

Changing Opportunities for Partnership for Men and Women Lawyers During the Transformation of the Modern Law Firm

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Changing Opportunities for Partnership for Men and Women Lawyers During the Transformation of the Modern Law Firm

Abstract

Considerable controversy surrounds partnership in law firms, particularly regarding the possibility of systematic gender bias and discrimination. This article contributes to the existing literature by considering explanations of women's under-representation in partnerships within the historical context of changes in the structure of law practice. Such changes include transitions in the organization and scale of contemporary law firms, the emergence of branch offices and international markets, the diversification of recruitment practices and mobility routes through modified firm hierarchies, and rising expectations of billable hours. Using a survey of over 1,000 lawyers in Ontario law firms, the authors examine opportunities for partnership in terms of individual resources, firm characteristics, economic climate, and women's representation in law practice. The findings of this study reveal a profession undergoing rapid structural transformation involving reduced partnership opportunities for women and men, with women faring worse than men in this competition. The authors assess causes of this gender disparity and suggest policy recommendations toward the achievement of gender equality in law firms.

CHANGING OPPORTUNITIES FOR PARTNERSHIP FOR MEN AND WOMEN LAWYERS DURING THE TRANSFORMATION OF THE MODERN LAW FIRM[©]

BY FIONA M. KAY AND JOHN HAGAN*

Considerable controversy surrounds partnership in law firms, particularly regarding the possibility of systematic gender bias and discrimination. This article contributes to the existing literature by considering explanations of women's under-representation in partnerships within the historical context of changes in the structure of law practice. Such changes include transitions in the organization and scale of contemporary law firms, the emergence of branch offices and international markets, the diversification of recruitment practices and mobility routes through modified firm hierarchies, and rising expectations of billable hours. Using a survey of over 1,000 lawyers in Ontario law firms, the authors examine opportunities for partnership in terms of individual resources, firm characteristics, economic climate, and women's representation in law practice. The findings of this study reveal a profession undergoing rapid structural transformation involving reduced partnership opportunities for women and men, with women faring worse than men in this competition. The authors assess causes of this gender disparity and suggest policy recommendations toward the achievement of gender equality in law firms.

Beaucoup de controverse entoure le processus par lequel on s'associe à une société d'avocats, et particulièrement les possibilités de discrimination systémique et d'opinions préconçues selon le sexe. Cet article fait partie de la doctrine actuelle en considérant les raisons pour lesquelles les femmes sont sous-représentées dans les sociétés. Parmi ces changements sont les transitions dans l'organisation et l'échelle des sociétés d'avocats contemporaines; l'apparition des succursales et des marchés internationaux; la diversification de pratiques de recrutement et de plans de mobilité; et l'exigence d'un nombre plus élevé d'heures à facturer. En se basant sur un sondage de plus de mille avocats travaillant pour des sociétés en Ontario, les auteurs examinent les opportunités liées à l'association quant aux ressources individuelles, aux caractéristiques des sociétés, au climat économique, et à la représentation des femmes dans la profession de l'avocat. Les conclusions tirées de ce sondage démontrent que la profession est en train d'être transformée structurellement de manière rapide tout en diminuant les opportunités pour les femmes et les hommes voulant devenir associés.

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I. INTRODUCTION

The demographics and types of legal practice have changed dramatically in recent years. This metamorphosis has shifted the gender composition of practice and concentrated legal capital in large law firms. In this paper we examine the development and operation of the modern law firm and the resulting implications for issues of gender equality in the legal profession. Issues of gender and law firm dynamics are closely intertwined, because the large-scale entry of women into the profession coincides with the emergence and growth of firms and an historic shift from solo and smaller firm practice to larger aggregations of lawyers in hierarchically-structured partnerships. We provide an overview of contemporary research on the transformation and structure of law firm

practice, with particular attention to the impediments to gender equality in firm settings. We then analyze gender differences in the advancement of women and men to law firm partnerships using a recent survey of the Ontario legal profession. We suggest both research strategies and policy recommendations that are relevant to the achievement of gender equality in law firm settings.

A. Structural Transformation of Law Firms

1. The great expansion in numbers

In the past twenty years law firms have undergone a set of changes aptly described as a transformation.¹ Innovations in the structure and organization of law firms have prompted a flurry of research activity.² In particular, changes in the organization and scale of

¹ M. Galanter & T.M. Palay, "Why the Big Get Bigger: The Promotion-to-Partner Tournament and the Growth of Large Law Firms" (1990) 76 Va. L. Rev. 747 at 749 [hereinafter "Promotion-to-Partner Tournament"].

² Numerous scholars have investigated the changing structure of the large law firm. Recent research includes: M. Galanter, "Mega-Law and Mega-Lawyer in the Contemporary United States" [hereinafter "Mega-Law"] in R. Dingwall & P. Lewis, eds., *The Sociology of the Professions* (London: Macmillan, 1983) at 152; A. Chayes & A.H. Chayes, "Corporate Counsel and the Elite Law Firm" (1984-85) 37 Stan. L. Rev. 277; R.A. Kagan & R.E. Rosen, "On the Social Significance of the Large Law Firm Practice" (1984-85) 37 Stan. L. Rev. 399; M.S. Larson, "On the Nostalgic View of Lawyers' Role: Comment on Kagan and Rosen's 'On the Social Significance of Large Law Firm Practice'" (1984-85) 37 Stan. L. Rev. 445; S. Macaulay, "Control, Influence, and Attitudes: A Comment on Nelson" (1984-85) 37 Stan. L. Rev. 553; R.L. Nelson, "Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm" (1984-85) 37 Stan. L. Rev. 503; W.H. Simon, "Babbitt v. Brandeis: The Decline of the Professional Ideal" (1984-85) 37 Stan. L. Rev. 565; R.J. Gilson & R.M. Mnookin, "Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits" (1984-85) 37 Stan. L. Rev. 313 [hereinafter "How Partners Split Profits"]; R.W. Gordon, "Introduction to Symposium on the Corporate Law Firm" (1984-85) 37 Stan. L. Rev. 271; J.S. Kaye, "Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality" (1988-89) 57 Fordham L. Rev. 111; S.E. Masten, "A Legal Basis for the Firm" (1988) 4 J. L., Econ. & Organization 181; R.H. Sander & E.D. Williams, "Why Are There So Many Lawyers? Perspectives on a Turbulent Market" (1989) 14 Law & Soc. Inq. 431; R.J. Gilson & R.H. Mnookin, "Coming of Age in a Corporate Law Firm: The Economics of Associate Career Patterns" (1988-89) 41 Stan. L. Rev. 567 [hereinafter "Associate Career Patterns"]; S.S. Samuelson, "The Organizational Structure of Law Firms: Lessons from Management Theory" (1990) 51 Ohio St. L.J. 645; R.J. Daniels, "The Law Firm as an Efficient Community" (1992) 37 McGill L.J. 807.

contemporary law firms³ have led some scholars to speculate that "law firms are in a state of turmoil."⁴

Law firms in western industrialized countries have undergone particularly rapid growth in the last decade. For example, none of the 50 largest firms in Canada had more than 100 lawyers in 1970, only one firm had more than 100 lawyers in 1980, while 19 firms had more than 100 lawyers by 1990.⁵ In the United States, Galanter and Palay found that an exponential function best fitted data on law firm growth,⁶ indicating that the size of large American firms grew by an annually-increasing percentage. Daniels finds that the pattern of Canadian law firm growth paralleled that of the American firms. That is, notwithstanding a few anomalous years, the data show that Canadian law firms grew by a constant or increasing rate during the period from 1960 to 1990.⁷

A hierarchical structuring of personnel within law firms is also evident: "[t]he number of associates within the profession increased fivefold between 1951 and 1980, while the number of partners increased less than threefold."⁸ The emergence of the large law firm with its own distinctive style of practice is highlighted in the phenomenon Galanter refers to as the "megafirm."⁹ Large firms employ as many as 200 or more lawyers.¹⁰

The phenomenon of the "megafirm" has been attributed to an array of factors: the enormous size of recent-entry cohorts, economies of scale, size, and internal diversity of clients, relationship between internal composition and partnership profits, and the value of name recognition (*i.e.*, the role of reputational capital).¹¹ In the United States and

³ Terms legal scholars have used recently to describe law firms and the professional attitudes include: "dramatic change" ("Associate Career Patterns," *supra* note 2 at 567); "extraordinary flux" ("How Partners Split Profits," *supra*, note 2 at 313); "anxiety and dismay" ("Promotion-to-Partner Tournament," *supra* note 1 at 749).

⁴ Samuelson, *supra* note 2.

⁵ Daniels, *supra* note 2 at 829.

⁶ "Promotion-to-Partner Tournament," *supra* note 1 at 756-65.

⁷ Daniels, *supra* note 2 at 829.

⁸ R.L. Abel, "United States: The Contradictions of Professionalism" in R.L. Abel & P.S.C. Lewis, eds., *Lawyers In Society, Vol. 1: The Common Law World* (Berkeley: University of California Press, 1988) 186 at 230.

⁹ "Mega-Law," *supra* note 2 at 153.

¹⁰ R. Collison, "The National Dream of McCarthy & McCarthy" *Report on Business Magazine* (19 April 1989) 42; H.S. Erlanger, "The Allocation of Status Within Occupations: The Case of the Legal Profession" (1980) 58:3 Soc. Forces 882 at 884.

¹¹ Abel, *supra* note 8 at 229-30.

Canada, this phenomenon also involves a higher proportion of new lawyers who are starting their careers as employees and retaining that status for longer periods.¹² Firms not only employ a higher number of recent graduates as associates, they also keep these lawyers in the status of employees for lengthy periods, sometimes indefinitely, as “permanent associates” or “salaried partners.”¹³

2. Branch offices and international markets

Accompanying the rapid growth in firm size is the steady expansion of the law firm into distant national and international markets.¹⁴ Galanter has commented on the propensity of large American corporate law firms to grow by opening branch offices in cities other than where the firm was originally established:

Twenty years ago the occasional Washington or foreign branch office seemed anomalous... . But in 1979 of the twenty largest firms, nineteen had offices in more than one city... . The mean number of city locations of the twenty largest firms was five. Of these fifteen had at least one branch overseas.¹⁵

Canadian law firms also have grown geographically, although this change is less pronounced than in the United States. Within a period of five years, from 1985 to 1990, 14 Canadian firms opened 18 foreign offices. This compares to a total of 6 openings in the twenty years prior to 1985.¹⁶

¹² R.L. Abel, “Comparative Sociology of Legal Professions” in R.L. Abel & P.S.C. Lewis, eds., *Lawyers In Society, Vol. 3: Comparative Theories* (Berkeley: University of California Press, 1989) 80 at 104.

¹³ R.L. Abel, “The Transformation of the American Legal Profession” (1986) 20 *Law & Soc’y Rev.* 7 at 14.

¹⁴ See, for example, T. Harper, “Going Global: Big Law Firms Expand Overseas” 75 *A.B.A.J.* (September 1989) at 68-72; B.B. Buchholz, “When Firms Branch Out” 77 *A.B.A.J.* (March 1991) at 49-51; and R.J. Daniels, “Growing Pains: The Why and How of Law Firm Expansion” (1993) 43 *U.T.L.J.* at 147-206.

¹⁵ “Mega-Law,” *supra* note 2 at 155 [footnotes omitted].

¹⁶ Daniels, *supra* note 14 at 157.

