is very difficult to perform well in the legal profession part-time."

"It is a constant battle. The main issue is that we bill for our time which is incompatible with spending time with kids."

"I do not believe that practising law (and in particular family law) is conducive to part time work. It is too busy and too stressful and the clients too demanding. My experience is that the best arrangement [is] that you work full time with the other parent at home full time."

Some respondents were more specific about the particular challenges that law presented for lawyers who were primary caregivers, like this respondent, who wrote that challenges included:

"... limitations to marketing (formal and informal, internal and external) opportunities because these are scheduled outside working hours (ordinarily at the end of the day), so makes attendance difficult, or costly (requiring additional childcare). This limits opportunities for career development because building a referral base is crucial. Conservative attitudes limit the ability to work part time (reduced hours or reduced days) and/or remotely, making the start and end of day stressful. There remains an inflexible view on remote working and the fear of unavailability for clients, despite the availability of smart phones etc. While not apparently deliberate, delegation of work, supervision and scheduling all contribute to difficulties in balancing work and childcare because things are often left to the end of the day with a required turn-around being the close of business, making reduced afternoon hours and/or leaving work on time difficult, without being seen as a problem and/or this impacting on future work delegation. These issues (all of which I have experienced) create a huge amount of guilt both personally and from a career perspective."

Guilt was also commonly mentioned by female respondents (and not mentioned at all by male respondents). For example, female respondents wrote:

"The biggest challenge is the guilt. I am lucky I have a very supportive husband who literally does everything around the home (picks up children from day-care, grocery shopping, cooks dinner, cleans the house). But then I feel guilty about that too ...!"

"[A challenge I face is feeling] guilt that I don't do either of them [childcare or work] properly."

"[A challenge I face is feeling] guilt that [I] am not able to have so much family time [or] guilt if I have to leave work early or for school appointments."

What is most interesting about these responses, however, is that very few of them referred to biologically female challenges such as childbirth or breastfeeding.³⁰ Rather, all referred to the supposedly gender neutral role of childcare, indicating a type of indirect form of discrimination. The sheer number of responses to this question from female practitioners, the length of the responses and the vast array of challenges recorded by female respondents is a strong indication that childcare remains a women's issue, in New Zealand and within the legal profession.

In recognition of that, some respondents referred to the role that their partners had in providing childcare, but often also noted that their arrangements were uncommon. For example, respondents wrote:

"To some extent the only reason we have been able to make it work is because I now earn enough money to have the luxury of my husband taking time off (and I am lucky to have a husband prepared to do that – it is not that common)."

"Unusually none – my husband manages the childcare responsibilities and the demands on me are very light."

"I seldom find it an issue as my husband is the primary caregiver. Obviously there are times when I wish I could spend more time with family, but I suspect many of my male colleagues feel the same. Unfortunately relatively few men are willing to put their careers behind those of their wives."

The difficulties experienced by female practitioners in balancing their work and childcare responsibilities, and the acknowledgment that it is uncommon for female practitioners to have a stay-at-home partner, is given some context by the research of American sociologist Kenneth Dau-Schmidt. In his 2009 study, Dau-Schmidt and his colleagues found that female practitioners were more likely to have a husband with a high-powered career (often a fellow lawyer), whereas male lawyers were more likely to have a stay-at-home wife.³¹

30 In fact, only three responses did. One woman wrote that she stopped off at the office on the way home from the birthing suite because she had to ensure a client received an opinion, and two women commented on the difficulties in breastfeeding when working, particularly when court ran late.

31 Kenneth Glenn Dau-Schmidt and others *Men and Women of the Bar: The Impact of Gender on Legal Careers* (2009) 16(1) Michigan Journal of Gender & Law 49 at 63.

(4) *Career breaks*

Similarly, career breaks were another area in which indirect discrimination was apparent. When asked whether they had at any stage in their career taken a break from law (whether for career purposes, children, family, travel or any other reason), only two men responded that they had taken time away from work to care for their children. In comparison, well over half of those women who had taken career breaks had taken them to care for their children. The top reasons for taking a career break for men were for a (temporary) career change, for travel or for recovery from a mental illness (such as depression) or addiction (such as alcohol). For women, the top reasons for taking a career break were to travel. Barely any female respondents had taken time away from work for any reason other than travel or childcare.

(5) *Flexible working arrangements*

Perhaps surprisingly, given the responses in relation to childcare, similar proportions of male (86.1 per cent) and female (83.3 per cent) respondents believe that flexi time is a viable option for lawyers (that is, working a set number of hours with flexibility as to when those hours are worked). The majority of respondents noted both that their workplaces provided for flexible working arrangements (71.6 per cent of female respondents and 86.5 per cent of male respondents), and also that they were satisfied with the amount of flexibility they personally had at work (56.8 per cent of male respondents and 58.3 per cent of female respondents).

Almost half of the respondents agreed that there were role models in their workplaces who worked flexible hours successfully. Further, only 33 per cent of respondents agreed with the statement that "asking to work flexibly is tantamount to stepping off the career ladder," although almost a quarter were not sure whether they agreed or disagreed. That is interesting in light of recent American research, which indicated that:³²

"... although 93% of respondents (male and female) looked favourably on employers that allow flexible work (even if they themselves did not intend to use it) the majority believed that working flexibly would be career limiting."

It is also surprising, in light of the 2014 Gender & Diversity Research Group's report, commissioned by the Auckland Women Lawyers' Association,³³ which noted that part-time partners were seen as "unusual,"³⁴ and recorded that there were "unequivocal beliefs [from some survey participants] that Partnership is not

32 Fiona Severs "Flexible Work – more than just an issue of being family friendly" *The Lawyer* (online ed, United Kingdom, 19 October 2011).

33 Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014).

granted to those working part-time.”³⁵ More overtly, one managing partner/CEO of one of the interviewed law firms openly acknowledged that big firms did not want part time staff.³⁶

Those findings show a disjunct between the views of those in senior roles and the desires of the staff in the big Auckland firms. When asked, for the purposes of the Gender & Diversity Research Group's report, what it would take for practitioners to remain in the practice of law, the leading response for female survey participants was part-time, flexible or shorter hours.³⁷

Further, respondents' comments in the 2012 Survey were overwhelmingly supportive of the inclusion of flexible working arrangements in the legal profession. Key comments included:

“Flexible working arrangements have been essential to me being able to balance work and family life. My experience is that the legal culture in Wellington is generally supportive of flexible working hours so long as you can meet your commitments to clients and your team.”

“Employer solicitors don't seem to realise that work can be done anytime anywhere.”

“Given the context of the modern world, where work involves communication with other parties internationally or with those who are not office based, work could be conducted during different times of the day and from outside the office. It is a matter of changing expectations of employers and clients. Given the availability of technology there is greater opportunity for there to be flexible working hours rather than simply longer working hours.”

“I think it is a good idea, and it would encourage professionalism, and provide clients occasionally with the benefit of a second look at things.”

“Generally flexitime works, but both parties must be flexible and appreciate that occasionally deadlines are 'hard' deadlines.”

“Good god yes!!!! It is absolutely appropriate in many areas of law, provided both parties are willing to make it work. Law firms can be very archaic and outdated with the view that bums must be on seats from 8:30–

34 Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 14.

35 Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 14.

36 Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 77.

37 Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 36–37. Note that this was not a factor for male respondents.

5:00 at least. It's silly. Seriously, it's not that hard and the sooner firms take flexibility on board, the better. Also, flexibility can't come with 'conditions' or negative consequences i.e., we are giving you flexible hours so your salary will be less (i.e. not just prorated but actually less), the work you get will be basic and you will be considered less committed and useful. This often happens and it negates the benefits of the flexibility."

"You can often get MORE work done outside 9–5 because you are not interrupted by clients and colleagues."

One father noted that he appreciated "the flexibility to work from home on Fridays (hence I can look after my younger kids on Friday afternoons) as well as leaving by 5pm most days to spend time with them during the witching hour – I then attend to work in the evenings, if necessary."

Most who did not believe flexible working arrangements were appropriate in the legal workplace were forthright in their disapproval:

"It doesn't work. There is always abuse whether real or perceived, and someone (usually those without children or family obligations) who has to do extra work to accommodate the 'flexi-timers'."

"Not appropriate. You do the work when it is there until it is done."

Some approved but had reservations, noting the danger in opening oneself up to flexi time, in that clients and staff may expect round the clock availability, instead of availability within business hours. Some also voiced concerns about a lack of availability during normal business hours impacting on other colleagues; a lack of ability to meet deadlines that cannot be fitted into flexi hours; and the danger of other lawyers picking up work and, correspondingly, clients if another practitioner is not available.

Despite these comments, when asked what their employer could do to retain the respondent for the next three to five years, the overwhelming response from both male and female respondents was to provide more flexibility, or to continue to provide the same (agreed) level of flexibility. These findings are reflected in PricewaterhouseCoopers' United Kingdom research, which in 2010 "showed that flexible work is the benefit most valued by employees (47% as compared with pay and bonus that came second with just 19%)."³⁸

7.4.6 Attitude and discrimination

In her 1992 study, Gatfield concluded that incidences of discrimination and harassment were increasing, and found that most respondents (69 per cent) agreed that there was gender discrimination within the legal profession.

38 Fiona Severs "Flexible Work – more than just an issue of being family friendly" *The Lawyer* (online ed, United Kingdom, 19 October 2011).

Disappointingly, the results of the 2012 Survey did not show a significant improvement in those statistics.

Participants in the 2012 Survey were asked whether they thought that there was any discrimination in the legal profession, and if so, on what basis. Of the 87 per cent of respondents who answered this question, 70.6 per cent of those believed that there was discrimination in the profession, 12.6 per cent believed that there was none and 16.8 per cent were undecided. Altogether, 73.2 per cent of female respondents, as against 54.1 per cent of male respondents, believed that there was discrimination within the profession.

Although gender discrimination was not addressed in detail in the 2014 Gender & Diversity Research Group's report, "masculine culture, attitudes"³⁹ were cited by female respondents to that report as the third most likely reason for women leaving the legal profession (few male respondents agreed). In addition, and as former president of the New Zealand Law Society Christine Grice noted, the Report found that men believed women were leaving the law primarily because of family demands, whereas women did not believe that that was necessarily the case.⁴⁰

(1) *Forms of discrimination within the legal profession*

Over half of the men surveyed and just under a third of the women surveyed declined to provide details as to the basis of any discrimination in the legal profession. However, both male and female respondents who agreed that there was discrimination in the profession identified gender as the leading basis for discrimination (72.2 per cent of male respondents and 92.3 per cent of female respondents who believed there was discrimination in the profession believed there was gender discrimination within the profession).⁴¹ Only a quarter of respondents disagreed with the statement (taken from a study by the Law Society for England and Wales) that "women in my workplace who have achieved senior or partner status have done so at significant cost to their personal lives."⁴²

39 Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 33 (commissioned by the Auckland Women Lawyers' Association).

40 Interview with Christine Grice, Executive Director of the New Zealand Law Society (Kathryn Ryan, Nine to Noon, Radio New Zealand National, 10 March 2014) <www.radionz.co.nz/audio/player/2588397>

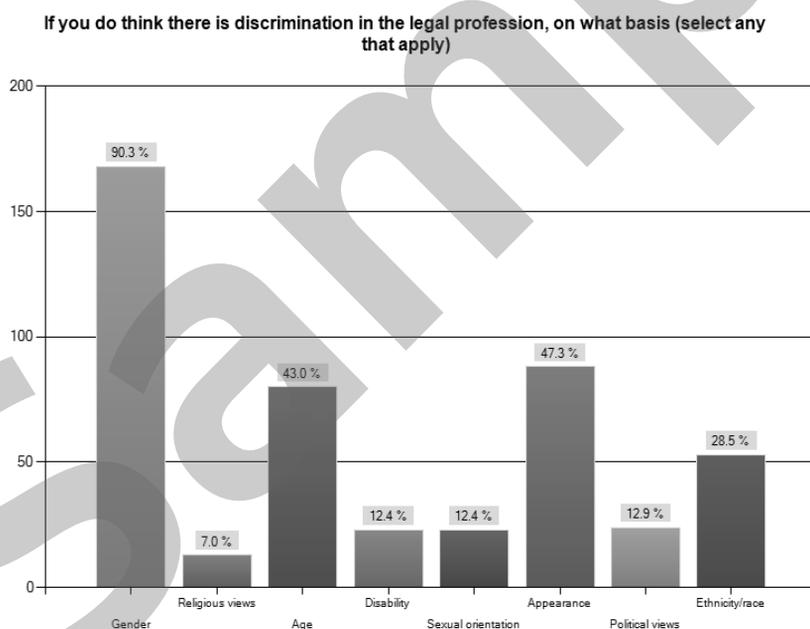
41 Note, however, that one failing of the survey was that gender discrimination was not defined. Given the title of the survey and the information provided to participants, it can be assumed that most participants recognise the term gender discrimination refers in this case to discrimination against women.

42 From the Law Society for England and Wales *Diversity and Inclusion Charter* questions for 2011 (can be accessed by emailing accessibility@lawsociety.org.uk). See also the Law Society's Diversity and Inclusion Annual Reports at <www.lawsociety.org.uk/advice/diversity-inclusion/diversity-inclusion-charter/diversity-charter-annual-report/>.

