

BAR CODES: WOMEN IN THE LEGAL PROFESSION BY JEAN MCKENZIE LEIPER (VANCOUVER: UBC PRESS, 2006) vii + 242 pages, bibliography, and index.¹

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Jean McKenzie Leiper's study of women in the legal profession examines the struggles faced by the "first wave"³ of women lawyers in Ontario. Using Shakespeare's Portia from the *Merchant of Venice* as a unifying metaphor for her analysis and conclusions, Leiper demonstrates how the robes of lawyers remain "ill-fitting and inadequate"⁴ for most women employed "in a culture bound by men's rules."⁵ "Unwritten" and heavily "guarded" "codes"⁶ of conduct pertaining to the need for a lawyer's open-ended availability have proven resistant to change. The traditional, one-dimensional male paradigm, requiring continued and unfettered devotion to work on a full-time basis, as well as the ability to be freed from personal responsibilities at will, remains the norm. Leiper concludes that this aspect of the "gentleman's"⁷ profession has not changed in any meaningful manner despite years of research by academics, bar associations, and law societies, and despite many professed commitments and policies designed to promote change. Those who cannot or will not fit within this model must alter their career paths or accept being relegated to less powerful positions within the profession.

Leiper's conclusions are based upon her study of 110 women lawyers of different ages and from diverse social and cultural backgrounds who practise law across Ontario in many areas of practice. Leiper followed the careers of these women from 1994 to 2002 and used personal interviews, as well as follow-up questionnaires and e-mails, to

¹ [*Bar Codes*].

² Sole Practitioner.

³ Leiper, *supra* note 1 at 5. Leiper refers to these women as a "first wave" because they are part of the first large cohort of women to enter law schools in Ontario.

⁴ *Ibid.* at 141.

⁵ *Ibid.*

⁶ *Ibid.* at 6.

⁷ *Ibid.* at 179.

track their progress over time. Hers is the only Ontario study of its kind because of its primary focus on semi-structured interviews, the results of which led to more areas of inquiry as the study progressed;⁸ Leiper was able to interview most of the women twice at different points in their lives and careers. Her study adds to a growing body of research on women lawyers from other jurisdictions that utilize personal interviews, in particular: Joan Brockman's study in British Columbia,⁹ Margaret Thornton's study in Australia,¹⁰ and Hilary Sommerlad and Peter Sanderson's study in England and Wales.¹¹

As Leiper notes, studies of this kind provide richness and texture that cannot easily be achieved with written surveys and "statistical generalizations."¹² Quotes from the women interviewed are woven throughout her theoretical analysis; the stories they tell are personal and highlight not only the consequences of motherhood to their careers, but also the internal struggles they faced pursuing successful careers while balancing the demands of motherhood. This deeper look into the hearts of these women provides important insight into why career patterns of women in the field of law are different than career patterns of men. Leiper's study also complements the Law Society of Upper Canada's 2004 report, *Diversity and Change: The Contemporary Legal Profession in Ontario*,¹³ which concluded that the advancement of women in the legal profession continues to be undermined by insufficient accommodation for parental responsibilities.¹⁴

⁸ Fiona Kay and John Hagan also conducted interviews with fifty women lawyers in Ontario in 1985 for their book *Gender in Practice* (New York: Oxford University Press, 1995). However, their primary methodology was surveys and their study did not involve re-interviewing these women again at a later date.

⁹ Joan Brockman, *Gender in the Legal Profession: Fitting or Breaking the Mould* (Vancouver: UBC Press, 2000).

¹⁰ Margaret Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Oxford: Oxford University Press, 1996).

¹¹ Hilary Sommerlad & Peter Sanderson, *Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (Hampshire: Dartmouth Publishing, 1998).

¹² Leiper, *supra* note 1 at 13.

¹³ F.M. Kay, C. Masuch & P. Curry, *Diversity And Change: The Contemporary Legal Profession in Ontario* (Kingston, ON: Law Society of Upper Canada, 2004), online: Law Society of Upper Canada <<http://rc.lsuc.on.ca/pdf/equity/diversityChange.pdf>>.

