

**Final Report and Recommendations  
of the Working Group on Women in Criminal Law**

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## **TABLE OF CONTENTS**

<b>PART I: BACKGROUND</b>	<b>1</b>
<b>PART II: SURVEY RESULTS</b>	<b>4</b>
<b>PART III: CONSULTATION PROCESS</b>	<b>5</b>
<b>PART IV: DISCUSSION AND RECOMMENDATIONS</b>	<b>8</b>
<b>APPENDIX I: PRELIMINARY REPORT OF THE WORKING GROUND ON WOMEN IN CRIMINAL LAW – SURVERY RESULTS</b>	<b>11</b>
<b>APPENDIX 2: MODELS DISCUSSED AT CONSULTATION SESSIONS</b>	<b>24</b>

## **Final Report and Recommendations of the Working Group on Women in Criminal Law**

### **PART I: BACKGROUND**

Women face unique challenges in the practice of criminal law. A disproportionate number of women chose to leave defence practice because of these unique and often overwhelming challenges. As Jill Presser noted in her April 2011 article in *For the Defence* entitled “Off Track: To Maternity and Back, Against the Odds”:

The imbalance between men and women [in the defence bar] appears to be a problem with retention. More than 50% of lawyers graduating from law schools are women. A recent study of the gender of lawyers in Ontario found that in 2006, 56% of lawyers aged 25-34 were women; 46% of lawyers aged 35-44 were women; and 33% of lawyers aged 45-54 were women.

The percentages of women in the criminal defence bar pale in comparison even to the rest of our profession, and our drop off in the childbearing years is even more pronounced. In 2010, only 46% of CLA members in their first 10 years of practice were women; 30% of CLA members in their second ten years of practice were women; and a mere 17% of CLA members in their third ten years of practice were women.<sup>1</sup>

These numbers suggest that a large number of women are leaving defence practice within the first 10 years and are not returning. These findings are consistent with the research done by the Law Society of Upper Canada’s Retention of Women in Private Practice Working Group. According to their 2008 final report, despite efforts to promote equity within the profession, women continue to face inequalities and barriers in the legal profession. In fact, research shows that a large proportion of women leave private practice even though that is their preferred choice of employment. The Law Society’s Working Group noted that “the loss of talent as a result of gender based barriers will likely have an impact on the legal profession’s capacity to offer legal services to the Ontario public.”

Unfortunately, the Law Society’s Working Group did not focus its attention specifically on women in criminal law. In fact, the Committee noted that women defence lawyers face unique challenges that were not addressed in their report:

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<sup>1</sup> J. Presser, “Off Track: To Maternity and Back, Against the Odds”, *For the Defence*, Vol. 32, No.4 (April 2011), p. 38

In a number of regions in consultations, criminal defence lawyers noted the uniqueness of their challenges. The difficulties they face to sustain viable practices along with the nature of the practices, which often require them to be available on short notice or at times when institutions have visiting hours, would make it difficult for women in criminal defence in sole practice to take advantage of the parental funding program or locum arrangements. Representatives of the Criminal Lawyers' Association suggested that the Law Society consult more fully with them to try and address their challenges.<sup>2</sup>

It is interesting to note that the Law Society's Working Group met on two separate occasions with Crown Attorneys but did not meet with female members of the CLA.<sup>3</sup> The Working Group did recommend the Law Society study the unique challenges of women in criminal defence. To date, nothing has been done by the Law Society to study or address the unique interests of the female members of the criminal defence bar.

As the Law Society's Working Group noted, "it is not expected that the critical mass of women entering the profession will lead to significant systemic change without a cultural shift in the profession as a whole".<sup>4</sup> The report points out that legal associations and organizations, like the CLA, have a role to play in promoting women within the profession and providing support to keep women in private practice.<sup>5</sup>

Given the pressing nature of the issues facing women in criminal law and the apparent lack of interest on the part of the Law Society of Upper Canada in addressing the unique challenges faced by female defence lawyers, it is incumbent on the CLA to take bold and decisive action to retain and promote its female members. This work is needed to improve the quality of professional experiences and opportunities available to women criminal defence lawyers. It is also an access to justice issue with repercussions beyond our bar, impacting on criminal accused and the administration of justice as a whole.

It will take a substantial and sustained effort on the part of CLA leadership if lasting change is to be achieved. A cultural shift within the CLA is needed to ensure that women are not driven from defence practice and that the unique interests of female defence counsel routinely and meaningfully inform all CLA policies and activities.