3. Recruitment practices and changing careers

Standard practices of hiring have also changed in recent years. Rather than rely on the traditional practice of direct recruitment from law schools and subsequent promotion through the ranks, law firms have developed a wide range of practices, including lateral recruitment ("cherry picking"), recruitment in foreign settings ("greenfielding"), affiliations, and mergers.¹⁷ In the classical large firm, almost all hiring took place at the entry level and the firm recruited partners from the ranks of associates. Starting in the 1970s, lateral movement became more common, soon developing into a systematic means of enlarging the specialties and localities a firm could service, and as a means of adding rainmakers who could attract new clientele.¹⁸

Mobility within firms is also diversified. The long-dominant "up-or-out system" by which associates were either promoted to partnership or fired is no longer as dominant, and firms are no longer so simply characterized by a two-tier structure of partners and associates. New categories of employee lawyers have emerged, including permanent associates, staff lawyers, special counsel, non-equity partners, junior partners, and senior lawyers.¹⁹

Law firms have modified the traditional partner-associate pyramid in a variety of ways. In some firms paralegals have been added to perform tasks previously undertaken by associates.²⁰ Firms also have experimented with permanent associates or hired non-tenure track, contract lawyers, who are paid lower salaries than other associates and are not eligible for partnership. Some firms have instituted two-tier partnerships that create a layer of salaried, non-equity partners below the stratum of full partners; firms have also increased the number of years required before admission to partnership, from six or seven to eight or nine years.²¹ There are also indications that the proportion of associates promoted to partner, after rising somewhat during the high growth years of the seventies and early eighties, has begun to decline.²² The upper echelons of firms are also subject to change. Firms are

¹⁷ "Mega-Law," *supra* note 2 at 162.

¹⁸ "Promotion-to-Partner Tournament," *supra* note 1 at 750.

¹⁹ "How Partners Split Profits," *supra* note 2 at 315-16; Kaye, *supra* note 2 at 114.

²⁰ M. Galanter & T.M. Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (Chicago: University of Chicago Press, 1991) at 65.

²¹ *Ibid.* at 63.

²² *Ibid.* at 63-64.

dismissing or demoting, *i.e.*, “departnerizing,” partners who do not achieve levels of performance and profitability expected by firm leaders.²³

Structural change within the law firm has consisted of a subtle transformation of traditional roles, a gradual bureaucratization,²⁴ and a growing trend toward salaried employment and larger work units.²⁵ Careers show the further impact of bureaucratization in the declining frequency of general practice and the increasing incidence of early specialization, sub-specialization, and involvement in large-scale litigation.²⁶

4. Billable hours: The accelerating pace

Firms of all types now also keep careful track of their billable hours. This is a relatively recent development that did not become common in firm practices until the mid-1960s. However, by the 1970s it was conventional for firms to set targets of over 1,500 billable hours per year for associates and partners. While the older and more traditional norms of firm practice placed an emphasis on seniority to establish remuneration, the new norms focus on productivity and competitiveness. Spangler notes that “new lawyers must not only learn to be partisan, but also to be economical. They must remember that the practice of law is ‘first and foremost’ a business.” Kaye adds that

[b]illable hours—just which lawyers are earning their keep and which are not—are assiduously recorded and instantaneously matchable; even “profitability indices”—or the ratio of profits per partner to revenues per lawyer—are published and subject to ready comparison. Increased costs require more hours, higher rates, billing premiums, scrupulous attention to weeding out poor performers.²⁷

²³ *Ibid.* at 68.

²⁴ See R.L. Nelson, *Practice and Privilege: The Social Organization of the Large Law Firm* (Ph.D. dissertation, Department of Sociology, Northwestern University, 1983) [unpublished]; R.L. Nelson, *Partners with Power: The Social Transformation of the Large Law Firm* (Berkeley: University of California Press, 1988) [hereinafter *Partners with Power*].

²⁵ M.L. Schwartz, “The Reorganization of the Legal Profession” (1979-80) 58 *Tex. L. Rev.* 1269.

²⁶ *Partners with Power*, *supra* note 24 at 128-29, 159, 171.

²⁷ Kaye, *supra* note 2 at 114 [footnotes omitted].

Perceptions of “law as a business” and concerns over the emphasis on billable hours resonated among views expressed by lawyers in our study. Two respondents spoke of their disgruntlement as follows:

The law is great; the practice of law is great; the business of practice of law is becoming a nightmare—far too much emphasis on profitability and docketing more and more hours. In Ottawa there is a finite amount of work available with too many firms moving in to chase it.

Many of my friends and colleagues state the concern that a recent emphasis on the business of the practice of law has diminished their enjoyment and commitment to practice (especially in Toronto). The ridiculous emphasis on 2,000+ billable hours a year distorts young lawyers’ training and doesn’t help their clients obtain sound, considered advice. I am strongly considering leaving law, or at least the traditional firm-based practice after only two years (plus articles) in a major Toronto firm. There is—and I insist upon—more to life than grinding out mindless documents day and night for a partnership that appears to be ungrateful for the effort and insatiable for the money. My complaint, you will note, is a lack of satisfaction from my work. I do not suggest I am poorly paid; that aspect is quite neutral. But to have so little interest in my work and minimal satisfaction from my ‘contributions’ to my clients and society generally (it sounds trite but it’s true) is no longer sufficient. And since the mega firms in Toronto are unlikely to make any significant changes in the short term, it is time for me to explore other options.

Other lawyers in our study described the crushing pressure to augment billable hours with a tone of despair:

For the amount of hours/stress demanded the pay is not great and too little private life is left. Frustrating to not be able to give the time and attention to each person and file that it should receive, we must always have our eye on the bottom line. The fun of helping people and talking to them is replaced by “got to get the billings up!” like a rat on a treadmill.

I feel strongly that the practice of law, particularly on Bay Street, is unresponsive to the needs of men and women to balance their personal and working lives. Unless that trend changes, the profession will lose many of the very talented women who are no longer willing to sacrifice their relationships with their children in order to bill 1,800 hours/year.

The rapidly rising expectations in billable hours are the new realities for associates aspiring to be partners, and for partners themselves.

5. Progress and prosperity or the decline of professionalism?

For many, the changes in firm practice we have described signal progress and prosperity. The large law firm has existed for close to a century now and, as Galanter and Palay remark,

[i]t is, in a Darwinian sense, a success story: there are more of them, they are bigger, and they command a greater share of an expanding legal market. The big law firm is also a success story in a deeper sense, as a social form for organizing the delivery of comprehensive, continuous, high-quality legal services.²⁸

And yet, increasingly, for many others the large law firm brings a loss of stability and security. As firms grow, the task of maintaining an adequate flow of business becomes more challenging; firms can split up, decline, and fail, as well as grow.²⁹ As firms have expanded they sometimes have outpaced earlier methods of coordinating and monitoring personnel, recruiting associates, and generating revenues to compensate the larger staff. To survive, firms have had to make numerous adaptations, sometimes slowing growth, often seeking new sources of income, and recently accepting decreased profit distributions.³⁰ Law firms are discovering that the structure of the traditional partnership can be both cumbersome and delicate, and often too fragile to bear the weight of rapid change.³¹ Concerns about efficiency and productivity are no longer dismissed as "boorish."³² As Galanter and Palay point out, "the growth and prosperity of big firms is accompanied by a palpable anxiety and dismay within the legal profession. It is widely feared that increased competitiveness and commercialization portend the decline of professionalism."³³

²⁸ "Promotion-to-Partner Tournament," *supra* note 1 at 748.

²⁹ *Ibid.* at 750. See also, R.L. Abel, *American Lawyers* (New York: Oxford University Press, 1989) at 186-87.

³⁰ Galanter and Palay speculate that the near future will see the development of current trends and some innovations in the forms of the "Big Eight" firm, the "interdisciplinary firm," "in-house" law departments, boutiques, "mixed" compensation firms, networks or affiliation groups, and sub-contracting. For a discussion of the future of the large law firm, its variants, companions, and rivals in the corporate hemisphere, see "Promotion-to-Partner Tournament," *supra* note 1 at 806-11.

³¹ Samuelson, *supra* note 2 at 645.

³² *Ibid.*

³³ "Promotion-to-Partner Tournament," *supra* note 1 at 749.

II. WOMEN'S ENTRY TO A CHANGING PROFESSION

For much of this century "women were excluded from the profession either by law or by cultural and social constraints."³⁴ In light of this history of exclusion, the change in women's representation in law over the last two decades is "nothing short of revolutionary."³⁵ In most, if not all, Western industrial nations, women constitute at least a third of

³⁴ See Abel, *supra* note 12 at 116. Early rationales for the exclusion of women from the profession involved the following factors: the use of the masculine pronoun in statutes; a common law disability which prevented women from voting, holding public office, owning or managing property, or entering into contracts without their husbands' consent (see L. Gibson, "What Price Discrimination For Women in the Legal Profession? A Survey of Studies: 1967-1982" in *Women and the Legal Profession* (Continuing Legal Education Toronto: The Law Society of Upper Canada, Osgoode Hall, 1986, 11-146). In the United States, Canada, and Great Britain, "the professions were deemed unsuitable for women because of their assumed biological and psychological differences from men, particularly their reproductive and nurturing capacities": see C. Menkel-Meadow, "Feminization of the Legal Profession: The Comparative Sociology of Women Lawyers" [hereinafter "Feminization of the Legal Profession"] in Abel & Lewis, eds., *supra* note 12, 196 at 201. Therefore, women were blocked from the profession because they were considered constitutionally unsuited for the roughness of the adversary system or because, if they adapted to the harsh reality of practice, they would lose the ability to be nurturing family members: see C. Menkel-Meadow, "Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change" (1989) 14 *Law & Soc. Inquiry* 289 at 299 [hereinafter "Theories of Gender"]].

Ultimately, the battle was won in the legislatures, where most provinces (and states in the United States) eventually altered the language of admission to include qualified females: see R. Chester, *Unequal Access: Women Lawyers in a Changing America* (South Hadley, Mass.: Bergin & Garvey, 1985). In the United States, no women were admitted to practice until the 1870s, and about 12 of the 45 jurisdictions continued to exclude them as late as 1900. Some professional associations barred women until 1937, and some law schools continued to bar women until 1972 (for a more detailed account of the exclusion of women from legal practice, see Abel, *supra* note 8 at 202-03).

