

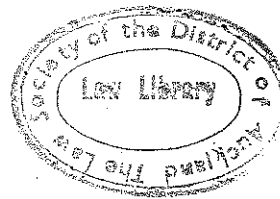
**WOMEN IN
THE
LEGAL PROFESSION**

**THE REPORT OF THE SECOND WORKING PARTY
ON WOMEN IN THE LEGAL PROFESSION**

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AUCKLAND DISTRICT LAW SOCIETY

**WOMEN IN
THE
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**THE REPORT OF THE SECOND WORKING PARTY
ON WOMEN IN THE LEGAL PROFESSION**

General Editor: Jeannine Cockayne

c 1989 The Public Relations Department
of the
Auckland District Law Society

PRESIDENT'S FOREWORD

It is my very real pleasure to present the report of the second Working Party on Women in the Legal Profession, a copy of which is enclosed with this letter.

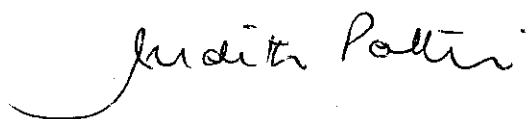
It is seven years since the first Working Party examined the position of women in the legal profession and during the intervening years there have been significant changes both in the number of women entering the legal profession and in the manner in which women practitioners are involved in the profession. It is timely therefore that the second Working Party has reported.

An enormous amount of time and effort has been spent by the Working Party in producing this report for the Society. The result is an extremely worthwhile document which will be of great interest and educational value to the profession as a whole. I hope each of you will take the time to read the report thoroughly.

The report contains a number of important recommendations. The Council of the Auckland District Law Society will over the coming months be giving careful consideration to the recommendations and to the manner in which they might be implemented to benefit the profession as a whole and the public whom the profession serves. The Council will be pleased to receive feedback from members on the recommendations and as to the manner of their implementation

I thank the Working Party for producing this Report and I commend it to you as an interesting and informative study.

Yours sincerely



Judith Potter
President

APRIL 1989

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PART 1: INTRODUCTION

- 1.1 The second Working Party on Women in the Legal Profession was appointed in April 1986 by the then president of the Auckland District Law Society, Simon Lockhart, Q.C., to follow up the recommendations made by the original working party (established in April 1981) and to report to the Auckland District Law Society.
- 1.2 The members of the working party were:

Andrew Becroft
Gerard Curry
Patrick Gibson
Helen Graham
Margaret Jensen
Deidre Milne
Elizabeth Minogue
Michael Ruffin
Norman Shieff
Nadja Tollemache

During the course of the committee's work Helen Graham resigned on going overseas. She made a valuable contribution during the period of her appointment. Nadja Tollemache was appointed Ombudsman.

Norman Shieff was initially appointed convenor of the working party. Subsequently an approach was made on behalf of some women in the legal profession concerning the convenorship and constitution of the working party. They thought it more appropriate that a woman lead the committee which was concerned with an enquiry as to the position of women in the profession. There was also a concern that there was not a representative on the committee who was a female partner. After consideration a recommendation was made and implemented that Elizabeth Minogue be appointed as joint convenor.

1.3 TERMS OF REFERENCE

- (a) The 1981 report and recommendations were reviewed and checks were made as to whether major causes of concern had been redressed;
- (b) A questionnaire by the Heylen Research Centre was commissioned to elicit facts on which the working party's report would be founded;
- (c) The working party called for and received oral and written submissions.

1.4 ISSUES

The working party addressed the issues in the first working party's report including:

- (i) present facts and attitudes relating to women in the profession as to their status and prospects of partnership and attainment of goals;
- (ii) issues relating to prejudice and discrimination;
- (iii) whether women in the profession suffered from harassment;
- (iv) issues relating to the establishment of creches and the question of taxation relief in respect of child care.

[An analysis and summary of the report of the 1981 Working Party on the Position of Women in the Legal Profession can be found in Part 8 of this report.]

PART 2: DISCRIMINATION

DEFINITION

- 2.1 The working party considers that for the purposes of this report, it is both necessary and desirable to define discrimination.

It is of the view that the best and most helpful definition that the working party could find is that prepared by Doctor Margaret A Wilson and included in her Report on the Status of Academic Women in New Zealand (July 1986 - page 5). An extract is set out as follows:

"It is important to define what is meant by the term discrimination, and why women consider the elimination of discrimination on the basis of sex a pre-condition to their equality. It is important because frequently behaviour is not recognised as being discriminatory. It is also not often recognised that the way in which institutions are organised can result in discriminatory practices. Further, the effects of discrimination upon women and the consequences of such discrimination upon the community are not always understood by those who have never experienced discrimination ...

Discrimination against women is experienced by the making of decisions that affect them on the basis of their sex or characteristics attributed to their sex, in circumstances where their sex or characteristics attributed to their sex are neither relevant nor appropriate. Discrimination in this context involves an element of injustice or unfairness and inequality of treatment between two people or two groups of people. Such discrimination is considered unacceptable by the community as evidenced by the enactment of the Human Rights Commission Act 1977 which makes it unlawful to discriminate against women in specific circumstances, including employment. ...

Frequently discrimination is not just the result of an individual act by one person against another but is the result of procedures and practices that have the effect of discrimination against women.

Discrimination takes many forms but may be categorised as being either direct or indirect for the purposes of this report. Direct discrimination may be either intended or unintended, but intended is the most easily identifiable. This occurs when the discriminator acts on the basis of beliefs that are deliberately discriminatory against women. For example, if there are two people applying for a job, a man and a woman, and the job is given to the man because it is assumed that all women will marry and have children and, therefore, will inevitably leave the employment. In such a case there may be no factual basis for this assumption but it is acted upon to the detriment of the woman. In such instances the discriminator will often acknowledge the reasons for the decision even though it clearly discriminates against the woman. It is this form of discrimination that is most easily subject to legal remedy.

Unintended direct discrimination occurs when the discriminator does not realise that a decision is based upon a discriminatory belief. This form of discrimination is evidenced by decisions made on the basis of characteristics that are attributed to women. For example, a married woman is passed over for promotion and preference is given to a male colleague of equal standing because it is assumed he is the 'bread winner' and serious about his career whereas she already has another job as wife and mother. Often this attitude is unconscious but it does result in discrimination because, again, assumptions are made that may not be valid.

Indirect discrimination is more difficult to identify because it is not associated with the specific actions or motivation of an individual. It occurs when what appear to be neutral employment practices have the effect of discriminating against women ... e.g. indirect discrimination takes place when the needs of women are not incorporated within the practices of the institution. For example, the failure to acknowledge women's needs with respect to the provision of flexible maternity leave and child care facilities can result in an apparently equal, neutral system operating in a discriminatory way."

2.2 The working party reminds the profession that discrimination against women within the profession is:

- (i) Unlawful.
- (ii) Contrary to accepted principles of human rights.
- (iii) Unfair to women.
- (iv) Contrary to the public interest, and
- (v) Adversely affects the standing of the profession and its ability to serve the needs of the community and should therefore be eliminated in all its forms.

This report attempts to identify discrimination as it is perceived to exist within the profession, reveal its insidious nature, and devise a response.

PART 3: SOURCE DATA RECEIVED BY THE WORKING PARTY

3.1 THE HEYLEN SURVEY

At the request of the working party, the Auckland District Law Society commissioned the Heylen Research Centre to carry out a survey of members of the legal profession within the Auckland District Law Society.

After considerable discussion and consultation with Heylen, including a review of available overseas survey material, a suitable questionnaire was finalised in April/May 1987.

Research Objectives

Specifically, the research objectives were to measure:

- (i) Personal career satisfactions and aspirations.
- (ii) Perceived prospects for advancement.
- (iii) Factors believed to impede personal development and advancement.
- (iv) Perceptions regarding areas of law more difficult for women than men (and vice versa).
- (v) Perceptions regarding prejudice and discrimination against women practitioners.
- (vi) Factors affecting child care and maternity/paternity leave.

Questionnaires

Self-completion questionnaires were mailed to 900 Auckland District Law Society members in mid-May 1987. In order to provide sufficient numbers for analysis, questionnaires were sent out to all 371 female member and 530 randomly selected male members. As the questionnaires were not sent to representative numbers of males and females, the sample is not strictly

representative of the profession as such, but provides a sample size of both males and females to enable a valid analysis in terms of the specific objectives.

Of the 900 questionnaires sent out, 431 usable questionnaires were returned, representing a 48 percent return rate. This is a relatively high response for a survey of this size of a professional body. Response rates for males and females were very similar - 51 percent for females, 45 percent for males.

Further details of the methodology and sample description, along with the Auckland District Law Society's covering letter and questionnaire, can be examined with the full report at the offices of the Society.

Results

The results of the survey were tabulated by the Heylen Research Centre into four volumes being:

- (i) Findings
- (ii) Tabulations
- (iii) Further tabulations
- (iv) Verbatims being anonymous comments by persons responding to the survey.

The working party has taken extracts of the 80 pages of condensed findings set out in Volume 1, divided into:

- (i) Selection of condensed poll questions and summary of answers.
- (ii) Conclusions of Heylen.
- (iii) Recommendations of Heylen.