As a first step towards improving the professional experience of women in our bar, in

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<sup>2</sup> Law Society of Upper Canada, Final Report – Retention of Women in Private Practice Working Group, 22 May 2008, at para. 280

<sup>3</sup> Law Society of Upper Canada, Final Report – Retention of Women in Private Practice Working Group, 22 May 2008, at para. 269

<sup>4</sup> Law Society of Upper Canada, Final Report – Retention of Women in Private Practice Working Group, 22 May 2008, at para. 93

<sup>5</sup> Law Society of Upper Canada, Final Report – Retention of Women in Private Practice Working Group, 22 May 2008, at paras. 96 - 99

September 2012 the CLA struck a Working Group to consult with the women of the CLA and to draft a proposal for how the CLA should address gender-specific issues facing women in the practice of criminal law. The Working Group was composed of Marlys Edwardh, Breese Davies, Jill Presser and Indira Stewart.

In October 2012, the Working Group sent out an on-line survey to the CLA membership in an effort to gather information on the challenges faced by women defence lawyers and how the CLA could better respond to the needs of its women members. In total, 113 responses were received to the survey, which represents approximately 35% of the female members of the CLA.<sup>6</sup>

The Working Group prepared an interim report summarizing the results of the survey. The Working Group presented the results of the survey at the Women in Criminal Law Breakfast at the CLA Fall Conference and sought input from the women present on the best way to tackle the unique challenges facing women in criminal law. Approximately 50 women attended the Women in Criminal Law Breakfast. The discussion at the breakfast was very constructive but much too short for everyone to contribute. It was clear that we needed to do more consultations on this issue: the women of the CLA had more important insights and ideas to share.

In July 2013, the Working Group held consultation sessions in London, Ottawa and Toronto. In total, 89 women attended the consultation sessions (9 in London, 29 in Ottawa, 35 in Toronto, 16 via webcast at the Toronto session). The Working Group was particularly encouraged by the level of involvement and participation of new call women in the consultation sessions.

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<sup>6</sup> In her article entitled "Off Track: To Maternity and Back, Against the Odds", Jill Presser analyzed the membership of the CLA by gender. Based on the best available information, in 2010, there were 311 female members of the CLA. The total CLA membership in 2010 was 1057.

## **PART II: SURVEY RESULTS**

A full report of the results of the survey was published by the Working Group in November 2012.<sup>7</sup> For the purpose of this report, it is sufficient to identify a number of themes that emerged from the survey.

First, the respondents identified the following as the most pressing issues facing women in criminal law:

- Balancing competing demands of work and personal/family obligations and commitments (80%)
- Building a successful practice (59%)
- Surviving financially on a legal aid practice (56%)
- Subtle sexism on the part of other justice system participants (55%)
- Subtle sexism on the part of fellow defence counsel (54%)
- Securing lucrative cases (52%)
- Re-entering the profession after a leave (family, educational, medical etc.) (52%)

Second, the overwhelming majority of respondents (88%) think there is a need for a Committee to address the unique challenges faced by women in criminal law. The overwhelming majority of respondents (87%) think the Committee should be part of the Criminal Lawyers' Association, not an independent organization.

Third, respondents wanted the Committee to focus on (a) advocating on behalf of women defence counsel; (b) providing business support for women in criminal law; (c) researching the retention of women in criminal law; and (d) providing networking opportunities.

Finally, in terms of the composition of the Committee, respondents thought it should have regional representation, representation from racialized communities and representation based on year of call.

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<sup>7</sup> A copy of The Preliminary Report of the Working Group on Women in Criminal Law; Survey Results is attached as Appendix 1

### **PART III: CONSULTATION SESSIONS**

Given the overwhelming support for the creation of a committee within the CLA to address the unique challenges of women in criminal law, the focus of the discussion at the consultation sessions was how to structure the committee. At each session, two models were presented as a basis for the discussion.<sup>8</sup> The two models were developed in consultation with the CLA executive based on the survey results. The purpose in creating two possible models was simply to stimulate discussion and debate about the respective merits of each model. Neither the Committee nor the CLA executive preferred one model over the other. In the end, on the basis of feedback from the breakfast and the consultations, the Working Group is recommending a structure that combines elements from each of the two proposed models.

Again, a number of themes emerged from the consultation sessions.

First, at all 3 sessions, the majority of participants favoured a model that involved creating 2 new Board positions to be filled by women. Many participants expressed concern about the number of women on the CLA Board. There was general agreement that efforts should be made to substantially increase the number of women on the CLA board. There is some hope that creating these two new positions and creating a new committee focused on the unique interests of women will, over time, encourage more women to seek Board positions and will encourage members to elect women to the Board.

In addition, it is important to the participants that the two new positions be full Board members with all the rights and privileges of any other CLA director. The two new Board positions would be responsible for chairing a committee dedicated to improving the experience of women in criminal law. Participants thought it was important to have these positions filled by women with an express interest in advocating for and working on behalf of the women of the CLA. As one participant stated: "We should not assume all women on the Board will want to chair a committee focused on women's issues."