Both men and women also reported high incidences of discrimination in terms of age, appearance, and ethnicity or race. Of the male respondents, 44.4 per cent reported that they believed there was discrimination within the profession on the basis of age, 50 per cent reported that there was discrimination on the basis of appearance and 27.8 per cent reported that there was discrimination on the basis of ethnicity or race. Similarly, 42.9 per cent of female respondents reported that they believed there was discrimination within the profession on the basis of age, 47 per cent reported that there was discrimination on the basis of appearance and 28.6 per cent reported that there was discrimination on the basis of ethnicity or race. Men were twice as likely to report that there was discrimination within the profession on the basis of sexual orientation (22 per cent of male respondents as against 11.3 per cent of female respondents).

The following graph shows both men and women's beliefs in terms of discrimination in the profession.

Figure 7.5 - Discrimination



Respondents also identified other forms of discrimination, including on the basis of family status (that is, whether a lawyer was a parent), and family connections (that is, whether a lawyer was part of a particular network). Specifically, respondents commented that “nepotism” and the “Old Boys’ Network” were “still alive and well in the profession” as was discrimination on the basis of “wealth, privilege, upbringing and the associated networking opportunities.”

These views were echoed by both male and female respondents, with other comments including:⁴³

“It’s a network of lawyers’ children’s children, and people from well to do, wealthy backgrounds and”

“Certain pockets of the legal profession are still dominated by Pakeha men of a certain social and political background. This is especially true of the large commercial law firms.”

This was a theme echoed strongly in the 2014 Gender & Diversity Research Group’s report, with many respondents (male and female) raising concerns about the private school network in Auckland. As one respondent to the report noted:⁴⁴

“I certainly didn’t go to King’s or Dio or St Cuth’s. I was educated in Dunedin ... Now it might not matter to get the job that you want – but it might matter again, like anything, if I wanted to be a Partner.”

Another respondent to the report put it more delicately:⁴⁵

“I don’t think anyone’s going to say – You can’t be a Partner because you didn’t go to Auckland Grammar or you didn’t go to King’s. But I have noticed that, I guess, if people have gone to school and had a network of friends that have all grown up to be quite successful, lots of work often

43 Only a relatively small proportion of the practitioners surveyed for the 2012 Survey identified issues of nepotism and “the old boys’ network” as impediments to their own career development. It is the author’s view (based on the responses to this survey and on the discussions had with practitioners in the course of this research) that, although nepotism and aspects of the old boys’ club still remain, those attitudes are dying out. The more important issue is one of in-group favouritism; that is, while men remain in positions of power and women remain under-represented in those positions (regardless of the underlying reasons), in-group favouritism means that women will struggle to progress their careers. In their report on the way that compensation structures of law firms impact on female practitioners, American sociologists Joan C Williams and Veta T Richardson cite in-group favouritism as a reason why female practitioners are not remunerated as well as their male counterparts. See Joan C Williams and Veta Richardson “New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women” (2011) 62 *Hastings LJ* 597 at 609: “The demographics of law firm partnerships, and of the committees and individuals in charge of compensation, pave the way for a pattern called in-group favouritism. In-group favouritism flips the common image that gender bias discriminates *against women*. In-group favouritism is a potentially powerful form of bias that discriminates *in favour of men*. In-group favouritism tends to be strongest when men greatly outnumber women, because then gender is salient – it jumps out as unavoidably apparent.”

44 Judith Pringle and others *Women’s career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 44 (commissioned by the Auckland Women Lawyers’ Association).

45 Judith Pringle and others *Women’s career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 44 (commissioned by the Auckland Women Lawyers’ Association).

gets referred through connections and relatives and friends of friends. So if you happen to have a mate who's a CEO of such-and-such company, then obviously you can approach them for work".

In a wider sense, respondents to the 2012 Survey identified issues with the type of work people were engaged in. For example, one participant wrote "[m]ore women choose to do family work, which is lower paid than commercial options, particularly with legal aid."

The most common response was that law was simply an homogenous profession. As one participant wrote:

"Corporate law firms also appear to recruit dominantly from a fairly homogenous demographic (Pakeha, middle class, young, able-bodied, and no outwardly discernable religious or political views). However, whether that is attributable to discrimination or simply reflective of the individuals who tend to apply for roles within the corporate firms is an open question. ... In my own experience it is the latter but it may differ from firm to firm."

That uneasiness about the homogenous nature of corporate firms was reflected by another respondent, who wrote:

"I'm not entirely sure, but I sometimes wonder whether Asian law students are employed in numbers commensurate with their % of law students (and their degree of academic success). I hope I am wrong and I don't think this is due to any overt racism – possibly just a 'mini me' syndrome where people feel most comfortable with people who are like them."

Many responded that working part time to manage childcare disadvantaged them, although they acknowledged that this was not a direct form of discrimination, one respondent writing: "Only that it is difficult to balance family and therefore [there is] gender [discrimination]." Others also referred to indirect gender discrimination:⁴⁶

"Generally I think it is much harder for people (male or female) with heavy commitments (e.g. family) outside their career to put in the hard yards necessary to achieve at the highest levels. Because far more women are primary caregivers than men this issue impacts much more greatly on women."

Unusual forms of discrimination identified by participants included discrimination on the basis of personality, with one respondent noting that the profession encourages "Type A" personalities, and still others commenting on the way that lawyers tended to be homogenous in appearance, with one

46 Note that male respondents also recorded that they felt discriminated against because of their childcare commitments.

respondent stating that she “would love to see a study looking at the body mass index of women employed by top tier law firms compared with the general public, as I am sure it would be very low.”

(2) *Personal experiences of discrimination*

Participants were asked whether they had personally felt discriminated against during their careers. The question had a response rate of 92 per cent. Despite the fact that over 70 per cent of respondents had earlier said that they believed there was discrimination within the profession, only 53.5 per cent of female respondents and 24.3 per cent of male respondents stated that they had personally felt discriminated against at some stage in their legal careers. Put another way, 73 per cent of male respondents and 43.8 per cent of female respondents had not experienced any personal discrimination during their legal careers.

Female respondents overwhelmingly recorded feeling discriminated against on the basis of their gender (84 per cent) and on the basis of their age (31.9 per cent). Men, on the other hand, reported feeling discriminated against on the basis of their age (42.9 per cent) and then, in equal amounts, on the basis of religious views, sexual orientation, appearance and ethnicity/race (all 14.3 per cent).⁴⁷ Examples of discrimination personally felt by male respondents included:

“In many large firms, partners over 50 are seen as ripe for retirement – some firms are very good and some very bad.”

“In an interview for [firm redacted] summer clerk position, I was asked to do a short speech on how someone with my ethnic makeup would interact with the majority of the firm’s clients (white, old).”

“Large law firms are old boys clubs. Any non-conforming characteristic such as sexuality puts you at odds with your peers. This can manifest itself in indirect, unintended discrimination at times.”

Given that more than twice as many women as men reported that they had personally felt discriminated against, it is not surprising that both the number of comments and the variety of grounds on which women have felt discriminated are far larger than those reported by male respondents.

The most common ground on which women felt that they had been discriminated was gender. Respondents provided numerous examples of

⁴⁷ Given that only 39 survey participants identified themselves as male, and only nine of those noted that they had ever felt personally discriminated against during their careers, this sample size is simply too small to use to draw a relevant comparison to female data, or to use as representative of the experiences of male practitioners in New Zealand in relation to discrimination. The results are nevertheless of interest.

occasions in which they felt that they had been personally discriminated against because they were female, including the following comments:

"In judge's clerking it appeared that a much higher proportion of the clerks selected to work at the court of appeal/supreme court are male, compared with the proportions at the [high court/district court]."

"It is very challenging as a young female lawyer to establish respect from an older, male client."

"My income was lower than my male counterparts' even though I was billing equal or exceeded male colleagues."

"A client asked for a male lawyer to represent him."

"I found it disconcerting in private practice looking at senior staff and how all were male. Working in-house I feel much less discriminated [against]."

"In my employment at a firm I was told my salary band was not important as my husband was working."

"I was a young blonde female so people did not take me seriously. As a junior litigator just out of uni I was asked by clients if I was on school work experience. I've had older male lawyers speak to me in a very disrespectful manner and all but tell me to be quiet and do it their (old fashioned) way. I've had clients uplift from my firm as they want a male (I took over the practice from two older males). I've had a real estate agent tell my husband he (the agent) can draft documents better than me because he has more experience."

"At the Bar the client preference is for male barristers. I think they are perceived as being 'tougher'."

"Male colleague invited into partnership sooner than me."

"Frequently, I feel that women lawyers continue to be viewed as junior level well past the point at which male lawyers seem to move upwards in the estimation of senior males."

"Not being allocated work, being moved to different team."

"I encounter gender discrimination on a frequent basis and the discussion would be too lengthy. The most overt was at a mediation and a colleague stated 'I am not listening to a junior woman lawyer.'"

"I have encountered firms where the client functions are very male-oriented (certain sports being an example) and the female lawyers are not included in them. I have attended industry functions dominated by men where as a young woman I have been effectively ignored (and in some

conversations at such events, there is a strong sense that this is 'men's talk')."

Although not a recorded option, women overwhelmingly reported that, during their careers, they had felt personally discriminated against for "being a working mother", for having the "potential to take time off for children" and for their "family responsibilities." Women wrote comments such as these:

"I have a young child and I can tell from comments received from partners and colleagues that they don't like part-time workers and/or expect that I'll be off on maternity leave any time soon."

"I think working mothers are discriminated against insofar as my firm does not deal well with people who work part time. We are tolerated but do not get the same opportunities as our full time peers."

"There was a very thinly disguised view that working mothers didn't have the necessary level of commitment to the company."

"[I faced] discrimination by a male colleague who decided I didn't need to get a particular position because 'surely I wanted to be home with my baby'."

"Extreme and illegitimate pressure to provide details as to when going on maternity leave at 15 weeks pregnant!"

Conversely, one woman reported being discriminated against for *not* having children.

Female respondents also noted that they were discriminated against because of their backgrounds, and were passed over for opportunities in favour of practitioners who had the right connections. Other reported examples of discrimination included discrimination on the basis of race or ethnicity, sexual orientation, religion and age (different practitioners being viewed as too young or too old!).

Many women reported feeling that they had been discriminated against because of their appearance. There was a strong indication that practitioners felt they could not be overweight and that they had to look a certain way (69.7 per cent of female respondents and 64.9 per cent of male respondents agreed that there was an expectation about practitioners' physical appearances in the workplace). One woman commented that "people who look different or are overweight are still not welcome [in the profession]" and female respondents provided the following examples of incidences during which they felt they had been personally discriminated against because of their appearance:

"General comments [made about my] appearance. I don't think the particular person would say the same things to someone who would get visibly upset by them."

"I was not selected to assist in [the] graduate recruitment process. The only reason I can think of as to why I wasn't chosen was appearance (I am not as thin as the other girls I work with)."

"I am female, Maori and until recently had dreadlocks. People made assumptions and generalised."

Overall, women felt that the discrimination they experienced was inherent in the profession. Women made comments such as "discrimination is ingrained" and "the discrimination is inherent in the business model, not in the attitudes of the people in the profession." Others provided a rationale for that view, noting:

"I think the legal profession is slow to grow. It still exhibits an old white middle class male ethos. So to some extent I think the people are just ignorant and the discrimination unintentional. There needs to be more diversity at the Bar and in the Judiciary."

"Gender bias against women is grounded in law and its practise. Occasionally very hard working women succeed."

"The men in law are obtuse with their sexism. They are so comfortable with it that it does not occur to them that it may be inappropriate or hurtful to their female colleagues."

"In relation to partnership opportunities, I do not consider these to reflect gender based discrimination, [but] largely a reflection of being invaluable from a billing perspective. However, often the additional work done by women that is not directly billable (e.g. networking, ensuring colleagues who are struggling have support and guidance etc) is not valued in that assessment. Because buying into partnership is at the discretion of the current partners, while there is a male dominated partnership and a tendency to recruit 'like' personalities, there will always be the potential for this to be limiting on women's opportunities for partnership. I have observed other women's marketing and/or more direct stance regarding career progression to be seen as too confrontational by the partnership and a negative, whereas the same is not said of males taking a similar approach."

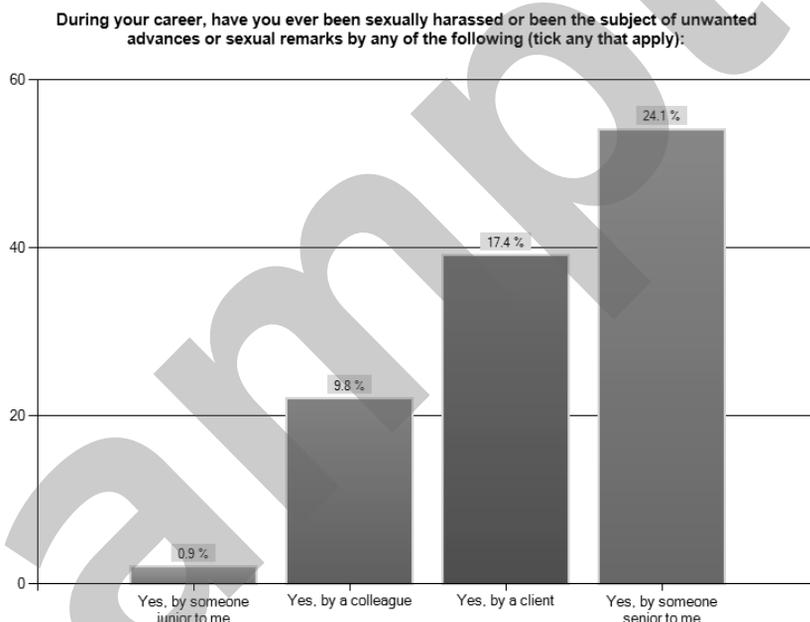
(3) *Sexual harassment*

There remains a high incidence of sexual harassment in the legal workplace. Only female practitioners reported being harassed by colleagues, but both men and women reported being harassed by a client (17.4 per cent of female respondents, and 8.1 per cent of male respondents). The graph below shows the

proportion of female participants who reported that they had personally been sexually harassed, or had been the subject of unwanted advances or sexual remarks by senior colleagues, junior colleagues, peers or clients.

