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**“THE NUMBERS DON’T LIE:” SYSTEMIC
GENDER INEQUALITY IN THE NEW ZEALAND
LEGAL PROFESSION**

Submitted for the LLB (Honours) Degree

Faculty of Law

Victoria University of Wellington

2020

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Abstract: This paper investigates the causes of the gender imbalance in the New Zealand legal profession drawing on the findings of 10 confidential one-on-one interviews that the author conducted with senior women lawyers. This paper concludes that there is a range of deeply engrained systemic gender issues in the way that law firms operate. Good financial performance in firms, which is the paramount determinant of promotion and partnership prospects, is conceptualised in a way that disfavors women. The partnership model is highly flawed. Partners make important decisions including as to who is appointed to join the partnership. As a largely non-diverse cohort, they are influenced by conscious and unconscious biases when doing so. Those who take on primary caregiving roles in families, who are predominantly women, face significant barriers and are poorly accommodated in the legal profession. Part-time and flexible work arrangements for these individuals are difficult to negotiate and operate inadequately. Career progression as a part-time employee is extremely difficult. This paper discusses certain areas of law and sections of the profession where career progression is more accessible to female lawyers but explains that these are currently perceived as being ‘softer’ areas of law or ‘less than’ jobs in large commercial firms.

Key words: women in law, gender inequality, legal profession, working parents

Acknowledgements

I would like to thank the 10 incredible wāhine who participated in my interviews for this research. They are all hard-working and busy women who nevertheless made time to speak with me at the drop of a hat. I am grateful for their generosity in taking the time to share their insights and experiences so openly with me.

I want to acknowledge that a number of these women, and others, have faced significant barriers and injustices in their legal careers. This should never be the case in any profession, least of all the legal profession which purports to be concerned with fairness and justice. As one of the women I interviewed suggested, “there is a lot that needs the sunlight shone on it.” This paper is a small contribution towards doing that.

Lastly, I would like to thank my supervisor, Zoë Prebble, who has been infinitely supportive of me and this project, and who gave me space and freedom to do this my own way.

He aha te mea nui o te ao. He tāngata, he tāngata, he tāngata.

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I Introduction

Since the early 1990’s, women have made up more than half of graduating law students in New Zealand.¹ Women have made up the majority of barristers and solicitors admitted to the bar since 1995 and now comprise more than half of practicing lawyers in New Zealand.² However, despite these figures, women continue to be underrepresented in the higher ranks of the legal profession. Women make up less than 30 per cent of equity partners in New Zealand’s largest law firms and just 10.3 per cent of Queen’s Counsels.³ This significant disparity in numbers indicates systemic barriers to career progression for women in law.

To gain insight into these barriers, I conducted 10 confidential one-on-one interviews with senior female lawyers. I spoke with two women who founded their own firms, two barristers including one QC, a partner in a large firm, three senior associates in large firms, one lawyer in the public sector with experience in a medium-sized firm, and one associate from a boutique provincial firm.⁴ The interviews I conducted were semi-structured and involved broad questions about career progression for women in law, reaching partnership, and part-time and flexible working.

I found that there is a range of systemic barriers that make career progression significantly more difficult for women in law. Good financial performance in firms, which is the paramount determinant of promotion and partnership prospects, is conceptualised in a way that disfavors women. The partnership model is highly flawed.

¹ Grant Morris *Law Alive: The New Zealand Legal System in Context* (5, Thomson Reuters, New Zealand, 2019) at 22.

² Geoff Adlam “Snapshot of the Profession 2019” (2019) 926 LAWTALK 26 at 28 and 32.

³ Aotearoa Legal Workers’ Union 2019 Employment Information Survey (Aotearoa Legal Workers’ Union, Employment Information Survey Report, 2019) at 9. 10.3 per cent is the proportion of female QC’s as at 2016: Susan Glazebrook “Gender Myths and the Legal Profession” (2016) 22 CLR 171 at 177.

⁴ I do not suggest that this sample is representative of all women in the New Zealand legal profession. This is qualitative research targeted to women who have been in the profession for some time. Whilst I spoke with two women who belonged to ethnic minority groups, the difficulty I had finding women in the higher ranks of the profession who belong to diverse groups speaks to the lack of diversity in the profession as a whole. I touch on this at paragraph six below.

Partners make important decisions including as to who is appointed to join the partnership. As a largely non-diverse cohort, they are influenced by conscious and unconscious biases when doing so. Lastly, those who take on primary caregiving roles in families, who are predominantly women, face significant barriers and are poorly accommodated in the legal profession. There are some areas of law and sections of the profession where these barriers are fewer. These are currently perceived as being ‘softer’ areas of law or ‘less than’ jobs in large commercial firms.

II The Financial Focus of Law Firms

All of the women I spoke with identified that, to some extent, the paramount emphasis placed on staffs’ financial performance in law firms disadvantages women. One participant stated that the law firm model “is broken and needs to change. It just doesn’t work to value people, it is based on the amount of time they spend billing clients,” whilst another expressed that “you are judged really just on the big pile of money that you pull in.” This financial focus is not unique to the legal profession, because for all businesses, financial viability is crucial for survival. However, the way that financial performance is conceptualised and measured in the legal profession disfavours women. Overwhelmingly, the only factors that firms regard as relevant to their financial performance are the fees that lawyers charge, and the clients and work that they bring in. These narrow metrics favour men for several reasons. Firstly, women lawyers face barriers when it comes to billing fees due to the less lucrative nature of many female-dominated areas of law and the often non-billable nature of workstreams that women are pushed into. Furthermore, logistically those with childcare commitments, who are predominantly women, are less able to work and bill additional hours late into the evenings and on weekends.⁵ Additionally, due to the ‘old boys’ culture prevalent in the corporate sphere, male lawyers are likely to have an advantage in recruiting clients for the firm, particularly large corporate clients.