Current and past CLA Board members consistently expressed strong opinions that women who are elected for that express purpose should hold the Women in Criminal Law portfolio. Women Directors of the CLA, especially executive members, who are not elected to do so should not be required to take on the added responsibility of chairing a Women in Criminal Law Committee. It is expected that the Women in Law portfolio will be a significant amount of work on its own. It should not be simply added onto the other Board and/or Executive responsibilities of directors/executive members who happen to be women.

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<sup>8</sup> Attached as Appendix 2 is a copy of the models discussed at the consultation sessions.

Second, there was overwhelming support at all 3 consultation sessions for regional representation on the Committee struck to deal with the challenges facing women in criminal law. In London and Ottawa, there were repeated comments that CLA events and business are exclusively focused on Toronto. Many women who live and practice outside Toronto do not feel that the CLA meets their needs. In fact, of the 29 women who attended the session in Ottawa, fewer than 10 were CLA members. The Working Group's take away from the consultations was that there are women criminal defence lawyers throughout the province who need and want support in facing the challenges of being a woman criminal defence lawyer, but who have not yet found that support in the CLA. For the Committee's work to be meaningful, efforts must be made to ensure the work of the Committee addresses the needs of women throughout the province.

Third, there was strong support for the idea that the composition of the Committee must reflect the diversity among the women of the CLA including racial diversity, years of experience, type of practice and sexual orientation.

Fourth, in both London and Toronto, there was significant discussion about whether positions on the Committee should be filled by way of an election or by some other process of appointment/application. A significant number of participants indicated that they would be less inclined to volunteer their time if they were required to stand for election.

A number of women said they think the CLA elections in general are little more than a popularity contest, which privileges men over women and perpetuates a form of "elitism" within the CLA. Having the membership on the Women in Criminal Law Committee chosen exclusively by way of elections may replicate the same perceived problems.

Many participants in the consultation sessions had no idea what committees exist within the CLA, how membership on the committees is chosen or how they might volunteer to work on a committee. In addition, people expressed concerns that the "same people" (primarily from Toronto) are afforded all the opportunities in respect of CLA committee work and interventions. There is a perception that CLA Directors simply select people they know and like to populate CLA committees. As a result, there was discussion about the need for a new, more inclusive approach to selecting the members of the Women in Criminal Law Committee. Participants in the consultations thought it was important for there to be a requirement that the Women in Criminal Law Committee include representatives from different regions and reflect the diversity of the women members of the CLA. Participants would not support a system that gives the Committee Chairs unfettered discretion to appoint Committee members.

There was significant discussion at the consultation sessions about who should be eligible to vote for the 2 new proposed Board members. In Toronto, a vote was held on this issue and the overwhelming majority of participants who voted were in favour of



only women members of the CLA voting for the new positions. In Ottawa, many participants felt the same women would be elected from that region regardless of who voted. The women in Ottawa expressed concern that the new Board members might lack credibility or be treated as less than a full Board member if they are not elected by the CLA membership as a whole. Similar views were also expressed by a small number of participants in Toronto session.<sup>9</sup>

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<sup>9</sup> The issue of who should vote for any newly created positions on the CLA Board of Directors was not discussed during the London consultation session. However, participants in the London session were canvassed individually on this issue by email after the session. We received only three responses, which reflected mixed opinions on this issue.

#### **PART IV: DISCUSSION AND RECOMMENDATIONS**

It is clear that much work needs to be done to retain women in the practice of criminal law and to improve the experience of women defence counsel.

Based on the survey results and the consultation sessions, the Working Group on Women in Criminal Law makes the following recommendations as the first steps towards creating a culture of gender equality within the CLA:

##### **New Board Positions**

1. At the next AGM of the CLA, by-law amendments should be proposed to create 2 new positions on the CLA Board to be filled by women members of the CLA (Women's Directors), one of which will be a newly created Vice-President position (Women's Vice-President). One position should be filled by a woman practicing in Toronto (Toronto Women's Director). The other position should be filled by a woman practicing outside Toronto (Regional Women's Director). It is proposed that the Women's Vice-President will be first filled by the Toronto Women's Director. In subsequent terms, the position will alternate between the Toronto Women's Director and the Regional Women's Director.
2. If the by-law amendment is passed to create the Women's Director positions an election should be held immediately following the AGM to fill the positions in the same manner the newly created "New Call" positions were filled in 2009.
3. The Women's Directors will be full board members with all the rights and privileges of any other Director of the CLA. The Women's Vice-President will be a full member of the CLA executive with all the rights and privileges of any other executive member. Like all CLA Directors and Executive members, the Women's Director and Women's Vice-President will serve a 2-year term.
4. As part of their duties as CLA Directors, the Women's Vice-President and the Women's Director will co-chair the Women in Criminal Law Committee of the CLA.
5. Only women members of the CLA will be eligible to vote for the Women's Director positions. Women members who practice in Toronto will be eligible to vote for the Toronto Women's Director. Women members who practice outside Toronto will be eligible to vote for the Regional Women's Director.
6. The Women's Directors will be empowered to speak publicly on behalf of the CLA on matters related to advancing the interests of women in the practice of criminal law.