The second Working Party on Women in the Legal Profession urges that all members of the profession read these condensed findings.

**THE HEYLEN SURVEY: A SELECTION OF CONDENSED POLL
QUESTIONS AND A SUMMARY OF ANSWERS**

Q. In which year were you admitted as a Barrister and/or Solicitor?

- (i) Nearly half of all females have been in the profession for less than five years. This contrasts sharply with males and indicates the relatively recent presence of females in the profession, and the likelihood of an increasing ratio in the immediate future.
- (ii) Subsequent comparisons of the relative position of males and females in the profession need to be made in the light of the differences in years of experience.

3.1.2 Current Position

Q. What is your current position?

- (i) The overall sample is made up of approximately equal numbers of employed solicitors and partners/principals.
- (ii) The employed solicitors are dominated with respect to numbers of women, the reverse is the case for partners - this is partly a function of the relatively shorter number of years in the profession of females.

Q. In addition to your LLB, what further academic qualifications, if any, do you have?

- (i) Overall, half of the survey sample have qualifications in addition to their LLB.
- (ii) LLB Honours and Bachelor of Arts degrees are the most common additional qualifications.
- (iii) Females are more likely than males to have additional qualifications, particularly B.A.'s.

- (iv) This is partly a function of the fact that people who have been admitted to the Bar within the last five years are more likely to have additional qualifications. However, when comparing the qualifications of male and female partners - (females generally have taken longer than males to become partners - see section 3.1.5), female partners have more additional qualifications than their male colleagues.

3.1.4 Legal Experience

Q. How many years of legal experience have you had in the following areas of employment?

- (i) Overall, it appears that females have spent more time as a graduate law clerk than have males. This difference holds when comparing the experience of current male and female employed solicitors, and particularly current male and female partners or principals, as a graduate law clerk.
- (ii) Similarly, experience as an employee solicitor is markedly greater for present female partners than for male partners. Thirty eight per cent of female partners spent more than five years as an employee solicitor, in contrast to only 19 per cent of male partners.
- (iii) The difference between males and females in terms of partnership experience is partly a function of years in the profession.

Q. How long have you been with your current organisation?

- (i) More than half have been with their current firm for three years or less.
- (ii) Male and female employed solicitors have spent about the same amount of time in their current firm.
- (iii) Female partners are more likely than male partners to have been with their current firm three years or less.

Q. How many different law offices (including this one) have you been employed by in your post-graduate legal career?

- (i) While there is no sizeable difference for employed solicitors, female partners are a lot more likely than male partners to have worked in two or more law offices (81 per cent vs 60 per cent males).
- (ii) When taking into account the lesser average time women have been in the profession, it is clear that women move from law firm to law firm more frequently than their male colleagues.

3.1.5 Non Legal Experience

Q. If you have been out of law office employment (not including paid or unpaid leave), for more than three months at a time, please indicate how you spent this time.

- (i) Overall, 37 per cent of practitioners have been out of law office employment for three months or more, females slightly more than males, despite fewer years in the profession.
- (ii) The most common reason for being out of law office employment for three months or more is holiday taking, followed by other jobs (law and non-law related).
- (iii) Females are more likely to have had time off for maternity leave/family commitments - in fact no males in the survey had taken three months or more off for paternity or family commitments.

(Partners and Principals only)

Q. What was the length of time between your being admitted to the Bar and becoming a partner?

- (i) Although few females qualifies to answer this question, it is clear that males generally achieve partnership in far shorter time than females.

- (ii) Half of the males who have achieved partnership or principal status achieved this within three years of being admitted to the Bar.
- (iii) Only 17 per cent of females (one third that of males) achieved this position within this time, and are much more likely than males to have taken over five years (37 per cent vs 22 per cent males).

Q. Into which 'remuneration package' do you fall?

(This includes pre-tax salary, partnership profits, and the imputed value of: car, medical insurance, subsidised superannuation scheme, overseas travel allowance, non-taxable allowances etc ...)

A summary of the claimed remuneration by males and females within the two main positions is as follows:

	<u>EMPLOYED SOLICITORS</u>			<u>PARTNERS/ PRINCIPALS</u>		
	<u>Total</u> %	<u>Males</u> %	<u>Females</u> %	<u>Total</u> %	<u>Males</u> %	<u>Females</u> %
\$30,000 or less	49	39	54	1	-	6
\$30,001 - \$45,000	42	42	42	11	6	31
\$45,001 - \$80,000	8	17	4	41	38	50
\$80,001 and over	1	2	-	41	56	13
	-----	-----	-----	-----	-----	-----
	100	100	100	100	100	100
	-----	-----	-----	-----	-----	-----

- (i) The above indicates that female employed solicitors are receiving relatively lower remuneration packages than their male equivalents.
- (ii) There is a similar disparity when comparing the remuneration of male and female principals/partners. The disparity remains when comparing the packages of males and females who have been with their current organisation for the same length of time.

Q. Thinking about the size of your current law firm, how many partners, employed solicitors (who are not partners) and graduate law clerks are there?

(i) Males are slightly more likely to work in smaller firms of 10 practitioners or less.

Q. Approximately how many total hours per week do you work on average for your organisation?

<u>AVERAGE TOTAL HOURS PER WEEK WORKED FOR ORGANISATION</u>	<u>Total</u>		
	<u>Sample</u> %	<u>Males</u> %	<u>Females</u> %
Less than 40	15	13	17
40 - 45	37	34	41
46 - 50	23) 48	23) 53	23) 41
More than 50 hours	25)	30)	18)
Not stated	1	-	2
	----	----	----
	100	100	100
	----	----	----

(i) The majority of practitioners in the survey are working at least 40 hours a week, with many of these working more than 50 hours a week.

(ii) While it may, on the surface, appear that males are working longer hours than females, this is weighted by the number of male partners. Partners are working longer hours.

There is, however, a larger segment of female partners working less than 40 hours (28 per cent vs eight per cent), which indicates some part-time work.

Female employee solicitors are nine per cent more likely to work 40 hours or more than male employee solicitors.

(iii) In general, practitioners working in larger law firms are more likely to be working more than 50 hours a week.

Q. And how many hours per week on average, if any, would you spend in additional law-related activities (e.g. Law Society, continuing education etc.)?

- (i) Sixty per cent of those surveyed participate in some additional law-related activities. Males are slightly more likely than females, although this is also a reflection of the fact that partners and principals are more likely than employed solicitors to put time into additional law-related activities.
- (ii) Female partners seem to spend more time than male partners in additional law-related activities.

Q. In the past, in what areas, if any, has your work been concentrated?

Q. Currently, in what areas, if any, is your work primarily concentrated?

Q. And what areas, if any, would you like to concentrate in, but presently do not?

- (i) With the exception of family law and to a lesser extent criminal law, male practitioners have had a wider range of experience than females, particularly commercial conveyancing, company law, trusts and estate administration and tax and estate planning. Females accordingly express more interest in expanding their experience by getting into other areas.

Employed Solicitors

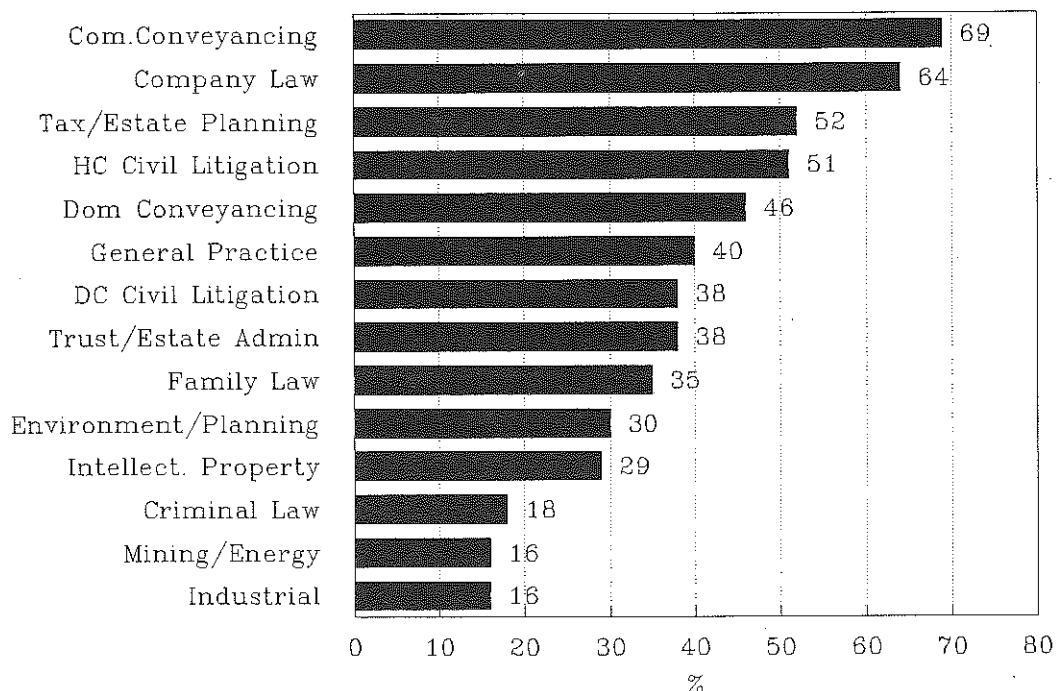
- (i) Amongst employed solicitors, females have had more experience in family law, and to a lesser extent criminal law, while male solicitors have had more experience in company law, and to a lesser extent, commercial conveyancing.
- (ii) This is reflected in areas currently worked in - the proportions of females and males working in family law is more similar however, with differences in criminal law and district court civil litigation (males).
- (iii) Females are more likely to express interest in areas they are not currently working in, such as company law.