³⁵ See Abel, *supra* note 8 at 202. Women began entering law faculties in large numbers in the late 1960s and early 1970s. Between 1967 and 1983, the enrolment of women in ABA-approved law schools increased from 4.5 per cent of the total to 37.7 per cent. In fact, after 1973, all the increase in law school enrolment was attributable to the growth in the number of women. Abel notes that, for most Western countries, "the entry of women explains virtually *all* the increase; the number of men admitted to the profession remained relatively constant or even declined": *supra* note 12 at 100 [emphasis in the original]. In Canada, "the number of male students doubled between 1962/63 and 1980/81, while the number of female students increased twenty-four times": see "Feminization of the Legal Profession," *supra* note 34 at 206. During the 1970s alone, the proportion of women tripled: see D.A.A. Stager & D.K. Foot, "Changes in Lawyers' Earnings: The Impact of Differentiation and Growth in the Canadian Legal Profession" (1988) 13 *Law & Soc. Inquiry* 71 at 76.

all law students, and in some countries they are more than half.³⁶ Yet, while the last quarter-century has witnessed a substantial change in women's access to the legal profession and its firms, it has not brought them to the positions of greatest power, prestige, nor income rewards.³⁷

Ongoing changes in the climate and structure of firm practice have prompted the concern of many legal professionals and scholars, not only about upward mobility, job longevity and security, but also about the quality of professional practice. As Kaye remarks:

I worry also about the human costs of the changed culture, and particularly on [sic] its impact on women, who are at last coming into the profession in large and growing numbers. While the bar studies whether the escalating demands of law office economics are causing us to lose sensitivity to the needs of society, I think we must also ask whether they are causing us to lose sensitivity, as individuals, to the needs of each other.³⁸

The changed professional climate is likely to impact heavily on women lawyers, presenting new barriers to their advancement. In an environment where individual value and productivity are measured largely by billable hours, new obstacles are presented to women with family responsibilities. Demands for increased billings come during the time of women's lives when family demands are also peaking.³⁹ Fox offers this insightful comment: "At a time when more than 40 [per cent] of the new graduates of law schools are women ... contemplating professional lives harmonious with personal lives, law firms are on a track of expansion, specialization, and 'the bottom line'."⁴⁰

A number of unanswered questions therefore confront the profession: as women continue to enter firms, will larger numbers of them "make partner"? Will firms that hire women and make them partners attempt to do more to assist them if they become working mothers? Will women lawyers be able to develop into successful

³⁶ While "[t]he percentage of women students in many law schools has reached 50 [per cent]" (K. Donovan, "Women Associates' Advancement to Partner Status In Private Law Firms" (1990) 4 *Geo. J. Legal Ethics* 135 at 137), women's representation in the profession "appears to be peaking at about 40 [per cent]" (Abel, *supra* note 8 at 202).

³⁷ D.L. Rhode, "Perspectives on Professional Women" (1987-88) 40 *Stan. L. Rev.* 1163 at 1178.

³⁸ Kaye adds that while her perceptions have much broader applicability, her focus is upon women, "for whom immutable biological and still decidedly dominant cultural differences engender genuinely different concerns": *supra* note 2 at 116.

³⁹ *Ibid.* at 122.

⁴⁰ E.M. Fox, "Being a Woman, Being a Lawyer and Being a Human Being—Woman and Change" (1988-89) 57 *Fordham L. Rev.* 955 at 958 [footnotes omitted].

rainmakers?⁴¹ Will women change the profession? Or, will women find themselves having to conform to prevailing and escalating expectations? Will more and more women simply leave private practice and the profession in frustration?⁴²

III. PLAYERS IN THE COMPETITION FOR PARTNERSHIP

A crucial rite of passage in the private practice of law is the ascent to partnership within a firm. Generally, a lawyer works as an associate for a law firm for four to ten years before being invited into partnership. During this prolonged apprenticeship, the associate strives to develop expertise and to build professional relationships. The work of junior lawyers is supervised and reviewed by seniors.⁴³ When seniors determine that the associate meets their expectations, that individual is invited to enter into the partnership agreement. Together with the new prestige, the new partner also usually enjoys a considerable increase in remuneration, along with broader responsibilities.⁴⁴

In a landmark study, Galanter and Palay have argued recently that contemporary law firms are characterized by a "promotion-to-partner tournament."⁴⁵ Their theory is that the modern "law firm structure[s] attorney compensation and incentives around a promotion contest [devised for] the efficient sharing of human capital."⁴⁶

Galanter and Palay explain how lawyers enter into cooperative associations, *i.e.*, firms, based on an exchange of human capital for labour. They argue that attorneys gradually combine labour with the capital they acquire over time. The lawyer's capital comes primarily from four types of human assets or sources: education, experience, reputation, and clients. Thus, all prospective lawyers begin with a pre-law-school endowment of intelligence, analytical skills, and background education. Each then invests in further legal education and acquires experience-dependent skills: a law school degree, apprenticeship, and participation in continuing legal education programmes. Significant information and skills also are acquired from more senior practitioners.

⁴¹ Kaye, *supra* note 2 at 121.

⁴² *Ibid.* at 122.

⁴³ Galanter & Palay, *supra* note 20 at 2.

⁴⁴ J.N. Scott, "A Woman's Chance for a Law Partnership" (1987) 71:2 Soc. & Soc. Res. 119.

⁴⁵ Galanter & Palay, *supra* note 20 at 88.

⁴⁶ *Ibid.* at 3.

Lawyers thereby gain experience-dependent skills that distinguish them as practising attorneys from new recruits who are fresh from law school. Perhaps most importantly, attorneys invest in their professional reputations. By reputation, an attorney “disseminates information to clients and other attorneys about her qualifications, skills, temperament, legal philosophy, honesty, and integrity.”⁴⁷

Many lawyers acquire a surplus of reputational capital in the sense that, working alone, they can no longer satisfy client demands for services. When this occurs, senior attorneys may choose to enter associations with more junior lawyers, lending their capital and increasing its productive value. The resulting law firm provides internal organization, a marketplace, in effect, for the sharing of capital. It also protects shared capital assets from opportunistic conduct through the organization of trust relations.⁴⁸ Thus, the firm operates as a monitoring device designed to protect the firm’s capital from lawyers who shirk responsibilities, grab assets, and/or leave.⁴⁹ The key incentive in this monitoring process is the prospect of partnership. Galanter and Palay suggest that a tournament ensues, “in which all the associates in a particular ‘entering class’ compete [for] the prize of partnership.”⁵⁰

IV. WOMEN AND PARTNERSHIP

Partnership is widely regarded within the legal profession as a mark of success in private practice. However, much controversy and debate surrounds partnership, particularly regarding the possibility of systematic bias and discrimination. Women have not yet succeeded at becoming partners at a rate proportionate to their male counterparts.

⁴⁷ *Ibid.* at 90.

⁴⁸ See S. Macaulay, “Non-Contractual Relations in Business: A Preliminary Study” (1963) 28 *Am. Soc. Rev.* 55.

⁴⁹ “How Partners Split Profits,” *supra* note 2 at 354.

⁵⁰ See Galanter & Palay, *supra* note 20 at 100. Occasionally an attorney is “passed over.” Though it has been the typical practice, those who are denied partnership need not be fired: the firm may tell losers that they can remain as associates and possibly be invited to join the partnership at a later date or be retained as “permanent associates,” or it may fire them and offer a consolation prize (severance pay or assistance in locating a position with another firm), or offer them nothing. Alternatively, the individual may decide to leave private practice and pursue a career with government or as corporate “in-house” counsel: see Scott, *supra* note 44 at 119; Galanter & Palay, *supra* note 20 at 100-01.

In the widely noted case of *Hishon v. King & Spalding*,⁵¹ Elizabeth Hishon filed suit against the Atlanta firm of King and Spalding, claiming a violation of Title VII of the 1969 U.S. *Civil Rights Act*⁵². The district court dismissed the claim finding that Title VII did not apply to partnership decisions. Subsequently, a divided panel of the Eleventh Circuit affirmed the dismissal. However, the United States Supreme Court ultimately reversed the decision, holding that Title VII does apply to partnership decisions in that becoming partner is a condition of employment. This decision established that denying a woman partnership based on sex is unacceptable.⁵³ The case brought widespread attention to the issue of partnership, and to the disparate treatment of male and female lawyers.

For example, a front page 1990 headline of the *Law Times* read "Study Shows Firms Lack Women Partners,"⁵⁴ and another widely-read periodical reported: "[w]alk into almost any established law firm and you will still find, as you would have found a generation ago, that the majority of partners are white males from a middle- or upper-middle-class background."⁵⁵ Although there are many anecdotes about women leaving law firms before partnership decisions are rendered because of the fear of negative outcomes, there is little systematic research to document the pervasiveness of such problems.⁵⁶

A number of descriptive accounts of women in the legal profession focus attention on the difficulties confronting women who seek to attain partnership in major law firms. These accounts consist primarily of surveys of firms asked to report the numbers of male and female associates and partners. Results are reported in a variety of summary forms that are suggestive, but that make meaningful interpretation problematic. For example, Fenning reviews three studies from Los Angeles, Maryland, and Michigan, which collectively indicate that women represent approximately 4 to 8 per cent of partners and 25

⁵¹ 467 U.S. 69 (1984).

⁵² 28 U.S.C. § 1447 (1982).

⁵³ For a discussion of the case, see Donovan, *supra* note 36 at 141-42.

⁵⁴ Referring to the Law Society of Upper Canada's 1989 report of its membership, Kulig writes: "Within the last seven years of being called to the Bar, only 5.5 per cent of female lawyers have secured a partnership, compared to 14.8 per cent of men." See P. Kulig, *Law Times* (February 19-25, 1990) 1.

⁵⁵ R.M. Spire, "Breaking Up the Old Boy Network" *Trial* (February 1990) 57.

⁵⁶ L. Liefland, "Career Patterns of Male and Female Lawyers" (1986) 35 *Buffalo L. Rev.* 601.

to 30 per cent of the associates of surveyed firms.⁵⁷ Unfortunately, the findings provide no controls for differences in experience or other relevant variables.⁵⁸ Nonetheless, it is useful to take note of the breadth and diversity of such reports.⁵⁹ Between the early 1960s and the mid-1980s, the percentage of women in the American legal profession increased from 3 to 14 per cent, but women still represented only 5 per cent of partners at the nation's 100 largest law firms, and a handful of key judicial and governmental decision makers.⁶⁰ To understand how this could happen, it is useful to note a unique study that tracked lawyers over time. This analysis of the Harvard law school class of 1974 revealed that, although women were more likely than men to begin working at large elite law firms, ten years later only 23 per cent of those women were partners, compared to 51 per cent of the men. More than a half of the 49 women who initially entered large firms had left within ten years.⁶¹ Thus, many women left the partnership ladder.

In 1980, the *National Law Journal* reported that, across the United States, women accounted for only 14 per cent of the lawyers in the 50 largest law firms. In terms of job descriptions, women accounted for 22 per cent of the associates and 2 per cent of the partners. None of these firms lacked female associates, but one-fifth had no female partners.⁶² Female attorneys in the mid-1980s were less than half as likely as their male counterparts to be partners in a firm, earned approximately 40 per cent less, and were disproportionately represented

⁵⁷ L. Hill Fenning, "Report from the Front: Progress in the Battle Against Gender Bias in the Legal Profession" (Paper presented at the conference on Women in the Legal Profession, Madison, Wisconsin, August 1987) [unpublished].

⁵⁸ J. Hagan, "Gender and the Structural Transformation of the Legal Profession in the United States and Canada" in M.T. Hallinan, D.M. Klein & J. Glass, eds., *Change in Societal Institutions* (New York: Plenum Press, 1990) at 49-70.

⁵⁹ For a review, see B.A. Curran, "American Lawyers in the 1980s: A Profession in Transition" (1986) 29:1 *Law & Soc'y Rev.* 19.

⁶⁰ Rhode, *supra* note 37 at 1178-79.

⁶¹ It is also relevant to note that women are disproportionately represented among the unemployed, those employed on a part-time basis, and the under-employed. A smaller proportion of female law graduates enter practice, and a higher proportion of those who enter leave during the first few years. Chamber's study of a single elite American law school (Harvard) finds that after five years of private practice more women than men decide to leave. Men and women explain that pressures of work and family tend to push women out of private practice in both large and small firm settings. See D.L. Chambers, "Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family" (1989) 14 *Law & Soc. Inquiry* 251.