7. The CLA Executive and CLA Committees will consult with the Women in Criminal Law Committee before formulating positions on any issue that may affect women in a unique way. By way of examples only, the CLA Executive (or Committees of the CLA) would be expected to consult with the Women in Criminal Law Committee on issues related to legal aid, parental leave assistance, retention of women in private practice, proposed legislative amendments that may disproportionately affect women, intervention applications which may require gender-sensitive legal analysis and educational programming.

#### **New Standing Committee: Women in Criminal Law**

8. The CLA Board should create a Women in Criminal Law Committee as a standing committee of the CLA with the following mandate:

The Women in Criminal Law Committee is committed to promoting and protecting the interests of the women members of the Criminal Lawyers' Association (CLA). The Women in Criminal Law Committee is also committed to ensuring diversity among its own members and the leadership of the CLA generally. To this end, the Women in Criminal Law Committee will work to:

- a. Advocate on behalf of women defence counsel both within the CLA and in the broader legal community;
  - b. Research and promote the retention of women in criminal law;
  - c. Provide mentorship and networking opportunities for women in criminal law; and
  - d. Provide business development support for women in criminal law.
9. The membership of the Women in Criminal Law Committee should be governed by the following regulations:
  - a. The Committee shall be co-chaired by the Women's Directors;
  - b. The Committee shall be composed of at least 8 members in addition to the Co-chairs;
  - c. Membership on the Committee shall include:
    - i. at least one member from the Southwest (Hamilton, Niagara, London, Grey/Bruce, Waterloo and Windsor)
    - ii. at least one member from the East (Ottawa, Rideau/St. Lawrence, Kingston and Belleville/Napanee);
    - iii. at least one member from the North (Huron/Muskoka, Sault Ste. Marie, Sudbury, Thunder Bay); and
    - iv. at least five members at large
  - d. The Co-chairs shall call for applications for members of the Committee;

- e. Membership on the Committee will be selected in a manner that reflects, to the extent possible, the diversity among the women members of the CLA taking into account race, ethnicity, sexual orientation, years of experience, regional representation and type of practice.
10. The Women in Criminal Law Committee is empowered to amend its mission and mandate as new priorities are identified through consultations with the women members of the CLA.
  11. The CLA Board shall allocate to the Women in Criminal Law Committee sufficient resources (financial and administrative) to ensure the Committee is able to effectively carry out its mandate.

The Working Group on Women in Criminal Law is very encouraged about the level of interest and engagement among the women of the CLA for this project. Of the 106 women who responded to the survey, 65% expressed an interest in joining the Committee. There is a strong appetite among the women of the CLA to seek real action to improve their professional experiences and opportunities. We are confident that the women of the CLA will actively participate in the new Committee. We are also confident that the proposed changes to the CLA structure will result in advances and lasting change for the women members of the CLA and, by extension the CLA as a whole.

There will inevitably be “growing pains” along the way as the first Women’s Directors and the Women in Criminal Law Committee work out the details of the Committee structure and its relationship to the CLA as a whole. If the good will and commitment the Board has shown over the last 12 months continues, we are confident the Committee will be operating to its full potential very quickly.

We would like to thank the CLA for all the support (financial and otherwise) the Working Group received. We remain available to do any work necessary to move this initiative forward at the AGM in November.

**APPENDIX 1****Preliminary Report of the Working Group on Women in Criminal Law  
Survey Results**

The Criminal Lawyers' Association (CLA) recognizes that women face unique challenges in the practice of criminal law. The CLA is committed to addressing those unique challenges, with a view to improving the professional experience of women in our bar. The CLA wants to tackle head on the retention of women in the practice of criminal law.

In the last year, the CLA has started to address the challenges and frustrations unique to women criminal defence lawyers. However, the CLA decided it needed a better understanding of the dimensions of the problem to ensure more meaningful and lasting change.

A Working Group was struck to consult with the women of the CLA and to draft a proposal for how the CLA should address gender-specific issues facing women in the practice of criminal law. The Working Group was composed of Marlys Edwardh, Breese Davies, Jill Presser and Indira Stewart.

This is the Preliminary Report of the Working Group on Women in Criminal Law. The purpose of this report is to inform the CLA membership of the results of our data collection process and to provide the basis for further discussion about how best to proceed.

**PART I: SURVEY RESULTS**

The Working Group sent an on-line survey to the CLA membership on October 4, 2012. The survey was active until October 15, 2012. Only female members were invited to respond. Respondents were asked to provide their name as part of the survey. This information was used only to ensure we did not receive duplicate responses and to ensure we received responses from female members only. CLA staff removed the respondents' names before the results of the survey were shared with the Working Group.

The survey questions are attached as Appendix A. The complete results (also with identifying information removed) are available for review on the Members Only section of the CLA website.