As demonstrated by the graph, sexual harassment is most commonly perpetrated by a senior colleague, or by a client, suggesting that the incidences of sexual harassment will wane (at least within the workplace) as the more senior practitioners move through the profession and attitudes towards sexual harassment continue to change. However, the incidences of sexual harassment perpetrated by clients remain troubling.

Figure 7.6 - Sexual harassment



(4) *Microaggression*

When Gatfield undertook her study, the term “microaggression” was not yet in common parlance. The term was originally coined to describe the large impact of a small slight against someone of a different race,⁴⁸ although its use has been extended to refer to everything from slights against a person on the basis of their gender, to their age, immigration status, ethnicity or mental health.⁴⁹ In short, the term refers to the concept of the vast power of the small slight during specific

48 Derald Wing Sue *Microaggressions in Everyday Life: Race, Gender, and Sexual Orientation* (Wiley, Hoboken New Jersey, 2010).

49 See <www.microaggressions.com/>, a website where visitors can post experiences of microaggressions.

interactions between people who are different. While these everyday occurrences may appear trivial, these “small slights” can have a powerful impact on inequities in employment,⁵⁰ and in fact create, foster and enforce marginalisation.⁵¹

Although the survey did not specifically address the concept of microaggression, many respondents provided examples of interactions that they thought were not serious enough to be discrimination, but which had nevertheless demoralised or upset them in some way.

Microaggressions are particularly difficult to address in the workplace precisely because of their seemingly small impact. As one respondent wrote:⁵²

“When a microaggression occurs, the victim is usually placed in a catch-22. The immediate reaction might be a series of questions: Did what I think happened, really happen? Was this a deliberate act or an unintentional slight? How should I respond? Laugh it off? Sit and stew on it? Confront the person? If I bring the topic up, how do I prove it? Is it really worth the effort? Should I just drop the matter? In most cases, women are told not to overreact and to simply ‘let it go.’ But evidence supports the detrimental impact of microaggressions on efforts to achieve equality in the workplace. The cumulative effects can be self-doubt, frustration, and isolation.”

The following are examples of microaggressions reported by respondents:⁵³

“Attending a lunch with a male partner and a client, and the male partner forgetting that I was there, and commenting to the male client ... ‘Yes the

50 Derald Wing Sue *Microaggressions in Everyday Life: Race, Gender, and Sexual Orientation* (Wiley, Hoboken New Jersey, 2010). Also taken from an email discussion with respondent Dr Marie Bismark, email from Marie Bismark to Natalya King regarding the original 2012 survey (6 June 2012).

51 Microaggressions can generally be categorised as microassaults, microinsults or microinvalidation. Microassaults take the form of a derogatory act, such as name-calling, or showing overt preferential treatment to someone. Microinsults are displays of rudeness or insensitivity that discredit the differentiating factor about the person to whom it is directed. The negativity in the microinsult is usually less overt. Microinvalidation is the invalidation or nullification of a person's experiences. In her PhD thesis “Microaggression and Pregnancy in the Workplace”, Shawna Kirby gives the example of Asian-American citizens being complimented on their English-speaking abilities and their experiences of being a United States citizen thereby being denied (see Shawna Blake Kirby “Microaggression and Pregnancy in the Workplace: From Benevolence to Punishment” (PhD Thesis, Alliant International University, San Francisco Bay, 2011).

52 Taken from email correspondence with one respondent, Dr Marie Bismark (email from Marie Bismark to Natalya King regarding the original 2012 survey (6 June 2012)), and from Derald Wing Sue and others “Racial Microaggressions in Everyday Life: Implications for Clinical Practice” (May–June 2007) vol 62(4) *American Psychologist* 271.

53 Note that instances of microaggressions were only reported by female respondents, although that is not to say that male practitioners do not experience microaggressions in respect of other issues (for example, sexual orientation).

problem with most female lawyers is that they are more focused on shopping than the law’.”

“Regularly being mistaken for a secretary or junior level assistant (women don’t occupy high-status positions).”

“Being treated as a secretary or junior level assistant and being told ‘she will go and photocopy the document while I chat with you’ in a joint meeting of mutual clients, or ‘why don’t you go and tell the girls to make us a cup of coffee?’.”

“Frequent comments on appearance or clothing.”

“Being repeatedly asked ‘what did you do to get appointed?’ (as a woman, you must have obtained the position through some personal connection and not because of ability.)”

“Being on the receiving end of the following comments:

‘Getting Board appointments is like Rachel Hunter’s hair, it won’t happen overnight but it will happen.’

‘Right now, you’re in the fondant layer but you could be the icing on the cake.’

‘We’ve never had such a decorative board member.’

‘Has anyone seen the recent study on fellatio habits of bats?’

‘I don’t have a problem with more women being appointed to senior positions – as long as they’re good looking.’

‘We’ve got a new woman on the board but I’m not even sure that she’s a real woman (referring to a very senior appointment of another woman to a Board I was serving on).’

‘What do you girls think?’

‘Great legs.’

‘I bet I know why he offered to be your mentor (wink wink).’ ”

“Being on the receiving end of comments about just shopping all day (instead of working).”

“Being patronised about people swearing in front of me (for example, male practitioners telling [me] to cover [my] ears when they swore, or making comments about not swearing in front of the ladies).”

“Being called ‘sweetie’, ‘honey’, ‘darling’ or ‘sweetheart’.”

“Being told by a client after a (sick) day off work that he bet I had looked good lying by the pool in my bikini the day before.”

"Clients making derogatory comments about women in front of me (for example, that women are hysterical)."

"A senior barrister shouting at me on [the] phone; male clients being rude and aggressive."

"Sometimes things can be said unintentionally, almost like there is [a] subconscious level of discrimination that people allow themselves."

"At the beginning there were many put downs from senior male practitioners – often 'sweetie' etc and then bully tactics."

"Men discussing sex or making sexual innuendo in front of me in situations where I feel like I can't react (for example, client lunches, or when they appear to be joking)."

"It did not faze me [(throw away comments and attempts at bullying by older male practitioners)], just [a] nuisance and I always made a point of raising the issue and having a conversation about it in the hope that their behaviour would not be repeated on other women practitioners who might not have been as keen to tackle the issues."

"Occasionally I receive emails from opposing counsel where I wonder whether the email would have the same tone if sent to one of my male partners – they can feel condescending or bullying. Sometimes the solution is to pull in a male partner to sign their name on the correspondence."

"There are also numerous networking occasions that I attend where I feel ignored. The people that we meet (always senior men) automatically focus in on the men in the group and there seems to be an assumption that they are the ones with the 'real' careers."

"In my first practice a senior male partner used to bully me and shout at me, I think it was because I was then a young female and junior. Now I am older these things don't ever happen, but some of the younger female staff sometimes make remarks that I am a lot older than them."

"One man required advice, neither of my superiors were available, but it was within my area. When I provided the advice he did not accept it and told me 'I was a pretty young thing and when he wanted my opinion he would tell me what it is'. Second example involved a client interview by my HR Manager to discuss how the client had found my work. Comment was made that he wondered whether my looks (particularly my blonde hair) would help or hinder me. He made the comment that I challenged his perception of pretty blonde women?!"

"Repeated jokes about wearing a short skirt and my clothes."

“While pregnant with my first child I had most of my work removed during my pregnancy and was told often by my superiors that I didn’t know how my life would change being a parent or how/where my priorities would change. It was extremely patronising and fairly demoralising.”

The key difficulty with microaggression in the workplace is that it is difficult to see, and also difficult to control and eradicate. A full discussion of its impact is not appropriate in this book, but it is, as one respondent wrote, “a powerful descriptor for much of the gender discrimination that currently occurs in New Zealand workplaces” and in my view, the female legal profession would benefit from further research into the control of microaggression in the workplace.

7.4.7 Career progression and opportunity

The final category of Gatfield’s study looked at career progression and opportunity. Gatfield considered factors such as entrenched attitudes, the old boys’ network, and the perception that women were less “compatible” with clients than men to be factors that had hindered women’s development in the profession.

However, the 2012 Survey responses indicated that although there remain concerns within the profession (particularly among older female practitioners) about old boys’ networks and outward sexism (as opposed to microaggression), the major barriers to progression are family commitments⁵⁴ and a lack of career guidance (although both men and women complained of this). Fewer than half of the respondents to the 2012 Survey agreed with the statement that “business development opportunities in my workplace are male dominated”, and most disagreed with the statement that “there is a poor level of support from management for women’s career development in my workplace” (as opposed to men’s career development).

54 Note that family commitments can have adverse effects on the careers of both male and female practitioners. As part of their research, American sociologist Dau-Schmidt and his colleagues analysed data from male and female American practitioners who had been with their firms for 15 years. They found that those who were most likely to achieve partnership within that time were those who had children but did not take time away from work to care for them – regardless of whether the practitioners were male or female. Surprisingly, their research also showed that women who had taken time away from work to care for their children were less likely to be partners in the firm than other women, but that male practitioners who had taken time away from work to care for their children were the least likely to be partners overall. Childless practitioners were less likely to achieve partnership than those with children who were not caregivers, but more likely than those who took time away from work to care for their children. Dau-Schmidt et al concluded that “childcare is somewhat incompatible with partnership for both men and women and ... that people with kids who do not do childcare strive for and achieve partnership at higher rates than their childless colleagues.” (See Kenneth Glenn Dau-Schmidt and others *Men and Women of the Bar: The Impact of Gender on Legal Careers* (2009) 16(1) Michigan Journal of Gender & Law 49 at 67.)

The responses to the 2012 Survey suggested that legal professionals are by and large happy with the nature of their work: Almost 90 per cent of respondents felt that the work they were given reflected their ability, and 82.9 per cent felt they were given the same opportunities as lawyers in other firms/places of employment with comparable qualification and experience. While 78 per cent reported that their firm had no formal policy for assigning work, around two-thirds of respondents who had a budget reported that they “always” or “often” made their budget. This level of satisfaction was also borne out in practitioners’ responses to the question about retention.⁵⁵ Respondents to the 2014 Gender & Diversity Research Group’s report also reported high levels of job satisfaction.⁵⁶

Where law firms and employers could do better appeared to be in providing career guidance and support. Over 65 per cent of respondents said they did not have a formal mentor at work, and over 70 per cent reported that their workplace did not provide any formal career plan or any career guidance for them. Over half of those who worked in a law firm said that they had never been offered any guidance or advice as to the firm’s criteria for partnership, or as to their own partnership prospects. Some of that can of course be explained by the high proportion of junior respondents but given that the current timeframes for achieving partnership in a large corporate firm are 8–12 years, and in a smaller firm, 5–8 years,⁵⁷ it appears that there is a lack of career advice provided to staff at all levels, not simply to juniors. More dramatically, 86 per cent of respondents who worked in a law firm said that they had never been given any advice by anyone within their firm about alternative career paths to partnership. More than one respondent noted that the law firm model seemed geared towards partnership, so as a junior you were expected to make sacrifices that would be paid off once you made partner; a model that did not work for those who had no desire to become a partner.

Respondents’ knowledge about the options available was also limited, although there was a general understanding that most respondents’ workplaces (if they worked in law firms) offered consultant or special counsel type roles (that is, effectively salaried partner roles or recognition of seniority without the managerial responsibilities). However, more than one respondent noted that the best that a part-time worker in a large- or mid-level firm could hope for would be a senior associate position. Others noted that they had left the law or their firms because of the lack of alternatives to partnership, and attained membership

55 See [7.4.9(4) and (6)] below.

56 Judith Pringle and others *Women’s career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 24 (commissioned by the Auckland Women Lawyers’ Association).

57 These approximate timeframes are taken both from the comments in the survey results and from Gill South “Through the Glass Ceiling” *The New Zealand Herald* (online ed, Auckland, 22 May 2010).

at the Bar, moved to academia or moved to a boutique firm or in-house. Respondents also commented that although information about climbing the ladder was easily accessible in the first five years in a big firm, it became less accessible and more difficult to understand once progress became merit based.

Practitioners were also unclear about the levels of marketing and socialising that they were expected to undertake, with one respondent noting that she had been told at a review that “[I] needed to attend more social functions and go to Friday night drinks more often if I wanted to get promoted.”

Of those who had been given some kind of formal career guidance, that guidance was largely of the type that one respondent called “normal corporate stuff – development plans and professional development opportunities, performance appraisal and bonus (in theory).” In addition, most partner respondents reported that partners had partner plans in place which dealt with career development and expected progression. Other types of guidance provided to respondents included:

“A new system incorporating the current six monthly review process, but with a follow up built in.”

“A five year plan with budget and responsibility targets, and goals for steps to partnership (which is coming to fruition).”

“Participation in a number of leadership programmes, all supported and funded by my work.”

“A CEO who provides mentoring and helps us as partners to plan career progression.”