⁵ I discuss directly the barriers that primary parents face in their careers at paragraph four below.

Beyond fee billing and recruiting clients, women lawyers tend to contribute to their workplaces more broadly, including through mentoring, fostering a more caring work environment, doing pro bono work and representing the firm in the community. These contributions are undervalued and expected to be surplus to meeting billable targets. In reality, these contributions are not only culturally valuable but indeed financial, as they make the firm more appealing to clients and prospective employees, and improve productivity and retention of staff. I will discuss how transformative change towards a more caring ethical environment in firms that capitalises on these contributions would improve the diversity and financial performance of firms.

A The Gendered Reality of ‘Financial Performance’

Good financial performance, as it is currently conceptualised in the profession, is more accessible to male lawyers.

1 Fees

The most championed performance indicator for lawyers in firms is the number of ‘billable hours’ recorded per day. Remuneration and promotion decisions depend heavily on this metric. Lawyers are typically expected to record around 6 to 6.5 billable hours per day but these targets do not nearly represent the actual hours worked. This is because there are expectations to do various non-billable work too. Lawyers often find themselves having to under-account for the time they spend on pieces of work to accord with fee estimates and expectations.

Billable targets are a cause of stress for lawyers at all levels. In 2019, the Aotearoa Legal Workers’ Union reported that the majority of young lawyers worked far more than their contracted hours per week in order to meet their billable targets.⁶ Young lawyers working at various firms with targets between 30 to 32.5 billable hours per week reported actually

⁶ Aotearoa Legal Workers’ Union, above n 3, at 7.

working approximately 50 to 54 hours per week.⁷ That study focused on the expectations on first to third year solicitors. Billing expectations increase as lawyers gain more experience and progress in their careers. This is particularly pronounced for those seeking promotion and advancement up the firm hierarchy.

Three of the women I spoke with referenced the stress associated with fee targets, stating, for example, that “to get to budget, the hours you have to do are crippling.” Three women with whom I spoke suggested that this stress contributes to the decisions of many lawyers, and particularly family-orientated lawyers, to drop out of private practice or downsize to smaller firms.

(a) Workstreams

Female-dominated areas of law tend to be less lucrative than male-dominated areas of law.⁸ This means it is more difficult for many women lawyers in these disciplines to meet budget expectations. For example, in family law, where women make up 70.3 per cent of practitioners, clients are typically private individuals.⁹ This means that the time spent on pieces of work in this area typically need to be underreported so that fees are affordable for clients. In male-dominated areas of law, on the other hand, such as banking and finance, clients tend to be large corporations with deeper pockets, meaning that hours spent on pieces of work can be more accurately reflected in the final bill.¹⁰

Beyond strictly billable work, many women excel in providing other cultural contributions to their firms. Women I spoke with described myriad contributions that they have seen women provide throughout their careers, including mentoring, facilitating peer groups, supporting colleagues going through hard times, representing

⁷ At 7 – 8.

⁸ Grant Morris, above n 1, at 22.

⁹ Human Rights Commission *Census of Women’s Participation* (Human Rights Commission, 2012) at 75.

¹⁰ At 75.

the firm at community events, giving feedback to peers, and “working the room” with clients. Such contributions are currently regarded as unbillable, and outside billable targets. This is the case even when the firm has specifically assigned such tasks to individual lawyers. One lawyer I spoke with recalled being pushed into doing pro bono and non-billable work that was highly valuable for the firm on a reputational basis, while at the same time being compared negatively with other staff who had billed more fees than her. As she put it, “they direct women into less respected areas of work and then say ‘this person has done more billables than you.’” Firms’ understandings of such cultural contributions as inferior to billable hours is highly gendered. These contributions are financially beneficial and partners are assigning this work to staff for that very reason. These contributions should be recognised and rewarded.

(b) Parenting

Those who have primary parenting commitments, who are currently predominantly women, are logistically less able to put in extra hours in the evenings and weekends to bring in client fees.¹¹ These individuals are put at a less favourable position compared to those who do not have parenting obligations when weighed up against each other at a solely numerical financial level. I will discuss further the barriers that primary parents face in the profession in paragraph four below.

2 *Clients*

Bringing new clients to the firm is the other measure considered highly relevant to ‘financial performance.’ This is easier for male lawyers to achieve due to the “old boys” culture prevalent in the private sector and the male-to-male advantage created by this.¹² It is predominantly men who occupy the higher ranks of private businesses and who are

¹¹ Law Commission *Relationships and Families in Contemporary New Zealand* (NZLC SP22, 2017) at 42 – 43.