## Demographics of the Respondents

In total, 113 responses were received. This represents approximately 35% of the female members of the CLA.<sup>10</sup> Based on the biographical information collected, the respondents can be broken down as follows:

### Year of call

0 to 4 years of call	32% (36 respondents)
5 to 10 years of call	23% (26 respondents)
10+ years of call	45% (51 respondents)

### Primary location of practice

Toronto and GTA	60% (68 respondents)
Ottawa/East	13% (15 respondents)
London/West	10% (11 respondents)
Kingston/Central East	5% (6 respondents)
Hamilton/Niagara	4% (4 respondents)
North	2% (2 respondents)

### Criminal Law as a percentage of practice

90% or more	81%
50% to 90%	13%
less than 50%	6%

### Legal Aid as a percentage of practice

75% or more	42.5%
50% to 75%	19.5%
10% to 50%	20%
less than 10%	18%

### Type of practice

Sole practitioner	49%
Small firm (2 to 4)	31%
Larger firm (5+)	12%

## Need for a Committee

Respondents were asked if they think there is a need for a Committee to address the issues unique to women in criminal law. The overwhelming majority of respondents (88%) think there is a need for such a Committee. The overwhelming majority of

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<sup>10</sup> In her article entitled "Off Track: To Maternity and Back, Against the Odds", Jill Presser analyzed the membership of the CLA by gender. Based on the best available information, in 2010, there were 311 female members of the CLA. The total CLA membership in 2010 was 1057.

respondents (87%) think the Committee should be part of the Criminal Lawyers' Association, not an independent organization. 61% of respondents were willing to pay \$50 or more to support the activities of a Committee dedicated to women in criminal law.

Two of the respondents who do not think there is a need for a Committee provided the following explanations:

"Why I say no: One self-selects criminal defence work precisely because it is devoid of the perks and privileges of big-ticket law firms. Women who fight this good fight do so the same as our male colleagues – we don't need to be advanced, because we are not the "weaker sex".

"What Committee? While well intentioned, this idea smacks of encroaching political correctness. I fully support the creation of a CLA "Men's Committee", so as to be egalitarian if a Women's Committee is struck. And CLA men and women would be allowed to join each other's committees. Which would bring us full circle back to the CLA as the inclusive entity it already is, and should remain."

### **Issues unique to women in criminal law**

We asked respondents to identify the most pressing issues facing women in criminal law. Of the 11 issues listed in the survey, seven were chosen by more than 50% of respondents:

- Balancing competing demands of work and personal/family obligations and commitments (80%)
- Building a successful practice (59%)
- Surviving financially on a legal aid practice (56%)
- Subtle sexism on the part of other justice system participants (55%)
- Subtle sexism on the part of fellow defence counsel (54%)
- Securing lucrative cases (52%)
- Re-entering the profession after a leave (family, educational, medical etc.) (52%)

Respondents were also given an opportunity to identify other issues not included in the list. Some of the "other problems" identified included the following:

- The isolation of sole practice
- "Women being shitty to other women"
- The viability of a career in criminal law
- The retention of women in criminal practice

## **Mandate of Committee**

Initially, we asked respondents to describe the mandate of the Committee in their own words. Here is a sample of the responses:

“To give a voice to women in the CLA. To address the needs of women defendants and ensure they are treated equitably in the system.”

“I think the objective of the committee should be to strategize about how best to address marginalization within the practice of criminal law, and to create mechanisms to support each other, and strategize as to how best to work in solidarity with each other.”

“To advocate on behalf of women who wish to start families, so that proper remuneration and practice re-integration is possible.”

“Retaining women in private practice.”

“To support women and assist them in reaching the highest level of practice with the same ease that men reach this level.”

“Create a structure to provide leadership, mentorship, support, encouragement, professional contacts, role models for young women in the bar.”

“There are many extremely talented women who end up working for MAG, Legal Aid, or applying to the judiciary because of the issues specific to running a criminal defence practice. We need an organization that reflects our experiences, which differ significantly (at times) from those of our male counterparts. Retaining women of all experience levels will make a big difference to the culture of criminal law and the health of justice system.”

We then also asked respondents to help identify what activities the Committee should pursue. We asked respondents to rank the importance of the following of activities:

- Developing and presenting CLE programs
- Advocating on behalf of women defence counsel
- Researching the retention of women in criminal law
- Providing networking opportunities
- Engaging in public education about the challenges facing women in criminal law
- Advocating for female accused in the criminal justice system and prison system
- Providing business support for women in criminal law



We also asked respondents to identify other issues the Committee should address. The most common “other” objective identified was mentoring young female counsel (6 of 15 respondents).

The following four activities were identified as the most important to the respondents:

1. Advocating on behalf of women defence counsel
2. Providing business support for women in criminal law
3. Researching the retention of women in criminal law
4. Providing networking opportunities.