“Regular development discussions and the ability to learn via on-the-job opportunities, secondments and formal training (for example, Institute of Directors courses).”

“We have formal personal development plans and quarterly informal reviews/annual review. In addition, in our subgroup, we have monthly catch-ups with immediate supervisors at which we can discuss any career development issues. Direct supervisor is proactive in passing on information about opportunities, both in terms of appropriate training and future career prospects (e.g. scholarships).”

“My firm had an ‘Associates Day’, part of which included career guidance. Unfortunately it was a full day and [as I work part time] I couldn’t attend.”

One issue that was repeatedly mentioned was that firms appeared to pay lip service to the idea of career guidance. Respondents frequently noted that although there were development or performance plans in place, it was up to the staff member to ensure that those were progressed. For example, one

respondent wrote: "We complete a personal development plan each year, but due to staff cutbacks and turnover there is no consistency in terms of mentoring or supervision." Another wrote: "We do have personal development plans, but these are dealt with largely once a year at performance review. You would need to be proactive in this area." Similarly, one respondent noted that she was supposed to have frequent discussions about her work and career planning with the HR manager and her supervising partner, but the regularity or value of these discussions were not enforced or policed.

Employers also fared badly in terms of providing managerial or human resources training to their senior staff (fewer than a quarter of respondents said their workplaces did this), and in arranging internal support groups for staff (such as internal groups for young practitioners, female practitioners, or those attempting to achieve partnership). Almost 65 per cent of respondents said that their workplace did not provide any internal support group such as this, and almost 10 per cent did not know whether this kind of internal support was available within their workplace.

On the other hand, most (over 60 per cent) of the respondents reported that their employer offered subsidies for membership of external support groups (such as committees or New Zealand Law Society groups for recently admitted practitioners).

The clear indication from the 2012 responses is that both men and women feel the progression of their careers is hindered by the lack of career guidance and support provided by their employers (both within law firms and in other legal environments). Many practitioners simply responded to these questions with the comment that the lack of clear career planning and opportunity was the key reason that they had moved into sole practice or established their own firms. In addition, many respondents from law firms felt that they were penalised simply because they did not want to become a partner and wished, instead, to pursue other options within their firms.

7.4.8 Affirmative action

Despite the recognition by respondents that women lag behind in terms of advancement within the profession (almost 80 per cent of respondents agreed with the statement "the law firm culture is male dominated"), affirmative action to advance female practitioners was not, by and large, viewed favourably by men or women.

Section 159 of the Equality Act 2010 (UK) allows "positive" or "affirmative" action in relation to recruitment and promotion for jobs in England, Wales and Scotland. The Master of the Rolls, Lord Neuberger of Abbotsbury, has recently suggested that 159 should be applied to the judiciary, meaning that if there are two candidates who are equally qualified, the female candidate should be

appointed to the role. Over two-thirds of respondents said they would not support this type of initiative in appointing partners or senior managers in their workplace.

Comments that were representative of the majority included the following:

“Such an initiative has the potential to create resentment and make it appear that women appointed to senior roles are there to meet quotas rather than it being recognised that they were promoted based on merit.”

“I believe that if there were two equally qualified candidates, my workplace would likely appoint them both and I think this seems appropriate.”

“The best person should get the role.”

“I would always want to be judged according to merit, not affirmative action.”

“I wouldn't support that rule as an absolute, but I would support a rule requiring that in such a situation, the female/male balance of existing managers in the relevant team is taken into account, with a view to considering redressing any obvious imbalance in reaching a final decision.”

“It would create a sense of resentment and a spectre hanging over a female candidate that she was not in fact the better person for the role. Better to try and effect organisational/attitudinal change in other ways, such as organised women's groups, or analysing the benefits of having female lawyers and targeting those at clients.”

“I do not believe forcing women through over men will gain us respect. In fact I believe quite the opposite would occur.”

Respondents were similarly against the American Bar Association's recommendation that clients be serviced by a team of lawyers with an even gender balance (so for example, one male lawyer and one female lawyer). Again, over two-thirds disagreed with this approach, and comments reflecting the majority included that the strategy was “dopey”, “bizarre”, “tokenism” and “possibly damaging to the client relationship.”

One respondent commented:

“There is already a good gender balance, and I do not consider it is necessary or helpful to have requirements in relation to gender – I think it could result in resentment and gender divide, and would complicate decision-making. The team of lawyers serving a client or working on a particular project should be chosen based on their skills and expertise.”

As part of its Women@CT policy, Chapman Tripp requires that all internal and external seminars be fronted by equal numbers of men and women (where possible).⁵⁸ Respondents were evenly split when asked whether they would

support the implementation of a similar requirement in their workplace. Some practitioners argued that this type of initiative was impractical, particularly in small firms, and unnecessary, noting presenters should be based on who is best placed to present (in terms of experience, workload and client base). Other respondents were enthusiastic, with one participant responding:

“I think it’s an excellent idea. Plenty of women won’t push themselves forward even though they are more than capable of delivering the seminars; it sends a positive message for young women coming through.”

Overall, the overwhelming response from both male and female practitioners was that affirmative action was not needed, and what was required was a shift in culture and attitude towards working hours and billable time, not only for gender equality, but also to enhance both male and female practitioners’ work–life balance.

7.4.9 What lawyers want: Retaining practitioners

Finally, practitioners were asked what their workplaces could do, aside from increasing salaries, to retain them for the next three to five years. Responses were consistently centred on flexible working hours, transparency of expectation and career guidance, career support and development, feedback and recognition of non-chargeable hours and additional leave.

(1) *Flexible working hours*

Many respondents noted that they would be happy if their employers maintained the current arrangements as to flexibility, but simply worked harder to ensure there was less spill-over time, and that employees were not punished or made to feel guilty for asking for those flexible hours or attempting to stick to them. Others noted that they wanted their employers to implement flexible working schemes. Respondents wrote:

“Allow me a little bit of flexibility with my working hours while not punishing me for that flexibility.”

“Maintain the flexi hours for me when my next child arrives.”

“Ensure my flexible working hours are actually respected.”

It is worth noting at this point that although some law firms outwardly extol the informality of their flexible working arrangements, the clear message from survey respondents was that work bled into personal time. To remedy that issue, arrangements recommended by the American Bar Association include:⁵⁹

58 As a former client of Chapman Tripp, the author notes that, for the most part, this has not been her experience.

59 American Bar Association “Charting our Progress: The Status of Women in the Profession Today” (2006) <www.abanet.org/women/ChartingOurProgress.pdf> at 10.

- Two-track billable hour arrangements in which young lawyers on the partnership track have a higher billable hour requirement than those who choose to work more flexible schedules. ...
- Recalculation of hours and increase in compensation when "part-time" schedules suffer from "schedule creep" ...
- ... a limited number of "core" work hours [so that lawyers can truly work flexibly for the remainder of those hours] ...
- Temporary suspension of the "clock" for tenure or partnership to allow for childrearing."

It may be that these options, or the options discussed in chapter 10 of this book, would be a better way to deal with flexible working than those currently provided.

(2) *Transparency of employer expectations and career guidance*

Many respondents wrote that their firms and employers simply did not provide enough transparency around expectations as to workload and performance, and did not provide clear measurements or objectives for success. Respondents made the following suggestions:

"Offer a career path objective and annual reviews (they do not exist and a pay rise has not been offered for three years despite constantly meeting targets)."

"Talk to me about and help me plan my career over those 3–5 years, including being more transparent about what is required for promotion."

"Provide clearer visibility of expectations, a clear career path, and active discussion of advancement potential."

"Provide a clear pathway that I can follow to further develop my skills and progress to senior associate level."

"Be more transparent as to what is required to succeed."

"Just tell me what I need to do to make Partner."

(3) *Career support and practitioner development*

On a related note, respondents reported that they would be more likely to stay with their current employer if they were provided with better opportunities to develop as lawyers. A surprisingly large number of respondents (both male and female) noted that having a mentor in the workplace would increase the likelihood that they would remain in their current jobs. Suggestions included:

"Give me a mentor and encourage my development."

"Provide better training, development and learning opportunities."

"Actually provide mentoring and training."

"Keep up professional development with the type and nature of work and allow me to attend career development training and seminars."

"Involve me in development discussions."

(4) *Positive feedback and recognition of non-chargeable work*

Many respondents wrote that they enjoyed their jobs but that there was a lack of positive feedback from supervisors and employers. Respondents also noted that they did not receive recognition for their non-billable contributions. Key suggestions for ensuring retention included:

"Acknowledge the whole package I deliver and all of my contributions, fee paying or otherwise (for example, management contributions, community profile, client list, staff relationships, and respect within the profession)."

"Be active in encouraging work well done."

"Recognition for the times when a job or project requires a large amount of my personal time (at present it seems that this is more an expectation than an exception)."

"Make me feel like they care about my career development more, instead of just about the work I turn out for them."

"Give me a budget to brief out time consuming unexciting work. Support me when I am confronted by bullies in the business. Acknowledge and thank me for work. Allow me to do work that interests me."

"Be supportive, encourage people to leave the office and have a life. Change the culture to one of support as opposed to fear mongering/competition."

"Recognise my teaching role within the firm and also the non-chargeable work I do."

"Employ HR staff who actually come across as caring about your well-being."

"More recognition of significant overtime."

(5) *Additional leave*

Perhaps the most surprising result, and one that has not been raised in the international research viewed by this author, was the huge number of respondents who wrote that they would be far more likely to stay with their current employer if they were provided with special (unpaid) leave.⁶⁰ The most common request was that employers allow some unpaid leave in order for

60 Note that Russell McVeagh's website addresses this issue directly, and says that the firm offers sabbaticals to staff with a minimum of three years' experience with the firm.

employees to travel. The following comments represent a common theme (raised in particular by those in the first 10 years of their employment, both male and female, but also by some senior practitioners):

“Be open about me taking a year off to study or travel and then coming back to the job.”

“Permit extra leave to travel for a month or two, whilst keeping my job.”

“Let me leave and come back to get a year of experience overseas.”

“Agree to give me time off for an OE, be flexible about leave etc.”

“Allow leave for extended periods for travel.”

“Give me some periods of extended leave (without pay) to do my OE, knowing I have a job to come back to.”

“Give me a sabbatical.”

“Extended parental leave.”

(6) *Other suggestions*

It was also surprising that only a very low number of respondents said that better work or a promotion would encourage them to stay in their roles. In terms of work, the most common theme was for employees to ask for more “challenging” or “interesting” work, and for litigators to ask for more court time and more opportunities to develop courtroom advocacy skills. Only two respondents said that a promotion would be something that their workplace could do to encourage them to stay with their firm or employer.

Other suggestions for improving retention included:

“HR training for managers and supervisory staff.”

“Reduced workloads.”

“Provide child friendly initiatives such as crèche or working from home access.”

“Better mentoring. More dialogue about how to address achieving a work/life balance for senior employees, particularly women with children. Better transparency around promotion criteria.”

“Increase number of females in higher positions in the firm (i.e. at partner level). Actively promote gender balance.”

“Have pride in me, understand what I do and my role in the community.”

“Recognise the importance of a role which does not involve partnership.”

“Clothing allowance, pay for my phone, insurance, gym membership, home internet – those things really make a difference.”

“Provide some way of acknowledging my seniority without having to make me a partner.”

Notwithstanding the fact that the question specifically excluded an increase in salary as a measure to retain staff, the large response rate to this question and the length of response, together with the commonality of responses, suggest that legal workplaces could work much harder in these “soft” areas in order to retain staff. It is notable that only two of the six most common responses (increased unpaid leave and ability to retain or take up flexible working arrangements) are options that would have a direct effect on budgets; the remaining four are focused on soft costs such as increasing management skill and involving staff in developing clear business objectives for themselves and the organisation.

Finally, it is worth noting that the 2014 Gender & Diversity Research Group's report showed that while female respondents would prefer flexible working hours and support for a more balanced life, the key issue for the retention of male respondents was career guidance, followed by a better salary.⁶¹

7.4.10 Other issues arising from the 2012 Survey

Four further issues arose out of the responses to the 2012 Survey that are not addressed under the headings above:

- (1) alcohol consumption within the profession;
- (2) the shortage of young male practitioners in the profession;
- (3) the lack of female-specific initiatives provided by firms and employers; and
- (4) the respondents' desire for a better profit and performance model (that is, one that is not focused on billable time).

Each of these issues is discussed briefly below.

(1) *Alcohol consumption within the profession*

A number of practitioners reported that there was an expectation that alcohol was “part of the job”. However, that was not borne out by the respondents' personal admissions as to how often they drank alcohol during the working week. Approximately one-third of male respondents reported that they drank at client functions once or twice a week, although they were slightly more likely to drink at team-building events than at client functions. The vast majority of male respondents (55 per cent) reported that they drank alcohol at client functions or team-building exercises less than once a month.

61 Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 36–37 (commissioned by the Auckland Women Lawyers' Association).

Nevertheless, respondents to both the 2014 Gender & Diversity Research Group's report, commissioned by the Auckland Women Lawyers' Association,⁶² and the 2012 Survey voiced concern about the prevalence of alcohol within the legal workplace.⁶³ Specifically, respondents to the 2012 Survey made the following comments:

"The binge drinking culture is not limited to university students but is prevalent in professional firms such as law firms."

"I think there is too much focus on big boozy nights out both in terms of client entertaining and team functions."

"It is expected – a lot of business development is done 'over a drink'."

"There is often an expectation to drink. This is most problematic at after work functions when no full meal is provided but we are required to stay late. In these situations the firm should provide dinner."

