



# The Retention of Women in the Private Practice of Criminal Law: Research Report

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## Table of Contents

|   |    |
|---|----|
| <b>ACKNOWLEDGEMENTS</b> .....   | 4  |
| <b>About the Authors</b> .....  | 4  |
| <b>Study Impetus</b> .....  | 5  |
| <b>EXECUTIVE SUMMARY</b> .....  | 7  |
| <b>INTRODUCTION</b> .....   | 10 |
| <b>FINDINGS FROM THE FOCUS GROUPS</b> .....   | 11 |
| <b>Family Related Concerns</b> .....  | 11 |
| <b>Gendered Differences in Treatment</b> .....  | 13 |
| <b>Financial Challenges</b> .....   | 14 |
| <b>Confidence to Start a Business</b> .....   | 14 |
| <b>Desire for Greater Mentorship</b> .....  | 15 |
| <b>Recommendations</b> .....  | 15 |
| <b>Are Women Leaving?</b> .....   | 17 |
| <b>Discussion</b> .....   | 18 |
| <b>Legal Aid Ontario Data</b> .....   | 19 |
| <b>Table 1. Year of Call Gender Distribution</b> .....  | 20 |
| <b>Table 2. Distribution of the number of criminal law certificates in 2013/2014 (for all lawyers who had least one criminal law certificate issued between 2005 and 2014).</b> .....                     | 21 |
| <b>Tracking the career paths of men and women</b> .....   | 21 |
| <b>Table 3. High volume certificates (21 or more): Percentage and number of those called to the bar between 2004 and 2006 who did at least some criminal law between 2006 and 2014.</b> .....             | 22 |
| <b>Discussion</b> .....   | 22 |
| <b>Table 4. Year of Call by Gender</b> .....  | 24 |
| <b>Table 5. The percentage of men and women (from the same cohort of those who initially were actively involved in the private practice of criminal law) who did no criminal law, for 1997-2002</b> ..... | 26 |
| <b>Table 6. The percentage of men and women (from the same cohort of those who initially were actively involved in the private practice of criminal law) who did no criminal law, for 2003-2008</b> ..... | 26 |
| <b>Table 7. The percentage of men and women (from the same cohort of those initially actively engaged in the private practice of criminal law) who did no criminal law, for 2009-2014</b> .....           | 26 |
| <b>Table 8. The percentage of men and women (from the same cohort of those initially actively engaged in the private practice of criminal law) who did no criminal law, for 2001-2007</b> .....           | 27 |
| <b>Table 9. The percentage of men and women (from the same cohort of those initially actively engaged in the private practice of criminal law) who did no criminal law, for 2008-2014</b> .....           | 27 |

|   |           |
|---|-----------|
| <b>Overview of these two cohorts.....</b>   | <b>28</b> |
| <b>Table 10. The 1994 &amp; 1995 cohort. Starting numbers for 1996 (doing at least 21% criminal law) in a private law firm and final numbers for 2014 (doing at least some criminal law, but not working for government).....</b> | <b>28</b> |
| <b>Table 11. The 1998 &amp; 1999 cohort. Starting numbers for 2000 (doing at least 21% criminal law) in a private law firm and final numbers for 2014 (doing at least some criminal law, but not working for government).....</b> | <b>28</b> |
| <b>Unpredictability of work hours .....</b>   | <b>29</b> |
| <b>Unpredictability of income.....</b>  | <b>30</b> |
| <b>Difficulties of having and raising children while working in criminal law.</b>   | <b>31</b> |
| <b>How women with other family obligations are treated by other criminal justice actors and colleagues .....</b>  | <b>32</b> |
| <b>How women are treated in the courtroom .....</b>   | <b>33</b> |
| <b>Reliance on legal aid clients/certificates .....</b>   | <b>34</b> |
| <b>Considering leaving? .....</b>   | <b>35</b> |
| <b>Reasons to leave .....</b>   | <b>35</b> |
| <b>Factors associated with staying in private practice.....</b>   | <b>36</b> |
| <b>Reasons why women may leave private practice .....</b>   | <b>36</b> |
| <b>Changes within the profession.....</b>   | <b>38</b> |
| <b>Changes by the Criminal Lawyers' Association .....</b>   | <b>39</b> |
| <b>Changes by Court administration.....</b>   | <b>39</b> |
| <b>Conclusion.....</b>  | <b>40</b> |
| <b>Appendix A: Women in the Practice of Criminal Law Survey .....</b>   | <b>43</b> |

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## About the Authors

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# Study Impetus

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Between 2005 and 2008, the Law Society of Upper Canada conducted an extensive study on the retention of women in private practice in Ontario. That work culminated in a report, which was released on May 22, 2008. The Law Society study found as follows:

***Women have been entering the legal profession and private practice in record numbers for at least two decades. However, they have been leaving private practice in droves largely because the legal profession has not effectively adapted to this reality.***

***The departure of women from private practice means that the legal profession is losing a large component of its best and brightest in core areas of practice.<sup>1</sup>***

The Law Society also noted that, through their consultations, it became clear that women in criminal defence practice may face more and different obstacles to remaining in practice when compared to their colleagues in other areas of practice:

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

To date, the Law Society has not undertaken any further study of this issue. So in 2012, the Criminal Lawyers' Association (CLA) established a Working Group to identify the challenges facing women in defence practice. In 2013, the CLA created two new positions on its Board of Directors (Women's Vice-President and Women's Director) and created a Women's Committee.

In 2014, the Women's Committee commissioned a study to look at whether women are leaving defence practice in greater numbers than men and, if so, to identify why that was the case and what can be done to reverse the trend. This report provides the first systemic look at the data on women in defence practice in Ontario. It provides qualitative information about the experience of women in private practice and sets out a number of recommendations for systemic changes to ensure women remain in defence practice.

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<sup>1</sup> Law Society of Upper Canada, *Final Report – Retention of Women in Private Practice Working Group* (May 22, 2008), at paras. 1 - 3

<sup>2</sup> *Ibid*, at para. 280

The Criminal Lawyers' Association (CLA) is one of the largest specialty legal organizations in Canada, with more than 1,200 members. We are a voice for criminal justice and civil liberties in Canada. Our advice and perspective is sought by all levels of government and the judiciary on issues relating to legislation and the administration of criminal justice. We also assist our members in every aspect of the practice of criminal litigation.

# Executive Summary

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The purpose of this study is to examine issues surrounding the retention of women in criminal law in Ontario, exploring whether women are leaving the private practice of criminal law at higher rates than are men, and whether women face specific challenges in criminal defence work.

This report outlines the findings from a series of studies on the experiences of women in the practice of criminal law in Ontario. Four distinct sets of data were used to try to understand the issues surrounding women in the private practice of criminal law:

- Focus groups
- Data from Legal Aid Ontario (LAO)
- Data from the Law Society of Upper Canada (LSUC)
- The results of a survey in late 2015 of women who are members of the Criminal Lawyers' Association (CLA)

## **Focus Group Results**

In December 2014, five focus groups were conducted to develop an understanding of whether women perceive unique challenges to working in criminal law and whether they perceived an issue of the retention of women in the private practice of criminal law.

A number of dominant themes emerged from the focus group discussions, framing the challenges that women – at various stages of their career – believed impacted women in the practice of criminal law. A large proportion of women discussed the financial and logistical difficulties associated with taking time off to have a child. Women further identified the financial challenge associated with being in private defence practice, with the unpredictability of income and the difficulties of building a business on one's own, coupled with heavy reliance on legal aid certificates, ripe with inherent issues of low rates of pay and delayed payments for work done. A number of women further discussed frustrations over gendered differences in treatment by judges and other court actors, seen as making an already challenging career all the more difficult.

Based on these concerns, focus group participants raised a number of recommendations on how to address the challenges that women face in the practice of criminal law, including the desire for greater mentorship from more senior female criminal lawyers, improved relations amongst court actors, and the need for greater financial support in order for women to be able to afford to take maternity leave.

## **Legal Aid Ontario Data**

As much of criminal defence work is supported by Legal Aid Ontario, information was obtained from Legal Aid on the pattern of billings by women and men over a period of time. Data were used to track the number of certificates of a cohort of criminal lawyers, looking specifically at difference in volume by gender.

The findings suggest that differences do exist between the number of certificates that women and men are receiving, with men doing more legal aid work in larger volumes. The data do not, however, show a drop off of women from defence

practice, leaving more room for investigation into the career paths of women and men in Ontario.

### **Law Society of Upper Canada Data**

In order to get a more complete picture of the career paths of female lawyers, data were obtained from the Law Society of Upper Canada. Looking specifically at those actively engaged in criminal law and working in private practice, the results provide a different perspective than that of the Legal Aid Ontario data.

When tracking the career paths of women and men from when they are called to the bar, it appears that after a few years of being called, women are more likely than men to no longer be doing any criminal law work. Further to this, when women leave, they are also more likely to work as government lawyers than are their male counterparts.

The findings from the Law Society of Upper Canada data appear to confirm beliefs that women are indeed leaving the private practice of criminal law at greater rates than are men.

### **Criminal Lawyers' Association Survey Results**

In December 2015, a survey of female members of the Criminal Lawyers' Association was conducted in order to canvass members on a number of different dimensions that had been identified as possible challenges faced by women in the practice of criminal law<sup>3</sup>.

The majority of survey respondents viewed the unpredictability of work hours, unpredictability of income, and the difficulties of having and raising children while working in criminal law as probable reasons why women may choose to leave the private practice of criminal law. With respect to how women are treated in the courtroom, the large majority of survey participants reported that women are indeed treated differently from men in the courtroom by judges, Crown counsel and other court staff, with only 22% of respondents viewing women and men as treated the same.

61% of women reported that they had considered leaving the practice of criminal law, citing low pay, long hours, and the challenges of dealing with Legal Aid as reasons that had fuelled that consideration.

For those women who were called to the bar more than 10 years prior, their reasons for staying in the practice were largely due to their passion and interest in the work and supportive partners who played an active role in day-to-day child care responsibilities. Women further noted that they were able to continue in private practice when they had partners whose income was greater than their own, thus alleviating some of the financial stress commonly experienced by other criminal lawyers.

Survey participants put forward a number of recommendations on what could lead to the greater retention of women in the practice of criminal law, many of them echoing

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<sup>3</sup> The survey questions can be found in Appendix A.



those raised in the focus group discussions. These included: the desire for greater mentorship and support by more senior women in criminal law; improved financial support for women to take maternity leave; having fixed court end times to help ease the stress of the uncertain work hours; and greater education of the judiciary to minimize gender based differences in the courtroom.