### **Structure and membership on the Committee**

We asked the respondents about the structure and membership of a Committee dedicated to addressing gender-specific issues facing women in the practice of criminal law. We asked respondents if they think the Committee should have an executive committee, regional representation, representation by year of call and/or representation from racialized communities.

There was significant support for the Committee having regional representation (average response: 7.22 out of 10), representation from racialized communities (average response: 7.32 out of 10) and representation based on year of call (average response: 7.21 out of 10). In respect of the need for the Committee to have an executive, the average response was 5.98 out of 10.

We also asked respondents about how membership on the Committee should be determined. 75% of respondents indicated members on the Committee should be decided by way of an election among female members of the CLA.

Again, we asked respondents to give us other ideas for how membership should be determined. Seven of 28 respondents suggested that membership should be determined on a volunteer basis:

“I think whoever wants to participate should be able to do so – nobody should be turned away – put everyone on a committee or subcommittee.”

“Anyone who would like to volunteer should be permitted to participate”

“I think you should ask for volunteers and then appoint an executive committee from the volunteers - this makes the committee more inclusive which is really what we would be advocating on a basic level.”

Respondents were asked whether they would be interested in running for a position on the Committee. Of the 106 women who responded to this question, 65% expressed an interest in joining the Committee.

## **PART II: CLA BOARD CONSULTATION**

A draft copy of Part I and Part III of this report was provided to Norm Boxall, President of the CLA. The draft was circulated among the executive of the CLA. The Working Group welcomed the feedback and suggestions from the executive.

The CLA executive reiterated its commitment to addressing issues facing the female members of the criminal defence bar. The executive is committed to finding a solution that is satisfactory to membership. The CLA wants to foster an environment that encourages and supports women's involvement in the defence bar, the CLA, its board and executive.

The CLA executive provided a number of suggestions or options for the structure and composition of a Committee dedicated to addressing the issues of women in the CLA. These alternatives were provided with a view to creating dialogue and do not reflect a firm position of the Board or its executive. The options provided by the CLA executive are described in detail below.<sup>11</sup>

## **PART III: DISCUSSION**

Based on the results of the survey and the consultation with the Board, there is overwhelming support for the creation of a committee to address issues of women in criminal law. There is also strong support for any new committee forming part of the existing CLA structure.

For the purpose of the discussion, we will refer to the female members of the CLA generally as the Women's Caucus. We will refer to the proposed new committee as the Steering Committee of the Women's Caucus. It is clear that the women of the CLA are interested in the issues raised in this report and eager to be involved in finding solutions to them. It is hoped that the Women's Caucus will be consulted on an ongoing basis around gender-specific issues facing women in the practice and the work of the Steering Committee. It is also hoped that all members of the Women's Caucus will be encouraged and welcome to participate in the work of the Steering Committee or its working groups.

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<sup>11</sup> See Model B and Model C below

The next step is for this Working Group to draft a proposal on the structure and mandate of the Steering Committee for consideration by the CLA Board. The goal is to present the final proposal to the CLA Board in January 2013 and to have the Committee fully operational in early 2013.

The survey results present a clear picture about the mission and mandate for the Steering Committee of the Women's Caucus. The issues that require further discussion and deliberation are the structure and composition of the Steering Committee.

### **Mission and Mandate**

Subject to further discussion, it is proposed that a Steering Committee of the Women's Caucus be struck as part of the CLA with the following mission and mandate:

The Steering Committee of the Women's Caucus is committed to promoting and protecting the interests of the female members of the Criminal Lawyers' Association (CLA). The Steering Committee of the Women's Caucus is also committed to ensuring diversity among its own members and the leadership of the CLA generally. To this end, the Steering Committee of the Women's Caucus will work to:

1. Advocate on behalf of women defence counsel both within the CLA and in the broader legal community;
2. Research and promote the retention of women in criminal law;
3. Provide mentorship and networking opportunities for women in criminal law; and
4. Provide business development support for women in criminal law.

The Steering Committee of the Women's Caucus will be empowered to recommend to the CLA Board amendments to the mission and/or mandate as new priorities are identified. The Steering Committee of the Women's Caucus will consult with the Women's Caucus before recommending changes to the mission and/or mandate of the Committee.

It is proposed that the Steering Committee of the Women's Caucus have a fixed budget to fund its activities. If necessary, the CLA should increase membership fees for all members to provide adequate funding for the Steering Committee of the Women's Caucus.

## **Membership on the Steering Committee of the Women's Caucus**

The Women's Caucus is being asked to consider three different models for the structure and membership of the Steering Committee. What follows is a rough structure for the Steering Committee of the Women's Caucus under each model. The Working Group will work out the details of the preferred model in consultation and collaboration with the CLA Board.