¹² See, for example, Eryn Hughes “Shattering the Hire Ceiling: Why Disproportionately Few Women are Partners at Large Law Firms” (BA Thesis, University of Pennsylvania, 2017) at 30-31.

thus in positions to decide which lawyer to retain.¹³ Furthermore, the very nature of lawyer-client networking continues to be based around the male-to-male relationship. One woman I spoke with recalled her experience as a junior lawyer observing senior male lawyers phoning clients or prospective clients and offering to take them out for a beer in the evening. She recalled thinking to herself how differently it would be perceived if she were to one day make that same phone call, stating that male clients “don’t talk to females the same or see them in the same kind of colloquial way.” Other interviewees described a range of other common networking practices, including golf trips, “boozing nights” and talking about rugby. As one interviewee put it, the cultural maleness of many of these networking practices and norms means that “... it becomes difficult to progress... unless you take on that ‘one of the guys’ persona.”

Clients’ conceptions as to who is a successful or authoritative lawyer can also be prejudicial. Men are more likely to take to other men who mirror their own qualities.¹⁴ In the words of one participant, “a very young woman is not going to be seen as being as authoritative as a man would at the same age.” It is not only women who are affected by this. In the words of one young Māori lawyer I interviewed, “it can take a little bit longer to earn clients’ trust” in part demonstrated by the fact that she, as a Māori lawyer, faces “additional questions that ... other stereotypical lawyers might not get.”

B Workplace Environment

Firms’ emphasis on financial performance, and narrow understanding of what is relevant to good financial performance, contribute to an ‘instrumental’ climate in legal workplaces.¹⁵ The instrumental climate is driven by competitiveness and a focus on

¹³ NZX New Zealand’s Exchange *Gender Diversity Statistics* (NZX New Zealand’s Exchange, Gender Diversity Statistics - 1 April 2019 to 31 March 2020, July 2020) at 4 – 5.

¹⁴ This is known as hydrophily which is the idea that “people like people who are like them:” Susan Glazebrook, above n 3, at 186. See also Anna Jaffe and others *Retaining And Advancing Women In National Law Firms* (Stanford Law and Policy Lab, May 2016) at 12.

¹⁵ Paula Baron and Lillian Corbin “Ethics begin at home” (2016) 19 *Legal Ethics* 281 at 290.

profit. Staff perceive that personal benefits and the organisation’s interests should guide behaviour, even if that is to others’ detriment.¹⁶

Research suggests that while the profession tends to focus on and address bad behaviour at an individual level, the ethical infrastructures fostered in legal workplaces have considerable bearing on lawyers’ behaviour.¹⁷ Studies have shown that dysfunctional behaviours, such as deception, lying and aggression are more likely in organisations with instrumental environments.¹⁸ The costs of these behaviours are significant. At an individual level, victims and perpetrators experience guilt, stress, disappointment, and shame which negatively affect their mental well-being.¹⁹ At an organisational level, the costs to the firm include absences due to ill-health, lower levels of productivity, and ultimately the need to recruit and train new staff when those who are unhappy leave. One woman I interviewed who owns her own firm expressed that, from her experience, a lot of women “don’t want to be in those (instrumental) environments because they want to work more collaboratively....”

In workplaces with more caring ethical environments, on the other hand, individuals tend to make decisions with regard for the well-being of others.²⁰ Decision-makers in these environments consider the specific needs of all individuals and design creative solutions that might never occur in other environments. Caring ethical environments have been proven to deter employee deviance and lead to more ethical decision-making.²¹ Research suggests that although both men and women utilise the ethic of care in the workplace, this is “consistently more apparent in women than men.”²² A senior associate with whom I spoke recognised this, suggesting that “a male in the team might have better numbers, but

¹⁶ At 285.

¹⁷ At 287.

¹⁸ At 286.

¹⁹ Paula Baron “The Elephant in the Room? Lawyer Wellbeing and the Impact of Unethical Behaviours” (2015) 41 Australian Feminist Law Journal 87 at 108.

²⁰ Baron and Corbin, above n 15, at 285.

²¹ At 286.

²² Leslie Bender “From Gender Difference to Feminist Solidarity: Using Carol Gilligan and an Ethic of Care in Law” (1991) 15 Vt L Rev 1 at 37 – 38.

[firms should] look at what women can contribute more widely, for example, bringing out the best in their colleagues.” A partner I interviewed voiced that:

We as women have some challenges that come from our gender, [but] we have some advantages. We are actually probably... better at organising teams and having that EQ part of the role.

A caring ethical environment is also more consistent with the Māori worldview which emphasizes collectivity and the importance of relationships.²³ If the caring contributions outlined above were better recognised and rewarded in legal workplaces, more staff would make an effort to perform in these areas. This would result in healthier work environments, improved diversity and ultimately better financially performing firms.²⁴

III Partnership

The underrepresentation of women in partnership positions in firms is one of the most widely discussed examples of gender inequality in the legal profession. Although women make up more than half of practicing lawyers in New Zealand today, women continue to make up less than 30 per cent of equity partners in New Zealand’s largest law firms.²⁵ In some of our biggest firms, such as Bell Gully and Chapman Tripp, the numbers of women equity partners are as low as 23 and 22 per cent respectively.²⁶ This gender imbalance indicates systemic barriers to women moving up law firm hierarchies. These barriers include conscious and unconscious bias from current partners in decision-making, a lack of female role models and mentors, and a lack of transparency as to how to become a partner. Furthermore, the partnership model allows for poor governance, as high performing fee earners who become partners are thrust into leadership positions often with little to no management skills or training.