"You need to learn how to look like you are drinking but not drink."

"I do not drink, however I observe that there is a strong tendency toward alcohol-based socialising that surprised me when I started. Often drinking is the only choice available e.g. the recruitment function included a wine tasting."

"You often have to ask for non-alcoholic options rather than them being freely available. It is also helpful if there is sparkling water rather than sugary orange juices and you can put it in a flute glass for perception reasons."

"While I have been pregnant, I have been excluded from invitations to marketing functions based on the presumption that I would not want to go because others present would be drinking. Obviously, this was extremely frustrating. There remains a 'boys club' in some aspects of the profession with alcohol consumption being tied to marketing/work related functions. However, in my experience women are good at creating their own networking activities whether these involve alcohol consumption or not."

"Sometimes I feel like the firms have no imagination about fun – everything seems to involve alcohol. Which is interesting for pregnant women – who become completely excluded from events."

The most surprising thing about these comments is the sheer number of participants who voiced frustration at the pervasiveness of alcohol within the

62 Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014).

63 Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 72.

legal profession, but professed not to drink themselves. As one commentator noted, the general view appears to be that “the others drink too much.”

On the other hand, several respondents noted that they enjoyed Friday night drinks with their colleagues, and that alcohol simply “provides relief from the pressures of work and particularly difficult clients/files”. Or, as another respondent put it, alcohol “goes with the territory, it is social, and relieves stress.”

Overall, the responses towards alcohol were mixed, and the original assumption (that alcohol consumption was a challenge for women in the legal profession)⁶⁴ was not borne out by participants’ responses.

(2) *Shortage of young male practitioners*

A number of participants in both the 2014 Gender & Diversity Research Group’s report, commissioned by the Auckland Women Lawyers’ Association,⁶⁵ and the 2012 Survey raised concerns about the low levels of male graduates entering the legal profession. As the graph below demonstrates,⁶⁶ female lawyers outnumber male lawyers by a significant amount. In addition, female law school graduates outnumber male graduates and are more likely to achieve better grades in higher numbers than male law students.⁶⁷

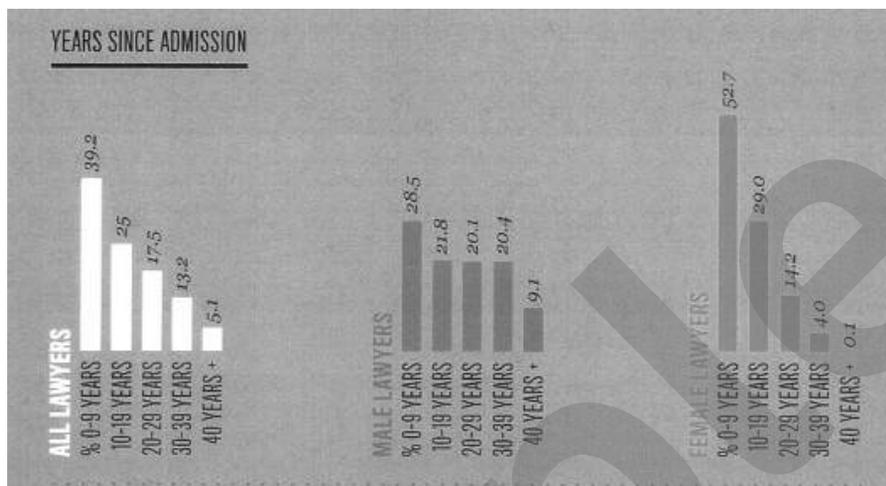
Figure 7.7 - Years since admission

64 Note that this assumption had its foundations in the research carried out by the author in relation to social issues for lawyers when originally planning the original paper that was the basis of this chapter, but also in conversations had at women lawyers’ networking events and in comments made by practitioners during the course of conversations about this research.

65 Judith Pringle and others *Women’s career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014). See, for example, at 11.

66 Graph reproduced from New Zealand Law Society “A Snapshot of the New Zealand Legal Profession: As at 1/4/2011” *LawTalk* (online ed, New Zealand, 22 April 2011).

67 For example, in 2011 just eight of the 38 law students in the University of Victoria’s honours programme were men (see Sarah Catherall “Where have all the smart men gone?” *Stuff* (online ed, Auckland, 24 October 2011). In 2013, women made up 62 per cent of all New Zealanders admitted to the Bar. See New Zealand Law Society “A Snapshot of the New Zealand Legal Profession” (2014) 836 *LawTalk* at 6.



In response to questions about affirmative action, respondents to the 2012 Survey noted:

“Given the quality of candidates I have interviewed for jobs and the relative quality of our staff on gender lines, if there needs to be affirmative discrimination in our practice it would be in favour of young men, who are tending in terms of qualifications, and get-up-and-go, to be left behind.”

“There is no shortage of females in the profession but an increasing shortage of males.”

“When you look at the number of graduates coming through (even up to mid-level), the majority are female. It is difficult to get male lawyers now. And it is always good to have a balance.”

This book is not the place for a comprehensive analysis of how low levels of male graduates may impact gender balance in the profession, but it is a topic worthy of further research. In any case, it may be that the change is already coming. In June 2011, law graduate Megan Pearce published an article on the *mylawsociety* website in which she recounted her experience at an interview where she was told that the firm “wanted to hire a man to even up the gender imbalance in the firm – one male, one female, one vacancy.”⁶⁸

(3) *The lack of female-specific initiatives provided by firms and employers*

Given the prominence of the female-specific initiatives discussed above,⁶⁹ respondents were asked about the female-specific initiatives operated in their places of work.

⁶⁸ Megan Pearce “A modern-day law graduate’s tale” (June 2011) *my.lawsociety*.

⁶⁹ See ch 6.

However, only 16.3 per cent of respondents reported that their workplace had any female-specific initiatives in place (such as the Women@CT initiative). Women whose workplaces did have specific female initiatives in place were asked to detail those, and many were low-level initiatives. Many respondents recorded that their places of employment had monthly women's group meetings, regular female speakers and regular functions for female clients and practitioners, but one respondent noted simply "we attended one seminar for women in business."

Despite the apparent low level of initiatives, some of the more interesting and innovative programmes and initiatives were noted as follows:

"A comprehensive 'women in law' programme, including training and career development."

"We have 3 months' paid maternity leave and an emergency nanny service."

"We have a gender diversity representative on our management board."

"Specific women only leadership programmes and professional/person development."

"We are an all women law firm – no 'initiatives' – just culture. We support working parents: time off to attend school functions, start late/end early to manage childcare, and have family functions at work."

"A specific programme to retain women at the firm and help them make partnership."

"A women leaders' programme and a forum for female staff to discuss related issues concerning women in business and leadership."

One respondent wrote:

"These are more informal – we have been sent on a personal development course (presumably with a career-planning goal). Occasionally our HR manager will convene a women lawyers' meeting to discuss issues of interest. Out of these arose an idea to present a female presenters-only legal seminar. We have been doing this for about 2 years, with the cast changing a little over that time. It has had positive benefits in terms of real improvements in confidence for some presenters – one of whom was terrified of her 10 minute group presentation and now does client presentations solo."

Given the relatively low cost of establishing these initiatives, and the enthusiasm with which they are met by female practitioners, the low incidence of such programmes and policies is surprising.

(4) *The call for a better profit and performance model*

The American National Association of Women Lawyers recommends that lawyers' compensation recognise and reward activity other than business generation and billable hours (such as business development, committee work and equitability of level of work across a partner's team; that is, good distribution of work). Over 90 per cent of respondents to the 2012 Survey said that they would support the implementation of a similar requirement in their workplace. Many recognised the inherent difficulty in measuring non-billable contributions.

Representative responses included the following:

"A solely 'billable hour' focus disregards the value created by these other tasks. To be an efficient business, the firm should encourage co-operation and a team approach rather than an individualised 'must meet my budget' approach. This is better for both employees and the firm/clients."

"Yes yes yes!!! Billable hours (or actual fees charged) often do not reflect the value of what people are doing in a day. My problem is that my work type is lower billing. I work just as hard on a day to day basis as my colleagues, but my fees are lower so I get paid less. Very frustrating. I can't increase what I bill because the fees are set by the firm. Therefore no ability to increase my fees or my salary."

"These 'investment' activities are very important to a firm and to career development and should be explicitly recognised."

"This is important for everyone. People make different types of contributions to a partnership, and this needs to be recognised. Measurement is, however, a challenge."

"I think a certain budget forgiveness for non-billable (but still valuable) work (e.g. preparing articles, marketing activity, training and recruitment work) is a good idea. Also I think that teams should be incentivised to distribute work well across the team, e.g. ensure that work is given to a team member at the right level (as this is in the client's interest)."

"I believe we already have this. We are an equal profit share partnership, and different partners undertake different roles."

"The focus on billable hours seems very narrow, especially when the firm recognises that the non-billable work needs to be done."

These comments recognise that, as sociologists Joan C Williams and Veta T Richardson identify, "rewarding partners for working as many hours as humanly possible is not necessarily a good business model."⁷⁰ Williams and

70 Joan C Williams and Veta T Richardson "New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women" (2011) 62 Hastings LJ 597 at 619.

Richardson go on to note that a “most-hours-wins system” also disadvantages women because “it favours law firm partners who have a specific family form that most male partners, but few female partners, have: the ‘two person career,’ ... which includes a spouse who takes care of most, or all, of the lawyer’s nonwork responsibilities”.

Although again, this book is not the place for a complete examination of the billable-hours model, it is a topic worthy of further research, particularly in light of respondents’ comments that recognition of their non-billable contributions would assist in retention.⁷¹

However, some useful first steps can be illustrated by Joan C Williams and Veta T Richardson’s study on compensation of American lawyers, which sets out 10 recommendations to ensure a fairer and more equitable compensation system. Recommendations relevant to New Zealand law firms include:⁷²

- improving transparency of criteria for compensation;
- benchmarking or recording compensation and how it differs in relation to gender within a firm;
- improving diversity on compensation committees (so in New Zealand, improving diversity on a law firm’s board, or within a law firm’s senior partnership);
- re-examining whether a billable-hours approach is best, and whether a billable-hours threshold has a place in remuneration;
- taking proactive steps to avoid hidden bias, and to correct hidden bias (including, for example and as the authors cite, assuming that women are no longer committed to their careers after they become mothers);
- linking compensation to individuals’ contributions to the long-term viability of the firm instead of simply current cash flow (that is, rewarding people for the behaviours that you are trying to elicit within the culture); and
- designing a compensation system that does not penalise part-time partners (or part-time staff). Factors to assist in this approach include ensuring compensation for part-time partners is proportionate, compensating partners for any hours they work in excess of those agreed upon and taking into account non-billable contributions.

71 See [7.4.9]. There has also, of late, been a considerable degree of discussion on the law firm model.

72 Joan C Williams and Veta T Richards “New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women” (2011) 62 *Hastings LJ* 597 at 616 and 659.

7.5 Similar results showing in Australia's legal profession

In 2013, Alecia Simmonds noted that “[a]lthough 61.4% of law graduates are women, only 23% make partner in top-tier corporate law firms, 18% in mid-tier and 17% in small firms ... The Federal Court ... [has] a mere 16% of women on its bench.”⁷³ The Law Council of Australia, in the same year, undertook a study of 4,000 Australian lawyers, “investigating and analysing the drivers for attrition of women from the legal profession in Australia.”⁷⁴ The National Attrition and Re-engagement Study (NARS) Report (the Report)⁷⁵ was released in 2014, and many of its findings mirrored the findings of the 2012 Survey of New Zealand lawyers discussed in this chapter. In particular:

- Women felt that “some employers had misperceptions about the priorities of females with flexible working arrangements”,⁷⁶ with one respondent noting that “there is a perception that when you go and have a kid all of a sudden your priorities change ... People think just because you’re having a kid you don’t give a shit about your career.”⁷⁷
- Respondents identified that work–life balance was a tough prospect for litigators.⁷⁸

“Courts don’t consider the barrister’s personal life when they fix matters for hearings. ... if you were to say I’m off on school holidays and I have the fulltime care of my children that week, that’s not seen as an appropriate reason for fixing a hearing date later. So courts aren’t actually asked to accommodate barrister’s personal lives and we perpetuate something of a culture of silence and pretence around those things.”

- Respondents felt that there was “limited accessibility”⁷⁹ to mentors, despite the fact that mentors were highly valued and desired by respondents.
- Participants that were interviewed felt that they:⁸⁰

73 Alecia Simmonds “Why women can’t get ahead in law firms” *Stuff* (online ed, Auckland, 24 October 2011).

74 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 4.

75 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014).

76 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 23.

77 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 23.

78 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 23.

79 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 26.

80 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 26.

“... did not have any female role models in senior private practice or the Bar who had achieved good work-life balance. As a result, some women felt uninspired to strive for leadership roles, doubted whether it was possible to be a woman with a family at senior levels in the profession, and thought their progression would be hampered by the need to ‘forge’ the path themselves in a male dominated industry.”

Respondents’ comments included:⁸¹

“Every female that was there that was senior than me had very different lifestyles. Like they were either married with no children or ... children wasn’t something they were looking at, or they were still single, like there was no one there who was married or had children. I didn’t have any role models”

“The other thing is that women need champions and they need role models to make the way of managing life as a woman, as a mother, as a partner, as a daughter, all the rest of it, to make it normal to be able to say to the court I’m leaving, I need to pick up my kids, can we resume tomorrow. You know, just to have normal conversations where people aren’t pretending to be heroic.”