### **MODEL A:**

Under this model, membership on the Steering Committee of the Women's Caucus would be structured and determined roughly as follows (subject to input from the CLA Board on logistical issues):

- The Steering Committee shall be composed of eight (8) elected members.
- The elected members shall select a Chair, Vice-Chair and Secretary from among the elected members.
- Only members of the Women's Caucus are eligible to stand for election as a member of the Women in Criminal Law Committee.
- Members of the Steering Committee of the Women's Caucus are to be elected by the Women's Caucus of the CLA.
- Elections are to be held on a bi-annual either at the same time as the CLA general election or on alternating years.
- Nominations and voting shall follow the same procedure as the CLA general election as set out Criminal Lawyers' Association By-Law No. 1, ss. 5, 6.1 and 6.2.
- Each member will be elected for a two-year term.
- Of the 8 elected members, three (3) shall be elected from the GTA (Toronto, Durham, Peel and York Regions).
- Of the 8 elected members, one (1) shall be elected from each of the following regions:
  - Southwest (Hamilton, Niagara, London, Grey/Bruce, Waterloo and Windsor)
  - East (Ottawa, Rideau/St. Lawrence, Kingston and Belleville/Napanee); and
  - North (Huron/Muskoka, Sault Ste. Marie, Sudbury, Thunder Bay).
- Of the 8 elected members, two (2) shall be women who have been practicing for less than seven years as at the date of the election
- Of the 8 elected members, one (1) shall be a woman who has been practicing for fifteen years or more as at the date of the election
- If a member of the Steering Committee resigns during her term, a replacement member shall be chosen according to the Criminal Lawyers' Association By-Law No. 1, s. 9 for the balance of the term.

- If none of the elected members of the Steering Committee are members of the CLA Board, the CLA Board may appoint one female board member to the Steering Committee, in which case the Committee will be composed of 9 members.

The Steering Committee of the Women's Caucus would have the authority to recommend changes to its structure or membership if the need arises. The Steering Committee will be required to consult with the Women's Caucus before recommending changes to its structure or membership.

Under this model, it would be proposed that an election be held in late March 2013 for initial membership on the Steering Committee of the Women's Caucus. It is proposed that the nominations and election follow the procedure set out in the Criminal Lawyers' Association By-Law No. 1, ss. 6.1 and 6.2 with such modifications as may be necessary to expedite the election process.

#### **MODEL B:**

Under this model, the CLA By-laws would be amended to create two (2) "women in criminal law" board positions (one to be elected from Toronto and one to be elected from outside Toronto). Only members of the Women's Caucus would be eligible to run for these positions (much like the "recent call" directorships must be filled by lawyers under 7 years of call).<sup>12</sup>

The "women in criminal law" positions would be full board positions – elected at the same time as the board with the same term of office and voting rights. A variation of this model may involve having one of the two elected "women in criminal law" positions as a CLA executive position.

The two "women in criminal law" board members would become the co-chairs of the Steering Committee of the Women's Caucus and would select the other members of the Steering Committee. The Steering Committee could be as large or small as the two board members see fit but it would be expected that the co-chairs would consult with the Women's Caucus before setting the terms of reference for the Committee. In particular, it would be expected that the co-chairs would consult with the Women's Caucus before determining the size and composition of the Steering Committee. Steering Committee members would be selected according to existing CLA practice, i.e. a combination of volunteers/invitations/appointments. The co-chairs of the Women in Criminal Law Committee would report to the board/executive.

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<sup>12</sup> It should be noted that under current CLA by-laws, all CLA members are eligible to vote for "recent call" directors, not just "recent call" members.

**Model C:**

Under this model, female members of the elected CLA Board would select two women to co-chair the Steering Committee of the Women's Caucus. The co-chairs could be members of the CLA Board or from the Women's Caucus. The two selected co-chairs would select members of the Women in Criminal Law Committee. The Women in Criminal Law Committee could be as large or small as the two board members see fit. Again, it would be expected that the co-chairs would consult with the Women's Caucus before setting the terms of reference for the Committee, including its size and membership. Steering Committee members would be selected according to existing CLA practice, i.e. a combination of volunteers/invitations/appointments. If none of the selected members of the Steering Committee are members of the CLA Board, the CLA Board may appoint one female board member to the Steering Committee.

**Working Groups of the Committee**

Subject to further discussion, the Steering Committee of the Women's Caucus will be encouraged to strike working groups to organize events, research issues and advance its objectives. Membership of the working groups will be determined on a volunteer basis. Each working group will have at least one member from the Steering Committee of the Women's Caucus.

The working groups of the Steering Committee of the Women's Caucus are to be as inclusive as possible. The Steering Committee of the Women's Caucus will be committed to promoting diversity in the broadest sense among the membership of its working groups.