### **Conclusion**

The four different sources of data used in this report, taken together, provide a nuanced look at the career paths, patterns, and challenges of women in the practice of criminal law in Ontario. The findings suggest that women are experiencing unique gender-based challenges in the practice of criminal law. Further to this, women do appear to be leaving the practice of criminal at higher rates than are men, demonstrating that there does appear to be an issue in the retention of women in this area of law. Recommendations made by those best situated to understand these issues – women working in criminal law themselves – suggest that there are changes of varying degree that, if implemented, could improve the experience of women and likely lead to a greater retention of women in the private practice of criminal law.

# Introduction

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It is broadly believed, that by 10 years after call, women are much more likely than their male counterparts to leave the practice of criminal law notwithstanding the fact that women comprise approximately 50% of new calls to the bar and a high proportion of the new members of the Criminal Lawyers' Association. While many believe this to be true, systematic data do not exist supporting or refuting this view. Without systematic information, it is difficult to know with much certainty whether women leave, and if they do, when women leave, or where they go. Obviously, some move into other criminal law work (e.g. working as staff lawyers for Legal Aid Ontario or as Crown Attorneys) while others may move into other areas of legal practice. However, as little research has focused on the retention of women in criminal law, the present study seeks to explore and better understand the experiences of female criminal defence lawyers.

It is the purpose of this study to look into issues surrounding the retention of women in the private practice of criminal law in Ontario. As part of this investigation, this report seeks to assess whether women face unique challenges in the practice of criminal law and if so, what some of these challenges are. The central questions of interest include:

1. What hurdles, if any, are women facing in the practice of criminal law?
2. Are women leaving the private practice of criminal law at greater rates than are men?
3. If women are leaving, what factors are leading to decisions to leave this type of practice?

This report outlines the findings from a series of studies on the experiences of women in the practice of criminal law in Ontario. Four distinct sets of data were used to try to understand the issues surrounding women in the private practice of criminal law:

- Focus groups
- Data from Legal Aid Ontario (LAO)
- Data from the Law Society of Upper Canada (LSUC)
- The results of a survey in late 2015 of women who are members of the Criminal Lawyers' Association (CLA).

Together, these different studies help to answer the questions of interest and provide possible recommendations aimed at improving the experience and retention of women in the practice of criminal law.

# Findings from the Focus Groups

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In December 2014, five focus groups were conducted with women at various stages of their career. It included those working and residing in the Greater Toronto Area (GTA) as well as those living and working outside of Toronto in smaller jurisdictions. The primary purpose of these focus groups was to explore different perspectives and experiences of some female lawyers and judges in order to identify the common and diverging concerns of women in the private practice of criminal law. The purpose of the focus groups was to discuss perspectives on whether there are unique pressures facing women in practicing criminal law in Ontario as well as to discuss women's experiences in the practice of criminal law more broadly.

These 5 focus groups were conducted with:

1. Senior Lawyers – women who have been in the practice of criminal law for at least 10 years
2. Junior Lawyers – women who are more recent calls
3. Crown Lawyers – women who started off in defence practice but then moved over to work for the Ministry of Attorney General, Ontario.
4. Female lawyers who work outside of the Toronto area
5. Female Judges

Women were asked about whether they perceived barriers to staying in the practice of criminal law and whether they thought that the challenges associated with staying in the criminal law practice are different for women and men. Questions surrounding differential treatment by colleagues and other court actors were also included to get a broader understanding of both perceptions about challenges of the work itself as well as how women felt they were treated while carrying out their daily work. A number of dominant themes emerged out of these discussions.

## Family Related Concerns

*“...When you've got kids at home and you're trying to run a business, it's impossible. Something has to give and what ends up giving is you having any kind of a life outside of your responsibilities...And that's why people leave... because it's not fun to live like this.” (New calls transcript)*

One of the most common concerns raised by women at various stages of their careers was regarding the challenges associated with taking time off to start a family when working in private practice. Both women based in Toronto as well as those working in smaller urban centers shared this concern. Many discussed uncertainties over who would temporarily take over their client files while they were away, with further apprehension over how they would then rebuild their client list once they returned from maternity leave. Some cited worries of “being forgotten” by clients and colleagues while they were gone. They were concerned about the possibility that their

clients would seek other counsel and that other lawyers would refer potential clients to other defence counsel.

Being able to take an *actual* maternity leave was also a concern raised by a number of focus group participants, as those outside of large law firms did not have the benefit of a formal (paid) leave. Several indicated that this was a big difference between defence counsel and those working for the Crown, where maternity leave was seen as a non-issue, as the structure of the Crown's office allowed for parents to take a leave as others would be there to cover the workload until they returned.

Numerous defence counsel who participated in the focus groups who did take maternity leave ended up taking abbreviated leaves (for approximately three months), often still preparing for trials and doing other work related tasks while "off work". Further, many raised the issue of having to give up their office space as the overhead costs were too great when they were not earning an income. For many sole practitioners, the financial burden of taking an unpaid maternity leave while still having to pay overhead costs made having children a very costly and in turn stressful time in their lives. For those who could not afford to keep their office space while on leave, many noted that returning to work from maternity leave felt as though they were essentially starting over with their practice as they had to find new office space, start re-building their client base, and marketing their business.

For a large number of focus group participants, this concern over the lack of continuity was seen as a unique challenge to women in defence practice, particularly for those working outside of large firm environments. The participants discussed how these interruptions in their careers, particularly early on, were seen as problematic as they hindered their ability to build a reputation or forge connections with Crown counsel. Some argued that simply being absent from the courtroom meant that female criminal lawyers did not have the same opportunities as their male counterparts to get to know and become known by judges in the area. They expressed the view that a professional relationship was, predominantly, built on familiarity with court personnel through frequent contact or simple "face time".

Outside of concerns over the continuity of their practice, many cited the unpredictability of the work-day when caring for children as yet another reason why defence practice poses unique challenges, not just for women but men as well. The unpredictability of when one might need to appear in court to represent a client was discussed as a particularly challenging aspect, regardless of gender. However, gender differences were seen when women or men made requests to judges to leave court in order to go pick up a child from childcare or school. Some women felt that when men made such requests, judges were more amenable, whereas some felt that the same requests made by female lawyers were received differently and more negatively. It was discussed that when women made such requests judges were less supportive and often unwilling to cooperate. As such, when combined with family obligations, this unpredictability of work hours was seen as a major obstacle

This view, however, was not shared by all focus group participants. Concerns over unpredictability of work hours as a challenge, were countered by some who noted that being in private practice allowed them the flexibility to be active parents, with no one monitoring their hours, allowing them the flexibility to work when they

needed to and similarly take time for their families when needed. For some, working in private practice was seen as an ideal career for working parents.

Those residing and working outside of the Greater Toronto Area discussed how in smaller centres, concessions were often made for women with young children, with other lawyers and judges allowing matters to be heard earlier in order for those with children in childcare to be able to leave on time to pick them up. This was seen as an advantage of working in a smaller jurisdiction where members of the bar are closer, everyone knows one another and thus are more willing to be accommodating.

## Gendered Differences in Treatment

While not all women in the focus groups voiced concerns about the gendered treatment of women in defence practice, this was an issue that was highlighted by a smaller number of women.

Some of these women discussed how there are still issues with how female defence lawyers are treated by male colleagues, judges, court clerks, and clients because of their gender. A number of women raised frustrations over the assumption by male colleagues that *they* should be the ones talking to clients, presuming that their female counterparts would not want to and/or would have difficulties dealing with male clients. Some noted that they did not need their colleagues to “fight their battles for them”.

Others discussed how senior male lawyers tended to see female defence counsel as students or assistants, neglecting to view them as lawyers on a matter. Focus group participants conveyed stories of senior male lawyers asking women to do more administrative tasks such as printing out e-mails or other tasks that their administrative assistant would typically assist with.

With respect to differential treatment by clients, many women at various stages of their career noted that male clients often asked personal and inappropriate questions of their female counsel, or broached subjects they would never do with male lawyers (e.g., a client who encouraged his lawyer to go out with a surety).

A smaller proportion of comments surrounded treatment by more senior female lawyers, often Crown lawyers, who were seen as denigrating younger female defence counsel, being unnecessarily harsh with women defence lawyers and otherwise treating them badly. Similarly, a small number of focus group participants also discussed treatment by female judges, indicating that they felt at times that female prosecutors and judges treated them more disrespectfully than males in the same position.

## Financial Challenges

*“The nature of criminal law is that a lot of it is on a legal aid certificate so the remuneration is so low to begin with... Those financial problems are really magnified greatly, even in a little family firm. I think most of your clients would be paying you cash for that kind of work... The solitary nature of the criminal defence lawyer work, you know, on legal aid certificates, makes it a real challenge for women to stay”. (Judge transcript)*

Many in the focus groups cited the lack of consistent income as a major challenge faced by those in the private practice of criminal law, regardless of gender. Tied closely to this was the view that legal aid work was poorly funded. Many women discussed how the lack of adequate compensation for work done on legal aid certificates contributes to this insecurity. Issues regarding the lack of compensation for all of the hours that defence lawyers actually put in for a file, as well as the lack of payment for travel time to meet with clients or attend to matters at courthouses around the jurisdiction were seen as a contributing factor to the low remuneration for work done. For some, it appears that this feeling of financial instability was part of a larger sentiment of being undervalued for their work. Again, legal aid was mentioned numerous times in this regard, with many indicating that changes to legal aid funding structure – moving away from discretionary payments to the current fixed fee model – has made an already challenging situation far worse. There’s a perception that many women choose to avoid this insecurity, seeing the Crown’s office as a more attractive and secure option with the added benefit of health insurance and other benefits, as well as possibility to take a full maternity leave (as discussed above).

## Confidence to Start a Business

A number of women across focus groups discussed their concerns over lack of readiness to “hang out your shingle” and go into business on their own. Many expressed the difficulties of feeling confident and prepared to go out on one’s own at such an early stage of career. While many felt that they were competent, new criminal lawyers, they did not feel that they had the necessary business, marketing, and social media skills to manage and grow a practice on their own. They mentioned that these are not skills taught at leading law schools. While they mentioned that this lack of experience and knowledge about building a business was experienced across the board by both female and male lawyers in private practice, a number of women suggested that their male counterparts simply held greater confidence in branching out on their own, whether they were indeed ready to do so or not. From the discussions surrounding this topic, it appears that there is a perception that many women shy away from this due to their lack of experience in building and maintaining a successful business, while male lawyers forge ahead, regardless of experience.

When trying to build a practice, many discussed the importance of referrals from other often more senior lawyers. While not experienced by all, a number of women felt that more senior lawyers, who happen to be predominantly male, did not refer clients to female lawyers in the same ways that they did to other men. Within this group, some mentioned that male lawyers often only referred clients to women that they thought could use a “softer” approach or who they felt needed more “hand holding” than what they themselves wanted to provide. In this way, it was suggested that female lawyers were referred clients in fewer instances than their male colleagues and in cases where it was felt that the client was deemed “too needy” and thus where they felt that a female lawyer would be more appropriate.