Partners/Principals

- (i) Male partners have had more experience in domestic and commercial conveyancing, company law, trusts and estate administration, tax and estate planning, intellectual property, environmental/planning, and general practice.
- (ii) Women partners have more experience in family law, and to a lesser extent, criminal law.
- (iii) These differences are reflected in current activity, although female partners are at least as likely as males to be working in domestic conveyancing. Males are also more likely to be working in High Court civil litigation.
- (iv) Again, female partners express more interest in getting into other areas - the main ones being tax and estate planning, and company law.

Q. In your current organisation, which areas do you believe offer good or poor prospects for advancement?

Good Prospects
In Current Organisation



(i) Commercial conveyancing and company law are the areas of law regarded as offering the best prospects for advancement.

(ii) Practitioners from larger firms are more likely to rate the following areas as having good prospects;

- Company law
- High Court civil litigation
- Tax and estate planning
- Industrial law
- Mining and energy resources

and are less likely to rate the following:

- Domestic conveyancing
- Family law
- Trusts and estate administration
- General practice

(iii) Partners (of both sexes) are more likely than employed solicitors to rate family law, trust and estate administration and general practice as being areas of good advancement value, although these areas still fall well below the areas of company law and commercial conveyancing.

(iv) Female partners, however, rate family law higher than their male colleagues (59 per cent vs 40 per cent), while male partners rate the following areas higher: Commercial conveyancing (81 per cent vs 62 per cent), company law (74 per cent vs 53 per cent), trusts and estate administration (54 per cent vs 34 per cent), tax and estate planning (64 per cent vs 38 per cent), intellectual property and environmental/planning law.

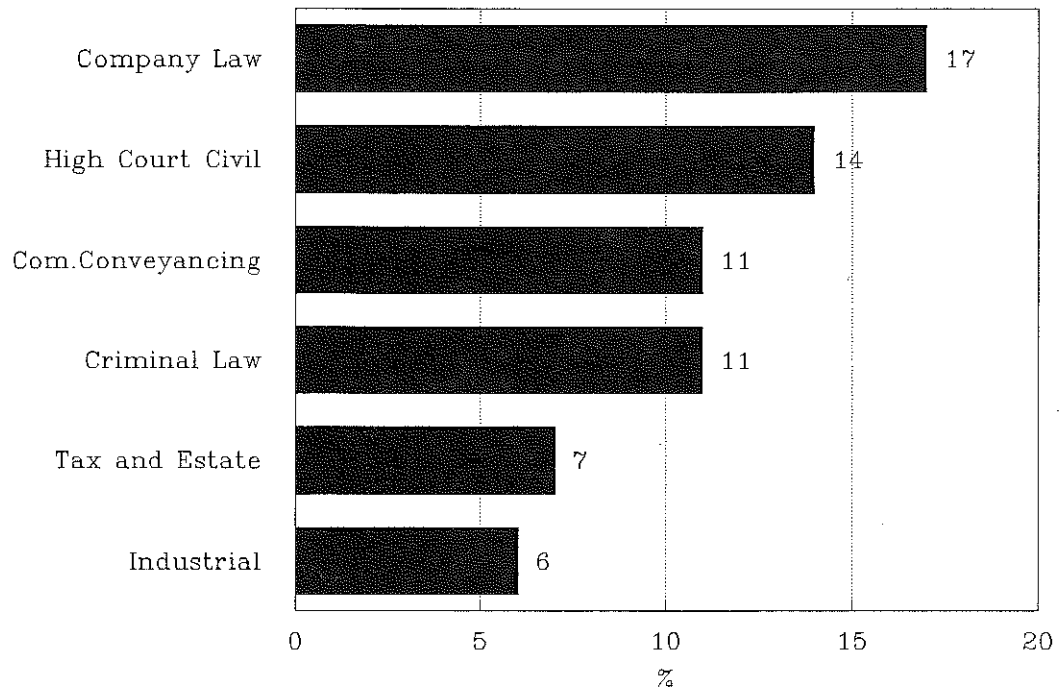
(v) Male employed solicitors are less likely than female employed solicitors to rate High and District Court civil litigation as having good prospects for advancement.

Q. Do you consider that there are any areas of law which are inherently more difficult for a woman than a man to practise and progress in?

The following graph illustrates the main areas which people consider to be more difficult for women to practise and progress in.

The table overleaf gives full details.

Areas of Law
More Difficult For Women



	Total		
	<u>Sample</u>	<u>Males</u>	<u>Females</u>
	%	%	%
Company Law	17	12	23
High Court Civil Litigation	14	10	18
Commercial Conveyancing	11	7	17
Criminal Law	11	13	8
Tax and Estate Planning	7	3	13
Industrial Law	6	3	6
Intellectual Property	5	2	8
Mining/Energy Resources	5	2	8
District Court Civil Litigation	4	4	3
Environmental/Planning	2	1	3
General Practice	2	2	2
Family Law	1	2	-
Trusts & Estate Administration	-	-	-
Other	3	1	5
None/not stated	67	73	60
Therefore, people identifying areas more difficult for women	33	27	40

- (i) Forty per cent of females consider there are areas of law inherently more difficult for a woman to practise and progress in, against 27 per cent of males who believe this to be so.

Overall, company law and High Court civil litigation are regarded as the areas most difficult for women to practise and progress in.

- (ii) Note that the areas regarded as being more difficult for women to progress in tend to be those which people regard as having good prospects for advancement.
- (iii) Practitioners from large firms are more likely than those from smaller firms to regard the following area of law as being difficult for women to practise and progress in:

- Commercial conveyancing
- Company law
- High Court civil litigation

Q. If you feel that there are areas of law which are inherently more difficult for a woman to practise and progress in, then please elaborate on why you feel this is the case.

- (i) Client attitudes, as well as an entrenched male dominance in the profession are seen as impeding progress in these areas.
- (ii) Women are more likely to express this, although men are as likely to mention the 'softer' attributes of women as a factor.

Q. Are there any areas of law which you consider are inherently more difficult for a man than a woman to practise and progress in?

- (i) Only nine per cent of practitioners consider that there are any areas of law which are more difficult for men to practise and progress in. This contrasts with 33 per cent of people considering there to be areas more difficult for women to practise in.
- (ii) Family law emerges as the primary area in which men are regarded as finding it difficult. This is thought to be the case by both sexes, but by slightly more women.

Q. Please elaborate on why you feel this is the case?

- (i) Comments stress the importance of sensitivity, being able to empathise with people's problems, and the personal nature of family law, which is often thought to require an approach 'based on mediation, not litigation'.
- (ii) Female employed solicitors are much more likely to give 'men intolerant/insensitive' comments, unlike female partners, who instead concentrate on the preference of clients, and the importance of the client - lawyer relationship.

Q. Do you feel there are any factors in general which you feel are impeding your personal development within the profession as a whole?

Q. Please elaborate.

- (i) Overall, almost half of the practitioners consider there are factors impeding their personal development.

Female employed solicitors in particular (58 per cent vs 45 per cent males) are the group most likely to feel this way.

- (ii) Overall, the biggest impediment identified is being a woman, that there are no or few women partners in law firms.

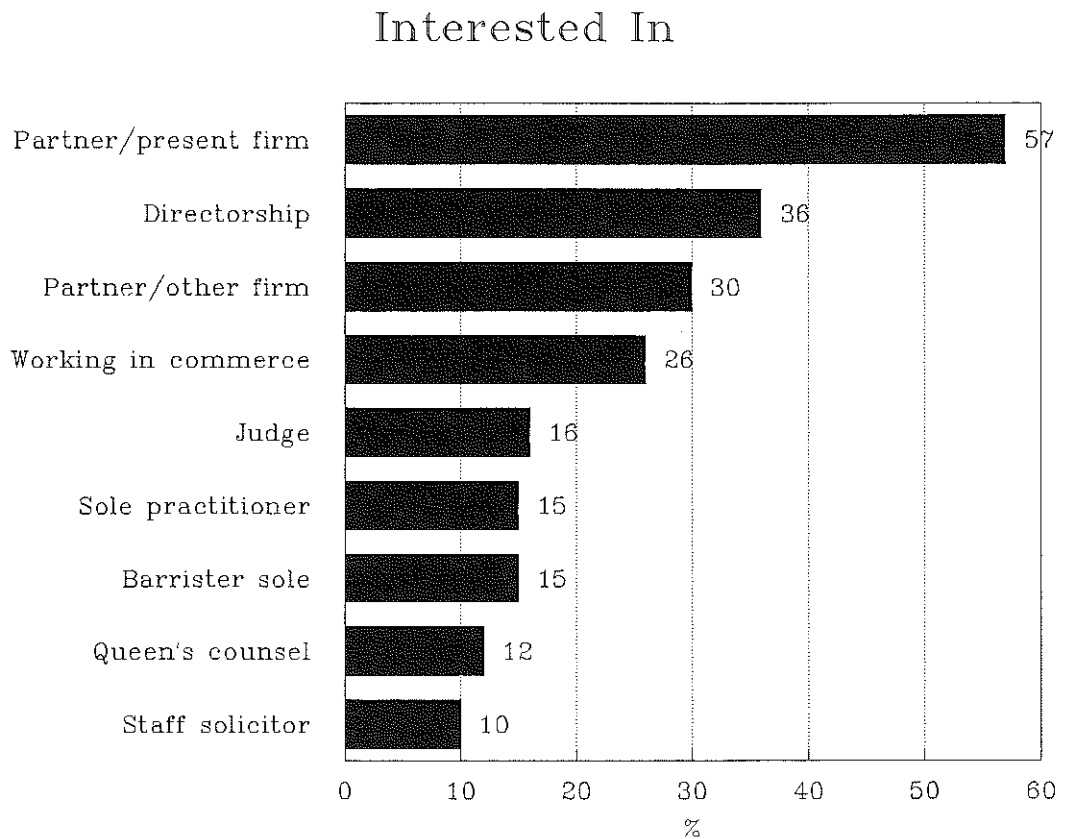
This is primarily a concern of female employed solicitors, as opposed to female partners (29 per cent vs three per cent female partners).