¹⁴ Leiper, *supra* note 1 at 119:

The women Leiper interviewed faced considerable stress trying to manage full-time work while also bearing the bulk of the responsibility for providing or organizing child-care. Many felt guilty about their inability to fit the model of the “good mother.”¹⁵ Leiper makes the case that women must “meet impossible ideals, both as professionals and responsible mothers,”¹⁶ and notes that many of the women “became very emotional at the mention of their families,”¹⁷ especially when they thought about the many hours their children spent in someone else’s care. Nevertheless, full-time motherhood was not an option for these women, since their personal identities were also directly linked to their careers. Most women interviewed sacrificed time for themselves, time with their extended family, and time with their spouse, in addition to sleep, to satisfy societal ideals of managing career success and motherhood together. Although “time-crunch”¹⁸ stress has increased for many professions in Canada, Leiper points out that women in law experience much higher stress than other groups; those with small children who work in large urban centres experience the highest levels. The only women who were able to reduce their level of “time-crunch” stress were those who made significant professional changes, including leaving law altogether, taking extended leaves of absence, reducing their hours of work, and even moving from urban to rural settings. While these changes reduced their stress and appeared to lead to greater personal fulfillment and satisfaction, these changes usually resulted in reduced earnings and status.

The importance of time is a recurrent theme in Leiper’s book. Like other academics,¹⁹ Leiper asserts that time has become a form of

Women’s advancement in the profession remains seriously hindered by child-rearing responsibilities compared with their male colleagues. Little progress has been made, particularly in the private sector, toward accommodating parental responsibilities for both men and women. Workplace supports and flexibility remain inadequate. The career consequences of children and family responsibilities are born primarily by women. The impact can be seen in the gender disparities in earnings, promotions, partnerships, career opportunities, and attrition of women from the profession.

¹⁵ *Ibid.* at 89.

¹⁶ *Ibid.* at 164.

¹⁷ *Ibid.* at 153.

¹⁸ *Ibid.* at 79. Note that “time crunch” is an index of time-related stress.

¹⁹ See e.g. Fiona Kay & John Hagan, “Cultivating Clients in the Competition for Partnership: Gender and the Organizational Restructuring of Law Firms in the 1990’s” (1999) 33 *Law & Soc. Rev.* 517.

social capital. Those who have more access to time, in particular the ability to work lengthy, continuous hours over extended periods without interruption, are more likely to succeed. Leiper notes:

Time becomes part of the metaphor suggested by the robing process. Since law firms fail to take account of women's other roles, women are hampered in their struggles to succeed, never quite measuring up to expectations. On the surface, they appear to be successful professionals, and in most respects, they are, but closer examination reveals that their lives are radically different from those of their male colleagues. These patterns are perpetuated because professional demands still rest on the perception that law is a "two person" career, leaving married male lawyers free to expand their working hours at will, while women are almost always committed to tight schedules at work and at home.²⁰

Further, while the time frame of work is linear, the time frame of motherhood is cyclical and encompasses life, death, birth, child-rearing, sickness, seasons, children's needs, and many other responsibilities that do not follow a linear path. Leiper contends that working women today are caught "in between times,"²¹ in that they are required to follow the strict chronological time frame of the workplace with little deviation while also being expected to respond to the demands of their bodies and their children, both of which follow a more cyclical pattern. She observes that: "They move between the two [times] without ever really being able to control either."²²

It is not merely day-to-day constraints that affect women lawyers, but timing expectations over the life of a career that also impede the advancement of women. Masculinist theories of career stress the importance of the traditionally male pattern of linear progression from the start of one's career to its finish, which occurs on a full-time basis and without interruption. Using twelve of the women in her study as examples, Leiper demonstrates how women's more cyclical lives do not easily conform to this ideal; the more they depart from this model, the greater the career consequences.

Like the landmark 1993 Canadian Bar Association report *Touchstones for Change: Equality, Diversity, and Accountability*,²³ Leiper's

²⁰ Leiper, *supra* note 1 at 106.

²¹ *Ibid.* at 112, quoting Karin Jurczyk, "Time in Women's Everyday Lives: Between Self-Determination and Conflicting Demands" (1998) 7 *Time and Society* 286 at 292.

²² *Ibid.*

²³ Canadian Bar Association Task Force on Gender Equality in the Legal Profession, *Touchstones for Change: Equality, Diversity, and Accountability* (Ottawa: CBA, 1993). See at 81 of the report:

study highlights the influence of large law firms on establishing these expectations, because it is here where norms relating to time are formed and are most heavily policed. Most alarming about Leiper's research is her conclusion that workplace norms in these firms are heading in the opposite direction to changes promoted by feminists, bar associations, law societies and many advocates of social justice. Despite much marketing and fanfare about their family-friendly policies, many large law firms have steadily increased their billable-hour requirements and their emphasis on open-ended availability. Further, these "time norms ... have slowly seeped into other types of practice."²⁴ Leiper suggests that the problem is systemic: technical advances have allowed work to seep into private life, clients probably favour those who can respond quickly, and law firms are businesses "vulnerable to economic fluctuations."²⁵ No doubt, there is much truth in this. However, Leiper's study does not critically examine the business environment in which law firms evolved over the period when women have entered it in increasing numbers, or the nature of the many changes these environments have undergone. What remains to be seen, through future studies that critically examine the evolution of law firms from a feminist perspective, is the extent to which increased work requirements and the maintenance and/or exacerbation of masculine values and time norms are based upon systemic issues or otherwise reflect the interests and preferences of those with power.