## **Desire for Greater Mentorship**

When discussing what could be done to address some of the challenges that women face, a number of focus group participants, particularly those who had more recently been called to the bar, reflected on the need for greater mentorship. While they felt law school and articling prepared them for their role as criminal lawyers, they felt that there was much that they could learn from more senior counsel. While a number of women indicated that they had benefited from close mentorship by senior male lawyers, the lack of mentoring by senior female lawyers was mentioned on a number of occasions. More generally, many suggested that they could greatly benefit from guidance on how to build a successful practice and deal with billing, marketing, and social media. It was suggested that either successful male or female lawyers could give this sort of advice. However, it was argued that advice on how to negotiate between a demanding career and desires to start or grow a family at the same time would be better directed from senior female lawyers, those who had managed to balance a successful career with a growing family life. Within these discussions, the suggestion of a course on the business side of private practice was raised, with many seeing this as a way to boost the confidence of a woman who may otherwise shy away from this area of law based on feelings of inadequacy in this area.

## **Recommendations**

Much of the discussion in the focus groups centred on what could be done to address some of the challenges faced by female criminal defence lawyers. Focus group participants were asked directly what they thought could be done to improve the experience of women in criminal law, and by extension, to ensure that those who were interested in doing so, were able to stay in defence practice. The suggestions include the following:

1. Improve relationships between Crowns/other court staff and defence lawyers
2. Establishing fixed court end times
3. Provide greater financial support for maternity leave
4. Promote collectives of defence lawyers working together

### *1) Improved relations amongst court actors*

A common issue raised by focus group participants surrounded the treatment of defence counsel, particularly female defence counsel, by Crown counsel and other court staff. For many, there appears to be a prevailing culture that has made it acceptable to treat female defence counsel poorly. A shift in this culture is sought. One suggestion to promote more professional and respectful treatment of defence lawyers was to hold a seminar for Crown lawyers and other court staff on the importance of addressing this concern through fair and professional treatment. Others suggested that perhaps every Crown in the province should have to spend two weeks a year as a defence lawyer, and also have defence counsel spend two weeks working with the Crown office. It was suggested that this might promote greater understanding of how each side operates and in so doing, promote a greater working relationship between the two sides.

In order to achieve a better balance in the courtroom between Crown counsel and defence counsel and in turn improve the culture that has allowed for the poor treatment of defence counsel, it was suggested that Crown counsel should have offices outside of the courthouse. In so doing, it was suggested that there would be greater separation such that defence and Crown counsel could be seen as more neutral parties, coming to the courthouse, eliminating the notion of defence counsel as “outsiders” and limiting the “home turf” mentality that some Crown counsel were said to exhibit.

### *2) Court hours*

As many women voiced concerns over the lack of predictable court end times, a number of women suggested that judges and justices of the peace need to be made aware of the challenges faced by lawyers with young children in child-care when court goes later than intended or expected. It was argued that court currently has a clear start time and so it should also have a more definitive end time. This was seen as part of a larger need to recognize the need to accommodate the differing needs of those working within the courts. This includes requesting Crown counsel to address cases earlier in the day, where possible, to ensure that lawyers can meet both career and family obligations. These scheduling changes were suggested as small changes that could in fact make a big difference for a number of female lawyers.

### *3) Need for greater financial support*

When discussing suggestions as to how to address some of the challenges that women face in the practice of criminal law, a number of focus group participants suggested that for those working outside of a larger criminal law firm, there was a need for greater financial support. Because sole practitioners do not have the benefit of continuing to receive their salary while on leave from work, it was suggested that financial support could lessen the burden of maintaining overhead costs while there is little to no income coming in. While a number of women discussed that there was some support available to them, and acknowledging that this was indeed helpful, the amounts involved were not seen as being enough to realistically cover the majority of the costs. As such, many women suggested that increasing this financial support could help alleviate a great deal of the stress and financial costs associated with stopping one’s practice to have children.



#### *4) Forging legal collectives*

Finally, across the majority of the focus groups, regardless of stage of career, it was discussed how a great deal of the challenges that women face in the private practice of criminal law could be minimized and/or addressed if lawyers could work collectively. It was suggested that groups of lawyers with like life goals could “team up” and have some type of cost sharing and work sharing situation. It was proposed that through such collectives, greater support could be provided to sole practitioners simply by having other lawyers available to step in to fill in with clients if one were to fall ill or have other family obligations. Concerns about having to forfeit office space while on maternity leave could further be addressed through this model, where it was suggested that lawyers would no longer need to do give up their office space as the overhead costs would continue to be shared by a number of lawyers, lessening the financial burden typically experienced by sole practitioners. In addition to these benefits, it was further suggested that working collectively could be advantageous to those early career lawyers who may have otherwise felt ill prepared to “hang their shingle” and start up their own practice. In this way, the collective was seen as supporting and providing mentorship to its members, minimizing the stress and possibly even avoidance of this line of work, knowing that one needn’t be solely on their own, if they so chose. As such, the collective was imagined as providing many of the advantages, support, and expertise that one may receive when working in a large firm or even for the Crown.

### **Are Women Leaving?**

There was a lack of consensus on whether women are in fact leaving the practice at a rate larger than men, particularly amongst women who have been in the practice for at least 10 years. Many in this group recognize that their experiences differ from those who left, as they are the ones who chose to stay and that this was not the case for other women. However, a small number of women did not agree that there was an issue of women leaving the practice. They further disagreed with the notion that women may leave due to difficulties managing family life and this demanding career. In contrast, being a sole practitioner was seen as a good career choice for parents due to the flexible and independent nature of the role. While it was previously mentioned that this lack of set hours was problematic for some women with children, for others, this was seen as a positive aspect, allowing greater flexibility with time and allowing working parents to still attend to their children.

It should be noted that it was not just those relatively new to criminal law or those who had left that expressed frustrations with billing clients, growing their business, dealing with legal aid, and poor treatment by Crowns and court staff. A number of these women also felt undervalued, but again, their desire to continue in this field seemed to win out. Those women who had “made it” and lasted more than ten years as criminal defence lawyers still shared frustrations with these elements of their jobs. However, many cited their love for the work and their passion for criminal law that motivated them to stay. The same sentiment was echoed throughout “I just couldn’t imagine doing anything else”.

## Discussion

Based on the nature of the focus group discussions, it appears that there is no single constraint or concern that may lead some women to elect to leave the private practice of criminal law. Rather, from the issues raised, it appears that there are a number of challenges, many of which are specific to the experiences of women that may compound and make it difficult or undesirable to stay in private practice. Issues surrounding challenges of having children when working as a sole practitioner appears to be a dominant challenge. Specifically, the unpredictability of the work as well as income, appear to be drive concerns about whether it is feasible or sustainable for many to stay in the practice. When compared to the kinds of support that are available to women working in larger firms and those working for the Crown, female defence lawyers working as a sole practitioners are left to work independently, with little support and without a “safety net” for times when they are sick or on maternity leave. For those considering starting or growing their families, this type of work model – that characterized by little to no support – may not be very appealing. While a minority of women held contrary views on this, stating that it was precisely this independence that allowed them the flexibility to attend to family obligations, including having and raising children, the majority of the views expressed in the focus groups did not share this view. As such, it appears that the current model works well for a minority of women. Those who experience the independence and unpredictability of the work as less restricting than if they were working in a large firm or for the Crown’s office. Further, it was mentioned that the current model also supports those who have partners with less demanding careers and/or for those who are able to afford full time care for their children. As many noted, for those whose case load is largely based on legal aid clients, many women’s incomes simply cannot fund this kind of childcare option. As such, while there are women who appear to be able to “stick it out” in the private practice of criminal law, the focus group discussions have highlighted a number of barriers that may hinder others from doing so.

In trying to understand whether women are indeed leaving the private practice of criminal law within the first few years of being called to the bar or not, an interesting counter argument was raised: “We lose them even before we have the opportunity to retain them”. It was suggested by some that it may not be solely that we are losing women in those early years, when they succumb to the challenges of balancing the demands of work with the desire to have a family. Rather, that there may be a number of women who are making the decision during law school or articling not to go into the practice of criminal law because of their concerns over balancing growing a career with starting/caring for a family. The question then is how many women are then consciously electing to avoid this area of law due to the perceived challenges associated with being a sole practitioner and defence lawyer. While this was not the focus of the current study, and thus not necessarily a question that can be addressed at this juncture, it is an important consideration to weigh when trying to better understand what is keeping some women out of the private practice of criminal law more generally.

# LEGAL AID ONTARIO DATA

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As much of criminal defence work is funded by Legal Aid Ontario, it seemed sensible to attempt to get some information from Legal Aid on the pattern of billings over time by men and women for legal aid certificates. In particular, it seemed likely that data from Legal Aid Ontario could help build a clearer picture of the career paths of men and women in criminal law work in order to investigate whether women are starting off in the practice of criminal law and then dropping off.

## Legal Aid Ontario Data

In December 2014, LAO provided access to some of their data on the career information of criminal lawyers in Ontario. This individual level data<sup>4</sup> allowed for an exploration of the issue of interest: whether women are leaving the private practice of criminal law in larger numbers than are men. It should be noted that there are some limitations caused when data initially collected for a different purpose are used in other ways. With the present LAO data, as the data are comprised of the number of certificates and the amount of those certificates, it is possible that those who receive a certificate may not be the ones who are in fact doing this work. For instance, lawyers working in a firm may work on a case where the legal aid certificate was issued to another lawyer in the firm. In this instance, the data would only capture who the certificate was given to but not who did the work on that file. This should be kept in mind when interpreting the following findings. However, despite these limitations to the kinds of inferences that can be drawn, the following analysis provides one piece of the larger puzzle on the career paths of women in criminal law.

### *Year of Call and Gender Distribution*

In order to examine whether female defence lawyers leave the practice of criminal law, LAO data were explored specifically looking at the breakdown in gender by year of call.

A very broad definition of criminal lawyer might be someone who has practiced at least some criminal law in the past ten years. To start with this broad overview, gender and year of call of anyone in the legal aid database who had *at least one* criminal law certificate *or* received payment between 2005/2006 up until 2013/2014 were examined. In looking at Table 1, we see, what is, in a sense, a picture of all lawyers – including criminal lawyers – over the past half century.

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<sup>4</sup> While the data is at the individual level, LAO removed all names and any type of identifier prior to providing the data. The data were coded for gender of lawyer only. As such, there is no risk that individuals could be identified from the information provided.

It appears that when one looks at that those who did at least some criminal law legal aid work in the last ten years who were called to the bar in 1969 or earlier, all 97 lawyers were male. At the other end of the distribution, of those called to the bar between 2010 and 2014 who did some legal aid criminal law work, ‘only’ 58% were men and 42% were women.