- Most of the respondents supported flexible working practices, and of those who had adopted flexible working practices, almost all (87 per cent of females and 91 per cent of males) reported that the arrangements had worked as intended.⁸² Long working hours and poor work–life balance were seen to impact on both male and female practitioners. However, women were twice as likely as men to report that their flexible working arrangements had had a negative impact on their career path/opportunities for promotion.
- Australian female lawyers reported similar incidences of sexual harassment to their New Zealand counterparts. In Australia the figures showed that 24 per cent of female lawyers had experienced sexual harassment (compared to eight per cent of male lawyers), and 47 per cent of female lawyers had experienced discrimination on the basis of their gender (compared to 13 per cent of male lawyers).⁸³ What is particularly interesting is that the Australian study found that women in firms with 20 per cent or less of female partners were most likely to experience gender discrimination and age discrimination. That finding seems to support the

81 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 26.

82 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 30.

83 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 32.

30 per cent critical mass argument discussed elsewhere in this book (that is, that a minority requires a 30 per cent presence in order to have any real effect).

- Women who were the primary caregivers of a family were most likely of any group to experience discrimination due to family responsibilities. The Report noted that “there is a perception of conscious or unconscious bias against women who adopt flexible working arrangements to balance family responsibilities.”⁸⁴
- Female respondents also reported incidents of microaggression, demonstrated in particular by the following comment:⁸⁵

“... a senior female barrister was very upset by this constant put down by a colleague of the same seniority as her, using her name in a diminutive form, just doing silly little things that she felt she shouldn't get annoyed about but was annoyed by. ... it's that subtle course of conduct, that undercurrent that I think remains there where there is still some majority of men in the jurisdiction who think that that sort of behaviour is okay.”

(1) Support for a better model

Finally, like the New Zealand respondents, many of the Australian respondents (male and female) made the case for a better model for law firms. That suggestion was picked up by the Report writers, who set out the following key suggestions for progression and change in the legal industry:

- Supporting and diversifying flexible working arrangements: as the Report writers identified, “many research participants considered access to flexible working arrangements a necessity for retaining working *parents* in the legal profession”.⁸⁶ The difficulty was the negative perception that accompanied women who took on flexible working arrangements – something, it is suggested, that can only be overcome by diversifying flexible working arrangements themselves, an option the Report writers noted was raised a number of times by respondents. As discussed elsewhere in this book, diversifying flexible working arrangements looks beyond part-time work, which in law at least is sometimes incompatible with clients' expectations, and often results in part-timers working outside their defined hours and for a reduced salary (below the prorated level).

84 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 5 and 76.

85 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 36. Note that this was not identified specifically as microaggression, but was described as “actions [that] were often small and necessarily offensive in isolation, but had a cumulative impact on women's enjoyment of the profession” (at 36).

86 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 70 (emphasis added).

Alternatives include working shortened fortnights, job-sharing, law firms providing childcare on-site and harnessing technology to enable employees to work remotely/off-site.

- Consideration of lawyers' lives outside of work: the Report noted that some participants "saw value in businesses, staff and structures catering to working parents, for example, in the times that meetings and events are scheduled",⁸⁷ with respondents suggesting that meetings should be held during the middle of the day rather than early or late, when parents are likely to have other commitments. That policy could easily be extended to consider childless lawyers who may like to go to the gym, partake in extracurricular activities or make commitments to family and friends that they can actually keep, outside of the hours of 9–5. That of course extends to having firm social functions at times other than 5 pm on a Friday.
- Transparency around remuneration and hours: the Report suggested that there was an opportunity for "industry bodies ... to provide guidance about what hours lawyers should be working, how much they should be paid, and how they should be performing relative to their level."⁸⁸ That was not raised in the New Zealand study (in terms of a suggestion that the New Zealand Law Society provide that information), but it would be a helpful way to assist lawyers in understanding expectations (a key concern in the New Zealand study) and would also go some way towards addressing the gender pay gap identified for lawyers in the New Zealand study.
- Building capacity for women: the provision of role models and mentors, as well as female-specific training, was identified as a way to increase gender diversity and assist women to advance up the ranks. Similarly, the New Zealand study identified that female lawyers wanted more training and development in areas such as negotiation skills and understanding what was required to get to partnership level.
- Enforcement: finally, the Report suggested that while there was "a growing, if not sufficient, industry knowledge of best practice management and ethical work practices",⁸⁹ what was lacking was any monitoring of that, or enforcement of policies beyond lip-service to diversity. One suggestion was that the industry bodies might have a role to play in implementing and monitoring workplace practices, both in terms of diversity but also in terms of good culture.

87 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 71.

88 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 71.

89 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 73.

I'll join the giraffe upstairs,' he thought. But as he started up the stairs, he heard stairs begin to crack. He jumped off and fell back against the wall. It too began to crumble. As he sat there dishevelled and dismayed, the giraffe came down the stairs. 'What on earth is happening here?' the giraffe asked in amazement. 'I was trying to make myself at home,' the elephant said.

"The giraffe looked around. 'Okay, I see the problem. The doorway is too narrow. We'll have to make you smaller. There's an aerobics studio near here. If you'd take some classes there, we could get you down to size.' 'Maybe,' the elephant said, not looking very convinced. 'And the stairs are too weak to carry your weight,' the giraffe continued. 'If you took a ballet class at night, I'm sure we could get you light on your feet. I really hope you'll do it. I like having you here.'

"Perhaps,' the elephant said. 'But to tell you the truth, I'm not sure a house designed for a giraffe will ever really work for an elephant, not unless there are some major changes.' "

As the fable makes clear, unconscious bias (also called second-generation bias) does not require any intent to exclude – sometimes, in fact, it comes from a desire to help. Neither does unconscious bias necessarily result in any direct harm or hurt to a person. But what it creates is “a context—akin to ‘something in the water’—in which women fail to thrive or reach their full potential.”⁶ It can manifest itself in a number of ways, many of which are explained in the following pages.

8.2.1 Expectations about how women should behave

Expectation of how women should behave is in itself a form of unconscious bias: it is widely accepted that women suffer a double bind in that the “styles that successful leaders set tend to be masculine.”⁷ The ideal leader has “masculine” characteristics: he is decisive, assertive, independent, rational, linear and in control of his emotions. In contrast, the female stereotype is warm, nurturing and unselfish. The result is that women may be one or the other:

6 Herminia Ibarra, Robin Ely and Deborah Kolb “Women Rising: the Unseen Barriers” *Harvard Business Review* (online ed, Boston, September 2013) at 6.

7 This quote was taken from Christine Kawakami, Judith B White and Ellen J Langer “Mindful and Masculine: Freeing Women Leaders From the Constraints of Gender Roles” (2000) 56(1) *Journal of Social Issues* 49 at 49. The first review of differences is generally credited to Judy B Rosener “Ways Women Lead” *Harvard Business Review* (Boston, November 1990), but the concept is widely accepted: see as examples, Valerie Petit “Male Stereotype of a leader persists” *Financial Times* (online ed, London, 2 March 2014); Herminia Ibarra, Robin Ely and Deborah Kolb “Women Rising: the Unseen Barriers” *Harvard Business Review* (online ed, Boston, September 2013).

- Women who excel as leaders, in particular, by adopting male characteristics, are viewed as competent but less likable than their male counterparts; but
- Women who exhibit traditional female characteristics are liked, but as the Harvard researchers note, “they are deemed too emotional to make tough decisions and too soft to be strong leaders.”⁸

Perhaps the most famous example of the double bind in terms of likeability is the Harvard Business School’s Howard/Heidi study.⁹ In that case, the author, a Harvard professor, provided one of her classes with a biography of a real-life entrepreneur named Heidi Roizen, “describing how she became a successful venture capitalist by relying on her outgoing personality and huge personal and professional network.” The professors then provided the story to a second group, with Heidi’s name changed to “Howard”. Each group of students rated Howard and Heidi on their accomplishments and on how appealing they seemed as colleagues. Although the students gave Heidi and Howard equal reviews in terms of their career success, they actively liked Howard, but considered that Heidi seemed selfish and not “the type of person you would want to hire or work for.”

The conclusion (that people respect women who are successful and exhibit traditional male leadership characteristics, but respect *and like* men who are successful and exhibit those same characteristics) was reflected in comments made by both the 2012 Survey respondents and the Australian Study respondents. Respondents to the Australian Study reported that they felt the legal profession in particular valued characteristics that “came more naturally to men than women”¹⁰ including “aggression, resilience, and in particular, self-confidence and assurance.”¹¹ For example, one respondent to the Australian Study reported that she felt that qualities she exhibited in attempting to make partner would have been looked at more positively if she were a man:¹²

“With progression to partnership, I always kind of suspect there’s a little bit of ‘She’s a pushy upstart, she’s treading on people’s toes and this is my patch’. A bit of jealousy factors and those kinds of things, whereas if a man

8 Herminia Ibarra, Robin Ely and Deborah Kolb “Women Rising: the Unseen Barriers” *Harvard Business Review* (online ed, Boston, September 2013) at 65.

9 Kathleen L McGinn and Nicole Tempest “Heidi Roizen” (Harvard Business School Case 800-228, January 2000, Revised April 2010).

10 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 23.

11 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 23.

12 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 23.

had been the same age or in the same position, they would have gone 'He's a real go getter, we want him.' ”

Similarly, a respondent to the 2012 Survey noted:

“I have observed other women’s marketing and/or more direct stance regarding career progression to be seen as too confrontational by the partnership and a negative, whereas the same is not said of males taking a similar approach.”

The 2007 study of New Zealand accountants showed similar responses, with one male respondent commenting that:¹³

“... [women bosses] are very competent but some of them ... really put people down ... I have only had a couple of woman bosses over the years and ... in fact I didn't enjoy any of them because both of them were of the aggressive style”.

What is interesting, however, is that research tells us that how we *perceive* female leaders and how we *experience* female leaders is different. For example, one study, which surveyed 60,000 American employees on their attitudes towards managers, found that almost three-quarters of those who expressed a preference for their boss's gender preferred a male boss. But the people who actually had female managers did not give them lower ratings than the people who had male managers.¹⁴ That is, because of unconscious biases, people did not like the *idea* of working for a woman, but were quite comfortable with their own female managers. That is reflected in research by KPMG, which found that the actual differences in women's leadership styles were “subtle and complementary”¹⁵ and the real issue was that, because there was a perception that women did not exhibit the right leadership traits, women were twice as likely to be given feedback on their leadership skills as men.¹⁶

In any event, new research shows that we may be forced to challenge our unconscious biases in respect of male and female leadership traits. In a 2012 study of over 7,000 leaders, Harvard researchers found that “at every level, more women were rated by their peers, their bosses, their direct reports, and their other associates *as better overall leaders than their male counterparts* — and the higher the level, the wider that gap grows.”¹⁷

13 Rosalind H Whiting *Deinstitutionalization of Gender-Biased Employment Practices in New Zealand's Accountancy Workplaces* (University of Otago, May 2007) at 15.

14 Kim M Elsesser and Janet Lever “Does gender bias against female leaders persist? Quantitative and qualitative data from a large-scale survey” (2011) 64 *Human Relations* 1555.

15 KMPG LLP (UK), Young Samuel Chambers Ltd and the 30% Group *Cracking the Code* (KPMG, 2014) at 13.

16 KMPG LLP (UK), Young Samuel Chambers Ltd and the 30% Group *Cracking the Code* (KPMG, 2014) at 12.

As some of the Australian Study respondents identified, good leaders (and good lawyers) require a number of skills, not all of those being the skills traditionally associated as masculine traits:¹⁸

“Actually I think they’re [women] brilliant at client relations generally. They have a lot of skills that might not appear on the job sheet about managing clients, particularly in some areas of law more than others, but they’re great at managing client expectations, they’re good at negotiating, they’re good at conflict resolution and I would just like to see more of that validated I guess and recognised in the complete role of the lawyer.”

Although most of the Harvard research discusses leadership qualities, the key is that unconscious bias occurs across all types of roles, and will continue to do so until an organisation can change its view of the ideal employee.

As one respondent in the 2012 Survey identified, the persistent valuing of dominant group traits over others means that women’s abilities are not seen as worthy:

“Often, the additional work done by women that is not directly billable (e.g. networking, ensuring colleagues who are struggling have support and guidance etc) is not valued in that assessment. Because buying into partnership is at the discretion of the current partners, while there is a male dominated partnership and a tendency to recruit ‘like’ personalities, there will always be the potential for this to be limiting on women’s opportunities for partnership.”

8.2.2 Expectations about women and family obligations/failure to take into account life-cycle factors

Many of the respondents to both the 2012 Survey and the Australian Study reported that they had faced gendered expectations about the way in which their careers and family life should intersect. Those expectations manifested themselves in terms of women missing out on work because of expectations about their family life. For example, from the Australian Study:¹⁹

“I know that I’ve been told that I’ve missed out on an opportunity at the Bar because the senior female barrister has made the comment that I’m a barrister with young children so I’m less likely to be reliable.”

17 Jack Zenger and Joseph Folkman “Are Women Better Leaders than Men?” *Harvard Business Review Blog* (online ed, 15 March 2012).

18 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 24.

19 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 37.

“As CEO of Palo Alto Software, I have made it a priority to encourage my employees to do whatever they need to succeed at work while raising a family. We have a room in our office designed specifically for children to relax after school while their parents are still working. We do not have strict hours for the sake of having them. If someone needs to leave work early to take their child to the doctor or work from home, we’ll never single them out. But they’re always expected to do what’s asked of them and more.