The second ranking impediment is firm structure, which was stated more often by male employed solicitors, and female partners.

- (iii) A perceived lack of training and feedback is another major concern of employed solicitors and females in particular.

Family commitments are a concern of women in terms of personal development, and of female employed solicitors more so than of female partners.

Q. Thinking about your career aspirations, which of the following are you interested in?



<u>INTERESTED IN</u>	<u>Total Sample</u> %	<u>Males</u> %	<u>Females</u> %
Partnership in present firm	57	61	52
Obtaining directorships	36	43	26
Partnership in another firm	30	24	39
Working in commerce	26	24	29
Becoming a Judge	16	14	19
Becoming a sole practitioner	15	13	16
Becoming a barrister sole	15	12	18
Becoming a Queen's Counsel	12	11	13
Becoming a staff solicitor	10	5	16

(i) It is apparent that partnership, in either one's present firm (57 per cent) or in another firm (30 per cent) are the aspirations held by the most people. Directorships and working in commerce are the next most popular options.

- (ii) The above suggests that women may be less likely to be interested in partnership in their present firm, and more likely than males to be interested in partnership in another firm.

However, when employed solicitors are isolated, this trend is not evident for this group, who are the typical aspirants to partnership. Male and female employed solicitors have equal aspirations with respect to partnership.

Female employed solicitors have, however, a higher level of interest in being a staff solicitor (25 per cent vs 18 per cent males), and male employed solicitors show greater interest in becoming a Queen's Counsel (26 per cent vs 16 per cent females), working in commerce (37 per cent vs 31 per cent) and obtaining directorships (44 per cent vs 24 per cent).

- (iii) Of practitioners who are presently partners, females are more likely to aspire to becoming a Judge (25 per cent vs 14 per cent males), whereas males are more likely to aspire to sole practice (10 per cent vs 0 per cent) and directorships (42 per cent vs 22 per cent).

**Q. How do you rate your partnership prospects in your current firm?
(Asked of non-partners in law firms, i.e. employed solicitors and associates).**

- (i) Overall, 41 per cent of employed solicitors and associates regard their prospects of partnership in their current firm as good or excellent. Males in these positions are much more likely to regard their prospects positively.
- (ii) Employees in a practice of fewer than four practitioners are the most likely to regard their prospects as excellent (23 per cent vs eight per cent), as are practitioners who have been with their current practice from four to six years (26 per cent).

As would be expected, associates rate their prospects higher than employed solicitors.

- (iii) As has been indicated earlier, employed solicitors, male or female are equally as likely to have partnership aspirations. When only those employed solicitors (and associates) who are interested in partnership are examined (see table below), it is evident that these people, who have all stated an interested in partnership, rate their prospects differently.
- (iv) Practitioners not interested in partnership rate their partnership prospects almost as well as do those with partnership aspirations.

Q. If you rated your prospects as less than good, please elaborate why you feel this is so?

- (i) The most frequent reason for females rating their partnership prospects as less than good is the perception that their sex has a bearing on how they are evaluated.

This was also the most frequent reason given to the 'factors impeding personal development' question earlier.

- (ii) Women are also more likely than males to cite lack of experience and confidence as reasons for less than good prospects.
- (iii) A perception that they do not fit the 'image' or personality mould of partners in their firm is also more of a concern to women, as is the feeling that the area they are working in is not of partnership value. Family commitments are given as reasons by seven per cent of women.
- (iv) For males, impediments to partnership centre on their firm's structure, experience and to a certain extent a lack of interest in partnership in their firm or indeed the profession itself.

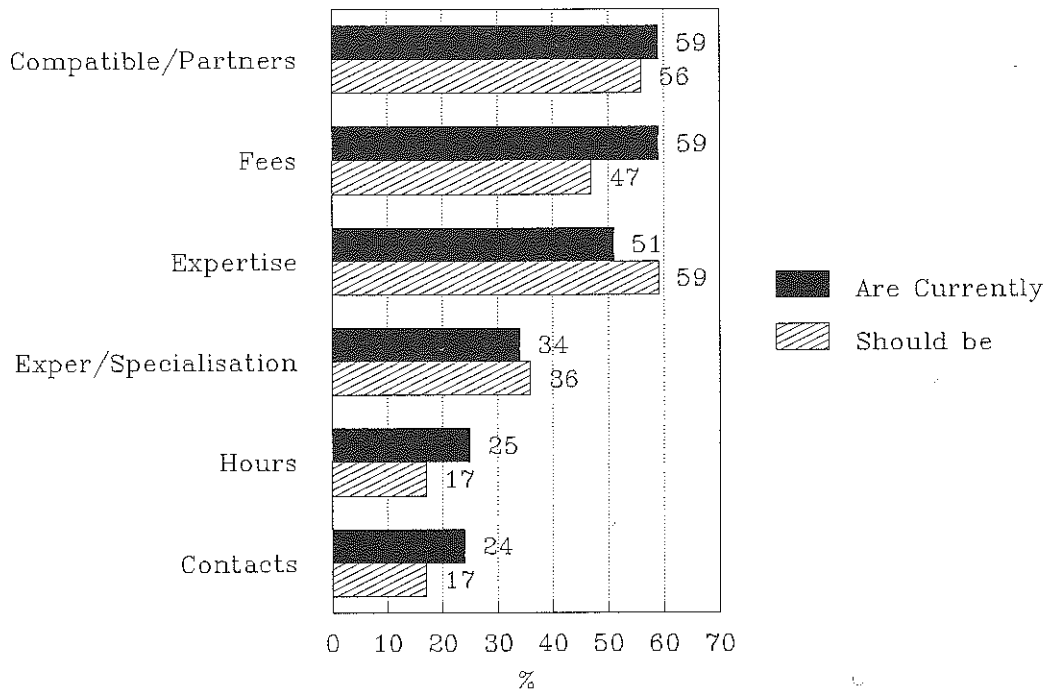
Q. We are interested in your personal views as to what qualities and criteria are important for admission to partnership in your current firm?

Q. Firstly, think about what criteria are important now for partnership admission in your firm.

Q. Secondly, think about what criteria you feel should be important for partnership admission.

(Respondents were then asked to rank the criteria)

Perceived Partnership Criteria (Ranked in first 3)



Criteria Currently Important

- (i) As the above graph shows, compatibility with partners and fees performance are perceived to be the most important partnership criteria currently.
- (ii) Partners are more likely than employed solicitors to rate partner compatibility as an important criterion (78 per cent vs 49 per cent employed solicitors - first three). This is also the case for the expertise/specialisation (66 per cent vs 44 per cent).

Male partners tend to rate the following current criteria more important than female partners:

- Expertise/specialisation (70 per cent vs 50 per cent female partners)
- Compatibility with partners (80 per cent vs 60 per cent)

Female employed solicitors rate the following as more important, as compared to males in this position:

- Hours worked (36 per cent vs 15 per cent male employed solicitors)
 - Fees performance (66 per cent vs 56 per cent)
- (iii) Personal compatibility with partners is perceived to be less important as size of firm increases, but the importance of expertise or specialisation, fee performance and hours worked are perceived as more important as size of firm increases.

Criteria That Should Be Important

- (i) Overall, there is a perception that one's expertise or specialisation should be a more important criterion than is currently for partnership admission, and that fees performance should be a less important criterion.
- (ii) Partners and employed solicitors differ slightly in their perceptions of what criteria should be important - partners regard the following as more important;
- Fees performance (57 per cent vs 44 per cent employed solicitors)
 - Compatibility with partners (73 per cent vs 46 per cent)
 - Expertise or specialisation (73 per cent vs 56 per cent)]
[Male partners more so than females regarding compatibility and expertise findings]

Female employed solicitors rate hours worked and experience as more important than their male equivalents.