**Call for Feedback**

The proposed mandate and mission of the Steering Committee of the Women's Caucus as well as the various models for its structure and composition will be discussed at the Women in Criminal Law Breakfast at the CLA Fall Conference. The Working Group encourages those who are not attending the Fall Conference to provide any comments or suggestions to Breese Davies ([bdavies@bdlaw.ca](mailto:bdavies@bdlaw.ca)) by November 30, 2012.

The Working Group would like to thank each woman who took the time to complete the survey and provide input. The information gathered from the survey is invaluable and will continue to drive our work. We look forward to seeing the Steering Committee of the Women's Caucus develop into a powerful voice for female members of the CLA over the coming years. The opportunities for the Steering Committee to improve the experience of women in criminal law are truly boundless.

The Working Group on Women in Criminal Law  
Marlys Edwardh  
Breese Davies  
Jill Presser  
Indira Stewart

## APPENDIX A

### SURVEY QUESTIONS

1. Name
2. Year of call
3. What region do you practice in?
4. Are you a sole practitioner?
5. If not, what size firm do you work in?
6. What percentage of your practice is criminal law?
7. What percentage of your practice is legal aid work?
8. Do you think there is a need for a Committee to address issues of women in criminal law?
9. If yes, what do you see as the mandate, goals and objectives of a Committee to address issues of women in criminal law?
10. What are the most pressing issues facing women who practice criminal law (select any that apply):
  - Balancing competing demands of work and personal/family obligations
  - Surviving financially on a practice based primarily on Legal Aid
  - Overt sexism on the part of fellow defence counsel
  - Overt sexism on the part of other justice system participants
  - Subtle sexism on the part of fellow defence counsel
  - Subtle sexism on the part of other justice system participants
  - Building a successful practice
  - Securing lucrative cases
  - Securing meaningful work
  - Other (please specify):
11. On a scale of 1 to 10, how important is it to you that a “women’s committee” do the following:
  - Developing and presenting CLE programs
  - Advocating on behalf of women defence counsel
  - Researching the retention of women in criminal law
  - Providing networking opportunities
  - Engaging in public education about the challenges facing women in criminal law
  - Advocating for female accused in the criminal justice system and prison system
  - Providing business support for women in criminal law
  - Other (please specify):



12. Of the activities listed above, which three are the most important to you? Please list your responses in order of importance.
- Developing and presenting CLE programs
  - Advocating on behalf of women defence counsel
  - Researching the retention of women in criminal law
  - Providing networking opportunities
  - Engaging in public education about the challenges facing women in criminal law
  - Advocating for female accused in the criminal justice system and prison system
  - Providing business support for women in criminal law
  - Other (please specify):
13. On a scale of 1 to 10, how important is it to you that that the Women's Committee has:
- a. An executive committee?
  - b. Regional representation?
  - c. Representation by year of call?
  - d. Representation of women from racialized communities?
  - e. Other (please specify):
14. In terms of determining the membership of the Committee, should the members be
- a. elected by the CLA membership as a whole
  - b. elected by the women members of the CLA
  - c. appointed by an elected chair
  - d. appointed in accordance with existing CLA policies and practices
  - e. other (please specify):
15. Do you think a Committee to address issues of women in criminal law should be an independent organization or a subcommittee of the CLA?
16. Would you pay to join an independent "Women in Criminal Law Association"? Again, is the CLA board fine with this?
17. How much more per year would you be willing to pay for membership in the CLA to support the activities of a Women in Criminal Law Committee? Assume for the purpose of answering this question that all CLA members will be asked to pay increased fees, not just female members.
- a. \$0
  - b. \$25
  - c. \$50
  - d. \$75
  - e. \$100
18. Would you be interested in running for a position on this Committee?
19. What have we missed? Please let us know if there are other issues or problems you think the Committee should address that are not covered by this survey.

**APPENDIX 2: MODELS DISCUSSED AT CONSULTATION SESSIONS**

<b>Model A</b>	<b>Model B</b>
<ul style="list-style-type: none"> <li>• Women's issues to be addressed by a Standing Committee of the CLA</li> <li>• Committee comprised of 8 to 10 members</li> <li>• Elected by women members of the CLA only</li> <li>• Elections are to be held bi-annually for 2 year term at the same time as general CLA Board elections</li> <li>• Representation from the regions, recent call and older call women</li> <li>• CLA Board can appoint one member to sit on the Committee</li> <li>• Committee reports and is accountable to the Board</li> </ul>	<ul style="list-style-type: none"> <li>• amend CLA by-law to create two (2) "women in criminal law" board positions (one from Toronto and one from outside Toronto)</li> <li>• "women in criminal law" positions would be full board positions</li> <li>• "women in criminal law" board members would become the co-chairs of the Standing Committee of the Women's Caucus</li> <li>• co-chairs would select members of the Standing Committee based on existing CLA practice (i.e. volunteer/invitation/appointment)</li> <li>• POSSIBLE VARIATION: co-chairs would be women otherwise elected to the Board, not newly created position</li> </ul>