“Our culture extends beyond just working moms, too. Dads who need to work from home and employees who need to tend to aging parents have the same freedoms. We offer more flexibility than the average company in America and have happier, more productive employees because of it. When you hear a child’s voice in our office, the reaction is not ‘who brought that kid here?’ but is instead considered a sign of a normal workday. We aren’t soft, we’re accommodating.”

8.5 Women at work: Internal issues

Part of the focus of this book is directed at tangible ways in which businesses and workplaces can attain gender equity but there is, of course, a raft of literature about the ways in which women work differently to men in the workplace (including a positive flood of American output on the topic: Sheryl Sandberg’s *Lean In*, Arianna Huffington’s *Thrive* and Katty Kay and Claire Shipman’s most recent book, *The Confidence Code*, to name a few⁴⁵).

Feminist writer Jessica Valenti agrees that there are behavioural differences between men and women, noting wryly that “imposter syndrome – a phenomenon in which high-achieving women believe ‘they are really not bright and have fooled anyone who thinks otherwise’ – was first written about in 1978.”⁴⁷ But, as she says, Kay and Shipman’s “confidence gap” is “not a personal defect as much as it is a reflection of [our] culture.”⁴⁸ That is, the self-help exercises set out in Kay and Shipman’s book (and in others’) may be helpful for personal development, but the greater problem is what Valenti calls the “deeply-ingrained structural discrimination” within our workplaces and societies. As she argues:⁴⁹

45 Sabrina Parsons “Female Tech CEO Says ‘Leaning In’ Isn’t The Answer” *Business Insider* (online ed, Sydney, 13 December 2013).

46 Sheryl Sandberg *Lean In: Women, Work and the Will to Lead* (Alfred A Knopf, New York, 2013); Arianna Huffington *Thrive: The Third Metric to Redefining Success and Creating a Life of Well-being, Wisdom, and Wonder* (Harmony Books, New York, 2014); Katty Kay and Claire Shipman *The Confidence Gap* (HarperCollins Publishers, New York, 2014).

47 Jessica Valenti “The Female Confidence Gap is a Sham” *The Guardian* (online ed, London, 23 April 2014).

48 Jessica Valenti “The Female Confidence Gap is a Sham” *The Guardian* (online ed, London, 23 April 2014).

“If we truly want women to be more confident – and for them to be able to express that confidence in a way that creates meaningful change – then we can start by creating a culture that values self-assured women. What’s the code for that?”

Put another way, and as a *Time* Magazine journalist phrased it, “what accounts for women’s career stall is not a lack of push ... but rather a lack of pull.”⁵⁰

Nevertheless, gender disparity in terms of attitude and behaviour *is* an issue for women in the workplace. Although it is not this book’s intention to explore in detail the various arguments as to these behavioural differences, it would be remiss not to acknowledge that it is widely accepted that there are core differences in the ways that men and women interact within the workplace, and that those differences directly affect a woman’s progression in the workplace. While not suggesting that these issues are black and white, or that they are applicable to every woman, this section summarises some of the key accepted differences between how men and women behave in the workplace, explains how those may impact on a woman’s career in the corporate world and suggests some tangible ways in which workplaces can recognise these differences and use them to eliminate structural discrimination.

8.5.1 Confidence

The key issue is of course, confidence. Kay and Shipman⁵¹ argue that women are less confident than men, and that lack of confidence directly impacts on their career progression. In support of their theory, the authors point to a study by University of Warwick psychology researcher Dr Zachary Estes. In that study, Estes asked students to solve a series of spatial puzzles, and analysed the results by gender. The women scored considerably worse than the men did because, on the whole, they had not attempted to answer many of the questions. When Estes repeated the experiment, he told the students they had to attempt all of the answers. In the second round, the women’s scores increased dramatically, matching the men’s. The point, of course, is that if women lack confidence, then they hold themselves back where they might otherwise have achieved.

Or, as a KPMG report identified:⁵²

49 Jessica Valenti “The Female Confidence Gap is a Sham” *The Guardian* (online ed, London, 23 April 2014).

50 Sylvia Ann Hewlett “Forget about Mentors – Women Need Sponsors” *Time* (online ed, New York City, 7 March 2013).

51 Katty Kay and Claire Shipman “The Confidence Gap” *The Atlantic* (online ed, United States, 14 April 2014).

52 KPMG LLP (UK), Young Samuel Chambers Ltd and the 30% Group *Cracking the Code* (KPMG 2014) at 11.

“[Women have a] [r]isk alertness [that] keeps women grounded in reality. Women are brutally self-honest about their skills and abilities when putting themselves forward for unfamiliar challenges.”

In a workplace setting, that can have far-reaching ramifications, as women are less likely to speak out during meetings or in discussions with seniors, are less likely to put themselves forward for projects or promotions and are less likely to speculate or take risks.

(1) *Men have “honest overconfidence”*

Men spoken to, in the writing of this book, about the confidence of men compared with women, disagree, pointing to incidences where they too have lacked confidence. But the message is not that men do not doubt themselves, but simply that they do not do it with “such exacting and repetitive zeal [as women] and they don’t let their doubts stop them as often as women do.”⁵³ Further, men have a natural tendency to overrate their abilities,⁵⁴ which in turn drives the gap between the genders even further apart.

Conversely, women tend to underestimate their talents and achievements. As the McKinsey authors noted, quoting a banker they interviewed:⁵⁵

“On the same project, the men will demonstrate 100% ambition even if they only have 50% of the required skills, whereas the women will be concerned about only having 80% of the required skills. This observation is backed by a survey of MBA students: 70% of female respondents rate their own performance as equivalent to that of their co-workers, while 70% of men rate themselves higher than their co-workers.”

This “honest overconfidence” was also reflected in the responses to the surveys noted in this book, with one respondent to the Australian Study commenting:⁵⁶

“I’m concerned that there’s this confidence thing. I don’t know why, where, how it’s happening, but women don’t have that confidence gene that guys have. I know all my feminist sisters will scream and hail me down, but men have this in built capacity to say ‘I’m worth \$1,500 a day, I’m going to charge \$1,500, of course I am. I’ve only been at the bar two years but I’m going to charge that’, whereas I can be at the bar for 30 years and still question whether or not I should mark that fee. There’s this

53 Katty Kay and Claire Shipman “The Confidence Gap” *The Atlantic* (online ed, Washington DC, 14 April 2014).

54 Ernesto Reuben and others “The emergence of male leadership in competitive environments” (2012) 83 *Journal of Economic Behavior and Organization* 111.

55 Darya Borisova and Olga Serkhova, *Women as A Valuable Asset*, (McKinsey & Company, April 2012) at 10.

56 Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report* (Urbis Pty Ltd, Australia, 2014) at 23.

inbuilt ego, personality trait that just seems to so easily speak with the guys.”

(2) *Women worry more when things go wrong*

Survey research has long told us that women report feeling more anxious, nervous or worried than men, but new research is now showing that there may be a scientific basis for this. The short version is that, following a negative emotional event, women tend to more intensely activate the part of the brain that worries than men do, and which, as Kay and Shipman suggest, may mean that “women are more likely than men to form strong emotional memories of negative events ... [and] women are more apt to ruminate over what’s gone wrong in the past.”⁵⁷ In addition, Kay and Shipman say that the part of the brain that helps us recognise errors and weigh options (the anterior cingulate cortex) is larger in women than in men. These factors together hold women back because they get caught up in past mistakes and cannot move forward.

8.5.2 The detrimental effect of the confidence gap

Aside from day-to-day performance, Kay and Shipman identify two main ways in which the confidence gap works against women; in salary negotiations and applying for roles.

(1) *Salary negotiations*

A Carnegie Mellon University study found that men initiate salary negotiations four times as often as women do, and that when women do negotiate, they ask for 30 per cent less money than men do.⁵⁸ In addition, they noted that when asked when they last negotiated, men were likely to have negotiated in a business context in the past week, while (business) women referred mainly to domestic negotiations. Women were also more likely to complain about a matter and leave it at that, whereas men would complain and then negotiate.

Similar results were evidenced in a Manchester Business School study, where Professor Marilyn Davidson makes a habit of asking her students what they expect to earn, and what they deserve to earn, five years after graduation. As she said in Kay and Shipman’s report, “I’ve been doing this for about seven years ... and every year there are massive differences between the male and female responses.” On average, she notes in the article, “the men think they deserve \$80,000 a year and the women \$64,000—or 20 percent less.”⁵⁹

57 Katty Kay and Claire Shipman “The Confidence Gap” *The Atlantic* (online ed, Washington DC, 14 April 2014).

58 Linda Babcock and Sara Laschever *Women Don’t Ask: Negotiation and the Gender Divide* (Princeton University Press, Princeton, 2003).

59 Katty Kay and Claire Shipman “The Confidence Gap” *The Atlantic* (online ed, Washington DC, 14 April 2014).

The cumulative impact of these findings is huge; not only does it mean that women entering (or re-entering) the workforce are likely to be paid less than their male counterparts, but also that that disadvantage is likely to be played out in yearly remuneration views, compounding the income gap over time. In addition, it is of course likely to impact women in other areas of their working life; in negotiating for flexible leave, for promotions and for bonuses, for example.

(2) *Women do not apply for roles*

Women are disadvantaged by their lack of confidence even before salary negotiations start. One oft cited Hewlett-Packard story⁶⁰ suggests that, when faced with a job description, women applied only when they believed that they met 100 per cent of the qualifications listed for the job, whilst men applied even when they believed that they met only 60 per cent of the job requirements. While the origin of this story may be somewhat dubious,⁶¹ the message rings true. As Kay and Shipman identify,⁶² there is certainly evidence-based research available to show that women have a self-perception issue when putting themselves forward as contenders in competitive environments (such as job applications).⁶³

8.5.3 Recognising the skills that women have to offer

As discussed above, it is commonly accepted that, by and large, men and women have different skill strengths. The Harvard Business Review notes:⁶⁴

“It’s not enough to identify and instill the ‘right’ skills and competencies as if in a social vacuum. The context must support a woman’s motivation to lead and also increase the likelihood that others will recognize and

60 Georges Desvaux, Sandrine Devillard-Hoellinger and Mary C Meany “A business case for women” (September 2008) *The McKinsey Quarterly*.

61 See Curt Rice “Anecdote, or how McKinsey’s story became Sheryl Sandberg’s fact” Curt Rice/Science in Balance (22 April 2014) <www.curt-rice.com/category/gender-equality/>.

62 Katty Kay and Claire Shipman “The Confidence Gap” *The Atlantic* (online ed, Washington DC, 14 April 2014). In particular, Kay and Shipman refer to a study by David Dunning and Joyce Ehrlinger in which male and female students were invited to participate in a science competition for prizes. Kay and Shipman report that “The women were much more likely to turn down the opportunity: only 49 percent of them signed up for the competition, compared with 71 percent of the men.”

63 Indeed, in an interview with Kathryn Ryan on Radio New Zealand’s Nine to Noon programme as to the possible reasons for the low number of female QC applicants, Executive Director and past president of the New Zealand Law Society Christine Grice noted that one reason was that “some of [the women] just feel that they are not up to it.” See Interview with Christine Grice, Executive Director of the New Zealand Law Society (Kathryn Ryan, Nine to Noon, Radio New Zealand National, 10 March 2014) <www.radionz.co.nz>.

64 Herminia Ibarra, Robin Ely and Deborah Kolb “Women Rising: The Unseen Barriers” *Harvard Business Review* (online ed, Boston, September 2013) at 62.

encourage her efforts—even when she doesn't look or behave like the current generation of senior executives.”

So while a first reaction might be that a women's tendency to worry or ruminate over losses is a negative quality, from a business point of view it is often useful and necessary to have one party slowing things down and considering how the company might have done certain things better.

The challenge then is for businesses to create an environment where female-dominant skills are also valued. As the Harvard authors suggest, one way to do so may be to get leaders (and employees) to think about the skills they possess that are valuable to the purpose of their role, and to the purpose of their skills. So, as they write, “[i]nstead of defining themselves in relation to gender stereotypes—whether rejecting stereotypically masculine approaches because they feel inauthentic or rejecting stereotypically feminine ones for fear that they convey incompetence—female leaders can focus on behaving in ways that advance the purposes for which they stand.”⁶⁵ To expand, in their diversity education plans and training, employers may also spread that message throughout their workplace; that all of us bring a variety of different skills and viewpoints to our jobs, and that the secret is to use those skills and viewpoints positively and productively in our roles. One example is in traditional “female” communication.

For high-performing women, the Harvard researchers suggest that companies go one step further and create an “identity safe space” for women such as, for example:⁶⁶

“... a coaching relationship, a women's leadership program, a support group of peers—in which women can interpret these messages ... [to assist their] their leadership identity development. Companies should encourage them to build communities in which similarly positioned women can discuss their feedback, compare notes, and emotionally support one another's learning. Identifying common experiences increases women's willingness to talk openly, take risks, and be vulnerable without fearing that others will misunderstand or judge them.”

That is an appropriate role for internal women's groups, the likes of which are discussed in chapter 6 of this book. That is, in bringing together their female workforce, the company is able to create an identity-safe place where women can actively provide feedback on each other's communication styles (in terms of confidence in delivery at least), and assist with building each others' confidence

65 Herminia Ibarra, Robin Ely and Deborah Kolb “Women Rising: The Unseen Barriers” *Harvard Business Review* (online ed, Boston, September 2013) at 66.