- (iii) As was the case for criteria currently important, size of firm still has an influence on perceptions of compatibility with partners - (importance declining with size of firm), and on expertise/specialisation (increasing with size of firm).

Q. When you joined your current organisation, which of the following topics were discussed at your interview?

(i) Males are more likely to have discussed:

- Potential for advancement
- Hobbies, interests
- Career aspirations
- Travel possibilities

(ii) Females are more likely to have discussed:

- Why left previous job
- Marriage/spouse/boyfriend (slightly)
- Possibility of parenthood.

Q. Thinking about your personal situation in your present organisation, how much do you agree or disagree that the following applies to you?

(i) Generally, it appears that most practitioners, males and females, enjoy their current work, and feel they are encouraged to use initiative and take responsibility in their jobs.

Relatively fewer are satisfied with their remuneration packages, and are less likely to feel their abilities are being fully utilised. Partners tend to be more satisfied, with exceptions, of having a balanced lifestyle.

(ii) Within the general trend, there are distinct differences between the sexes, depending upon position in the legal profession.

Male employed solicitors are more likely than females to agree with all of the statements (with the exception of 'balanced lifestyle'), indicating greater job satisfaction at this level than females. They have markedly higher ratings on promotion opportunities and respect from their colleagues.

- (iii) However, female partners appear to have equal to, or greater than equal job satisfaction than their male colleagues. In particular, they see their opportunity for advancement and promotion as being better (69 per cent vs 41 per cent).

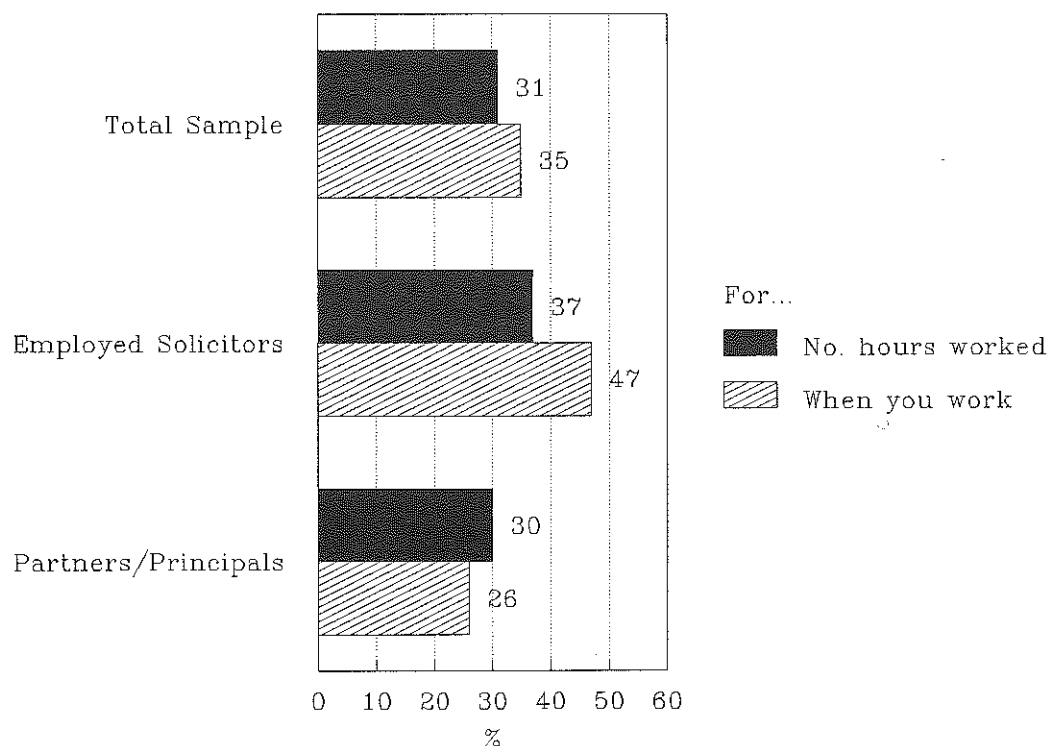
Q. In your current organisation, how much flexibility do you personally have regarding the hours you work?

- (i) As might be expected, it appears that partners have more flexibility regarding the hours they work. This is also the case for barrister sole's and sole practitioners.
- (ii) Male employed solicitors are more likely than females to state that they have quite a lot/a great deal of flexibility (52 per cent vs 36 per cent female employed solicitors).
- (iii) For partners, the reverse is apparent, with 86 per cent female partners stating they have this level of flexibility, as compared to only 68 per cent of males.

Q. Would you personally like to have more flexibility than present in terms of

- Number of hours worked?
- When you work (e.g. glide time)?

Would Like More Flexibility



- (i) As the graph above illustrates, about a third of all practitioners would like to have more flexibility with respect to a) number of hours worked, and b) when they work.
- (ii) Employed solicitors are more likely than partners to state this preference, as would be expected from the previous question covering current levels of flexibility.
- (iii) In terms of number of hours worked, male and female employed solicitors have similar responses, but male partners want more flexibility in this respect than their female peers (who are more happy with their current flexibility).
- (iv) In terms of when to work, female employed solicitors want more flexibility, whereas male and female partners are similar.

Q. For what specific reasons, if any, would you like additional flexibility?

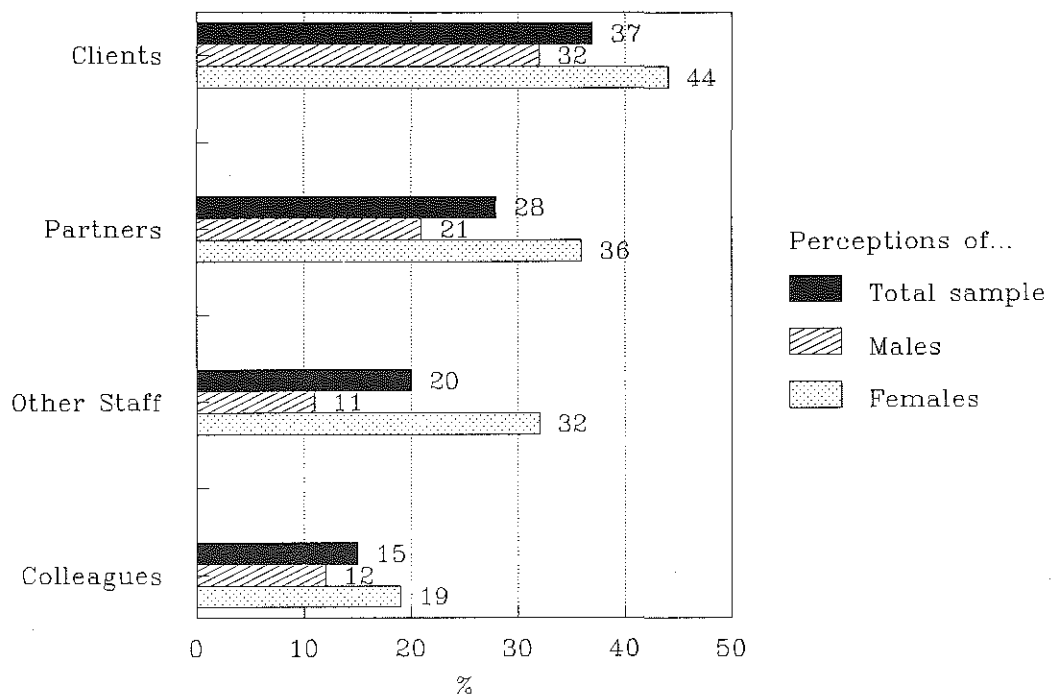
REASONS WOULD LIKE MORE FLEXIBILITY	Total Sample %	Males %	Females %
Flexible hours to compensate for long hours/office hours restrictive/use time more productively/break of routine	12	8	18
Quality of life /balance between work and personal life/health/stress/pressure	11	10	12
Time with family /children/part time when have children/school holidays and when sick	10	8	13
Outside interests: leisure/social/sport	9	8	10
Hours too long /less hours/9-5 only/would like part-time	4	6	2
Outside legal work /further education/professional activities	2	2	1
Client expectations /must be there/perceived expectations of clients	1	2	1
None/not stated	62	66	57

- (i) The most frequent reasons given for wanting additional flexibility relate to the efficient and fair use of time through flexible office hours, and the improvement of one's quality of life, incorporating family and other interests.
- (ii) Females are more likely to stress 'flexible hours' (18 per cent vs eight per cent males), and family commitments (13 per cent vs eight per cent). Males are more likely to comment on length of hours (six per cent vs two per cent).
- (iii) Employed solicitors are, in contrast to partners, more likely to stress 'flexible hours' (22 per cent vs five per cent).

Q. Do you discern any prejudice or discrimination against women practitioners in your organisation from staff, colleagues, partners or clients?

The following graph illustrates the percentage of the incidence of prejudice or discrimination against women.

Prejudice/Discrimination
In Organisation From....



- (i) Prejudice from clients is perceived as occurring by 37 per cent of respondents. Prejudice from partners is second ranking.
- (ii) In all cases, there is greater perception of prejudice by females, whether they are employed solicitors or partners.

Prejudice/discrimination from partners is much more likely to be identified by employee solicitors than by partners themselves.