⁶² D. Fossum, "Women in the Legal Profession: A Progress Report" (1981) 67 *A.B.A. J.* 578 at 582.

in low-prestige specialties.⁶³ Another U.S. study, the National Survey of Career Satisfaction/Dissatisfaction undertaken by the Young Lawyers Division of the American Bar Association in 1984, reported that 87 per cent of women were associates compared with only 56 per cent of men, and only 13 per cent of women were partners compared with 44 per cent of men.⁶⁴ However, like many previous studies, this research also did not control for experience or other potential differentiating factors.

Today, women represent less than 10 per cent of partners in major law firms, although this may be changing at a rate of about 1 per cent per year.⁶⁵ This figure is considerably lower than would be indicated by the entry rates of women into the profession within the last 15 years.⁶⁶ Since the early 1970s, women have comprised at least 20 per cent of graduating law students, and during the past 10 years women have been graduating at rates of more than 30 and 40 per cent in Canada and the United States. As Menkel-Meadow observes, even with time to partnership approaching 10 years in some locations, a directly proportional rate would predict a much higher rate of partnerships, especially since women are now disproportionately entering the profession as law firm associates.⁶⁷

Similarly, Abel's review of research on American lawyers finds that within private practice women are more likely than men to be either sole-practitioners or associates in large firms, and less likely to be found in small firms or to be partners. Abel's review also presents evidence that women are concentrated in specializations and positions that are less prestigious and less remunerative, that deal with personal plight, and that can be held on a part-time basis. These status differences are diminished, but not removed, by controlling for age.⁶⁸

⁶³ J. Abramson & B. Franklin, *Where They Are Now: The Story of the Women of Harvard Law 1974* (New York: Doubleday, 1986) at 201, 298-99; J. Abramson & B. Franklin, "Where They Are Now: The Story of the Women of Harvard Law, 1974" in C.W. Wolfram, ed., *Modern Legal Ethics* (St. Paul, Minn.: West, 1986) at 13.

⁶⁴ R.L. Hirsch, "Will Women Leave the Law?" *Barrister* (Spring 1989) 22 at 24.

⁶⁵ C. Fuchs Epstein, *Women in Law*, 2d ed. (Urbana, Ill.: University of Illinois Press, 1993); L. Hill Fenning, "Los Angeles Perspective on Hishon: The Slowly Eroding Partnership Barrier" in *Women in Law Firms: Planning for the Future* (Chicago: American Bar Association Press, 1984); "Feminization of the Legal Profession," *supra* note 34 at 208.

⁶⁶ See B. Curran *et al.*, *The Lawyer Statistical Report: A Statistical Profile of the U.S. Legal Profession in the 1980s* (Chicago: American Bar Foundation, 1985).

⁶⁷ "Theories of Gender," *supra* note 34 at 307.

⁶⁸ Abel, *supra* note 8 at 203.

In a study of Toronto lawyers, Hagan found that even for those women who reach higher levels of the profession, "women do not benefit as much in their earnings as do men when they practice in traditionally male areas, when they gain experience, or when they become partners in firms."⁶⁹ Men and women also experience mobility through the large firm differently. For example, Hagan and Zatz report that men are more likely to rise both within large law firms and by moving laterally to large law firm partnerships.⁷⁰ There is also evidence to suggest that women are disproportionately represented in the new class of legal professionals—"contract associates."⁷¹

These empirical findings extend previous studies' anecdotal evidence that women are relegated to certain types of work (routine and desk-bound tasks), are less successful when considered for partnership, and find it difficult to acquire mentors.⁷² Women's exclusion from partnership, particularly within the large firms, has important implications. The most powerful positions in legal practice are in the largest firms. These firms interconnect with "the boards of directors of dominant corporations, offer their members the highest incomes, and direct the ruling bodies of the legal profession itself."⁷³ As a consequence, women are not in as powerful positions as men to influence structural change at the higher levels of the profession.⁷⁴

Some researchers and lawyers alike have argued that, given career trajectories that require up to ten years before partnership, it is "too early to expect high rates of participation at the top levels of the

⁶⁹ J. Hagan, "Highlights from a Study of Toronto Lawyers" (CBAO Annual Institute, Program on Women in the Legal Profession: February 1988) at 2; cf. M.J. Mossman, " 'Invisible' Constraints on Lawyering and Leadership: *The Case of Women Lawyers*" (1988) 20 *Ottawa L. Rev.* 567 at 586.

⁷⁰ J. Hagan & M. Zatz, "Paths to Power: The Large Law Firm Mobility Route and the Gender Stratification of Lawyers" (University of Toronto, 1989) [unpublished].

⁷¹ J.A. Kingson, "Women in the Law Say Path Is Limited By 'Mommy Track' " *New York Times* (8 August 1988) A1.

⁷² D. Podmore & A. Spencer, "Women Lawyers in England: The Experience of Inequality" (1982) 9 *Work & Occupations* 337; B.D. Adam & D.E. Baer, "The social mobility of women and men in the Ontario legal profession" (1984) 21:1 *Can. Rev. Soc. & Anthropology* 21; R. Moss Kanter, "Reflections on Women in the Legal Profession: A Sociological Perspective" in *Women and the Legal Profession* (Toronto: Law Society of Upper Canada, 1986) at 9; Liefland, *supra* note 56 at 609.

⁷³ Adam & Baer, *ibid.* at 41.

⁷⁴ T.C. Halliday, "Six Score Years and Ten: Demographic Transitions in the American Legal Profession, 1850-1980" (1986) 20 *Law & Soc'y Rev.* 53; "Feminization of the Legal Profession," *supra* note 34 at 221.

profession."⁷⁵ As well, Chambers' study of graduates of the University of Michigan Law School from the late 1970s suggests that the gap may be narrowing between some women and men in private practice. Chambers notes the changing settings in which women are choosing to work. Since 1979, there has been a steady increase in the proportion of both women and men entering large firms.⁷⁶ However, there is also reason to temper a sense of optimism about this. Studies of women in large firms⁷⁷ and in management⁷⁸ suggest that, although women increasingly occupy entry-level positions, they are not making as significant progress vertically, even when controlling for work experience.

Moreover, relatively few women partners in large firms rise to leadership levels in their firms: "[e]ven as partners, women report that they hit the 'glass ceiling'."⁷⁹ The metaphor of the "glass ceiling" reflects the daunting fact that women do not seem to be rising to the highest levels of the legal profession—"they can see but not reach the top."⁸⁰

A. *Explaining the Underrepresentation of Women Partners*

Numerous factors may account for the lower representation of women in partnership.⁸¹ One obvious explanation is that of exclusion, or

⁷⁵ See Abel, *supra* note 12. These inequalities have typically been dismissed as artifacts of cultural lag or employee choice. Under either rationale, the absence of women in upper-level positions is said to be a transitory phenomenon, the result of outdated female preferences of applicants constrained by practices no longer legal. Given available remedies for discriminatory treatment, residual disparity in employment status has been viewed as a product of individual choice, capabilities, and commitment. See, for example, Newman, "Time Will End Shortage of Women Law Partners" *L.A. Times* (27 November 1983) 3 (letters to the editor); see also F. Lane, "Women in the Law No Longer a Novelty" (1985-86) 74 *Ill. B.J.* 420.

⁷⁶ Chambers, *supra* note 61 at 285.

⁷⁷ Hill Fenning, *supra* note 65.

⁷⁸ E.R. Auster & R. Drazin, "Sex Inequality at Higher Levels in the Hierarchy: An Intraorganizational Perspective" (1988) 58 *Soc. Inquiry* 216; N.J. Sokoloff, "Theories of Women's Labor Force Status: A Review and Critique" (1981) 2 *Current Persp. Soc. Theory* 153; G. Stamp, "Some Observations on the Career Paths of Women" (1986) 22 *J. Applied Behav. Sci.* 385.

⁷⁹ See Fox, *supra* note 40 at 958; "A.B.A. Report: Women in Law Face Overt, Subtle Barriers" *New York Law Journal* (19 August 1988) 2; Kaye, *supra* note 2 at 119-20.

⁸⁰ Kaye, *ibid.* at 120.

⁸¹ Ability is not one of them: women perform as well as men, and often better, in university, law school, and the bar examination. Abel argues that once women "leave the meritocratic arena of formal education and examinations, they again encounter prejudice and role conflict. As a result, qualified women lawyers fail to enter practice, leave early, or accept less attractive positions. These

discriminatory treatment, by colleagues and supervisors. Early studies revealed that women were denied clients and excluded from the all-important informal “old boys” network.⁸² Podmore and Spencer documented these experiences through interviews with 28 barristers and 48 solicitors in England:

Our interviews suggest that the promotion ladder may not be anything like as accessible to women solicitors as to their male counterparts. A repeated theme was that employers were inclined to exploit women assistant solicitors (i.e., salaried non partners) as a source of cheap labor. These women felt that their employers expected that they would work for a few years only before leaving to marry and have children, and that they would not be interested in promotion.⁸³

Many of the women interviewed in Podmore and Spencer’s study had encountered difficulties—“problems of getting an apprenticeship, of finding that they were paid less than men of similar seniority, of experiencing difficulty in advancing to a full partnership if they were solicitors, of finding themselves ‘channelled’ into particular types of work considered to be suited to their sex.”⁸⁴ Other research indicates that various forms of discrimination persist. Female lawyers report that they are relegated to certain types of work, not considered for partnership, and find it difficult to acquire mentors.⁸⁵ More recently, researchers have suggested that “some women lawyers are assigned less desirable and less lucrative clients because firms assume that they will not be available over the long term; for similar reasons [women] may be retained as ‘permanent associates’ rather than be promoted to partnership.”⁸⁶

A second explanation involves more systemic or “structural” barriers to women’s advancement in the profession.⁸⁷ Journalistic accounts of women with children in large law firms depict the challenges of working full-time and struggling simultaneously to raise children and

forms of inequality will not be overcome until there is a transformation of the sexual division of labor”: *supra* note 12 at 119.

⁸² C. Fuchs Epstein, “Women and Professional Careers: The Case of the Woman Lawyer” (Ph.D. dissertation, Department of Sociology, Columbia University, 1968) [unpublished].

⁸³ Podmore & Spencer, *supra* note 72 at 352-53.

⁸⁴ *Ibid.* at 357.

⁸⁵ Fuchs Epstein, *supra* note 65 at 198-99, 215, and 288; Liefland, *supra* note 56 at 609.

⁸⁶ L.A. LaMothe, “For Women Lawyers It’s Still an Uphill Climb” *California Lawyer* (September 1987) 8; “Feminization of the Legal Profession,” *supra* note 34 at 221.

⁸⁷ Mossman, *supra* note 69 at 567-600.

compete for partnership.⁸⁸ Pregnancy and parenting are likely to interfere with female partnership. It is common for firms to require 1,500 or more billable hours per year from their partners and associates, leaving little time for pregnancy and parenting.⁸⁹ Kaye also suggests that

with delayed marriage and childbearing, and with the computer's unquenchable thirst for partner revenues and billable hours, even women who have secured the brass ring of partnership may find themselves there—admitted, yet not truly *admitted*, to the partnership ... women generally seem to be delaying or foregoing—voluntarily or involuntarily—the ascent to the pinnacle.⁹⁰

If women graduate from law school at about 24 years of age and take six to ten years to “make partner,” they must commit the most hours to work and career during the optimal years for bearing children. Research emphasizes the cross-pressures faced by married women trying to fulfil both familial and professional roles.⁹¹ “Should female lawyers wish to have children, these women may have to bear a heavier ‘cost’ than would male counterparts wishing to raise a family.”⁹² As Donovan reports, partner status is “simply eluding many women lawyers,”⁹³ despite their entering the private sector in greater numbers.⁹⁴

⁸⁸ See, for example, J. Abramson, “For Women Lawyers, an Uphill Struggle” *New York Times Magazine* (6 March 1988) 36; R. Yates & S.B. Goldberg, “Superwoman is Alive and Well” *A.B.A.J.* (15 May 1987) 18 at 20; N. Blodgett, “Whatever Happened to the Class of 1981” *A.B.A.J.* (1 June, 1988) 56.