²³ David Brougham and Jarrod Haar “Collectivism, Cultural Identity and Employee Mental Health: A Study of New Zealand Māori” (2013) 114(3) Soc Indic Res 1144 at 1147

²⁴ See also Margaret Bazley *Independent Review of Russell McVeagh* (New Zealand 2018) at 61.

²⁵ Geoff Adlam, above n 2, at 28 and Aotearoa Legal Workers’ Union, above n 3, at 9.

²⁶ Aotearoa Legal Workers’ Union, above n 3, at 9.

A The Evidence

In the words of one interviewee, when considering the opportunities (or lack thereof) for women lawyers to progress to partnership level, “the numbers don’t lie.” You simply do not see as many female lawyers in these roles, and when you do, “it seems as though it has been more of a battle for them to get there.” The lack of women partners cannot simply be attributed to the historic male dominance of law. As Susan Glazebrook wrote in her 2016 *Gender Myths and the Legal Profession*, if there is indeed going to be any ‘trickle-up’ effect from women in more junior positions, it is not happening very fast.²⁷ The Queen’s Counsel I spoke with recognised this, stating that:

I left law school 30 years ago and at that point approximately half of graduates were female.... I would have thought that by the time I got to where I am now there would be complete equality across the profession and you don’t see that at all.

Two of the women I spoke with recounted experiences seeing deserving women miss out on partnership positions where men who they perceived as less deserving, made partner. One participant described her early bemusement at this phenomenon: “as a junior looking in, I couldn’t work out why these women weren’t making partner.” She went on to say “I have seen men become partner where I have perceived that there were women who work harder and were better to work for, who did not.” Another woman who is the owner of a firm expressed:

I know women who were the top fee earners, who met their budget consistently in their large firms, who did everything right but [were told that] they still didn’t have what was considered partnership potential.

Another interviewee who is in a senior position in a large firm voiced that it can take longer for women to make it to partnership than their male equals, explaining:

²⁷ Susan Glazebrook, above n 3, at 177.

I have heard about discrimination, for example, where there are two people coming up to partner, a man and a woman, and the partners say ‘if we don’t promote the male then we are at risk of losing him to another firm, whereas if we wait for this woman and... make her partner next year or the year after, we can convince her to wait around.’

These stories suggest that women are missing out on partnership positions not because they are not performing as well as men or because they are less deserving. In fact, one woman I spoke with pointed out that, from her time in a large firm, the women who did not make it to partnership “are now professors, running their own firms, chief legal advisers [and] QC’s... so it wasn’t that they weren’t good enough [and] it wasn’t that they weren’t talented...” Rather, the current system stands in the way of women reaching their full potential and making it to partnership positions.

B Causes of Inequality

There are many elements of the current patriarchal set up of law firms that continue to prevent women from reaching partnership. The heavy financial focus outlined in paragraph two above is just one of these. The current male dominance of partnerships has also become cyclical.

1 Conscious and Unconscious Bias

Conscious and unconscious biases factor into decisions made by existing partners as to the allocation of work and opportunities, mentorship, access to clients, and ultimately, who gets to join the partnership. One participant recounted that during her time in a large firm, “there was a fair bit of outright misogyny and sexism” as to how these decisions were made. Another woman who left a large law firm to become a barrister recalled:

... [from] my graduate cohort... it was only the men who went through to become partners and it was kind of obvious from the start that it was the men who mixed in... because male partners mix with people who are like them, who talk about rugby, who they identify with.

It is a deeply human trait to identify and empathise most closely with those who are the most similar to oneself.²⁸ If our current crop of male partners is the cohort making promotion decisions, it is not surprising that young male Pākehā lawyers who are highly similar to that decision-making cohort enjoy the greatest access to promotion and eventually partnership opportunities.

2 Lack of Mentors and Role Models

The lack of women and other diverse individuals in partnership positions means that there is a lack of good role models and mentors for young women lawyers coming up the ranks.²⁹ Young male lawyers are far more likely to have access to mentors due to the factors mentioned above. This lack of support for women lawyers is a real issue for women looking to move towards partner level in particular. It is not possible to reach partnership without help from others. In the words of one participant, “you need someone to say ‘this is how I did it and this is how you could do it.’”

3 Partnership Criteria are not Transparent

Neither the performance requirements for making partner nor the pathway to becoming a partner are transparent in law firms. Most women suggested that lawyers in firms have no access to this information until very far on in their careers, at which point they might start to have discussions about their partnership prospects. These discussions tend to come about in one of two ways. Either those who are seen as potential partnership candidates are ‘tapped on the shoulder’ and discussions ensue, or those with partnership aspirations must voice this to the partners and seek guidance on how to get there. At some firms, one

²⁸ See, for example, Anna Jaffe, above n 14, and Susan Glazebrook, above n 3, at 186.

²⁹ See also Susan Glazebrook, above n 3, at 184.

interviewee suggested there are no ‘shoulder taps’ and instead it is only those who come forward about their partnership aspirations who gain clarity on the matter.