Male employed solicitors are a lot less likely to perceive prejudice from staff or clients than are their female equivalent.

- (iii) Comparison of practitioner's firm size suggests that perceived prejudice/discrimination from clients and partners increases as the firm size increases.

Q. Elaborate on this prejudice or discrimination (against women in organisation).

- (i) Clients (perceived by 44 per cent of females and 32 per cent of males)

Prejudice/discrimination comments centre around clients' preference for male solicitors, for a number of reasons, including the doubting of female practitioners' abilities. This problem is perceived by equal proportions of males and females, although is cited by male partners in particular. Female partners are more likely to perceive initial reservation.

- (ii) Partners (perceived by 36 per cent of females and 21 per cent of males)

Most comments relate to women having a 'harder road to hoe', sexism and not being taken seriously. Work being given on the basis of sex is also an issue. These issues are identified more by females than males.

Comments stating no/few female partners are equally as likely to have come from males as females, and tend to come from employee solicitors rather than partners.

- (iii) Staff (perceived by 32 per cent of females and 11 per cent of males)

Perceived problems centre around the working relationship between office staff and female practitioners - how staff relate to female practitioners, and how co-operative they are in doing their work.

These problems are identified by female employee solicitors in particular. Male partners are slightly more likely to comment on the working relationship rather than the problem of getting work done.

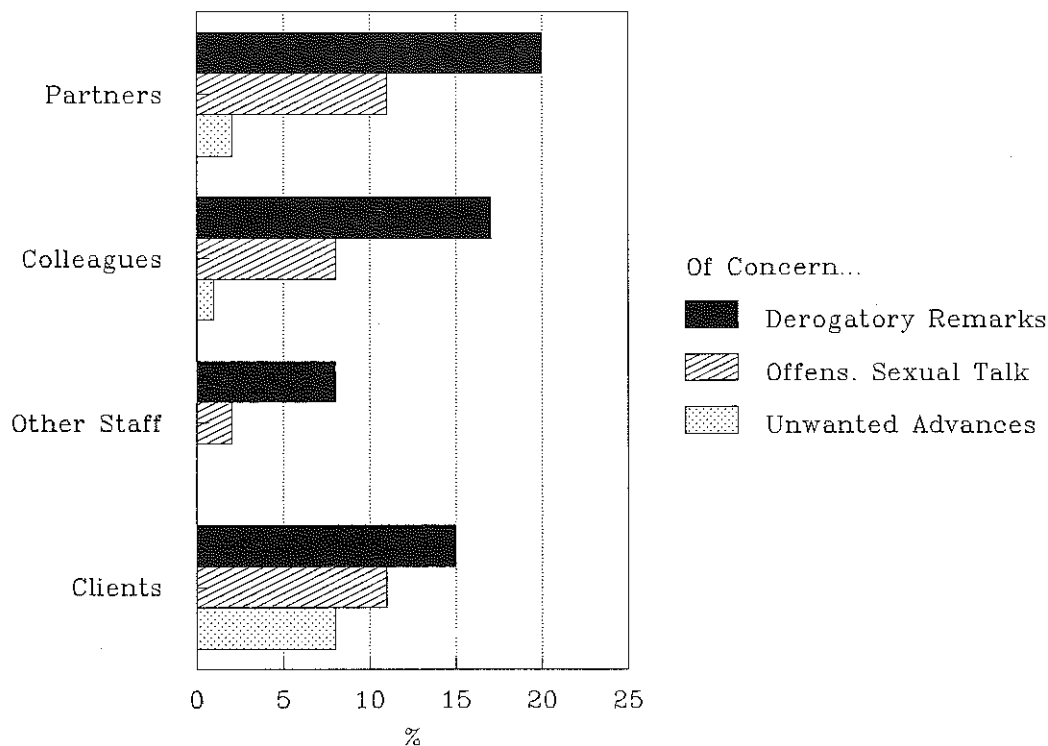
- (iv) Colleagues (perceived by 19 per cent females and 12 per cent males)

Comments centre on perceptions that female practitioners are not taken seriously, experience sexism and patronising behaviour, and that they are discriminated against when work is given according to sex. These comments are more likely to have come from females than males.

Q. In the course of your employment or practice, have you personally experienced any of the following behaviour from partners, colleagues, other staff or clients?

(Asked of females only)

Sources of Concern



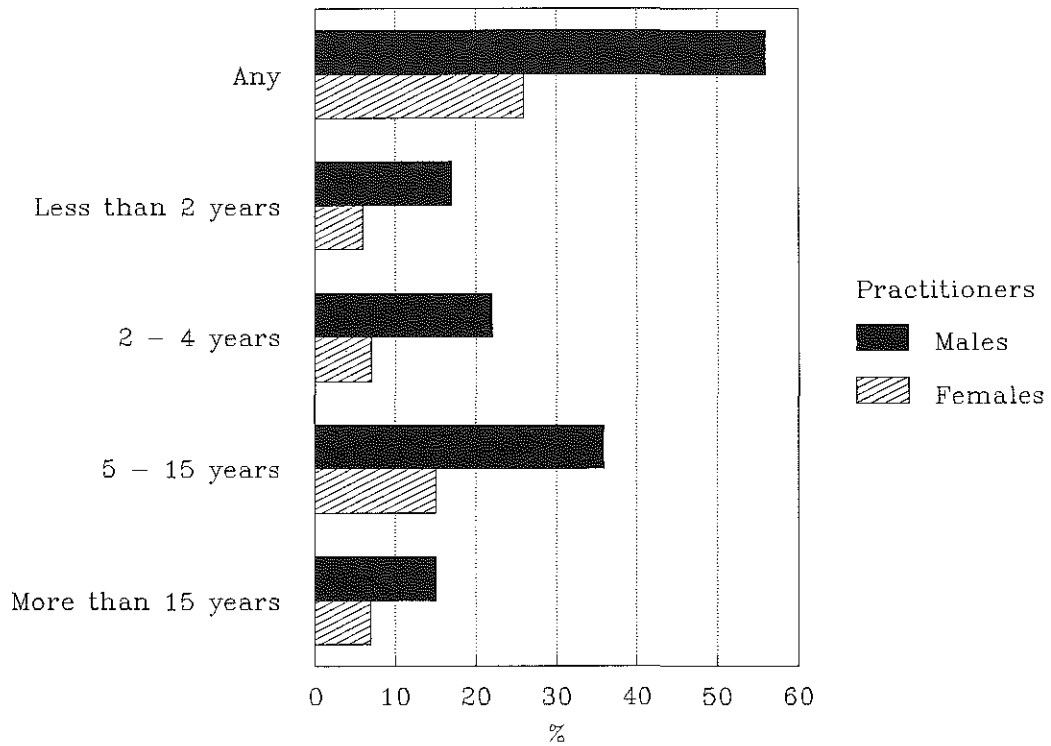
- (i) While derogatory remarks from partners and colleagues are of current concern, clients rate equally to partners as causing considerable current concern in this respect.
- (ii) Of equal considerable concern are offensive remarks from partners.
- (iii) The biggest source of current considerable concern, however, is unwanted sexual advances from clients affecting five per cent of female practitioners.
- (iv) Employed solicitors are most likely to regard derogatory remarks about women from partners as a current concern; similarly offensive remarks with sexual overtones from partners are felt more by female solicitors.
- (v) Again, it is employed solicitors who are currently concerned about unwanted sexual advances - in this case clients are the key offenders.

Q. Do you consider that there are adequate avenues in your present organisation for dealing with any sexual harassment problems and complaints that employees may have?

- (i) Over half of female employed solicitors either aren't aware of any avenues, or don't consider them to be adequate.
- (ii) Size of firm appears to have no effect on awareness avenues for making complaints.

Q. Do you have any dependent children for whom you are responsible aged.....

Dependent Children



- (i) Forty three per cent of those surveyed have dependent children. The graph above illustrates the relative numbers of practitioners having children in different age groups.
- (ii) Female practitioners are much less likely than males to presently have children. Those female practitioners who do have children are more likely to have fewer children.
- (iii) This is likely to be a function of (i) male practitioners are older; (ii) male practitioners are more able to have children and practise law (see following sections)

Q. Who currently looks after your children while you are at work?

<u>CHILD CARE</u>	<u>Sample Have</u>		
	<u>Dependant Children</u>	<u>Males</u>	<u>Females</u>
	%	%	%
Spouse/partner	70	87	26
School	36	33	44
Paid child minder	20	13	38
Other relative	12	9	22
Kindergarten	10	11	6
Nobody	9	6	16
Child care centre	6	4	10
Creche	5	5	4
Other	2	2	2
Not stated	3	2	8

- (i) Males are more likely to have a spouse/partner looking after their children.

Females are more likely to have a paid child minder or another relative.

- (ii) As was noted earlier (see 2.1 - Descriptive information section of the Heylen research), female practitioners are more likely to be single, living with their de facto partner, or separated/divorced.