⁸⁹ See Scott, *supra* note 44. The American national survey of associates reported in 1990 that “[t]he average target for billing is 1,600 hours a year, up from 1,500 last year. The increase appears to reflect the trend in many firms to push for more billable hours”: K. Monteith, “1989 National Associate Survey” *Canadian Lawyer* (December 1989/January 1990) 22; Menkel-Meadow argues that these increases in billable hours operate to the disadvantage of women: “In a legal culture where billable hours increase almost 100 a year (the ‘average’ at a major Los Angeles law firm is said to be 2,300 hours per year) and competition intensifies for good lawyers and good clients, the demands of work increase sex segregation” (“Feminization of the Legal Profession,” *supra* note 34 at 221).

⁹⁰ Kaye, *supra* note 2 at 120 [emphasis in the original].

⁹¹ “About 42 [per cent] of respondents feel there is some level of discrimination in their firm when it comes to women and visible minorities making partner. In some ways, it’s rooted in the very nature of practice life. A woman lawyer at McCarthy & McCarthy in Toronto says the demand to work long hours ‘makes family responsibility very onerous on women and they may “choose” to opt out of the profession’”: Monteith, *supra* note 89 at 27.

⁹² Adam & Baer, *supra* note 72 at 24 [footnotes omitted].

⁹³ Donovan, *supra* note 36 at 136.

⁹⁴ *Ibid.*

Perhaps the single most striking aspect of women's inability to become partners is the high attrition rate from private practice.⁹⁵ This is illustrated in the above-noted study of Harvard Law graduates of 1974. The most startling feature of this study was an attrition rate of 40 per cent for women. Women enter firms in large numbers,⁹⁶ but they often experience these firms in a revolving-door fashion.

V. ANALYSES OF PARTNERSHIP ATTAINMENT

A. *Data and Methods*

Scholars have suggested that once participation in the profession exceeds token levels new questions emerge. What success can Canadian women expect in this profession traditionally dominated by men? What individual characteristics, in terms of professional capital, are most influential in attaining partnership? Does the gender disparity in partnership narrow with greater representation of women in private practice? Women's representation in private practice has by now far exceeded the level of "tokens" and, therefore, these questions can at last be addressed.

Research reported in the following pages attempts to answer such questions using a 1990 mailed survey of lawyers in Ontario. A disproportionately-stratified random sample of Ontario lawyers was selected from the membership lists of the Law Society of Upper Canada. The sample was stratified by gender to include approximately equal numbers of men and women called to the Ontario Bar in the years 1975 through 1990. This time span was selected because it is only in the past fifteen years that women have entered the profession in substantial numbers. The sample was also stratified to include members who had experienced temporary absences from the practice of law, and members who had since left the practice of law. With one follow-up reminder, 1,597 survey instruments (67.73 per cent) were returned.

⁹⁵ Abramson & Franklin, *supra* note 63.

⁹⁶ Fuchs Epstein, *supra* note 65.

Two analyses of partnership attainment are presented. The first provides a descriptive picture of partners and associates in firm practice, while the second provides a multivariate consideration of factors that influence partnership outcomes.

B. *Modelling the Partnership Process*

Our approach to the selection and measurement of variables that may determine partnership is twofold. First, we include those measures in addition to gender that prior research suggests are relevant to the partnership decision. These include such promotion-relevant variables as work experience and legal education, weeks worked per year and hours docketed per week, and specialization status.⁹⁷ Also mentioned in research is the relevance of ethno-religious background, marital status, and the presence of children in the home.⁹⁸ Research into women's careers further suggests the importance of intermittent work histories and childcare responsibilities in hindering promotion opportunities.⁹⁹ Therefore, we include measures of parental leave, other leaves (sabbatical, sick leave, disability leave), and hours per week invested in childcare responsibilities.

⁹⁷ M. Blaug, "The Empirical Status of Human Capital Theory: A Slightly Jaundiced Survey" (1976) 14 J. Econ. Literature 827; J. Mincer, "The Distribution of Labor Incomes: A Survey With Special Reference to the Human Capital Approach" (1970) 8 J. Econ. Literature 1; J. Mincer & S. Polachek, "Family Investments in Human Capital: Earnings of Women" (1974) 82 J. Pol. Econ. S76.

⁹⁸ J.S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976); J.P. Heinz & E.O. Laumann, *Chicago Lawyers: the Social Structure of the Bar* (New York: Russell Sage Foundation and American Bar Foundation, 1982).

⁹⁹ C. Jones, L. Marsden & L. Tepperman, *Lives of Their Own: The Individualization of Women's Lives* (Toronto: Oxford University Press, 1990); C. Le Bourdais et H. Desrosiers, *Trajectoires Démographiques et Professionnelles: Une Analyse Longitudinales des Processus et des Déterminants* (Québec: Rapport soumis au Ministère de la Santé et du Bien-être social, 1988).

Table I
Description of Variables

Variables	Measurement
<i>I Dependent Variable</i>	
1) Partnership	Binary, partner vs. other
<i>II Human Capital Variables</i>	
2) Experience	Years Since Call to the Ontario Bar
3) Elite Education	Binary, U. of T. and Osgoode Hall vs. other
<i>III Ethnoreligious Background</i>	
4) Jewish	Binary, Jewish vs. other
5) WASP	Binary, WASP vs. other
<i>IV Family/Household Characteristics</i>	
6) Marital Status	Binary, married vs. single
7) Presence of Children	Binary, 1 or more children vs. no children
<i>V Workload</i>	
8) Weeks Worked Per Year	Interval, range = 1 - 52
9) Hours Docketed Per Week	Interval, hrs. docketed per week on average
10) Hours Per Week Childcare	Interval, hrs. per week devoted to childcare responsibilities on average
<i>VI Work Interruptions</i>	
11) Parental Leave	Binary, 1 or more parental leaves vs. none
12) Other Leave	Binary, 1 or more leaves from the practice of law (other than for parental leave) vs. none
<i>VII Specialization Status</i>	
13) Specialization Status	Interval
<i>VIII Employer Characteristics</i>	
14) Size of Firm	4 category ordinal scale: < 10 lawyers, 10-19, 20-49, 50+ lawyers
<i>IX Geographic Location</i>	
15) Practice District	Binary, Toronto vs. other districts
<i>X Macro Indicators</i>	
16) # Bar Ads. @ Call to Bar	Interval, range = 839 - 1222
17) # Bar Ads. @ 5 Years	Interval, range = 1077 - 1222
<i>XI Other variables</i>	
18) Gender	Binary, men vs. women

We also consider structural factors that could influence mobility in the profession. The organizational structures in which individuals work and related opportunities for mobility have been explored in recent social stratification research. For example, Skvoretz hypothesizes that the careers of members of disadvantaged groups, *e.g.*, women, are influenced more by structural factors than are the careers of members of advantaged groups, *e.g.*, men.¹⁰⁰ That is, factors relating to structural location have a greater impact on the careers of the former, while personal 'resource' variables have a greater impact on the careers of the latter.¹⁰¹ We include size of firm as a measure of the organizational context in which lawyers' opportunities for advancement are shaped. The size of the firm is measured on a four-category scale of firms: less than 10, 10-19, 20-49, and 50 or more lawyers.

We are also interested in practice location as a source of variation in partnership outcomes. Toronto's large firms are perhaps the most distinct practice setting in Ontario, and so a variable in our analysis singles out this practice location for separate consideration. To this set of factors we added a variable intended to reflect the enormous growth in the profession, particularly among the ranks of associate lawyers. This variable measures the number of Bar admissions in a given year.

The outcome variable, partnership, is binary, with partner coded "one" and all other outcomes coded "zero." Only lawyers who started their legal careers in firm settings are included in the analysis.¹⁰² Prior studies of partnership have included both firm lawyers and sole practitioners as partners. For example, Scott's study of partnership counts firm partners and lawyers practising as sole practitioners as partners.¹⁰³ There are some similarities: both sole practitioners and partners of law firms are employers, and both exercise, in their day-to-day work, considerable autonomy, authority, and decision-making power. However, we argue that it is necessary to separate these two

¹⁰⁰ J. Skvoretz, "Career Mobility as a Poison Process: An Application to the Career Dynamics of Men and Women in the U.S. Office of the Comptroller of the Currency from the Civil War to World War II" (1984) 13 Soc. Sci. Res. 198.

¹⁰¹ Hachen finds support for this hypothesis, observing that women are less likely than men to enter "male" occupations and, within these occupations, women are also less likely to move into positions of authority: see D.S. Hachen, Jr., "Gender Differences in Job Mobility Rates in the United States" (1988) 17 Soc. Sci. Res. 93 at 114.

¹⁰² Therefore, excluded from this analysis are lawyers who began their careers outside private practice or as sole practitioners and then moved laterally to firm settings before attaining partnership. The analysis which follows tracks a more conventional career path from associate level firm lawyer to the status of partnership.

¹⁰³ Scott, *supra* note 44 at 119.

professional positions on conceptual grounds. The work environment and nature of legal practice vary considerably between firm lawyers and sole practitioners. Major corporations and wealthy clients generally seek the legal advice of large firms, whereas small businesses or individuals of low or moderate income are generally represented by small firms or sole practitioners.¹⁰⁴ Sole practitioners are also more involved in general practice and, in particular, they take on a disproportionate share of criminal and family law cases.¹⁰⁵ The full listing of variables is presented in Table I.

VI. FINDINGS

A. *Descriptive Analysis of Partnership*

A total of 1,085 cases are included in the analysis that follows. Seventy-two per cent of the men (768) and 61 per cent of the women (288) in the original sample reported themselves to be engaged in the private practice of law. Within private practice, 60 per cent of men compared with 82 per cent of women are associates or employees of law firms, whereas 40 per cent of men compared with 18 per cent of women are partners in law firms.

The analysis first considers differences between men and women across the independent variables (Table II). To begin with, men reported on average eight years experience in the practice of law, compared with an average of five years reported by women. Men are slightly more often Jewish, while women are slightly more often white Anglo-Saxon Protestant.

We consider three measures of workload: weeks worked per year, hours docketed per week, and hours invested per week in childcare responsibilities. Male and female lawyers reported nearly equal numbers of weeks worked per year: 48.15 weeks for men and 48.11 weeks for women. Similarly, men and women reported nearly equal

¹⁰⁴ J. Hagan, "The New Legal Scholarships: Problems and Prospects" (1986) 1 *Can. J. Law & Soc'y* 35; H.W. Arthurs, R. Weisman & F.H. Zemans, "The Canadian Legal Profession" (1986) *Am. B. Found. Res. J.* 447.

¹⁰⁵ H.W. Arthurs, J. Willms & L. Taman, "The Toronto Legal Profession: An Exploratory Survey" (1971) 21 *U.T.L.J.* 498.

numbers of hours docketed per week: men docketed on average 35.95 hours/week and women 35.35 hours/week.¹⁰⁶

Overall, women reported a greater amount of time devoted to childcare (16.06 hours per week) compared with their male counterparts (12.13 hours per week). However, this difference is considerably greater when we consider that women were significantly less likely to have children (due in part to their relative youth). Men were also more likely than women in the sample to be married, and more likely to have one or more children. Women, however, were more likely to have taken a parental leave.