The idea that prospective partners must put themselves forward to access information about becoming a partner disproportionately excludes women. Women are less likely to do this and more likely to be perceived negatively if they do.³⁰ Participants stated that “women are more likely to feel awkward about raising (their partnership ambition)” and that “whether you feel comfortable doing this depends on who you work with and how open they are.” Not knowing that there is a need to come forward with partnership aspirations can mean that individuals wait a long time for the partners to initiate discussion. Male lawyers are potentially advantaged in this sense due to the “old boys’ network” and their more plentiful access to mentors. As one interviewee put it, men are more likely to have “[access] to information that is not necessarily being distilled to women”

All seven women with whom I discussed this lack of transparency directly, believed that this creates another barrier for women, especially those who have parenting commitments. Three of these women suggested that the lack of transparency contributes to decisions of lawyers to either leave their firm or stop striving towards partnership. One senior associate expressed “I know people who have been in a firm and it has been... [a] timing thing and they have left to go and become a partner at another firm” presumably not knowing that they would become a partner with time. Because of this, she suggested that it is “win-win for everyone if there is transparency.” For women who have childcare commitments, the barriers associated with the lack of transparency are compounded because, as a senior associate explained, they “can’t make strategic decisions about how they can work (towards becoming a partner).”

³⁰ The process for becoming Queen’s Counsel also involves putting oneself forward. The QC I interviewed suggested that “if you wanted to put off women applying, you couldn’t have designed a better application.” This likely contributes to the disproportionately low numbers of women who apply for QC every year. In 2013, for example, just 15.2 per cent of applications for QC were made by women: “Why so few women QC’s?” (31 January 2014) [lawsociety.org <https://www.lawsociety.org.nz/news/lawtalk/issue-834/why-so-few-women-qcs/>](https://www.lawsociety.org.nz/news/lawtalk/issue-834/why-so-few-women-qcs/).

Three women I interviewed worked or had worked in firms where partnership considerations were transparent. These were the women who worked in boutique and medium-sized firms, and interestingly also the partner from a large commercial firm. The associate working in a boutique provincial firm stated “we have quite open discussions about... what that (partnership) looks like. We have team planning trips... and talk about rules and responsibility within the firm.”

Rather than expecting those with partnership aspirations to come forward, there might be improved numbers of women reaching partnership if conversations were had more openly, and if women were *asked* about their goals. Participants I spoke with, and indeed other academics and businesspeople,³¹ have stressed the importance of *asking* women about their aspirations.³²

4 *Status Quo is Protected*

Four participants with whom I spoke suggested that the status quo is protected by current partners who are unmotivated to implement meaningful change. These interviewees suggested that there is a kind of survivors’ bias, according to which those who have made it to partnership level under the status quo are unsympathetic to others who have not. These participants felt that once an individual has made it to partnership level, they tend to have adopted many of the practices that the structure requires of them, such as working long hours, accepting less work-life balance, and taking a more traditionally ‘male’ approach. Ultimately there is a paradox in that the legal profession needs to change, but those who are willing and able to implement change are not being put into positions where they can do this. One participant explained that “the fact that I was a strong personality and I would challenge decisions is what held me back. I could have made it if I compromised my values.”

³¹ Nancy Carter and Christine Silva *Pipeline’s Broken Promises* (Catalyst, 2010) at 5.

³² Susan Glazebrook, above n 3, at 183.

5 *Lack of Part-Time and Flexible Working Partners*

There are very few partners in large firms who work less-than-full-time or flexibly. This means that it is very difficult for more family-orientated lawyers to pursue both family and career aspirations, especially when children are young. Six participants said that in their experience, those who reach partnership level tend either to have chosen not to have children, or have partners or carers at home to take on childcare commitments.

Those who take a more active role in the family could be expected to have unique and valuable skills that should be represented in the partnership.³³ Such individuals would be better placed to recognise and accommodate the needs of other staff who are juggling family commitments too. To accommodate better diversity of thought and experience in partnerships in this way, one participant voiced that there needs to be a shift to recognise that “you can have people working three days a week, for example, and their pay would be pro-rated... but they would still have that opportunity.”

C Poor Governance

All of the participants I spoke with agreed that there has historically been a significant dissonance between the performance requirements for becoming a partner, which are almost solely financial; and the role of partners which is to manage people and lead teams. These skills are not necessarily transferrable, causing one participant to state that “...the partnership model is a flawed model because it encourages pretty poor governance and operation separation.” As Dame Margaret Bazley found in her *2018 Independent Review of Russell McVeagh*, partners are promoted for their technical expertise and earning potential, not for their management skills.³⁴ They are not trained to be managers and staff can suffer as a result.³⁵ Dame Margaret found that the lack of management skills of partners at Russel McVeagh exacerbated issues so that staff did not feel

³³ See Stella Collins “Parents as leaders?” (2007) *Training Journal* 43.

³⁴ Margaret Bazley, above n 24, at 56.

³⁵ At 56.

comfortable reporting incidences of bullying to partners,³⁶ and partners were unaware when staff were working long hours unnecessarily or for extended periods.³⁷ Even more worrying were Dame Margaret’s findings that, in some instances, bad behaviour from partners was “well known and visible” but the firm was slow to respond because of these individuals’ status and earning capacity.³⁸

I did not speak with any lawyers currently working at Russell McVeagh, but all of the women I spoke with acknowledged similar issues. One senior associate stated “we are never taught in law firms how to manage people.... and this is evident in the issues in recent years that partners are not trained to deal with.” Another senior associate voiced:

There are a lot of partners around any of the large law firms whose people skills are really lacking. They are real experts in their areas, [and] they are very good at the financials, but they are really not leaders.