Q. How much, if anything, do you pay each week for child care?

	Sample: Have Dependent Children %	Males %	Females %
None/not stated	72	78	56
\$1 - \$99	16	17	14
\$100 or more	12	5	30
	----	----	----
	100	100	100
	----	----	----

- (i) It appears that females with dependent children are spending more on child care than males.
- (ii) When child care and child care costs are examined together, it is evident that those people paying in excess of \$100 a week for child care have paid child minders, or are sending their child to a child care centre.
- (iii) Those people (mostly males) for whom their spouse/partner is the major child carer, are the most likely to be spending 'nothing' on child care.

Q. Listed overleaf are a number of common problems experienced by working parents. Which of these, if any, have you personally experienced while working in the legal profession?

	Sample: Have Children Aged <u>15 or Less</u> (167) %	<u>Males</u> (123) %	<u>Females</u> (44) %
Stress in relation to child care	29	14	71
Ability to do well/concentration	28	20	50
The cost of outside care for your children	27	15	59
Finding care for a sick child	22	13	48
Finding temporary/emergency care	22	15	39
Quality of child care	19	11	39
Finding care for children less than 2 years of age	19	13	34
Dependability of child care	17	10	39
Convenience of child care location	13	7	30
Finding after-school care for children aged 5-15 years	13	2	43
Finding care for children aged 2-4 years	10	6	23
Getting leave to have a child	5	2	14
Other problems	7	2	18
None/not stated	39	51	4
Therefore answered question	61	49	96

- (i) Overall, more females appear to be experiencing more problems in relation to child care, particularly stress, costs, and the impact on their ability to do their job.

Q. Have you ever considered resigning from your job because of child care difficulties?

(This and subsequent child care questions were asked of practitioners with children 15 years or under).

	Sample: Have Children Aged 15 Or Less	<u>Males</u>	<u>Females</u>
	%	%	%
Yes	11	1	41
No	86	96	57
Not Stated	3	3	2
	----	----	----
	100	100	100
	----	----	----

- (i) Those people who have considered resigning from their jobs because of child care difficulties are more likely to be female than male, and an employed solicitor, associate, or barrister sole, rather than a partner.

Q. Have you, at any time, had maternity/paternity leave from your law office employment?

Q. If 'yes', how many times?

- (i) Thirty two per cent of females that have children aged 15 years or less have had maternity leave, slightly higher than the 21 per cent of males.

- (ii) The majority of females who have had maternity leave have had it just once. Males that have had paternity leave are more likely to have had it more than once.

Q. Thinking about the last time only, how long was this maternity/paternity leave?

- (i) Most females have over four months leave, while males take a lot less time off, and this tends to be paid rather than unpaid.

- (ii) Females appear to have the first part of their leave paid, with additional unpaid leave.

Q. Do you feel maternity leave provided in the legal profession should be paid or unpaid, or a combination of both?

Q. Depending on how you answered the above, how long should leave be?

(i) Overall, preference for paid or combination maternity leave is held by 59 per cent of practitioners - females are particularly keen on combination.

<u>MATERNITY LEAVE SHOULD BE FOR</u>	<u>TOTAL SAMPLE</u>		
	<u>Paid</u> %	<u>Unpaid</u> %	<u>Total</u> %
None/not stated	43	58	23
1 month	11) ₃₉	12) ₃₄	10) ₄₆
2 - 3 months	28)	22)	36)
4 - 6 months	14)	6)	24)
7 - 12 months	4) ₁₈	2) ₈	6) ₃₁
More than 1 year	-)	-)	1)
	----	----	----
	100	100	100
	----	----	----

(i) The lengths of time which practitioners consider maternity leave should be for are summarised in the above table.

(ii) When combining paid and unpaid leave, most people feel the total length of leave should be between three and six months.

(iii) For both paid and unpaid leave, females tend to feel leave should be longer than that stated by males.

- Q. Do you agree with the principle of paternity leave in the legal profession?**
- Q. Should paternity leave be paid, unpaid or a combination of both?**
(Asked of people who agreed with the principle of paternity leave)
- Q. Depending on how you answered above, how long should that leave be?**
- (i) Overall, about two thirds of practitioners agree with the principle of paternity leave in the legal profession. Females are more likely than males to agree with it.
 - (ii) Forty six per cent of practitioners think paternity leave should be paid or a combination of paid and unpaid. Females are more likely than males to agree with having paid or combination leave.
 - (iii) While fewer practitioners support paternity leave compared with maternity leave, the level of support for a total of over three months is similar.
 - (iv) A higher ratio of unpaid leave is supported compared with maternity leave.
 - (v) Overall, females support longer period of paternity leave than males.

3.2

THE HEYLEN SURVEY: SUMMARY OF CONCLUSIONS

- (i) Women in the profession tend to be younger than their male colleagues.
- (ii) Women are concentrated among employed solicitors, while most partners or principles are male.
- (iii) Women tend to have more qualifications in addition to their LLB - particularly Bachelor of Arts degrees.
- (iv) Women appear to spend more time as graduate law clerks before becoming employed solicitors and more time as employed solicitors before becoming partners.
- (v) Women tend to move from one law firm to another more frequently than their male colleagues.
- (vi) Women are likely to have spent more time out of law office employment, mainly due to family commitments.
- (vii) Males tend to achieve partnership in far shorter time than women.
- (viii) Women practitioners are on relatively lower remuneration packages than males in equivalent positions, even when accounting for the length of time they have been with their current organisation.
- (ix) The ratio of male to female is heavily weighted to males among partners in all sizes of law firms.
- (x) While women partners tend to work fewer hours than male partners, women employed solicitors tend to work longer hours than male employed solicitors.
- (xi) Males tend to have experienced a wider range of legal areas, with women expressing a desire for wider experience.

- (xii) Women are more likely to be working in family law, while males are more likely to be working in areas such as company law and commercial conveyancing.
- (xiii) Commercial conveyancing and company law are seen as areas offering good prospects for advancement. The areas seen as offering better prospects tend to be those where women are less likely than men to be involved or experienced in.
- (xiv) These areas are seen as inherently difficult for women, mainly due to client attitudes and an entrenched male domination within the profession.
- (xv) Men are not regarded as having any particular disadvantages, except in family law, where they are seen as being less sensitive than women.
- (xvi) Over half women practitioners believe their progress is impeded, particularly by negative attitudes to women, and a lack of female partners in their firm, and to a lesser extent family commitments. At the same time many males also feel impeded by aspects of their organisation.
- (xvii) Most practitioners aspire to partnership, both women and men, although men are relatively more interested in directorships than women. More female partners than male partners show interest in becoming a judge.
- (xviii) Prospects for partnerships are not seen as good by women however - particularly those in larger firms. Again, this is attributed in part to anti-women attitudes.
- (xix) Overall, current criteria for partnership are not regarded as particularly different from what ought to be the case, although there is seen to be too much emphasis on fees performance, and not enough on expertise.

Partners, however, rate partner compatibility much more highly than do employed solicitors - particularly male partners. They also put more emphasis on expertise or specialisation. Partner compatibility is given more emphasis in smaller firms.

- (xx) At the employment interview, there is a greater emphasis on discussing career aspirations and prospects with males, and more emphasis on why the previous job was left, and family circumstances, with women.
- (xxi) Female employed solicitors are less satisfied with their job than their male colleagues - particularly in regard to their promotion opportunity and the amount of respect they feel they have from their colleagues. Female partners, on the other hand, are quite happy compared with their male colleagues.
- (xxii) Female employed solicitors don't feel they have as much flexibility, particularly in terms of when they work (as opposed to how many hours) as they would like - mainly for reasons of using time more productively/quality or balanced lifestyle, and family. Female partners appear satisfied with their current flexibility however.
- (xxiii) Clients are viewed as the primary source of discrimination against women, followed by partners.
- (xxiv) In terms of actual experiencing of various degrees of sexual 'harassment' (i.e. from derogatory remarks - through to unwanted sexual advances) clients and to a lesser extent partners, rate fairly similarly as a source of derogatory or offensive comments, but it is clients rather than partners or other colleagues/staff who create concern about unwanted sexual advances. Those affected tend to be female employed solicitors.
- (xxv) While a majority of partners believe there are appropriate avenues for dealing with sexual harassment in their firms, most female employed solicitors either don't know of any avenues, or don't feel they are adequate.

- (xxvi) While more male than female practitioners have dependent children, women experience more child care problems, being less likely to rely on a spouse for child care, and depending more on their school, paid child minders, or other relatives.
- (xxvii) Consequently, some are paying considerable amounts on child care.

3.3 THE HEYLEN SURVEY: RECOMMENDATIONS

This survey has revealed a number of areas of disadvantage to women in terms of equal employment opportunities.

It is the Auckland District Law Society, rather than the Heylen Research Centre, who must now consider the most appropriate means of addressing the situation. However, it is within our prerogative to make the following observations.

- (i) The emphasis in this report, in line with the stated objectives, has been on the relative position of women in the profession. However, there is a wealth of data in this report that relates to the concerns and aspirations of all practitioners, including males. We recommend that these concerns be given due acknowledgement.
- (ii) Regarding the position of women, the first step must be to create an awareness of the current situation, particularly among partners and principals, who are in a position to do something about it. These include.....
- (iii) Recognition that women are spending less time in areas that are conducive to advancement, and are taking longer to become partners, despite having interest in working in other areas and in becoming a partner.
- (iv) Encourage law firms to provide flexible provisions for women who have child care commitments.