On average, men and women rank about equal on the measure of specialization status (6.00 and 6.05, respectively). Compared with women, men are more likely to work in small firms (less than ten lawyers).¹⁰⁷ In contrast, women appear slightly more likely than their male counterparts to work in large firms (50+ lawyers).

Next, we report the percentage of lawyers in private practice who have attained partnership by categories of independent variables. The data reported in Table III are generally consistent with expectations. For example, men are more likely than women to be partners, and experience is also strongly correlated with promotion to partnership. Forty per cent of the men are partners, compared to just over 18 per cent of the women. Meanwhile, only 8 per cent of those lawyers with five years or less experience are partners, while 50 per cent of those with 6-8 years experience are partners.

The number of hours docketed per week is also related to partnership, with those docketing less than 37 hours a week least likely to be partners (31 per cent). Generally, higher status specializations, such as taxation, civil litigation, and patents and intellectual property, are strongly associated with partnership. One exception to this pattern is real estate law which is strongly associated with partnership. A smaller proportion of respondents from mid-size firms (10-19 lawyers), compared with smaller and larger, firms reported they were partners. The data also reveal equal proportions of partnership within the Toronto area and the province of Ontario.

¹⁰⁶ These figures record only the number of hours per week docketed and do not include the total number of hours worked per week. It is likely that this figure exceeds considerably the number of hours docketed. Mean estimates were generated for men and women separately and substituted for those respondents who failed to report the number of hours they docket per week on average.

¹⁰⁷ This figure includes firms of 2-9 lawyers.

Table II
Means and Standard Deviations of Variables Used in
Logistic Regression Analysis

Concepts And Variables	Men (N=798)		Women (N=288)	
	Mean	SD	Mean	SD
<i>Dependent Variable:</i>				
Partnership	.40	.49	.18	.38
<i>Independent Variables:</i>				
Human Capital				
Experience	7.87	4.36	5.43	3.82
Elite Education	.38	.49	.35	.48
Ethnoreligious Background				
Jewish	.17	.37	.14	.35
WASP	.34	.48	.39	.49
Family/Household Characteristics				
Marital Status	.81	.39	.70	.46
Children	.62	.49	.43	.50
Participation Variables				
Weeks Worked/Year	48.15	4.18	48.11	3.07
Hours Docketed/Week	35.95	7.21	35.35	7.97
Hours/Week Childcare	12.13	14.65	16.06	25.97
Work Interruptions				
Parental Leave	.01	.11	.21	.41
Other Leave	.07	.26	.12	.32
Specialization Status				
Status	6.00	.85	6.05	.77
Employer Characteristics				
Size of Firm ^a				
<10 lawyers	.51	.50	.43	.50
10-49 lawyers	.11	.31	.09	.28
50+ lawyers	.22	.42	.26	.44
Geographic Location				
Toronto	.53	.50	.56	.50
Macro Indicators				
Bar Ads. @ Call	1040.29	100.81	1090.20	84.29
Bar Ads. @ 5 Years	1135.78	79.04	1174.83	66.87

^a The reference category is firms of 10 - 19 lawyers.

Table III - Partnership by Selected Characteristics

Variable	N	% Partners	Significance Level
All Cases	1086	34	N/A
Gender			p<.001
Women	288	18	
Men	798	40	
Experience			p<.001
0-5 years	443	8	
6-8 years	227	50	
9+ years	416	53	
Elite Education			
Other law schools	680	33	NS
U. of T./Osgoode Hall law school	406	35	NS
Ethnoreligious Background			
Other	528	31	NS
Jewish	173	34	NS
WASP	384	37	NS
Family/Household Background			
Marital Status			p<.001
Single	238	17	
Married	848	39	
Presence of Children			p<.001
No children	469	19	
1 or more children	616	45	
Participation Variables			
Weeks Worked Per Year			p<.001
≤47	155	51	
48	481	29	
49	187	32	
50+	263	33	
Hours Docketed per Week			p<.05
≤ 30	177	32	
31-36	644	31	
37-40	132	41	
>40	131	42	

continued ...

Table III - Partnership by Selected Characteristics (continued)

Variable	N	% Partners	Significance Level
Hours Per Week Invested In Childcare			p<.001
0	477	18	
1-10	131	57	
11-20	247	47	
21+	230	39	
Work Interruptions Parental Leave			NS
No	1015	34	
Yes	70	39	
Other Leave			p<.01
No	993	35	
Yes	92	22	
Specialization Status			p<.001
Real Estate	230	49	
Criminal	67	34	
Family	97	18	
Wills and Estates	13	28	
Patents/Industrial/Intellectual Property	21	37	
Labour	29	31	
Administrative	24	27	
Civil	241	39	
Corporate/Commercial	170	34	
Taxation	25	52	
Employer Characteristics			
Size of Firm			
2-9 lawyers	530	35	NS
10-19 lawyers	191	18	p<.001
20-49 lawyers	111	35	NS
50+ lawyers	253	43	p<.001
Regional Location			NS
Other	498	34	
Toronto	588	34	

B. *Multivariate Logistic Regression*

The primary contribution of the following analysis involves assessing the relative contribution of variables, including gender, to invitation to partnership. A multivariate method is necessary to determine which factors, *e.g.*, gender, influence the probability of partnership attainment independently of other variables, *e.g.*, experience, in the model. We employ a logistic regression analysis for this purpose.

Logistic regression coefficients are analogous in some ways to percentage difference measures or ordinary least squares regression coefficients, but they are more cumbersome to interpret. Specifically, logit coefficients represent the change in the log of the odds of an outcome variable associated with a unit change in an independent variable.¹⁰⁸ In the following analysis we employ a basic exponentiating function to facilitate the initial interpretation of these coefficients. However, for the final model we analyze changes in the probabilities associated with levels of variables, when all of the other variables in the model are held at their means (see Table V).

The primary results of the analysis are reported in five equations presented in Table IV. The first equation includes gender, experience, elite education, ethno-religious background, and household characteristics. The second equation reports results from a model in which the effects of these variables are allowed to affect partnership net

¹⁰⁸ Numerous techniques have been used to interpret logit coefficients. Alba recommends that interpretation be assisted by calculating antilogarithms to estimate percentage comparisons between exogenous variables. The strategy of exponentiating logit coefficients, however, does not permit one to relate logit coefficients directly to probabilities and can be somewhat misleading: see R.D. Alba, "Interpreting the Parameters of Log-Linear Models" (1987) 16:1 Soc. Methods & Res. 45 at 55-56.

For discussions of exponentiating coefficients and techniques of interpretation, see S. Wheeler, D. Weisburd & N. Bode, "Sentencing the White-Collar Offender: Rhetoric and Reality" (1982) 47 Am. Soc. Rev. 641; D.A. Smith & C.D. Uchida, "The Social Organization of Self-Help: A Study of Defensive Weapon Ownership" (1988) 53 Am. Soc. Rev. 94; and D.W. Roncek, "Using Logit Coefficients to Obtain the Effects of Independent Variables on Changes in Probabilities" (1991) 70 Soc. Forces 509.

An alternative strategy is to estimate probabilities of partnership associated with levels of significant variables, when all of the other variables in the model are held at their mean. An ordinary least squares approximation is statistically inappropriate in cases where the dependent variable is binary. It has been shown to result in biased estimates of the true marginal probabilities associated with change in the independent variables; see E.A. Hanushek & J.E. Jackson, *Statistical Methods for Social Scientists* (New York: Academic Press, 1977). The logit model is preferred over the linear model because it constrains estimated probabilities to a range between 0 and 1. In addition, the logit model's estimate of the effect of an independent variable is dependent upon how close to the minimum or maximum value of the dependent variable the probability already is.

of several workload and career interruption variables, namely weeks worked per year, hours docketed per week, hours per week invested in childcare, and whether the respondent had taken a parental or other form of leave. The third equation reported in Table IV presents the results from a model that introduces specialization status and organizational characteristics, specifically the size of the firm.

The fourth equation includes the effect of practice location, within Metropolitan Toronto versus regions outside Toronto. In the fifth equation we introduce a macro-level variable measuring growth in the profession. This interval-level variable indicates the number of Bar admissions five years after time of call to the Ontario Bar.

We also estimated several reduced-form equations to discern the effect of individually introducing a third and fourth variable into a bivariate relationship. For example, we estimated several reduced-form equations with experience, partnership, and a number of contextual variables, in an attempt to understand better the reasons for the change in the association between experience and partnership.

Results from Equation 1, reported in Table IV, are generally consistent with the associations noted above. For example, gender is significantly and positively associated with invitation to partnership ($B=.650$, $p<.001$). This suggests that men are about 92 per cent more likely than women to be invited to partnership ($e=1.915$). Indeed, the effect of gender remains sizeable and significant across all equations. *This finding supports more anecdotal studies and suggests that, regardless of experience and other background characteristics, men have consistently better prospects for partnership than women.* Experience is also positively and significantly associated with invitation to partnership, but it does not eliminate the effect of gender on partnership outcomes.

Neither ethno-religious background nor marital status have a significant effect upon partnership attainment. However, the presence of children is positively and significantly associated with the probability of partnership ($B=.459$, $p<.01$, $e=1.582$). Lawyers with children are 58 per cent more likely than their childless counterparts to be partners. Prior work suggests this effect is unique to men; that is, the presence of children in the home works to the advantage of men, but not women.¹⁰⁹

Hours docketed per week are positively and significantly related to partnership in Equation 2 ($B=.051$, $p<.001$, $e=1.052$). This suggests that the probability of partnership rises by about 5 per cent with each unit increase in the number of hours docketed per week.

¹⁰⁹ J. Hagan *et al.*, "Cultural Capital, Gender, and the Structural Transformation of Legal Practice" (1991) 25 *Law & Soc'y Rev.* 239 at 257.

Table IV - Logistic Regression Models of Partnership Attainment (N=995)

dependent variables	Equation 1		Equation 2		Equation 3		Equation 4		Equation 5	
	B ^a	S.E.	B	S.E.	B	S.E.	B	S.E.	B	S.E.
gender	.650***	.184	.764***	.224	.680**	.230	.679**	.230	.673**	.231
experience	.181***	.019	.195***	.020	.232***	.022	.233***	.022	.149***	.040
female Educ.	.075	.149	.044	.153	-.062	.162	-.105	.167	-.094	.168
ethnicity	-.065	.208	-.120	.214	-.102	.222	-.164	.231	-.143	.232
SP	-.002	.160	-.076	.165	-.011	.170	.004	.170	-.016	.171
married	.424+	.228	.366	.234	.235	.239	.242	.238	.252	.239
children	.459**	.182	.555**	.228	.549*	.237	.565**	.238	.603**	.240
years worked/yr.			-.008	.018	-.013	.018	-.013	.018	-.010	.018
Docket/wk.			.051***	.011	.039***	.011	.040***	.011	.039***	.011
/wk. Childcare			-.004	.005	-.000	.006	-.000	.006	-.001	.006
parental leave			.789*	.339	.472	.351	.466	.252	.481	.255
vacation leave			-.702**	.290	-.882**	.306	-.883**	.305	-.871**	.303
professionalization Status					.009	.097	-.004	.098	-.009	.099
n <10 lawyers					1.051***	.245	1.088***	.248	1.089***	.249
0-49 lawyers					1.305***	.328	1.332***	.329	1.418***	.332
0+ lawyers					1.983***	.281	1.940***	.285	1.994***	.287
location: Toronto							.193	.193	.168	.194
with at 5 years									-.005**	.002
constant	-3.248***	.266	-4.816***	1.040	-5.485***	1.194	-5.560***	1.193	.824	2.819
log-likelihood		1162.49*		1125.01		1066.79		1065.793		1059.53
total χ^2		226.05***		263.54***		321.75***		322.751***		329.01***

Maximum Likelihood Logit Coefficient
 * p < .05 *** p < .001
 ** p < .01 + p = .06

Although there is a positive relationship between partnership and parental leave, it is noteworthy that no men in the sample had taken parental leave, and the majority of women who had taken parental leave were more senior lawyers (with more than 5 years experience in practice). It is likely that older, more experienced lawyers are more likely to be parents and have attained partnership status. The actual benefit of taking a parental leave is only .05%. In contrast, other forms of leave have a damaging effect on partnership prospects ($B = -.702$, $p < .001$, $e = .496$). Taking a leave from practice results in a 49 per cent reduction in the probability of partnership.