Dame Margaret found that partners who go home to their families at a reasonable time in the evenings and encourage their staff to do the same are providing excellent role modelling,³⁹ and that if changes were made to value staff as much as financial performance, then firms would “reap the rewards of having a happy, high functioning, and well workforce.”⁴⁰

Three participants acknowledged a shift since Dame Margaret’s report towards better consideration of personal skills in partnership appointments. The woman I interviewed who is a partner at a firm spoke of the need for partners to “be [more] human, to understand that there are exceptional circumstances, [and] to motivate others.” However, considering partnership is a leadership position, it does not seem that this shift is happening as quickly as it should, with one senior associate admitting “I (still) don’t think

³⁶ At 44.

³⁷ At 57.

³⁸ At 62.

³⁹ Margaret Bazley, above n 24, at 59.

⁴⁰ At 61.

someone with a slightly weaker financial case would get there on their people skills alone.”

D Barriers for Women who are Partners in Firms

When women become partners in firms they continue to face barriers. The woman I interviewed who is herself a partner admitted that it can be difficult for some female partners to perform well, because:

...our standards and our goals and our budgets are still set up on the basis of the number of hours [worked] and the traditional work style, and a number of women will struggle with that at the beginning of partnership because of motherhood.

She recognised that some women do not want to be partners, because “they fear that they are almost being set up for failure.” This, she said, is because “we are opening the gate [but] we are not changing what comes next....”

IV Parenting

All 10 women I interviewed mentioned parenting as one of the most significant barriers that women lawyers face in their careers. Whilst men can also experience barriers associated with parenting in the profession, these are disproportionately endured by women. Women continue to take on disproportionately more childcare responsibilities in families which translates into a substantial reduction in workforce participation.⁴¹ The women I interviewed expressed that women lawyers who are parents experience the barriers outlined in paragraphs two and three above in compounded ways, and face some unique barriers too.

⁴¹ Law Commission, above n 11, at 44 - 43.

A Incompatibility with Family Life

Eight of the 10 women I spoke with expressed that they worked, or had worked, in firms with cultures of more-than-full-time working which is somewhat incompatible with family life. This style of working involves far more than the standard picture of a 40-hour work week and includes expectations of routine late night and weekend work, especially if one wants to progress towards the top end of the hierarchy. A barrister I interviewed, who had previously worked in a large firm, expressed that “you can’t be the parent you want to be and be the most successful you want to be.” A senior associate I interviewed expressed that:

If you can do the whole lot and have that quality time with your family then I think that’s a complete rarity. You get those people once in a blue moon that can juggle everything.

This approach to work, which is incompatible with family life, is not unique to large firms. Two barristers I spoke with expressed that the structure and operation of courts themselves present barriers for parents. One barrister said that “the court system... is not at all family-friendly” whilst the other expressed that “they favour the male lifestyle... of having a wife at home looking after the children.”

B Presenteeism

There is a culture of “presenteeism” in the legal profession, according to which being seen in the office, particularly late in the evening and on the weekends, is championed. One participant spoke of having observed colleagues whose productivity would be low throughout the day, who would then work late into the evening and be rewarded or considered highly committed to the firm for doing so. This value placed on quantity rather than quality of work disfavours those with family commitments who are less able to spend this extra time in the office, for example if their children need to be picked up from school.

C Social and Client Networking Events

Social and client events in the profession are held largely in the evenings and often on a Friday which is typically the day that part-time or flexibly working staff are not in the office. One interviewee perceived that value is placed on attending these events and behaving in an extroverted way at them. This creates an interesting double standard in that there is little regard for the cultural inputs that women tend to provide as discussed in paragraph two above, but yet value is placed on non-output related contributions when it comes to those that might be better suited to dominant male types.

D Part-Time and Flexible Working (Including Working from Home)

Whilst part-time and flexible working arrangements are championed for supporting working-mothers, these can be difficult to negotiate and tend to operate inadequately. Career progression, particularly at the top end of the hierarchy, is considered next to impossible when working part-time.⁴²

1 Difficulty attaining flexible and part-time work arrangements

One woman I interviewed spoke of the difficulty she experienced negotiating a less-than-full-time work arrangement. She spoke of strong resistance from her employer and pressure to increase her days and hours of work. She explained that reaching her less-than-full-time arrangement in the firm was considered ground-breaking and that she might not have been so successful in doing this if she were not so senior in the firm. Another woman I interviewed made a similar comment, that “part-time and flexible work are made next to impossible.”

Two women I spoke with who worked, or had previously worked, in small and medium-sized firms had more positive experiences and more accommodating employers in this

⁴² See also Judith Pringle and others *Women’s Career progression in Auckland law firms: Views from the top, views from below* (Auckland Women Lawyers’ Association & Auckland University of Technology, February 2014) at 30 - 33.

sense. However, the interviewee who was working in a supportive and family-friendly small firm admitted: “I don’t know that part-time in our profession really exists because it is so file driven.”

2 Inadequate operation of these arrangements

When less-than-full-time or flexible work arrangements can be reached, they tend to operate inadequately. I spoke with six women who had themselves worked four days per week at some stage in their careers as parents. All of them stated that this, in reality, involved fitting five days’ worth of work into four days per week, either by working for free on their day off or late into the evenings.