**Table 1. Year of Call Gender Distribution**

| <b>Year of Call</b>    | <b>Women</b> | <b>Men</b> | <b>Total</b> |
|------------------------|--------------|------------|--------------|
| <b>1969 or earlier</b> | 0% (0)       | 100% (97)  | 100% (97)    |
| <b>1970’s</b>          | 3% (27)      | 97% (779)  | 100% (806)   |
| <b>1980’s</b>          | 19% (27)     | 82% (727)  | 100% (892)   |
| <b>1990’s</b>          | 31% (369)    | 69% (826)  | 100% (1195)  |
| <b>2000-2004</b>       | 39% (299)    | 61% (460)  | 100% (759)   |
| <b>2005-2009</b>       | 37% (227)    | 63% (382)  | 100% (609)   |
| <b>2010-2014</b>       | 42% (127)    | 58% (175)  | 100% (302)   |
| <b>Total</b>           | 26% (1214)   | 74% (3446) | 100% (4660)  |

Table 2 represents all lawyers who had at least one criminal law certificate issued to them from LAO during the period between 2005 and 2014. The table looks separately at men and women and answers the question (for each gender): How much criminal law were these lawyers doing at the end of this period (i.e., during the 2013/2014 financial year)?

Overall, there do not appear to be large differences between men and women with respect to the number of certificates received. As shown in the table, roughly the same proportion of men and women received criminal law certificates, both when looking at the lower end range as well as the upper end. For instance, in 2013/2014, of those who did at least some criminal law in the period 2005-2014, 13% of women received between 1 and 5 criminal law certificates compared to 14% of men who received the same. When looking at the top end, 6% of women received 51 or more certificates whereas about the same proportion of men (8%) had this level of involvement in legal aid criminal work.

What these findings suggest is that the volume of criminal law certificates that men and women are getting is relatively the same – of those (still) in the practice of legal aid criminal work during the period 2005 to 2014.

When looking at the end of this period (2013/2014), it appears that there are many lawyers who are not doing any legal aid work, while a small number are doing a large share of certificates. What the table further shows, however, is if you only look at those high volume lawyers, those who received 21 and more criminal law certificates that year, 76% of these are men (a total of 541), while only 26% (168) are women. As such, while there does not appear to be a substantial gap between men and women when looking at those who had done some criminal law work in this period, one cannot escape the fact that most (76%) of those receiving relatively large numbers of certificates in 2013/14 were men.

**Table 2. Distribution of the number of criminal law certificates in 2013/2014 (for all lawyers who had least one criminal law certificate issued between 2005 and 2014).**

| <b>Criminal Law Certificates</b> | <b>Women</b> | <b>Men</b>  | <b>Total</b> |
|----------------------------------|--------------|-------------|--------------|
| <b>Zero</b>                      | 62% (747)    | 59% (2046)  | 60% (2793)   |
| <b>1-5</b>                       | 13% (163)    | 14% (473)   | 14% (636)    |
| <b>6-20</b>                      | 11% (136)    | 11% (386)   | 11% (522)    |
| <b>21-50</b>                     | 8% (95)      | 8% (280)    | 8% (375)     |
| <b>51 or more</b>                | 6% (73)      | 8% (261)    | 7% (334)     |
| <b>Total</b>                     | 100% (1214)  | 100% (3446) | 100% (4660)  |

## Tracking the career paths of men and women

One way to get one picture of the career paths of women practicing criminal law and to observe whether there is a drop-off of women is to start by looking at a single cohort of people. In this case, all of those who did at least some legal aid criminal work between 2006 and 2014 and were called to the bar between 2006 and 2014 were examined. Essentially, then, following their “legal aid” work for eight of their early years as a lawyer.

The question answered by the data in Table 3 is: What portion of those men and women who are new to the profession are relatively high recipients of criminal law legal aid certificates? Having grouped these 3 years of new calls together, the analysis begins with the first year that all of these new calls could possibly have done any legal aid work and reports the proportion of men and women who received at least 21 certificates each year. By looking at this cohort of lawyers, we can see the differences between male and female new calls as well as if there is a drop off in the practice of criminal law by either women or men.

The results suggest that in each year men are slightly more likely than women to be high volume recipients of legal aid certificates for most of this period of time, shortly after being called to the bar. If one looks at the actual numbers and not the percentages (the figures shown in brackets below each percentage) these differences between men and women are more apparent, and showing a starker picture of this issue. In trying to determine how many women are receiving a high number of certificates, the answer is simple: not very many. When looking at the most recent year available (2013/2014), the results show that of those who had 21 or more legal aid certificates, 25 were women, while 55 were men.

**Table 3. High volume certificates (21 or more): Percentage and number of those called to the bar between 2004 and 2006 who did at least some criminal law between 2006 and 2014.**

|              | 2006-<br>2007 | 2007-<br>2008 | 2008-<br>2009 | 2009-<br>2010 | 2010-<br>2011 | 2011-<br>2012 | 2012-<br>2013 | 2013-<br>2014 |
|--------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| <b>Women</b> | 14%<br>(21)   | 15%<br>(23)   | 16%<br>(25)   | 20%<br>(31)   | 16%<br>(25)   | 17%<br>(27)   | 14%<br>(21)   | 16%<br>(25)   |
| <b>Men</b>   | 16%<br>(42)   | 21%<br>(56)   | 25%<br>(66)   | 22%<br>(58)   | 20%<br>(53)   | 22%<br>(57)   | 24%<br>(64)   | 21%<br>(55)   |

Based on the results of Tables 2 and 3, it could be that people are perceiving a drop in female defence lawyers because they simply are not seeing them in court as often as they are men, as men appear to be disproportionately represented in legal aid work. One can understand why there may be a notion that women are leaving the defence bar as women are seen less frequently than men, based simply on the actual higher numbers of men doing high volume legal aid work.

## Discussion

Overall, LAO data does not seem to suggest that there is a drop off of women from the practice of criminal law, as suspected. However, it does appear to show a clear difference between men and women. Men are doing legal aid work in larger volumes than are women. However, there does not appear to be much difference in the percentage of men and women doing low volume criminal law work. This finding suggests that women do not appear to be dropping out of criminal law work, as some have suspected. As such, in trying to determine if women are leaving the practice of criminal law, based on the findings of the LAO data presented here, this does not appear to be the case.

However, these findings are not conclusive. While the data do not show a drop off of women, it is possible that the period for which we have data to track these career paths may not be sufficient to capture a drop, if it is occurring. It is possible that while the data do not show a decline of women participating in legal aid work, this may occur after the period for which we have data – after 2014. This is speculative, but based on the nature of the data, important to keep in mind.

In trying to further contextualize these findings within this broader study, glancing back at the focus group findings, one is reminded that women, particularly women who have had children, do not have linear career paths. There is not always a clear trajectory from being called to the bar to retirement with a steady progression of clients building in between. For some women, their practice may change form and they may come in and out of the practice of criminal law leading to a partial explanation as to why women appear to be doing less legal aid work. Further to this, based on focus group discussions, it is also possible that women may tend not to have a “traditional” criminal practice, but rather have a more diversified practice where they divide their time between working as defence counsel, working for the Crown,

doing coroners inquest work, law society work, amongst other things. These differences that were found in the volume of legal aid work between men and women could further be reflective of the barriers that women face as defence counsel at the early stages of their career, a time often accompanied by familial changes and obligations. The nature of the data here do not allow for deeper interpretations of these figures and proportions.

# LAW SOCIETY OF UPPER CANADA

## DATA

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As mentioned in the previous section, having data that is categorized by number or value of legal aid certificates in the name of a particular lawyer is, at best, an indirect indication of women's involvement in the criminal law. In order to get a more complete picture of the career paths of female lawyers, data were obtained from the Law Society of Upper Canada. We asked for, and were given, information about the self-reported percent of practice that was criminal law for all lawyers called to the bar in 1994 and later, amounting to a dataset that included information on individual lawyers from 1994 through to 2014.

To fully understand the place of women in the criminal law in Ontario, a good starting point might be to look at the breakdown, by gender for those called between 1994 and 2014. What we see is that women constituted between 45% and 56% of those called to the bar in each of these years. Overall, however, those called to the bar since 1994 are divided by gender more or less in proportion to people in the general population.

**Table 4. Year of Call by Gender**

| <b>Call Year</b> | <b>Women</b>  | <b>Men</b>    | <b>Total</b>   |
|------------------|---------------|---------------|----------------|
| <b>1994</b>      | 46%<br>(594)  | 54%<br>(691)  | 100%<br>(1285) |
| <b>1995</b>      | 48%<br>(584)  | 52%<br>(644)  | 100%<br>(1228) |
| <b>1996</b>      | 45%<br>(586)  | 55%<br>(711)  | 100%<br>(1297) |
| <b>1997</b>      | 48%<br>(564)  | 52%<br>(619)  | 100%<br>(1183) |
| <b>1998</b>      | 48%<br>(564)  | 53%<br>(665)  | 100%<br>(1267) |
| <b>1999</b>      | 46%<br>(561)  | 54%<br>(660)  | 100%<br>(1221) |
| <b>2000</b>      | 48%<br>(620)  | 52%<br>(660)  | 100%<br>(1280) |
| <b>2001</b>      | 50%<br>(627)  | 50%<br>(617)  | 100%<br>(1244) |
| <b>2002</b>      | 53%<br>(1257) | 47%<br>(1129) | 100%<br>(2386) |
| <b>2003</b>      | 53%<br>(717)  | 47%<br>(627)  | 100%<br>(1344) |
| <b>2004</b>      | 53%<br>(742)  | 47%<br>(627)  | 100%<br>(1395) |
| <b>2005</b>      | 56%<br>(790)  | 45%<br>(634)  | 100%<br>(1424) |
| <b>2006</b>      | 52%<br>(743)  | 48%<br>(696)  | 100%<br>(1439) |



|              |                 |                 |                  |
|--------------|-----------------|-----------------|------------------|
| <b>2007</b>  | 54%<br>(804)    | 46%<br>(681)    | 100%<br>(1485)   |
| <b>2008</b>  | 52%<br>(762)    | 49%<br>(717)    | 100%<br>(1479)   |
| <b>2009</b>  | 52%<br>(810)    | 48%<br>(738)    | 100%<br>(1548)   |
| <b>2010</b>  | 51%<br>(821)    | 51%<br>(804)    | 100%<br>(1625)   |
| <b>2011</b>  | 53%<br>(910)    | 47%<br>(797)    | 100%<br>(1707)   |
| <b>2012</b>  | 53%<br>(1001)   | 47%<br>(872)    | 100%<br>(1873)   |
| <b>2013</b>  | 50%<br>(990)    | 50%<br>(1005)   | 100%<br>(1995)   |
| <b>2014</b>  | 53%<br>(1049)   | 47%<br>(935)    | 100%<br>(1984)   |
| <b>Total</b> | 51%<br>(16,134) | 49%<br>(15,555) | 100%<br>(31,689) |

Note: Raw numbers in parentheses.