Recall that in the descriptive analysis we saw that, with the exception of real estate law, higher status areas of specialization had higher levels of partnership. When other factors are held constant, the effect of specialization status becomes insignificant (See Table IV, equation 3). It is likely that the size of firm accounts for much of this reduction. Lawyers employed in larger firms are more likely to practice higher status specializations and to work for more elite clients.¹¹⁰ The likelihood of promotion to partnership is greatest in large-firm settings of fifty or more lawyers ($B = 1.983$, $p < .001$). The odds of partnership in these firms increase by well over seven times the probability of partnership in a mid-size firm of 10-19 lawyers ($e = 7.264$). And equation 3 (Table IV) demonstrates that partnership chances are also better in medium-large firms of 20-49 lawyers ($B = 1.305$, $p < .001$, $e = 3.688$) and small firms of less than 10 lawyers ($B = 1.051$, $p < .001$, $e = 2.861$). Lawyers in small firms are more than two times more likely to "make partner" than their counterparts in mid-size firms (10-19 lawyers), while lawyers in larger firms (20-49 lawyers) are more than three times more likely to do so. Prior research suggests that women face their worst prospects for partnership in smaller firms (less than 20 lawyers), an indication that small firms may be especially resistant to modifying work roles assumed by women and men in the profession.¹¹¹ We find this to be the case in firms of 10-19 lawyers, rather than in the very small firms of less than ten lawyers.

The final two models introduce effects of geographic variation, *i.e.*, practice location, and changing demographics of law practice, *i.e.*, expanding size of bar admission cohorts. Whether one practices law in the city of Toronto, together with a quarter of the nation's legal

¹¹⁰ H.S. Erlanger, "The Allocation of Status Within Occupations: The Case of the Legal Profession" (1980) 58 Soc. Forces 882; Heinz & Laumann, *supra* note 98; Arthurs, Weisman & Zemans, *supra* note 104.

¹¹¹ Hagan *et al.*, *supra* note 109 at 239, and 260.

profession, or in other Ontario cities and towns, has little consequence for one's partnership opportunities. In contrast, measures of growth in the legal profession, and the consequent restructuring of legal practice, have significant effects on the probability of partnership.

As a contextual effect, the number of entrants to law at a particular year of call may reflect more than expansion of the profession. This variable may reflect both the influx of women to law and the overall growth in the profession.¹¹² Relative cohort size can determine the amount of competition at each stage in the career trajectory, which may affect opportunities for advancement.¹¹³ Within the practice of law, members of unusually large cohorts compete for limited resources and face stiff competition at each stage in their careers: for promising articling positions, recruitment to prestigious firms, and invitation to partnership. Cohort size is interesting because it introduces the role of social organization and structure as sources of temporal variability in promotion opportunities.

We introduced two measures of growth in the legal profession: number of Bar admissions at year of call (size of candidate's cohort) and number of admissions five years after call, *i.e.*, size of incoming cohort at earliest likely time of promotion. Preliminary analyses revealed that a large number of Bar admissions at time of call had a positive effect on partnership outcomes, while the rising number of bar admissions five years after call had a negative effect on partnership attainment. This

¹¹² The number of Bar admissions in the profession at the respondent's year of call may be viewed as a contextual source of variation. Research has demonstrated the relevance of contextual variables to the analysis of mobility, and that contextual analysis can contribute to the further elaboration of the relationship between context and the individual. The findings of this analysis present evidence concerning the form and magnitude of contextual effects on partnership attainment and on variables which intervene in the mobility process. See, for example, D.F. Alwin & L.B. Otto, "High School Context Effects on Aspirations" (1977) 50 Soc. Educ. 259; J.D. Willms & S.W. Raudenbush, "A Longitudinal Hierarchical Linear Model for Estimating School Effects and Their Stability" (1989) 26:3 J. Educ. Measurement at 209-32.

There are also two (non-mutually exclusive) theoretical alternatives for the ways in which gender contexts may produce variation in partnership attainment: (1) through macro-social processes, such as gender ratios within the entire legal profession; and (2) through micro-social processes which may operate within sectors of the profession, such as percentage female within particular fields of law (family law reportedly contains a larger proportion of female practitioners than other fields of law, such as corporate and tax law), and percentage female within particular areas of practice (for example, government employment has attracted a higher proportion of women lawyers in recent years). This analysis permits only the measurement of growth without specifying attention to gender ratios. However, it would be valuable to examine how the "feminization" of the bar and particular sectors within the legal profession may affect the chances for partnership.

¹¹³ See J.R. Kahn & W.M. Mason, "Political Alienation, Cohort Size, and the Easterlin Hypothesis" (1987) 52 Am. Soc. Rev. 155.

suggests that the enormous growth in the profession initially may have improved partnership prospects, but that it ultimately had a negative impact on opportunities for promotion to partnership. In equation 5 (Table IV), only one measure of growth is presented, because introducing both macro-level time-dependent variables into the analysis simultaneously produced problems of collinearity and confounded the estimation of probabilities.¹¹⁴

The latter of the above findings suggests that opportunities for promotion for women and men have not kept pace with the growth of the profession. The recent expansion of associates within law firms has resulted in small proportions of associates becoming partners. Women have fared worse than men in the resulting partnership tournament. There is, in effect, a failure of structural accommodation. Galanter and Palay hint at this pending problem when they document the exponential growth of large law firms and the increased appearance of permanent associates.¹¹⁵

Table V presents a summary of probability estimates for those independent variables that are significantly related to partnership.¹¹⁶ The results reflect the main findings in Table IV and involve probability estimates for different levels of the independent variables in this table. For example, with experience and other variables held constant, 38 per cent of men compared with 27 per cent of women are likely to secure partnership. Table V also reveals the critical period for invitation to partnership. While there is only a 16 per cent probability of invitation to partnership for lawyers with 3 years of experience, there is a 23 per cent

¹¹⁴ These two measures of growth were introduced in separate equations to examine separately the effects of cohort size and relative restructuring of the profession by the time of promotion. Introducing both measures of growth simultaneously results in problems of collinearity. To reduce collinearity and conserve space, one measure of growth is included in a single equation.

¹¹⁵ Galanter & Palay, *supra* note 20.

¹¹⁶ The table is based on the estimation of equation 5 in Table IV.

probability for those with 6 years experience, and a 31 per cent probability for those with 9 years experience.¹¹⁷ Probability of partnership also rises with increased hours docketed. Further, the probability of partnership (for the otherwise typical private practitioner) ranges from 26 per cent for those in firms of 10-19 lawyers to 62 per cent in large law firms (50+ lawyers). Partnership prospects decline for those who have taken leaves from practice, all other factors being similar to the typical associate.

Finally, Table V provides a summary of the effects of growth rates in the profession. Particularly noteworthy is the decline in partnership prospects with the burgeoning numbers of associates. For instance, lawyers called to the bar in 1975 (where 1,077 lawyers were admitted to the bar 5 years later) have a 34 per cent probability of invitation to partnership. Those chances are reduced to 27 per cent for lawyers called in 1982. Lawyers entering firm practice after 1985 find their prospects for partnership closer to just 20 per cent, all other professional characteristics being equal.

¹¹⁷ Recall that the analysis includes lawyers who started their careers in firm settings. The analysis is not restricted to lawyers who have remained in firm practice to this day. Probability estimates of partnership attainment would be considerably higher if one were to analyze only those lawyers who stayed in firm practice. The reality, however, is that many lawyers will opt off the partnership ladder, leaving firm practice for other work settings. Our analysis incorporates this "competing risk," the probability that associates will not be invited into partnership for several reasons: a decline by the existing partners to join the senior ranks, or choice or pressure to leave the partnership tournament prematurely.

Table V
Selected Probability Estimates for Significant Variables in Partnership Decision ^a

Independent Variables	Probability Estimate ^b (in per cent)	Range
Gender		11
Women	27	
Men	38	
Experience (years)		42
0	11	
1	12	
3	16	
6	23	
9	31	
12	42	
15	53	
Children		7
none	20	
one or more	27	
Hours docketed per week		N/A
10	12	
15	14	
20	16	
25	19	
30	29	
35	35	
40	48	
Leave		14
No	28	
Yes	14	
Size of Firm		36
<10 lawyers	39	
10-19 lawyers	26	
20-49 lawyers	56	
50+ lawyers	62	
Growth in Profession (5 years after Call to the Bar)		14
1077 Admissions	34	
1139 Admissions	27	
1222 Admissions	20	

^a See equation 5 Table IV.

^b Estimated likelihood of partnership when scores on all other variables are held at their mean. The logit response function of the probability of partnership ($P(\text{partnership})=1/1+e^{-xb}$) is thus approximated by setting each independent variable except for the variable being estimated (b) at its mean value. In this case: $xb=c+b_1x_1+b_2\bar{x}_2+b_3\bar{x}_3 \dots +b_n\bar{x}_n$.

VII. DISCUSSION OF RESEARCH FINDINGS

The preceding analysis of the probability of partnership suggests a number of conclusions about the opportunities for upward mobility by men and women engaged in the private practice of law. First and foremost, our findings are consistent with expectations about gender and partnership: regardless of experience and background characteristics, organizational settings and macro-social factors, men have consistently higher likelihoods of attaining partnership than women.

Several researchers have argued that as long as partnership decisions are timed to coincide with the years of childbearing, women may be unable to succeed in large numbers. Even when firms permit maternity leaves or allow part-time work, women who avail themselves of such "innovations" may find they are considered less committed to their careers.¹¹⁸ These women are often perceived as "opting out" without consideration of how the presumed "neutral" rules of existing work structures have a "disparate impact" on women. Both male and female law students still expect women to bear the principal responsibilities of childcare, and this is inconsistent with conventional work structures.¹¹⁹ The effects of childbearing and childcare may often result in delayed partnership or departure from the private practice of law for women. These potential consequences were perceived by many women practitioners in the sample. As one lawyer commented:

As a woman in private practice I do not see my career goals as being compatible with my hopes to have a family. I find the profession to be very male-dominated despite the increasing number of women. My firm is predominantly male and no associate to my knowledge has ever had a child. The general sense is that in order to advance, make sure you don't have children (this has actually been said by one of our partners to an associate engaged to be married). Although it is certain that the male associates will become partners, I honestly believe that the women that chose to have a family will become permanent associates.