One interviewee who worked as a senior associate in a large firm stated “I went down to four days a week [and] that was even worse [than working full-time,]” whilst another senior associate from a different firm voiced “I am working four days a week and my workload has not changed at all.” One interviewee recalled being amongst the top few fee earners in her team at a large firm despite having been a .8 employee. She recalled: “I was working just as hard as the full-timers and getting paid at 80 per cent.”

A senior associate from a large firm with whom I spoke, who had not herself worked part-time, had observed this in her colleagues, expressing:

“I have seen women get very stressed when this happens, they are trying to cram it all into three [or four] days and it has an impact on their health.”

She suggested that some women chose to go straight back to full-time work because of this.

These experiences illustrate that less-than-full-time work arrangements, in the way they currently operate, are simply pay cuts for working parents. Speaking about mitigating this workload issue, one participant felt that any responsibility to mitigate this by delegating

work to others would lie solely with them. Even then, any respite was incomplete, as the responsibility for ensuring the delegated work was done would remain theirs.

E Judgement and stigma

Two of the women I spoke with shared experiences of facing judgement and stigma as working mothers. One interviewee was told that she should not be eligible for promotion because she was “by definition not committed to the firm as a part-time employee.” This is inaccurate considering the level of commitment and sacrifice required to continue working whilst raising children. Another interviewee spoke of being treated as though she was having a “nice little holiday” when working from home. Beyond the fact that these assumptions are unjustified, they are frustrating in light of the considerations set out above: ‘part-time’ working mothers tend, in reality, to work full-time hours on a part-time salary. It is a cruel irony that that is viewed as a holiday, or as demonstrating a lack of commitment.

Beyond work-related judgement, some women face personal judgement for coming back to work either ‘too early’ or ‘too late’ after having children, highlighting that, in this respect, working mothers simply cannot win. Lastly, upon returning to work after parental leave, some women find themselves having been overtaken by those who were their juniors when they left. One interviewee described feelings of ‘punishment’ that her peers had felt upon realising that their former (male) juniors were now reviewing their work. Whether firms intend to send this message or not, women sometimes felt that firms were making a point that ‘this is what happens when you take time off.’

F Partnership

At some law firms, interviewees perceived that there is little to no possibility to make partnership as a less-than-full-time or flexible worker.⁴³ One woman I interviewed who is a senior figure in the profession expressed:

⁴³ See also Judith Pringle and others, above n 43, at 31.

“I think I was on the partnership track but once I had children it became very clear to me that I was no longer on that track. The attitude towards me changed at that point. I have heard other women say the same too.”

Even in firms where there might be a technical possibility of becoming a partner in these circumstances, this interviewee believed that the process is such that a single existing partner can prevent the promotion of any new partner. This setup would allow for those partners who view part-time staff as lacking commitment to veto those peoples’ appointments to the partnership. Another woman I interviewed, who had been in the profession for more than 30 years made a similar suggestion, that “it is very much possible that just one or a couple of people can sabotage genuine attempts of partners and HR to implement change.”

G Post-Qualification Experience

A further logistical barrier for women is that parental leave time is deducted from their post-qualification experience (PQE). This is the measurement of a lawyer’s time in the workforce after becoming fully qualified. There is significant emphasis placed on post-qualification experience in the profession and this has a bearing on a lawyer’s charging rate, pay, and prospects of promotion. Furthermore, minimum PQE requirements are often set out in job advertisements and considered throughout hiring processes. Because maternity leave time is deducted from a woman’s post-qualification experience, this means that “males... who haven’t had to have that break in their experience... progress a lot faster.”

What is frustrating and clearly sexist beyond this logistical consideration is that value is placed on other life experiences and events that create gaps in post-qualification experience. The two examples shared with me (by two different women) were international travel and high-performance sport. Participants felt that similar value is not placed upon time spent raising a child.

H Whānau

The Māori concept of whānau is much broader than the traditional European conception of the nuclear family.⁴⁴ Whānau often comprises many generations of family intertwined with the wider groupings of iwi, hapū and waka.⁴⁵ Compared to non-Māori individuals, Māori tend to engage in significantly more whānau activities per week.⁴⁶ The incompatibility with the law firm culture of more-than-full-time work and family life could therefore be expected to have a compounded effect on Māori.⁴⁷

I Consequences

The lack of provision for family commitments and flexible working in the profession do not only disadvantage working parents, but the profession as a whole.

1 Effect on Individuals

For working parents, the acute lack of provision and support for their needs can take a serious emotional toll and cause high levels of stress. This is not surprising but is a sinister consideration given the myriad of other physical, mental and emotional stresses that new parents, particularly mothers, already face.

Experiencing the abovementioned barriers, or observing colleagues’ experiences of these, likely contribute to the high numbers of female lawyers who look to alternative career pathways beyond big firms.⁴⁸ One senior associate I interviewed acknowledged this, stating:

⁴⁴ Chris Cunningham, Brendan Stevenson and Natasha Tassell *Analysis of the Characteristics of Whānau in Aotearoa* (Massey University, May 2005) at 14.

⁴⁵ At 14.

⁴⁶ At 34.

⁴⁷ See also Caren Fox “The future of Māori women in the law” (2017) 1 NZWLJ 16.

⁴⁸ See also Judith Pringle, above n 43, at 33 and Susan Glazebrook, above n 3, at 182.

“Colleagues I know are getting to that point in their life of thinking to have children, and... they think ‘this private practice pathway probably isn’t the best option in light of that.’”