A similar tracking strategy was used to explore the career paths of men and women, as was discussed in the previous section with Legal Aid Ontario data. Using LSUC annual reporting records, those who were called to the bar in 1994 or 1995 were selected as a starting point. Of these calls, only those who had done a non-trivial amount of criminal law (21% or more) in 1996 were used to create a cohort of lawyers for tracking purposes. This sample of new call in 1996 was made up of 140 men and 114 women, or 55% men and 45% women, roughly similar to the percentage of those called to the bar in those years. It should be noted that these data (140 men and 114 women) refer to whether they are doing criminal law in *any* setting. If one looks for those in what might be called the ‘private practice’ of criminal law, the picture changes quite dramatically.

Based on the categories available in the LSUC records, private practice of criminal law has been defined here as sole practitioners, partners, or employees or associates in law firms. Looking solely at this smaller group – called to the bar in 1994 or 1995, doing a non-trivial (21% or more) amount of criminal law *in a private practice setting* in 1996 – it was found that there were only 47 women and 87 men who fit this criteria. Within this group, the percentage of women is much lower than the initial cohort, with women comprising only 35% of this new group.

The involvement of men and women (47 women and 87 men) in criminal law from 1997 to 2014 was then tracked (see Tables 5,6, and 7 below). Almost immediately, a few of these lawyers (5%) did no criminal law (in 1997). But the proportion of women (4% of the 46 lawyers) and men (5% of the 87 lawyers) doing no criminal law were almost identical.

However, looking at those who report doing no criminal law over the course of the observed period of 1998-2014, the proportion of women not doing any criminal law grew faster than for men. Another issue, of course, is that by the end of this series of years (2014) we see that over half of this cohort is no longer doing criminal law. The

proportion doing no criminal law in 2014 was higher for women (60%) than for men (47%).

The Law Society data further show that approximately 5 years after call, when looking at the proportion of men and women that are reporting doing a great deal of criminal law (more than 60%), the proportion of men in this group is higher than that of women. In other words, although men and women starting off their careers in 1996 in the private practice of criminal law, their involvement did not differ dramatically at first. However, from about 2010 to 2014, there are differences that emerge in the proportion of time men and women spend in criminal law: women appear to be dropping out of the practice of criminal law more quickly than men.

**Table 5. The percentage of men and women (from the same cohort of those who initially were actively involved in the private practice of criminal law) who did no criminal law, for 1997-2002**

|              | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 |
|--------------|------|------|------|------|------|------|
| <b>Women</b> | 4%   | 15%  | 19%  | 32%  | 30%  | 34%  |
| <b>Men</b>   | 5%   | 13%  | 17%  | 18%  | 21%  | 26%  |

**Table 6. The percentage of men and women (from the same cohort of those who initially were actively involved in the private practice of criminal law) who did no criminal law, for 2003-2008**

|              | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|--------------|------|------|------|------|------|------|
| <b>Women</b> | 40%  | 43%  | 57%  | 55%  | 49%  | 53%  |
| <b>Men</b>   | 23%  | 26%  | 31%  | 29%  | 35%  | 38%  |

**Table 7. The percentage of men and women (from the same cohort of those initially actively engaged in the private practice of criminal law) who did no criminal law, for 2009-2014**

|              | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|--------------|------|------|------|------|------|------|
| <b>Women</b> | 53%  | 53%  | 55%  | 55%  | 60%  | 60%  |
| <b>Men</b>   | 38%  | 37%  | 44%  | 48%  | 46%  | 47%  |

These figures, however, do not tell the whole story. By 2014, fully 60% of women and 47% of men had dropped out of the practice of criminal law, with women being disproportionately represented in this group. Based on the tracking of the cohort between 1998 and 2014, a non-trivial period of time, it does appear that women are in fact leaving the practice of criminal law at higher rates than are men. With this in mind, the next question to ask might be ‘where are they going?’

In order to explore this, LSUC data on status was once again examined. This time looking at what members of this cohort reported as their year-end status in 2014. As there is often an assumption that many women leave the practice of criminal law for the stability and security of working as a Crown, whether members of this cohort indicated that they were now working for government was of particular interest. In line with this assumption, the LSUC data show that a higher proportion of women from this cohort were now working as government lawyers, with 17% of women reporting this as their status and only 10% of men from this cohort reporting the same.

The data presented above relate to one cohort: those called to the bar in 1994 and 1995. While the LSUC allowed for a tracking of this group for a period of time, in order to examine changes in practice, it is important to determine if the patterns that are observed with this group are reflective of the patterns of other cohorts of new calls. If not, it could be that the changes in practice that were reported are due to something unusual about this group. In order to do this, the same analysis is replicated with people called to the bar 4 years later (in 1998 and 1999) and who, in 2000 reported that at least 21% of their work was in criminal law. As with the previous analysis, only those who indicated that they were working in a private firm were included.

The results of this second cohort are presented in Tables 8 and 9. It appears that women drop out of criminal law sooner than their male counterparts. For instance, starting in 2001, 6% of women and 3% of men are no longer doing any criminal law. However, within only 2 years, over 20% of women and only 10% of men have left the private practice of criminal law. By 2014, the difference between men and women doing no criminal law is less dramatic, but women are consistently still dropping out of criminal law at higher rates than are men, with 36% of women and 29% of men reporting that they are no longer doing any criminal law work. Further, by 2014, LSUC show that 10 out of the 50 women in the original cohort were, in 2014, working as government lawyers. This is in stark contrast to only 2 men (of an original group of 90) who moved to work for government.

**Table 8. The percentage of men and women (from the same cohort of those initially actively engaged in the private practice of criminal law) who did no criminal law, for 2001-2007**

|              | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|--------------|------|------|------|------|------|------|------|
| <b>Women</b> | 6%   | 16%  | 21%  | 24%  | 22%  | 32%  | 28%  |
| <b>Men</b>   | 3%   | 11%  | 10%  | 14%  | 16%  | 18%  | 26%  |

**Table 9. The percentage of men and women (from the same cohort of those initially actively engaged in the private practice of criminal law) who did no criminal law, for 2008-2014**

|              | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|--------------|------|------|------|------|------|------|------|
| <b>Women</b> | 30%  | 32%  | 34%  | 36%  | 36%  | 42%  | 36%  |
| <b>Men</b>   | 29%  | 24%  | 29%  | 29%  | 28%  | 30%  | 29%  |

## Overview of these two cohorts

Looking at the results of the tracking of these two cohorts, one can then ask: How many people in each of these two cohorts started off in the private practice of criminal law, and how many were apparently still in the private practice of criminal law in 2014? The 2014 numbers would then exclude all of those who, in 2014, were working for government as well as those who reported, in 2014, that they did no criminal law work. These data are shown, for the two cohorts, in the next two tables.

**Table 10. The 1994 & 1995 cohort. Starting numbers for 1996 (doing at least 21% criminal law) in a private law firm and final numbers for 2014 (doing at least some criminal law, but not working for government).**

|              | 1996 | 2014 |
|--------------|------|------|
| <b>Women</b> | 47   | 13   |
| <b>Men</b>   | 87   | 42   |

**Table 11. The 1998 & 1999 cohort. Starting numbers for 2000 (doing at least 21% criminal law) in a private law firm and final numbers for 2014 (doing at least some criminal law, but not working for government).**

|              | 2000 | 2014 |
|--------------|------|------|
| <b>Women</b> | 50   | 22   |
| <b>Men</b>   | 90   | 62   |

Given that women in both cohorts were also, on average, doing less criminal law than their male counterparts, it is not surprising, given these numbers that observers have noticed that women are dropping out of the private practice of criminal law.

By tracking these two groups of lawyers, those called to the bar in 1994/1995 and 1998/1999 and observing their involvement in criminal law until 2014, it does appear that women are leaving criminal law at higher rates than their male counterparts. While the present data do not allow for explanations as to *why* they are leaving, this data does help address the question of whether there is an issue of retention of female criminal lawyers. While men were seen to leave private practice as well, the disproportionate rate of women dropping out of criminal law suggests that there may in fact be different reasons why men and women decide to leave criminal law. With respect to where women are moving to, part of this story appears to confirm what many have suspected – that women are leaving defence practice to work for the Crown's office. This is not the only place where women are likely going to, but LSUC data show that this is one area where women are moving to, and at greater rates than are men.

The final section of this report will help shed light on *why* women are deciding to leave criminal law and the kinds of challenges that some women perceive to be impeding their ability to stay in the private practice of criminal law.

# SURVEY OF FEMALE MEMBERS OF THE CRIMINAL LAYWERS ASSOCIATION

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In December of 2015, female members of the CLA were invited to participate in an online survey on the experiences of women in criminal law. The survey was drafted to specifically address topics and issues raised in the five focus groups that initiated this research, aiming to further understand whether there are specific challenges that women face in the private practice of criminal law that would lead some to leave the practice.

A total of 224 surveys were completed. The study included women at various stages of career, from those called to the bar in 1971, to those who were called in 2015. 44% of survey respondents indicated that they worked in some type of a firm, while 34% reported that they were sole practitioners, and 8% reported working independently but in association with other lawyers. The remaining 14% responded that they worked in an “other” capacity, for instance, working for government or legal aid.

## Unpredictability of work hours

The unpredictability of work hours was highlighted in the focus groups as a source of concern for many women. As such, this topic was further explored in the survey of CLA members. The results suggest that this was seen as an issue with 76% of participants indicating that this was something they viewed as a problem (32% said it was “a serious problem for at least one period of my professional life” and an additional 44% said that it was “a problem or an irritant but one that I was always confident I could deal with”). About a quarter of survey respondents did not see this as much of a problem, if a problem at all (18% said that it “has never been more than a minor problem for me” and an additional 7% said “it has never been a problem”).

When asked if the unpredictability of hours was more of a problem for women than for men, 76% indicated that this was more of a serious issue for women (30% “much more” and 46% “somewhat more”). 23% reported that this was an issue that equally impacted women and men, while only 1 respondent (0.5%) felt that the unpredictability of hours was more of a problem for men than for women.

Respondents were asked whether the problem of unpredictability of hours was a concern specific to those working in criminal law or whether it was a problem shared by those in other areas of law. Here, the large majority of respondents (70%) felt that this was more of an issue (33% much more and 37% somewhat more) associated with criminal law with only 28% of women reporting that unpredictable hours was an equal problem for women in private practice and those working in other areas of law. Only 3% of survey participants indicated that the unpredictability of hours was more of an issue for women practicing in other areas of law than those in criminal law.

Finally, respondents were asked whether the unpredictability of the work would be a reason why some women might leave the practice of criminal law more so than their male counterparts. 64% of respondents answered that this was definitely or probably a reason, with a further 30% reporting that this was “perhaps” a reason why women may leave in higher rates than men. Only 6% of survey participants felt that this was not a reason why women may leave criminal law at a higher rate than men.