66 Herminia Ibarra, Robin Ely and Deborah Kolb “Women Rising: The Unseen Barriers” *Harvard Business Review* (online ed, Boston, September 2013) at 65–66.

in their roles and values. Finally, because women tend to underestimate their talents and achievements, women's groups may be a forum for talents and achievements to be discussed more openly and thereby identified by the company on a more formal level. In short, companies should also be looking at the talent pool within these groups to identify success stories or talent that might otherwise not come to their attention.

Here is a summary of Sheryl Sandberg's advice for women from her book *Lean In* (where she says "A truly equal world would be one where women ran half our countries and companies and men ran half our homes."⁶⁷):

- (1) Leadership: do not be afraid to lead or to dream big, and do not think that your choice is a black and white one between a successful career and family life.
- (2) Sit at the table: take risks, look confident, turn up to meetings and presentations and sit forward, be involved.
- (3) Success and likeability: do not buy into the double bind, and do not worry about being liked (as she says, "if you please everyone then you are not making enough progress.").
- (4) It is a jungle gym, not a ladder: career progression is not always linear. Look for roles where you will grow quickly, which may not always be the roles that look like the next step up.
- (5) Mentors: mentors can be valuable, but they are not therapists. Make the right connections and use them well, provide value to your mentors and respect their time.
- (6) Truth: be yourself at work. Tell people if you think they can do better. Ask how you can do better. If you need to cry or show emotion at work, do so.
- (7) Do not leave before you leave: do not pass up opportunities just because you might have a family one day. Deal with those events as they come.⁶⁸
- (8) Partners should be real partners: have a real 50–50 split with your partner, even if it means giving up some control. Men are just as good at being caregivers as women.⁶⁹

67 Sheryl Sandberg *Lean In: Women, Work and the Will to Lead* (Alfred A Knopf, New York, 2013) at 7.

68 This was identified by senior respondents to the 2014 Gender & Diversity Research Group's report as an issue that they saw with young female practitioners, one citing two 27-year-old women who were already planning to leave their firms before getting married because they did not see their career as being compatible with their family goals. See Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 56 (commissioned by the Auckland Women Lawyers' Association).

- (9) The myth of doing it all: you cannot do it all, so do what you can do and do not feel guilty about it. That goes for single people as well as families; if you need to leave work to spend time with your friends, at the gym, out socialising – then do so.
- (10) Be open about biases: we all have biases – let us talk about them openly so we can work towards overcoming them (either in ourselves, or at least in the decisions we make based on our biases).
- (11) This is a job for all of us: men and women need to speak up about what we want our homes and workplaces to look like, and take steps toward change.

More recently, mainstream celebrities have joined Sandberg's movement, with singers Beyoncé and Victoria Beckham fronting her joint campaign with the Girl Scouts of America to "Ban Bossy." The campaign (for which you can buy branded "tees, totes, stickers and more"⁷⁰) aims to encourage girls to lead by banning the word "bossy" in favour of more positive descriptors, such as leader. Ban Bossy claims that "between elementary and high school, girls' self esteem drops 3.5 times more than boys' ... girls are twice as likely as boys to worry that leadership roles will make them seem 'bossy.'" Whether these statistics are similarly reflected in New Zealand is not known.

As the authors, Katty Kay and Claire Shipman wrote:⁷¹

"Some observers say children change our priorities, and there is some truth in this claim. Maternal instincts do contribute to a complicated emotional tug between home and work lives, a tug that, at least for now, isn't as fierce for most men. Other commentators point to cultural and institutional barriers to female success. There's truth in that, too. But these explanations for a continued failure to break the glass ceiling are missing something more basic: women's acute lack of confidence ...

"Even as our understanding of confidence expanded, however, we found that our original suspicion was dead-on: there is a particular crisis for women—a vast confidence gap that separates the sexes. Compared with men, women don't consider themselves as ready for promotions, they predict they'll do worse on tests, and they generally underestimate their

69 Interestingly, having a "real" or supportive partner was one of the four key pieces of advice for female lawyers provided by the partners of large Auckland law firms surveyed in the 2014 Gender & Diversity Research Group's report. See Judith Pringle and others *Women's career progression in Auckland law firms: Views from the top, views from below* (Gender & Diversity Research Group, AUT University, Auckland, 2014) at 14 (commissioned by the Auckland Women Lawyers' Association).

70 From the Ban Bossy website <www.banbossy.com>.

71 Katty Kay and Claire Shipman "The Confidence Gap" *The Atlantic* (online ed, United States, 14 April 2014).

abilities. This disparity stems from factors ranging from upbringing to biology.

“A growing body of evidence shows just how devastating this lack of confidence can be. Success, it turns out, correlates just as closely with confidence as it does with competence. No wonder that women, despite all our progress, are still woefully underrepresented at the highest levels. All of that is the bad news. The good news is that with work, confidence can be acquired. Which means that the confidence gap, in turn, can be closed”.

The shortage of female confidence is increasingly well quantified and well documented. In 2011, the Institute of Leadership and Management in the United Kingdom surveyed British managers about (among other things) how confident they felt in their professions. The study found that most men (across all age groups) had “high or quite high levels of self confidence” compared to only half of women. In addition, only a third of male managers reported “feelings of self-doubt” compared to half of the female managers.⁷²

8.5.4 Closing the confidence gap: Practical suggestions for women

Mary Civello, a woman who has made a career as an “executive coach” summarises the confidence gap a different way. She says:⁷³

“Executive presence – looking and sounding like a leader – is often a euphemism for confidence. Businesses don’t approach me to help an executive because he or she lacks confidence, but because they need to ‘polish their presence.’ Nobody wants to acknowledge that their leader lacks confidence. Indeed, most often I’ve found they are confident in the job they do -- they just don’t look it or feel deep down that they deserve success.”

Her tips for polishing your presence include the following:

- (1) Be comfortable with how you look. Civello notes that she could “count on one hand” the men who, when filmed for executive coaching, were concerned with the way they looked on camera. Women, on the other hand, could not concentrate on how well they were doing unless they were satisfied with the way they looked. In that regard, women were at a disadvantage before they even began. After all, as Civello noted, it was not that the men featured had any good reason to be unconcerned with how they looked.

72 Institute of Leadership and Management *Ambition and Gender at Work* (United Kingdom, 2011) at 2.

73 Mary Civiello “How women can narrow the ‘confidence gap’” *Fortune* (online ed, New York, 22 April 2014).

- According to the United Kingdom online magazine *The Lawyer*, the number of English men working flexi time has more than doubled in the last decade. Forty per cent of fathers now say that they spend too little time with their children and two-thirds of fathers see flexible work as an important benefit when looking for a new job.³
- Research by PricewaterhouseCoopers in 2010 showed that flexible work is the benefit most valued by all employees (47 per cent, as compared with pay and bonus, which came second with just 19 per cent).⁴
- A 2011 review of the flexible work provisions of New Zealand's Employment Relations Act 2000 found that "[m]ale employees were somewhat more likely to have flexible hours (43 percent) than female employees (39 percent)".⁵
- The same review found that a significant proportion of employees who have flexible working arrangements do not have any caring responsibilities.⁶
- Research by PricewaterhouseCoopers found, globally, that less than a third of Millennials⁷ expect to work regular office hours, and of those, slightly more men than women expected to work "mainly flexible hours."⁸

9.2 Flexible working in New Zealand

A 2011 review of the flexible working provisions of the Employment Relations Act 2000⁹ found that flexible working was common in many workplaces throughout New Zealand, with 70 per cent of employers reporting that some or all of their employees work flexibly. Unsurprisingly, while men were more likely than women to say that they had access to flexible breaks and working from another location, women were more likely than men to report access to part-time work and job-sharing; that is, women were more likely to have access to arrangements that involved a reduction in hours and income.

Some of the key findings from the review are:¹⁰

- ... employers had not experienced any significant costs associated with [allowing flexible working].

3 Fiona Severs "Flexible Work – more than just an issue of being family friendly" *The Lawyer* (online ed, London, 19 October 2011).

4 PricewaterhouseCoopers "Employees rate work-life balance over bonus" (31 May 2010) pwc <www.pwc.blogs.com>.

5 Department of Labour *Review of Part 6AA: Flexible Working Arrangements* (2011) at [38].

6 Department of Labour *Review of Part 6AA: Flexible Working Arrangements* (2011) at [3] and [51].

7 Or Generation Y; those people born after Generation X (that is, after the early 1980s).

8 PricewaterhouseCoopers *Millennials at work: Reshaping the workplace* (2011).

9 Department of Labour *Review of Part 6AA: Flexible Working Arrangements* (2011).

10 Department of Labour *Review of Part 6AA: Flexible Working Arrangements* (2011) at [3].

- “• [The legislation] has not changed the widespread practice of employers and employees developing formal and informal flexible work arrangements that suit their particular needs beyond caring responsibilities.
- “• Awareness of the [flexible working provisions] has declined in New Zealand between 2008 and 2010.
- ...- “• Uptake of flexible working arrangements is by both men and women, and a significant proportion of these employees have no caring responsibilities.
- ...- “• Employers widely perceive flexibility as delivering positive business benefits, including improved retention and recruitment, reduced turnover, and improved employee motivation and loyalty.
- “• New Zealanders value flexible work and are more likely to rate their work-life balance and productivity highly if they have flexible working arrangements.”

In addition, and relevantly for this book, it is more common for employees working in “highly skilled” occupations to have flexible hours than those working in other types of occupations.

9.3 The drivers for flexible working: Generation Y/ Millennials and Baby Boomers

The reality is that flexible working is becoming a necessity for employees of all types and across all roles. In addition to the general trend for connectivity and work-life integration, this change is driven by two dominant demographics:

- Generation Y/Millennials, who have grown up communicating via technology in their personal lives and are sometimes categorised as people who have less loyalty to their employers and who have different values in terms of non-financial benefits than the generations before them; and
- Baby-Boomers, who as they age are looking for ways to stay in the workforce without having to commit to full-time work.

As the *Harvard Business Review* reports, “[s]tated at the highest level, our finding is that people, especially Gen Ys and Boomers, are looking for what we call a ‘remixed’ set of rewards: Flexible work arrangements and the opportunity to give back to society trump the sheer size of the pay package.”¹¹

11 Sylvia Ann Hewlett, Laura Sherbin and Karen Sumberg “How Gen Y & Boomers Will Reshape Your Agenda” *Harvard Business Review* (online ed, Boston, July 2009).

Chapter 10

CORPORATES LEADING THE WAY

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“[S]mall businesses don’t have the HR infrastructure, the metrics or the research to understand the issue of pay equity, but ‘the corporates do have the infrastructure and they have an obligation and a social responsibility to do something about it’.”¹

10.1 How are successful businesses doing it?

As set out earlier in this book,² the United Nations’ Women’s Empowerment Principles (WEP) are a global initiative to offer guidance to companies on how to empower women in the workplace, marketplace and community. In 2013, the New Zealand branch granted a number of awards to companies for progress in regard to the Principles. This chapter looks at three of those recipients (Bank of New Zealand, Coca-Cola Amatil New Zealand and Deloitte) and explores what it is that those companies are doing right. By no means does this chapter suggest that these companies have gender equality perfected. But these companies, at least, are three who have made a public commitment to the gender agenda, and who are making changes from which other businesses can learn.

¹ Martin King, the General Manager of Human Resources at Coca-Cola Amatil New Zealand, quoted in Raewyn Court “On the Job – Pop Culture” *Employment Today* (New Zealand, May 2014) at 15–16.

² See [6.4].

thinking about life-cycle factors and career paths much earlier than had been previously understood.

Its key message to women and Millennials, though, is that it is for employees to drive flexible working. Even if options are not role modelled for employees, or do not appear to be on the agenda, that does not mean that they are not available, according to Breeze. In Deloitte-speak, employees are encouraged to “write your own story”.

Finally, Deloitte is working hard on two key issues. First, it wants to change the physicality perception; that people need to be in the office and at their desks to be doing their job. To do so, it is using social technology such as Yammer and Lync to do internal business so that staff can communicate collaboratively and remotely. Part of that allows staff who work, for example, three days a week, to work on any three days and mix those up as they choose. Secondly, it is trying to move away from an hours-focused measurement to an outcomes-focused measurement, so that there is less pressure on hours at work and more on efficiency and productivity.

10.5 Key take-outs: What these companies are doing right

In summary, this is what is right about what the three companies discussed in this chapter are doing:

- **Gender audit:** all of the companies conducted internal research to find out exactly what was going on in terms of gender in their company.
- **Chief Executive Officer buy in:** all of the companies’ programmes are lead by the Chief Executive Officer with commitment from the executive team.
- **Group to lead:** a specific lead group or task force was used to lead the way.
- **Awareness:** Recognition that gender is a workplace issue, not a women’s issue. All three companies have tried to make equality and diversity part of their company’s language.
- **Ongoing monitoring:** all three companies require transparency and repeated reporting on gender diversity within the organisation.
- **Playing the long game:** each of the three companies recognise that success in attaining gender diversity requires ongoing commitment.
- **Early intervention:** the organisations all say that they talk to junior and mid-level women, not just senior women, about gender and their career cycle.
- **Availability of flexible working:** the organisations are open to proposals from employees, and actively encourage flexible working.
- **Harnessing of technology:** use of technology was specifically made to create and facilitate engagement (in particular, intranet sites and social media-style communication).