Given the unequal distribution of parental responsibilities between males and females, we might expect that female lawyers with children would have fewer opportunities to develop their careers because of family obligations imposed upon them. However, a contrary hypothesis might also be advanced suggesting that the causal order is reversed: it is conceivable that occupational status determines the ability

¹¹⁸ Stanford Law Review, "Project: Law Firms and Lawyers With Children: An Empirical Analysis of Family/Work Conflict" (1981-82) 34 Stan. L. Rev. 1263; Abramson & Franklin, *supra* note 63; Hill Fenning, *supra* note 77.

¹¹⁹ "Feminization of the Legal Profession," *supra* note 34 at 210.

to have children. That is, higher income and higher status women are better able to afford childbearing services, gain some sense of occupational security, and hence contemplate raising a family: “[w]hile male lawyers may be able to rely on spousal support for child care, female lawyers must attain a level of economic success and occupational security before raising children becomes feasible.¹²⁰ The kind of reasoning that leads to the postponement of children (and sometimes the decision to remain childless) is illustrated in the following remarks:

Having no children is partly due to anticipated problems with care arrangements and managing household chores, as well as a perception that part-time lawyers who are mothers, even if such positions are available, are perceived as having assigned a higher priority to home and children than to work. In other words I would continue to work full time even with children, but expect this would be draining, so I haven’t had any.

A fuller understanding of timing of partnership may require a more dynamic model of partnership attainment. Such a modelling strategy should incorporate elements of time until partnership, frequency and length of career interruptions, and sequencing of events such as timing of child births and promotions.

The models estimated in the preceding analysis offer some insight into structural conditions that can influence the prospects for partnership. Beyond the organizational context, *i.e.*, size of firm, we examined the effects of growth in the number of Bar admissions to the legal profession. The enormous growth in the profession seems to have had a negative impact on opportunities for partnership. Thus, the profession has encountered some difficulty in its efforts to absorb and provide opportunities for upward mobility to an increasing number of entrants to law. These findings parallel discussions in the American literature.¹²¹

For example, Galanter and Palay explore the exponential growth of large law firms and the emergence of alternatives to the “partnership tournament.”¹²² They observe that the percentage of associates becoming partners seems to be declining in some American firms and that time to partnership has lengthened. In addition, law firms are increasingly making use of “nonequity partnerships, paralegals, ‘temporary’ attorneys, ‘second-tier’ associates with no expectation of making partner, and the practice of retaining as permanent associates

¹²⁰ Adam & Baer, *supra* note 72 at 24.

¹²¹ Abel, *supra* note 8 at 223, observes that the centrality of private practitioners themselves is becoming internally more differentiated.

¹²² Galanter & Palay, *supra* note 20.

those passed over for partnership." As Galanter and Palay point out, this practice slows the firm's growth potential and "creates difficulties in recruitment, compensation, motivation and retention of productive young associates."¹²³ The transformation of the partnership tournament is poignantly summarized:

[A] cadre of permanent salaried personnel (paralegals, second-tier associates, and permanent associates/senior attorneys) now surrounds that promotion-to-partnership core. Within the core, promotion comes to fewer entry-level associates and it often comes later. For those who achieve promotion, the meaning of partnership has changed. The prospect of an orderly procession to unassailable eminence has been replaced by entrance to an arena of pressure and risk amid frenetic movement.¹²⁴

The chances of invitation to partnership are greatest in large-firm settings of 50 or more lawyers (double the odds of partnership in mid-sized firms of 10-19 lawyers). This finding is consistent with earlier research on the size of the firm and opportunities for promotion.¹²⁵

VIII. CONCLUSION: CHANGING DYNAMICS OF LAW FIRMS

Unfortunately, the foregoing analysis does not fully account for gender disparities in partnership. This research suggests that barriers confronting women employed within firms are complicated and reflect a variety of constraints. The relative significance of these constraints is difficult to discern.¹²⁶ Four avenues of research merit further consideration.

One possibility not directly addressed in this study involves sex-typing.¹²⁷ Epstein suggests that the legal profession exemplifies Merton's characterization of sex-typed professions, where a majority of an occupation's membership is male and there is a normative expectation that this is how it should be.¹²⁸ Studies of discrimination in corporations

¹²³ *Ibid.* at 118.

¹²⁴ *Ibid.* at 76.

¹²⁵ See Hagan *et al.*, *supra* note 109; "Feminization of the Legal Profession," *supra* note 34; "Theories of Gender," *supra* note 34.

¹²⁶ See Rhode, *supra* note 37 at 1180.

¹²⁷ Podmore and Spencer, *supra* note 72 at 343, argue that sex-typing has profound consequences for women who attempt to enter traditionally "male" professions, and for the performance and rewards of women who successfully enter these professions.

¹²⁸ C. Fuchs Epstein, *Woman's Place: Options and Limits in Professional Careers* (Berkeley: University of California Press, 1970) at 152.

reveal that, when standards of performance are vague, people tend to fall back on social standards and social characteristics in making judgements.¹²⁹ Kanter has written extensively on the structural constraints within organizations, which systematically exclude from promotion and advancement all those who are not “like” existing leaders in the organization.

Kanter asserts that the higher the uncertainty factor in any area of employment, the greater the tendency to discriminate and to seek social similarity among people being selected. This tendency limits opportunities for women, and for any individuals who are “different,” to areas of the law with the least uncertainty, and the most routine and clear standards of performance.¹³⁰ For example, in her study of managerial roles in the corporation, Kanter characterizes tasks to be performed on the basis of whether they were “routine” or whether they required exercising some degree of discretion. Kanter reports that wherever discretionary decision making was required within the corporate structure, the organizational response was to ensure homogeneity of personnel in order to eliminate uncertainty. According to Kanter, the corporate response to discretionary decision making was to choose new senior managers who were most “like” existing senior managers.¹³¹

Evidence of such structural constraints, such as exclusion from informal peer networks, assignment to stereotypical roles, and routine work, is apparent in many of the qualitative reports of this study. Commenting on subtle forms of discrimination, one respondent remarked:

I find the practice of law in this area is very much tied to the “old boys network” and the profession is not willing to consider innovative changes to the traditional methods of practising law, even though clients’ needs have changed. I find the trend towards “mega-law firms” sad because the emphasis is away from the client and his/her needs. Despite the slow increase of female partners in law firms, I feel that sexual discrimination still exists, except that now lip service is paid to the need to welcome women into the profession. Discrimination now takes a more insidious form but is unfortunately still

¹²⁹ R. Moss Kanter, *Men and Women of the Corporation* (New York: Basic Books, 1977).

¹³⁰ *Ibid.* at 55.

¹³¹ Kanter’s study also documents the expressed preferences of both male and female employees to work with male managers, because male managers were perceived to be part of the power structure of the organization. “In the context of organizations where women do not have access to the same opportunities for power and efficacy through activities or alliances,” the employees’ preferences for male managers is clearly a preference for power: *ibid.* at 199-200. As Mossman, *supra* note 69 at 590, notes, “[t]his structural barrier also affect[s] women’s abilities to achieve leadership roles within the organization.”

prevalent. If the issue is raised, a person is automatically labelled a "feminist" and remarks are then discredited in this fashion.

A second area yet to be explored is that of changing definitions of success within the profession of law. Is it possible that many women define success and satisfaction differently? Is the definition of success changing among younger men and women in the profession? Chambers' research suggests that women who have balanced work and family are more likely to express satisfaction, even if that balance includes some compromise with the traditional (male) model of total commitment to work.¹³² Menkel-Meadow asks, "[b]y focusing on other sites of legal work might we not discover whether satisfaction measures are in fact gendered, or would we find that some men, too, have chosen to achieve alternative definitions of success?"¹³³ Dissatisfaction with the balance between personal and professional lives is expressed by numerous respondents in the Ontario survey. One respondent comments that,

while it seemed that in the late 1980s it was fashionable, and professionally correct, to work as much as possible and to always ensure that everybody knew about it, young lawyers are starting to think, and say, "this is ridiculous!" Unfortunately, the old boys at the top of the pyramid, who need to squeeze the billables out of younger lawyers to maintain their large incomes and short hours, do not appear to agree that changes are necessary. Perhaps change will require incomes to be reduced.

It will be interesting to see if the tension between law firm management's desire to grind out the dollars, and the growing desire for fundamental change on the part of younger lawyers and women, will be resolved in a way that enhances the professional lives of lawyers. People are no longer satisfied with sacrificing their families and their personal lives for the good of organizations which do not understand that professional fulfilment is not found in 12 hour/6 day work weeks. However, a recession will limit opportunities for change ... And, in the end ... you have to pay your mortgage.

Third, research addressing partnership and firm structure ought to take into account differing work histories of male and female lawyers. Women lawyers are more likely to experience work interruptions through parental leaves. The importance of such career interruptions for promotion opportunities is emphasized by Scott.¹³⁴ Scott's study of attorneys in the city of Los Angeles reveals evidence of a "passed over" effect. Additionally, the larger percentage of female associates compared with men may reflect the tendency for women to re-enter the workforce after family completion. As Scott points out, women over 30 years of age are more likely to re-embark on a law career than are men.

¹³² Chambers, *supra* note 61.

¹³³ "Theories of Gender," *supra* note 34 at 307.

¹³⁴ Scott, *supra* note 44 at 120.

Women re-entering the profession may not be granted full credit for the experience they have previously gained.¹³⁵ We have yet to measure and analyze fully all of the avenues by which women may be restricted from achieving partnership.

A fourth area to be examined is attrition from firm practice. The most important finding from our study of law firms and partnership is that women are leaving firms without achieving partnership at a higher rate than men. What are the sources of discouragement and discontent among associates of law firms? What are the workplace conditions and supports that lead young associates to leave firm practice for other more inviting career opportunities? Law firms invest considerable resources in the training and development of legal talent. Therefore, what incentives might law firms offer to encourage associates to remain strongly committed to the firm's future?

Several reforms of firm practices may help to improve this situation. First, there is a need for a more systematic approach to the evaluation of female and male associates in firms. These evaluations should be based on actual observations of work performance rather than on generalized perceptions, and should be recorded annually or semi-annually and reviewed regularly to assure that all associates receive the range of practice experience necessary for partnership assessment. Law societies and the Canadian Bar Association ought to assume leadership in the creation of model policies in this area. Second, alternatives to partnership are emerging that are not well understood or documented. Law societies and bar associations need to be involved in monitoring processes that assess the forms of associate and partnership arrangements used within particular jurisdictions and firm settings. This information should be regularly reviewed to assure that classes of associate and partnership status are not being used to systematically limit the mobility prospects of categories of individuals in the profession.

Finally, firms can be made more accountable for their partnership decisions. Firms employing articling students and associates should be required as a condition of involvement in placement and recruitment programmes operated by law schools, law societies, and bar associations, to report fully on the policies and procedures applied to these individuals, and to further report the numbers of women and men employed in articling and associate positions and their annualized rates of retention and promotion to partnership. This information should be freely available for review by students and others participating in

¹³⁵ *Ibid.*

placement and recruitment programmes. The pressing need for such reform is perhaps most persuasively argued by one lawyer in our study:

I think there is a real need to broaden our ideas of what makes a good lawyer and allow people to select different levels or intensities of practice. So much of our definition of an outstanding lawyer seems to focus on the ability to endure a staggering workload and constant demands for faster turnover without flinching, and without responding to the deprivation which occurs in other areas of our lives which for many of us are just as crucial as career to our sense of worth and well-being. Even from the perspective of law as a business enterprise, I believe such changes would be advantageous. People seem to perform at their very best, with energy and inspiration, when they are happy and mentally healthy.