*“It is hard to juggle court hours with day-care hours. Often I am begging for adjournments (at) 4:30 so I can get my kids from day-care. Even worse when my clients are in custody!”*

When given the opportunity to expand on the issue of unpredictable hours, the majority of survey respondents discussed how this was an issue for women with children. Many of those who felt that the unpredictability of hours was not of concern to them explained that this was due to the fact that they did not have children.

A smaller number of respondents commented that this is a problem shared by parents who are the primary childcare giver, regardless of gender, however, others noted that this would continue to be more of an issue for women as they carry the large share of the burden of childcare. A number of comments furthered this point, suggesting that in order for the unpredictability of hours to not be an issue for women with children, they needed partners that were more supportive and/or took greater responsibility with parenting responsibilities.

## Unpredictability of income

Whether the unpredictability of income was seen as an issue varied much more than views of the unpredictability of hours.

When asked about the extent to which the lack of predictable income was a problem, 40% reported that this was “a serious problem for at least one period of my professional life” and an additional 25% reported that it “has been a problem or an irritant but one that I was always confident I could deal with”. 15% of respondents reported that this had never been more than a minor problem for them, while 21% felt that this was not a problem.

Respondents were further asked whether unpredictability of income for those working in the private practice of criminal law was more of a problem for women or men. 40% felt that this was a somewhat or much more serious issue for women than for men, while 59% indicated that this was a problem equally experienced by women and men. Only 1.5% of respondents felt that a lack of predictable income was more of a problem for men than women.

When asked to compare the issue between women in the practice of criminal law and those practicing in other areas of law, the vast majority of respondents or 77%, felt

that this was somewhat or much more of a problem experienced by women in criminal law more so than other areas of law. 24% of survey participants felt that unpredictability of income was a problem for both women in criminal law and those in other areas, with the issue seen as uniformly impacting women in all areas of law. No respondents felt that that this was more of an issue for women in other areas of law when compared to women in criminal law.

Women were further asked whether the experience of having an unpredictable income could be a reason why women leave the practice of criminal law at higher rates than men. Here, 63% of respondents answered that this definitely or probably was a reason why women may disproportionately leave the practice of criminal law. 31% thought this was possibly a reason, while only 6% thought that unpredictable income was not a reason why women may leave the private practice of criminal law.

## **Difficulties of having and raising children while working in criminal law**

During focus group discussions, it is was often suggested that one of the primary challenges that women in the practice of criminal law face is trying to balance having children and a family life with the demands associated with practicing criminal law. However, while the majority of women in focus groups tended to agree that this was a significant hurdle, others diverged from this argument, suggesting that criminal law work, and being in the private practice of criminal law more specifically was not a barrier. These women saw the lack of set hours as allowing them, to be more flexible in their work, allowing them to better manage home and work needs. Interestingly, survey responses mirror these views with women seeming split between the two polar views. 51% of women indicated that this has been a problem (40% “a serious problem for at least one period of my professional life” and 11% of a problem or an irritant but one that I could deal with”. In contrast, 42% of women in the study stated that this has never been a problem for them, with an additional 7% noting that this has never been more than a minor problem in their lives.

Not surprisingly, when asked whether having and raising children while practicing criminal law is more of a problem for women over men, all but one respondent indicated that this was either a much more serious problem (76%) or somewhat more serious a problem (24%) for women than men. One respondent indicated that this was equally a problem for men and women in the practice of criminal law.

Related to this, respondents were asked whether difficulties of having and raising children was specific to women working in private practice of criminal law, or whether it was an issue experienced by women practicing in other areas of law. The large majority of survey respondents (78%) stated that they felt this was more of a problem for women in private practice over other areas of law. Only 22% felt that this was an equal problem shared by women in all areas of law.

Finally, survey participants were further asked whether they thought difficulties with having and raising children while practicing criminal law could be a reason why

women leave the practice of criminal law at higher rates than men. An overwhelming majority of respondents (88%) agreed that this was a reason for women leaving, with 58% indicating that was ‘definitely’ and 30% indicating it was ‘probably’ a reason. An additional 11% reported that it could be a possible reason, while only 2% stated that this was probably not a reason why women leave criminal law.

*“Women are still expected to be the primary care givers in early years. Breastfeeding, doctor’s appointments, taking days off work when the child is sick. Leaving practice for an extended period of time WILL cause you to lose clients. You will not get new clients while away. When you come back to practice, it is like starting almost from scratch. It has been very very difficult. As well, the activities that used to transpire in the firm, drinking after work etc., are much more difficult to participate in when you want to be home with your child. You are seen as less deserving of referrals because you have other priorities at home.”*

Respondents’ comments on the difficulties of having children while practicing criminal law reveal that the majority of women, regardless of whether they have children or not, see having children while practicing criminal law to be a significant challenge. Reasons for this include the lack of maternity leave, and as mentioned in other parts of the survey, how the unpredictable hours make child-care a challenge. A number of women noted that the only way that women can effectively balance parental responsibilities with the demands of work is if they have a supportive partner who takes an active role in co-parenting. For some women, the absence of such support was the real barrier. A small number of women expanded on this argument by noting that challenges for women in the practice of criminal law were importantly not problems within the profession, but rather were indicative of continued sexism in the domestic sphere where women continue to take on the majority of parenting and family obligations, regardless of the nature of their careers.

A number of women commented that they did not have children yet, but that they were already anticipating some of the challenges that they would face once they decide to start a family. For a number of these women, the security and support offered to those working in a Crown environment was seen as a possible solution, despite being passionate about the importance and interest in defence work.

## **How women with other family obligations are treated by other criminal justice actors and colleagues**

Respondents were further asked about how they felt they were treated by others in the criminal justice system, such as judges, Crown counsel, court staff and as well by people working in their offices when it came to dealing with family obligations. Interestingly, respondents were split on this topic, with approximately half viewing it as a concern, with the other half not seeing it as an issue. Over a quarter of respondents indicated that how they were treated when it came to family responsibilities was a serious problem for them. Nearly another quarter of respondents indicated that the way they were treated by other criminal justice actors due to their



family obligations was a problem, but one that they felt that they could deal with. In contrast, 21% reported that this had never been more than minor problem for them, with an additional 30% viewing this as something that was not at all a problem.

When canvassed about whether treatment by other criminal justice actors, including people working in one's own office was more of an issue for women than men, fully 85% of respondents felt that this was a more serious problem for women than men (split about equally between 'much more serious' and 'somewhat more serious'), with 15% perceiving this as an equal issue for men and women. No respondents found treatment by other criminal justice actors to be a more serious issue for men than women.

Whether treatment of women who have other family obligations by colleagues and others in the criminal justice system was a unique issue faced by women in the practice of criminal law was examined. 60% of survey participants indicated that this was indeed more of a concern for women in criminal law over other areas of law. However, 36% of respondents reported that this was an equal issue shared by women in all areas of law. Finally, only 3% felt that this was more of a problem for women working in other areas of law.

Survey participants were further asked if the ways in which women with family obligations were treated by other criminal justice actors and colleagues was a reason why women may leave the practice of criminal law at higher rates than men. 66% indicated that this was definitely or probably a reason for women leaving criminal law. A further 26% felt that this was a possibility. Only 8% of survey participants did not see this issue as a reason why women are leaving the practice of criminal law.

*“Many lawyers are expected to prioritize their careers above everything else, including their families. As women are still more likely to be primary caregivers and/or the administrators of their households, this isn't always possible. The legal profession needs to remember that it works FOR society – including the family unit, which is the basic building block of society – rather than against it.”*

A number of women commented on how those with family obligations are treated by judges and other lawyers, including those working in their own offices. A number of women reiterated that there is simply no room for family obligations in firms and the courtroom, with some relaying stories of colleagues being fired after returning from maternity leave due to ongoing family obligations as well as judges refusing to accommodate requests for delays citing that the “the Court of Appeal doesn't give mat leave”. While a number of women reported not receiving or witnessing any kind of poor treatment of women by criminal justice actors, for those who have, the gendered nature of this treatment is not lost on them.

## **How women are treated in the courtroom**

*“If I get called Little Lady in court one more time...”*

The issue of how women and men are treated in the courtroom was posed, asking generally whether women are treated differently than men in the courtroom. 78% of women indicated that women are treated differently, with only 22% reporting that men and women are treated equally.

When given the chance to elaborate, many responded, relaying stories of their own experiences and views on how women are treated in the courtroom. The vast majority of comments addressed how women are often (but not always) treated differently in the courtroom than men. Many discussed feeling disrespected by Crowns, judges, and/or court staff, with some noting that this was particularly the case for younger females. Discussions surrounded feeling patronized and not taken seriously in the courtroom, in a way that male colleagues were not, as well as being spoken to in a condescending manner seemingly reserved for female lawyers. Men were seen as receiving more deference in the courtroom, regardless of experience. Further, a number of respondents noted differences in how confidence was received in the courtroom, with confidence appearing more acceptable from men, but when exhibited by women, is often interpreted as unnecessarily aggressive. Only a small number of women reported that they themselves had never received poor or differential treatment in court, or had not seen women being treated differently from men. However, the vast majority of survey participants' commented the negative treatment of women in court, both by men and other women. A number of these women cited experiencing this differential treatment in court as clear instances of sexism.

Interestingly, being treated "the same" as men was not always seen as beneficial, with a few women raising the issue of judges treating women and men the same in the courtroom, neglecting to acknowledge the differences between the two that may require consideration, such as different child-care responsibilities and the double-duty that many female lawyers play. In this way, being treated no different from men was in itself problematic as requiring the same standards in these instances was seen as unattainable due to familial obligations.

## **Reliance on legal aid clients/certificates**

A concern that was raised frequently during focus group discussions involved the ways in which lawyers are compensated by LAO. In the survey, women were asked whether a reliance on legal aid clients/certificates rather than private clients pose any special challenges to women in the private practice of criminal law. Survey respondents were somewhat split in their views on this issue, with 53% stating that this did pose a challenge to women, while 47% indicated that this did not pose a specific issue for women.

When providing an explanation for this, a number of women discussed the lack of adequate compensation for the work done, with many suggesting that many more hours are worked than what LAO pays for. Others noted the constant delay in payment for certificates. However, few discussed why this as a specific problem for women, but more so a general frustration associated with dealing with legal aid. A few women discussed how private clients seem to feel more confident hiring a male

lawyer, over a female one, presuming that they will have a better outcome if they are represented by a male lawyer indirectly leading more women to take on legal aid work. Finally, a few respondents discussed how big case management files tended to be awarded to male lawyers, with these being the only reliable sources of legal aid income. Overall, for many women, the frustration associated with dealing with legal aid was immense yet for many their practice depended on that source of income. For some, this frustration and hassle was seen as a contributing reason for women to leave the private practice of criminal law.