As Leiper notes, her research provides answers and raises questions about the impact of workplace norms on women and the impact of women on workplace norms.²⁶ On the latter point, Leiper's views are somewhat mixed. While she clearly concludes that workplace norms have not improved and may have even worsened, she suggests

...The success rate of women in private practice has broad implications for all women lawyers. Law firms are the model for the profession and the most powerful positions in legal practice are in the largest firms. These firms interconnect with the boards and directorships of major corporations, offer their lawyers the highest incomes, and significantly influence the ruling bodies of the legal profession itself. If women do not remain in private practice, they will not occupy the powerful positions in the profession and will consequently be unable to influence structural change at the higher levels of the profession.

²⁴ Leiper, *supra* note 1 at 5.

²⁵ *Ibid.* at 133.

²⁶ *Ibid.* at 9.

that the story is still unfolding. Issues faced by women lawyers are, at least, on the table. The mere presence of women lawyers has raised “alarm bells”²⁷ within the governing bodies of the legal profession, which have actively been trying to find solutions to the problems identified. Further, despite the absence of real change, women continue to enter the legal profession and, in many cases, are able to creatively forge new and rewarding paths that combine career and personal fulfillment. She points out that media stories alleging that professional women are leaving the workplace in droves to find satisfaction in the home are greatly overstated and have very little, if any, empirical basis. Indeed, the bulk of the women she interviewed did not give up their careers, despite significant obstacles and internal turmoil.

Of particular interest is the “unradical” nature of these “first wave” women lawyers. Only a handful complained about gender issues during law school despite significant literature which has suggested that law school curricula are discriminatory, and despite the fact that these women attended law school during the 1980s when “feminist debates in Canadian law schools erupted.”²⁸ Many of these women denied that the workplace imposed any discriminatory requirements, even when they discussed their difficult circumstances. Others left their places of employment without protest, even when their dismissal was blatantly and illegitimately because of pregnancy. Although their lack of personal time was raised over and over in interviews with Leiper, few of them were prepared to speak openly with their employers/partners about these issues. Only one of the 110 women interviewed suggested that a change in the division of labour in the home was as important as changes in the workplace.

It would be interesting to explore the reasons why these women lawyers have not been involved in more overt challenges to the systems and structures that apparently cause them difficulty. (One could speculate that perhaps they simply did not have the time.) Nevertheless, although they may not be social activists in the usual sense, Leiper is probably correct when she suggests that this generation of women may indeed be “engaged in a profound process of social change.”²⁹ Perhaps

²⁷ *Ibid.* at 178.

²⁸ *Ibid.* at 61.

²⁹ *Ibid.* at 178.

their sure, steady, and quiet footsteps are laying the groundwork for their daughters and for the many men who are tired of unrelenting masculinist norms that seem to cast career success and personal fulfillment as polar opposites. No doubt, research projects like Leiper's are also an important part of the "feminization"³⁰ process.

³⁰ *Ibid.* After women obtained the legal right to practice law and began entering the legal profession in increasing numbers, academics began considering whether the legal profession might transform or become 'feminized.' Feminist scholars had considered the law to be patriarchal in its determinations and outcomes, in particular with respect to women. Further, the practice of law was based upon male life cycles that did not take into account pregnancy and child rearing. As such, feminist scholars wondered if the presence of women and a female voice would alter the way the law made decisions about women, and whether the profession would change to incorporate and accommodate women's life cycles, or simply force women to assimilate and adopt the typical male work pattern. See e.g. Carrie Menkel-Meadow, "The Comparative Sociology of Women Lawyers: The 'Feminization' of the Legal Profession" (1986) 24 Osgoode Hall L.J. 897; Carrie 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; Joan Brockman, "'Resistance by the Club' to the Feminization of the Legal Profession" (1992) 7:2 C.J.L.S./R.C.D.S. 47; & Hilary Sommerlad, "The Myth of Feminization: Women and Cultural Change in the Legal Profession" (1994) 1:1 Int. J. Legal Profn 31.