2 Effect on the Profession

For the profession as a whole, there are cultural and financial costs. These include the financial costs associated with high turnover rates. Furthermore, firms that do not allow for flexible working forgo the benefits of this, including that the workforce is available to clients across a greater period of time throughout the day and potentially during the hours where staff are at their most productive.

V Areas of Law and the Profession that are more Gender Equal

There are some areas of law and sections of the profession where career progression tends to be more accessible to women.

A Areas of Law

One senior associate I interviewed suggested that family and employment law are two key areas where career progression is more accessible to women. She expressed that “within employment law, there are a lot of female partners and a lot of them work differently.” She attributed this in part to the fact that employment clients tend to be HR practitioners who are often women, voicing that this allows for employment lawyers and clients to develop relationships well. The benefits of this are two-fold. Firstly, women face fewer obstacles in reaching partnership level in these areas. Secondly, when women partner are leading these teams, they might be more accommodating and supportive of team members working in less traditional ways.

At the other end of the spectrum, this participant suggested that within more male-dominated areas of law, such as banking and finance, “there is less accommodation for recognising women as coming through the ranks, and also less accommodating them if

they want anything different to the typical structure.”⁴⁹ Both barristers I interviewed spoke of difficulties associated with litigation too, primarily due to the way that courts operate. One suggested that the courts are “not at all family friendly.” Women working in litigation teams in firms therefore not only face obstacles of becoming a partner as a woman, but also barriers “put in place by the way the courts work.”⁵⁰ This contributes to the lack of diversity in our judiciary which is detrimental to public confidence in the legal system.⁵¹

B Sections of the Profession

I interviewed six women who worked outside of large law firms, either in small or medium firms or as barristers. Each of them had more positive experiences.

The women who worked in small and medium firms spoke of better governance and support and recognition for women coming up through the ranks. The barristers I interviewed, whilst identifying gender issues in the way that courts operate, expressed that “the bar has flexibility that you can’t get elsewhere.”

C Perceptions of These

There are unfortunate negative perceptions around many of the areas of law and sections of the profession that women lawyers excel in. An employment lawyer I interviewed spoke of a perception that this is a “soft” area of law, or in some cases even looked down on as “not real law.” Another interviewee who founded her own firm acknowledged that “25 per cent of lawyers practice in-house. They are not... necessarily seen as something

⁴⁹ See also Human Rights Commission, above n 9, at 75.

⁵⁰ Helen Winkelmann commented on this in 2019, stating ““When you're in court you can't take phone calls and make the arrangements women are constantly running through their heads.... What happens if a child's sick, what if the school rings up?” – “National Portrait: Helen Winkelmann Chief Justice” (16 March 2019) Stuff <<https://www.stuff.co.nz/business/110876599/national-portrait-helen-winkelmann-chief-justice>>.

⁵¹ See, for example, New Zealand Law Society “Judicial legitimacy lies in a focus on diversity, says Chief Justice” (07 November 2019) New Zealand Law Society <<https://www.lawsociety.org.nz>>.

to strive towards.” There are similar negative perceptions of Māori areas of law including Māori land law and Waitangi Tribunal claims. An associate working in these areas expressed that “there is a perception that it isn’t quite the same (as general practice).” These perceptions are potentially engrained from university years where clerkships and graduate roles in big firms are seen as the hallmarks of success. The four women I spoke with who worked or had worked in smaller firms, however, found their work fulfilling, rewarding and highly interesting and also spoke of the ability to maintain a healthier work-life balance.

VI Diversity

Beyond gender, there is a broader lack of diversity across the legal profession. For example, just 6.3 per cent of lawyers practicing in New Zealand today are Māori.⁵² It is important to acknowledge that Māori and Pasifika women face many of the barriers that I have highlighted above in unique and compounded ways and face additional barriers too.⁵³ The legal profession has a long way to come to accommodate staff from diverse backgrounds, including those who are ethnically, gender and sexuality diverse. It is important that members of the legal profession empower and listen to those who belong to minority communities. In the words of one participant:

“if you don’t give a voice to Māori, Pasifika, immigrants [and] LGBTQI+ [individuals]... and you don’t listen to them and they’ve got no power at all... then nothing will change.”

VII Conclusion

The significant disparities in numbers between men and women in the higher ranks of the legal profession, and particularly in law firms, are a product of deeply engrained systemic

⁵² Geoff Adlam, above n 2, at 34.

⁵³ See, for example, Caren Fox, above n 48 and “Local Focus: The Pasifika face of NZ law” (24 May 2019) NZ Herald <https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12234018>.

issues. Women in the profession are held back by firms’ narrow conceptions of financial performance, minimal recognition for contributions made by women, and poor accommodation for working parents. The current partnership model perpetuates these issues. This gender imbalance is deeply concerning in a profession that is involved in the administration of justice and that purports to be deeply concerned with the ethical conduct of its members.⁵⁴ There is a need for transformative change for law firms to recognise and reward contributions that women provide in firms, and to accommodate alternative ways of working. Without such authentic change, efforts by firms to improve diversity through any ‘trickle up’ effect from junior ranks of the profession will be unsuccessful.

⁵⁴ Baron and Corbin, above n 15, at 281.

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Word count

The text of this paper (excluding table of contents, footnotes, and bibliography) comprises approximately 8,020 words.