*“Relying on LAO creates added burdens in terms of running a business, dealing with LAO bureaucracy, managing cash flow and securing a reasonable income. If faced with these additional stresses while raising a family, many women seem to chose staying home or moving to another area.”*

## Considering leaving?

*“Daily! It is often simply not worth the trouble. I do not make any money. I spend way too much of the time I have available to work on doing administrative tasks for my practice, such as dealing with LAO billings, discretionary increase requests.”*

When faced with the question of whether they had ever considered leaving the practice of criminal law, the majority of women (61%) reported that they had contemplated leaving. Survey participants were further asked to elaborate on the reasons they had considered leaving as well as the reasons that made them to stay in private practice.

## Reasons to leave

The most commonly expressed reason to leave private practice was due to the need to increase their income, particularly when the amount of hours women tended to work was considered. Many discussed that the limited financial compensation for the amount of time that they spent and they amount of stress that they experienced often did not seem worth it. Legal aid’s low rate of pay was often cited as a contributing problem. For many women, their income level was not nearly enough to compensate for the demands of the job.

*“Women are treated poorly when they make childcare a priority. This is an old boys club that emphasizes face-time. This creates a glass ceiling environment in many respects.”*

For many women, the manner in which defence lawyers are treated in general, and women in particular, was a key reason to consider leaving the practice of criminal law. Many reported feeling that criminal law was a poor environment for women to work in, with others discussing feelings of being “dumped on” by media, Crown lawyers, court clerks, judges, and even their clients. The private practice of criminal law was seen as very much still an “old boy’s club”, leaving many women wondering

feeling poorly treated simply because they are women and reconsidering why they ought to stay in the practice.

However, many continue to stay because of their passion for defence work. This reason was raised by the majority of women who discussed how they were most interested in criminal defence work and could not imagine working in other areas of law, despite the better hours, benefits, and higher pay. Others indicated that they had stayed simply because the right opportunity to leave had yet to present itself. Finally, some cited the flexibility afforded to them as reasons they have stayed in the private practice of criminal law.

### Factors associated with staying in private practice

Women who were called to the bar more than 10 years ago were asked what they considered accounted for the fact that they are still in the practice of criminal law, in contrast with the decisions of many women to move to other kinds of work. A large number of women attributed their ability to stay in private practice to the support of their partners. Women who had partners who shared in the parental responsibilities or who were stay at home parents or whose partners had a higher income, placing less pressure on them financially, were cited as factors associated with lasting in defence work. Other women attributed their ability to stay in private practice to supportive firm environments, providing women with both emotional and professional support, as well as the financial means to continue practicing in an area they are passionate about. Finally, a number of women discussed how they were able to financially afford to stay in criminal defence work due to the diversification of their practice, splitting their time between criminal law and other areas of law and/or teaching law.

### Reasons why women may leave private practice

Of those survey participants who were called to the bar within the past 10 years, 81% indicated that there are factors that would lead them to leave the private practice of criminal law. Conversely, 19% indicated that there was no reason they would leave.

*“I struggle to come up with a realistic plan for when I choose to have a family and the challenges presented while trying to run a private practice. I’m having to remind myself that relatively speaking, these will be short-term challenges, but realistically, the decision to have a family and the length of any maternity leave seems to be dictated by what I will be able to afford when the time comes.”*

A number of common factors were raised that some felt could lead them to leave criminal law. The most common reason mentioned was related to decisions to leave if one could not afford to have a family or if working in the private practice of criminal law posed too great a challenge to maintaining some balance between work and family life. Related to this were anticipations of leaving due to the insufficient income private practice work allowed them to earn. A number of women indicated that if presented with a more stable, less stressful, better paying job with benefits, they would likely take that opportunity and leave private practice. This was discussed by

many despite the fact they maintained that they still loved the work that they did. For these women, the passion and interest in the work would have to be sacrificed for a more secure and less stressful work life.

After asking survey participants what they perceived were and were not contributing factors associated with why some women may choose to leave criminal law, particularly defence work, the remainder of the survey sought to explore possible remedies aimed at improving the experience of women in the private practice of criminal law. The following section will focus on these recommendations.

# Recommendations for Change: Responses from Survey Participants

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After canvassing survey respondents on the kinds of issues that they saw as barriers to the retention of women in the practice of criminal law, respondents were then asked to comment on what they thought could be done to better improve the current situation within the legal profession, by the Criminal Lawyers' Association, and by Court administration. These open-ended questions gave women the opportunity to voice their views on the kinds of change that they felt was needed, if any, to improve the experiences of women working in criminal law. As such, the recommendations outlined in this section are those made by the survey participants themselves.

## Changes within the profession

When survey respondents were asked what could be done, if anything, within the profession to improve the experience of women in the private practice of criminal law, a number of common themes emerged.

1. The need for greater mentorship of women. Many women raised this as a means of improving things for women within the profession, with many discussing the need for greater support of lawyers who have just been called to the bar. While some women indicated that they themselves had received mentorship from more senior male lawyers, they sought greater involvement in mentorship by senior female lawyers who could more closely relate to their experiences and specific challenges faced, primarily with respect to balancing family and work obligations.
2. Creating a system of support for women to be able to take maternity leaves. Women suggested that firms rethink their insurance policies to allow for greater maternity leaves while also considering more flexible work hours to allow women to better balance their family obligations with those of their career.
3. The need for greater referrals from women to women was mentioned by a number of survey participants. It was suggested that men are already referring clients to other men, it was time women started referring clients to other women.
4. The education of the judiciary was raised as an important practice to improve the experiences of women in the practice of criminal law. Many cited the need for judges to stop punishing women for having to leave court by 4:30 to pick up children in child-care. Further, the need for judges to be made better aware of how comments they make in the courtroom may in fact be sexist, creating a troubling work environment for many female lawyers. It was hoped

that through such initiatives that greater gender parity could be experienced in the courtroom.

5. The enhancement of LSUC's Parental Leave Assistant Program was raised as an integral change within the profession that could greatly aid women in the practice of criminal law. It was suggested that while the current level of assistance provided was helpful (to those who qualified for it), increased funding could help better cover expenses allowing women to take longer maternity leaves. Further arguments were made that the assistance should be made available to *everyone* regardless of business income, with many noting that the majority of women earn more than what the income cut-off is currently set as.

### Changes by the Criminal Lawyers' Association

Similarly, participants were asked what could be done, if anything, by Criminal Lawyers Association that could lead to greater retention of women in the practice of criminal law. A number of dominant themes emerged:

1. Desire for greater opportunities for mentorship were raised, where, as discussed above, women sought greater instances of mentorship from senior criminal lawyers facilitated through the CLA.
2. Need for continued lobbying of LAO was frequently mentioned by participants who sought ways to make working with LAO less cumbersome. Women discussed the need for CLA to continue to advocate for more equitable rates and timely payment for legal aid work, as well as to encourage LAO to move away from the public defender model it seems to be moving toward. It was suggested that if women do not have to work as many legal aid cases to substantiate their income, women will have more time to spend with their families, improving their work-life balance.
3. Importance of continued lobbying of LSUC for better funded maternity leave benefits, making it available to everyone who applies for it. This was raised by a number of women who sought continued support from the CLA in lobbying for maintaining and improving the existing parental leave program.

### Changes by Court administration

Participants were further asked what could be done, if anything by Court administration to improve the experience of women in the practice of criminal law and possibly lead to greater retention of women in the private practice of criminal law. These suggestions fell into 4 broad areas:

1. Establishing a fixed court end time. Many women suggested that if court has a clear start time, it can have an end time. Doing so would provide a greater

level of certainty of when they would be done court, alleviating some of the stress associated with unpredictability of work hours. This would further benefit those lawyers with children who would know exactly when they would be able to pick up their children from day care, after school activities or other child-care arrangements.

2. The need to improve the efficiency of the court. It was suggested that this could be achieved by avoiding late start times and minimizing court delays, streamlining paper work, utilizing video conferencing more frequently over brief in person court appearances, and the greater use of technology to communicate between Crown and defence as well as to deal with filing court documents and scheduling trials. It was suggested that steps such as these would improve the efficiency of the court while also freeing up time for already busy defence and Crown counsel. Further, the greater reliance on technology would benefit lawyers with young children who may be able to work effectively from home, particularly when considering the costs and challenges of obtaining child-care.
3. Need for greater female representation on the bench. A number of women discussed the need for more female judges to shift the predominantly male culture in the courtroom. It was further suggested that more women should be asked to speak at judge's conferences to better inform the judiciary of the challenges women face in the practice of criminal law.
4. Instituting sensitivity training for Crown counsel and judges/justices of the peace. Training was suggested so that these court actors could be made aware of the importance of fair, respectful treatment in court, improving the culture and climate within courtrooms. A number of women further mentioned that judges and justices of the peace should be trained to speak up if they witness sexist behaviour in the courtroom or bullying of any kind.

## Conclusion

While individual women may have a number of reasons for leaving defence work, by asking members of the Criminal Lawyers' Association what they think could be done to address some of the challenges, a list of possible changes and steps have been identified. These changes, varying in scope, provide a starting point from which to initiate steps towards improving the experiences of women in the practice of criminal law.



# Conclusion

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The central focus of this report has been whether women are leaving the private practice of criminal law at higher rates than their male counterparts. While there has been a common presumption and anecdotal observation that this is the case, no systematic research exists on whether this is in fact happening. The purpose of this report has been to try to address this specific question by looking at a number of different sources of information. The four sources of data outlined in this report – focus group data, Legal Aid Ontario data, the Law Society of Upper Canada data, and the survey results of female members of the Criminal Lawyers' Association – have each addressed a different element of this question. Together, they provide a nuanced look at the career paths, patterns, and challenges of women in the practice of criminal law in Ontario.

The answer to the central question on whether there is an issue of retention of women in criminal law, particularly in the private practice of criminal law, is simply yes there is. While there is not necessarily a consensus on this amongst focus group and survey participants, the data presented here suggests that women are indeed leaving the practice of criminal law at higher rates than are men.

The findings presented in this report suggest that a few years after being called to the bar, women are seen to be doing less legal aid criminal law work than are men, as evidenced by the findings from the Legal Aid Ontario data. When we look at the Law Society of Upper Canada data, specifically focussing on lawyers actively engaged in criminal law work, we see that as women move through their careers, they are more likely to be reporting that they are not doing *any* criminal law work as part of their practice when compared to men at the same stage of career.

While the data do not allow for answers as to *why* these women moved away from the private practice of criminal law, the qualitative data from the focus groups and the survey of CLA women suggests that there are a number of common reasons why women are choosing to leave this area of law. It should be mentioned, that this is not simply an issue of people growing bored or uninterested in criminal law, particularly criminal defence work, but rather despite what seems to be a strong passion and commitment for the work, women seem to feel that they need to engage in other areas of legal practice in order to be better able to accommodate family and financial goals. As such, the commonly cited reasons why women have chosen to leave the private practice of criminal law or are contemplating leaving, include the desire for greater job security with better financial compensation, more certain work hours, as well as careers that better accommodate and support the needs of women with children and other family obligations.

The question then turns to what can be done to address this issue of retention. What types of changes are needed to ensure that this area of criminal law is not losing many of its passionate female defence lawyers to other areas of law? While the fact that women are leaving the private practice of criminal law at a higher rate due to perceived barriers and challenges is not overly positive, the findings of this report suggest that there are steps that can be taken to better this experience and in turn,

achieve better retention of women in criminal law, as discussed in detail in the previous section. Some of the recommendations include:

- A greater commitment from the LSUC to not only continue to fund but also increase the amount of funds available to help lawyers be able to take maternity leaves, while also making funding available to all women who seek it regardless of level of income.
- The development of mentoring opportunities for women by women, particularly for those at early stages of career.
- Greater awareness and shift in how court actors interact to improve the prevailing culture of the court.

While changes such as the last one focussed on shifting culture are likely going to be more difficult to implement and/or take greater time, in the interim, this report has outlined a number of smaller changes that would better accommodate women in the practice of criminal law. It is hoped that through some of these proposed changes, that women who want to stay in defence practice feel that they are supported enough and treated in a way that encourages them to do so.

The encouragement and facilitation of greater mentorship is one example of a smaller shift that could help better retain women in the private practice of criminal law. As many women have discussed, historically there has been a lack of female mentoring by other females, likely due to challenges that women in the private practice of criminal law have faced balancing career and family demands, leaving little time for much else. However, based on the frequency with which it was mentioned, there is a great desire for this kind of support and a belief that women could be better positioned to succeed in criminal law with the help from greater mentorship.

Much like the women who make up the members of the Criminal Lawyers' Association, the challenges that women face in the practice of criminal law are diverse. There is not one single constraint that is likely leading women to leave the private practice of criminal law. In response, not one single strategy will likely remove the barriers that are keeping some women from staying. By bringing together the findings of the 4 different studies included in this report, the diverse needs of women in the practice of criminal law have been highlighted and in so doing, so have possible solutions. The recommendations outlined in this report provide a number of possible changes that could make a significant shift in how women are experiencing the practice of criminal law in Ontario.

## Appendix A: Women in the Practice of Criminal Law Survey

Thank you for taking the time to complete this brief survey. We are working with Women in Law Committee of the Criminal Lawyers' Association on a project on the retention of women in the private practice of criminal law. We have been asked to consider whether women face unique challenges in the practice of criminal law and, if so, how those challenges could be addressed. As a result, this survey includes a number of questions on the experiences of women in criminal law in order to get your perspective on what some of these challenges might be. There are no right or wrong answers; we are more interested in your perspective and opinion on these matters.

The survey is relatively brief and so although there are 7 pages, you will quickly see that the next 4 pages each have only four questions, and the questions on each of these pages are structured in a similar fashion.

We seek to maintain the confidentiality of all participants. Your name will not be linked to your survey responses, nor will any other identifying information. All of the responses that you provide will be kept confidential. If there are any questions that you would rather not answer, feel free to skip them and move on to the next question.

You can submit your survey through Survey Monkey, or if you would prefer, completed questionnaires can be sent to me by email at [n.madon@utoronto.ca](mailto:n.madon@utoronto.ca), or to the Criminal Lawyers Association at [admin@criminallawyers.ca](mailto:admin@criminallawyers.ca). They will separate the completed questionnaire from your email and forward the completed questionnaire to me without any identifiers. Alternatively, the survey can be sent by Canada Post to Natasha Madon, Centre for Criminology & Sociolegal Studies, University of Toronto, 14 Queen's Park Crescent West, Toronto, ON, M5S 3K9.

Year of Call: \_\_\_\_\_

Percentage of practice, in the past year, that is currently in criminal law: \_\_\_\_\_ %

Nature of your current practice:

\_\_\_\_\_ Sole practitioner

\_\_\_\_\_ I work independently but in association with a number of other criminal lawyers.

How many lawyers? \_\_\_\_\_

\_\_\_\_\_ I am part of a firm.

How many lawyers? \_\_\_\_\_

\_\_\_\_\_ Other (Please specify)

\_\_\_\_\_

\_\_\_\_\_

In terms of your hours worked, what percentage is typically made up of LAO work? \_\_\_\_\_ %

In terms of your income, what percentage comes from LAO clients? \_\_\_\_\_ %

There are a number of possible factors that people have mentioned might be relevant for criminal lawyers in thinking about whether to continue in the private practice of criminal law. We would appreciate if you would answer four questions about each factor. If the question or the response alternatives do not capture your experience, please add any information that would help us understand your experience.

**(1) The unpredictable hours**

- This has been a serious problem for at least one period of my professional life.
- This has been a problem or an irritant but one that I was always confident I could deal with.
- This has never been more than a minor problem for me.
- This has never been a problem.

**Unpredictable hours:**

- It is a much more serious problem for women than men.
- It is somewhat more serious a problem for women than men.
- It is equally a problem for men and women.
- It is somewhat more a problem for men than for women.
- It is much more serious a problem for men than for women.

**Unpredictable hours:**

- Much more of a problem for women in private practice of criminal law than other areas of law.
- Somewhat more of a problem for women in private practice of criminal law than other areas of law.
- Equally a problem for women in private practice of criminal law and other areas of law.
- Somewhat more of a problem for women in other areas of law than private practice of criminal law.
- More serious a problem for women in other areas of law than private practice of criminal law.

**Unpredictable hours:** Do you think that this is a reason that women may leave the private practice of criminal law at rates higher than men?

- Definitely yes
- Probably yes
- Perhaps
- Probably not
- Definitely not

Any additional comments on unpredictable hours?

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**(2) The unpredictability of income.**

- This has been a serious problem for at least one period of my professional life.
- This has been a problem or an irritant but one that I was always confident I could deal with.
- This has never been more than a minor problem for me.
- This has never been a problem.

**Unpredictability of income:**

- It is a much more serious problem for women than men.
- It is somewhat more serious a problem for women than men.
- It is equally a problem for men and women.
- It is somewhat more a problem for men than for women.
- It is much more serious a problem for men than for women.

**Unpredictability of income:**

- Much more of a problem for women in private practice of criminal law than other areas of law.
- Somewhat more of a problem for women in private practice of criminal law than other areas of law.
- Equally a problem for women in private practice of criminal law and other areas of law.
- Somewhat more of a problem for women in other areas of law than private practice of criminal law.
- More serious a problem for women in other areas of law than private practice of criminal law.

**Unpredictability of income:** Do you think that this is a reason that women may leave the private practice of criminal law at rates higher than men?

- Definitely yes
- Probably yes
- Perhaps
- Probably not
- Definitely not

Any additional comments on the unpredictability of income?

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**(3) The difficulties of having and raising children while practicing criminal law**

- This has been a serious problem for at least one period of my professional life.
- This has been a problem or an irritant but one that I was always confident I could deal with.
- This has never been more than a minor problem for me.
- This has never been a problem.

**Difficulties of having and raising children while practicing criminal law:**

- It is a much more serious problem for women than men.
- It is somewhat more serious a problem for women than men.
- It is equally a problem for men and women.
- It is somewhat more a problem for men than for women.
- It is much more serious a problem for men than for women.

**Difficulties of having and raising children while practicing criminal law:**

- Much more of a problem for women in private practice of criminal law than other areas of law.
- Somewhat more of a problem for women in private practice of criminal law than other areas of law.
- Equally a problem for women in private practice of criminal law and other areas of law.
- Somewhat more of a problem for women in other areas of law than private practice of criminal law.
- More serious a problem for women in other areas of law than private practice of criminal law.

**Difficulties of having and raising children while practicing criminal law:** Do you think that this is a reason that women may leave the private practice of criminal law at rates higher than men?

- Definitely yes
- Probably yes
- Perhaps
- Probably not
- Definitely not

Any additional comments on the difficulties of having and raising children while practicing criminal law?

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**(4) The treatment of women who have other (e.g., family) obligations by other people working in the justice system, including people working in your office.**

- This has been a serious problem for at least one period of my professional life.
- This has been a problem or an irritant but one that I was always confident I could deal with.
- This has never been more than a minor problem for me.
- This has never been a problem.

**Treatment of women who have other obligations by others working in the justice system, including people in your office:**

- It is a much more serious problem for women than men.
- It is somewhat more serious a problem for women than men.
- It is equally a problem for men and women.
- It is somewhat more a problem for men than for women.
- It is much more serious a problem for men than for women.

**Treatment of women who have other obligations by others working in the justice system, including people in your office:**

- Much more of a problem for women in private practice of criminal law than other areas of law.
- Somewhat more of a problem for women in private practice of criminal law than other areas of law.
- Equally a problem for women in private practice of criminal law and other areas of law.
- Somewhat more of a problem for women in other areas of law than private practice of criminal law.
- More serious a problem for women in other areas of law than private practice of criminal law.

**Treatment of women who have other obligations by others working in the justice system, including people in your office:** Do you think that this is a reason that women may leave the private practice of criminal law at rates higher than men?

- Definitely yes
- Probably yes
- Perhaps
- Probably not
- Definitely not

Any additional comments on the treatment by others working in the justice system, including people in your office?

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**(5) Treatment in the courtroom:**

- Women are treated much differently than men in the courtroom by judges, Crown Attorneys, and/or other court personnel.
- Women are treated somewhat differently than men in the courtroom by judges, Crowns, and/or other court personnel.
- Men and women are treated the same in the courtroom by judges, Crowns, and/or other court personnel.

**In what ways (if any) do you see women as being treated differently from men in the courtroom?**

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**(6) Does a greater reliance on legal aid clients/certificates rather than private clients pose any special challenges to women in the private practice of criminal law?**

- No
- Yes, Please explain

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**(7) Please briefly discuss any other factors that have not been mentioned that might be relevant for criminal lawyers in thinking about whether to continue in the private practice of criminal law.**

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**(8) What could be done, if anything, *within the profession* to improve the experience of women in the practice of criminal law and possibly lead to greater retention of women in the private practice of the criminal law?**

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**(9) What could be done, if anything, *by Criminal Lawyers Association* to improve the experience of women in the practice of criminal law and possibly lead to greater retention of women in the private practice of the criminal law?**

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**(10) What could be done, if anything, by Court administration to improve the experience of women in the practice of criminal law and possibly lead to greater retention of women in the private practice of criminal law?**

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**(11) Have you ever considered leaving the private practice of criminal law?**

No  
 Yes

**If yes, please elaborate on your reasons for considering leaving and the reasons that you remained in the private practice of criminal law:**

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**(12-1) If you were called to the bar more than 10 years ago, what do you think accounts for the fact that you are still in the private practice of criminal law, in contrast with the decisions of many women to move to other kinds of work?**

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**(12-2) If you were called to the bar within the past 10 years, is there anything that would lead you to leave the private practice of criminal law?**

No  
 Yes

**If yes, please elaborate.**

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