- (v) Providing, and creating awareness of, appropriate avenues for dealing with complaints of sexual harassment.

In regard to the above points, individual attitudes are not likely to change overnight. The Auckland District Law Society should, therefore, play a key role in educational information programmes, and in developing appropriate guidelines in regard to equal employment opportunities for its members. It would be desirable to repeat key elements of the survey after an appropriate period.

3.4 PARTNERSHIP SURVEY

The working party carried out an informal survey of partnership requirements with all firms of five partners or more.

On the 30th September 1987, this informal survey was sent to 44 law firms, being all those with partners of five or more.

There were only nine replies.

Questions

The questions asked were:

- (i) Which category does your firm come into in relation to the number of partners being five to nine, 10 to 19 or 20 plus?
- (ii) What are the criteria for admission to partnership?
- (iii) What factors are taken into account in relation to admission to partnership?
- (iv) What emphasis is placed on the number of chargeable hours worked by a prospective partner?
- (v) Is there any minimum requirement by way of a fees target or number of chargeable hours worked?

As a matter of information, the responses are set out only as indications of the views of some firms. No general conclusions can be drawn. The numbered answers in the responses correspond with the above questions.

Responses

The responses were:

Response 1

- (i) Category of five to nine partners.

- (ii) The fees earned by that partner and those members of the staff working under his or her supervision, the resources used in producing those fees, the efficiency and effectiveness with which those resources and the resources of the firm generally are utilised by that partner, and the hours worked.

The ability of that partner to attract new clients to the firm and to retain existing clients of the firm, involvement in activities directed towards attracting and retaining clients, willingness to make clients attracted by him or her become clients of the partnership as a whole and effectiveness in achieving that end.

The ability and willingness of that partner to undertake responsibility for work requiring a high degree of experience, expertise or commitment; the ability and willingness to deal with the difficult problems whether on behalf of clients or for the partnership; the ability and willingness to assist other partners and staff with difficult or non-routine work.

The contribution of that partner to office administration, staff training and the promotion of an harmonious and productive work environment and his or her involvement in professional and other outside activities of significance to the practice.

- (iii) As in (ii) but all are equal.

- (iv) See (ii).

- (v) No but a highly relevant factor.

Response 2

- (i) Category of 10-19 partners.

(ii) Criteria:

- (a) The firm's need for a new partner in the relevant work area and the firm's ability to carry the cost of a further partner financially.
- (b) The personal qualities of the person under consideration for admission.

(iii) Factors:

As in (ii)(a) above plus (not necessarily in order of importance):

- Professional competence.
- Proven honesty and trustworthiness.
- Ability to relate to clientele.
- Motivated to work hard for success.
- Compatibility with existing partners.

(iv) A proven track record in production is expected - but assessed by results and by the overall impression received by the other partners rather than by reference to computer print-outs.

(v) Fees target - yes.
Chargeable hours - no.

Response 3

(i) Category of 10-19 partners.

(ii) (a) Increase or maintain vitality and range of skills of firm.

(b) Retention of key member of staff.

(c) Reward contribution to partnership.

- (iii) (a) Compatible personality.
- (b) Legal skills.
- (c) Practical ability to impart information and instill confidence in clients.
- (d) Ability to attract clients.
- (e) Fee earning ability.
- (iv) Expectation of equal contribution by all partners, but acceptance that individual's input can be provided in a variety of ways one of which is chargeable hours.

(v) Yes.

Response 4

- (i) Category of 10-19 partners.
- (ii) The principal criteria for admission to our partnership is approval of the proposed person by all other partners.
- (iii) Factors to be taken into account are:
 - (a) The person has the trust and respect of all partners and in particular has demonstrated -
 - (i) firm loyalty.
 - (ii) ability.
 - (b) The person who has conscientiously or otherwise made a commitment to the firm, its growth and promotion.
 - (c) The prospective partner meets wherever possible a perceived age-spread requirement - in general the firm has a policy to try and cover in broad terms all

age groups rather than having all partners in one or two age groups, for example the 40-45 year bracket.

- (d) The person has the ability to constantly attract or promote new business.
 - (e) There should not be an oversupply of partners in one area and a dearth of partners in other areas so there must be a need for an additional partner in a particular department.
 - (f) All proposing partners must be well dressed and must have an attractive manner with other partners, staff and clients.
- (iv) Every partner is given a time budget which is reviewed once monthly. Staff are also given time budgets. All partners are expected to pull their weight and in particular are expected to put in whatever hours are necessary to ensure the completion on time and in a thoroughly professional and satisfactory manner of all instructions. If this requires weekend work and/or night work we expect that to be done without complaint.
- (v) All partners and legal staff are set minimum fees budgets and all partners are expected to make every effort to achieve them. In practice however, different branches of the law require different hours of input to achieve certain fees targets. For this reason more emphasis is placed on hours worked rather than fees earned. In determining the time and fees budgets, allowance is made for the personality and branch of law of the individual partner or staff member concerned in an endeavour to recognise that some members have a flair for and spend more time on direct promotional activities.

Response 5

- (i) Category of 10-19 partners.
- (ii) Ability to make an all-round contribution to the firm in terms of value of billings, ability to attract and retain clientele, contribution to management and administration, contribution to general well-being of the practice.
- (iii) See (ii) (No particular order).
- (iv) No particular emphasis on charge hours as such, but total fees billed is a material factor.
- (v) No.

Response 6

- (i) Category over 20 partners.
- (ii) The value of that person to the firm.
- (iii) Organisational and administrative ability.
Ability to inspire confidence in clients.
Fee earning ability.
Quality of the degree or degrees.
Compatibility with other partners and commitment to philosophy of the firm.
Ability to add quality to the firm.
- (iv) An important but not overriding factor. There is a requirement for partners to bill 1,350 hours.
- (v) There are fees targets but these are not rigid.

Response 7

- (i) Category over 20 partners.

- (ii) Criteria for admission for partnership:
 - (a) Technical skills.
 - (b) Management and leadership skills.
 - (c) Skills in developing relationships with the client.
 - (d) Integrity and other personal qualities.
 - (e) Compatibility.
 - (f) Personal stability and maturity.
 - (g) Need.

- (iii) See answer to (ii). The most important factors are integrity, technical skills and management skills.

- (iv) Very little. We expect anyone to achieve a time budget, but we are not looking for workaholics.

- (v) The only requirement is that the prospective partner show herself or himself to be capable of billing, on average, five to six hours a day at her or his charge-out rate.

Response 8

- (i) Category over 20 partners.

- (ii) Criteria for admission to partnership -
The criteria for partnership admission is outstanding legal ability, personal integrity and compatibility, and strong commitment to the enterprise. There is no discrimination on sexual or other grounds in the approach to selection of partners. All candidates for partnership are considered entirely on their merits.

- (iii) The factors taken into account are the suitability of the candidate measured against the criteria and all other relevant factors including performance. No account is taken of religion, politics, sex or race. The criteria set out in the above are the principal factors and to these are

added past performance based on total hours worked, and fees.

- (iv) The emphasis placed on hours relates to total hours, not chargeable hours. Partners, depending on their role within the partnership, will obtain a different level of chargeable hours.
- (v) There is no specific minimum requirement by way of fees target or number of chargeable hours worked. All factors relating to partnership involvement are taken into account at the time fees targets are set.

Response 9

- (i) Category over 20 partners
- (ii) (a) Quality of work, recognising that perceived excellence in a field of practice will normally be a prerequisite.
- (b) Ability to contribute financially, recognising that new partners should have demonstrated the ability to contribute at partner level, including the ability to direct and manage a team.
- (c) Strategic "fit", recognising the practice profile objectives set out in para. 4.3.7. [These are the practice areas that the firm wishes to be involved in].
- (iii) See (ii).
- (iv) Effectively, yes, because 'partner level performance' will involve meeting a fixed fee target which is reviewed annually.
- (v) See (iv).

3.5 SUMMARY OF SUBMISSIONS MADE TO THE WORKING PARTY

3.5.1 Introduction

Submissions were received from a number of interested individuals and organisations including the Auckland Women Lawyers' Association Inc (AWLA), the Women Members' Sub-Committee of the Auckland District Law Society, Lewis Callanan, and Bronwyn Davies, Chris Forbes, Rowena Lewis, Helen Melrose, Margaret Robins and Melanie Harland.

In addition, much was contributed by way of comments ("verbatim") by respondents to the survey questionnaire itself.

Common themes emerged from all submissions and responses. These showed that the areas viewed as being of concern to women were issues relating to:

- Apparent conflict between demands of career and family.
- The need for further adequate child care.
- The desirability for change in the tax laws to allow tax deductibility for child care.
- The need for clear provisions for maternity leave.
- The need for more flexible employment options including:
 - Flexible/glide time hours.
 - Part-time work.
 - Job-sharing.
 - Sick leave to care for dependents.
- The need for alternative, more flexible partnership structures.

Submissions also covered problems relating to:

- The effect of mergers/amalgamations on women in practice;
- The elimination of sexist/exclusionary language;
- The elimination of sexist behaviour by male practitioners;
- Sexual harassment.

AWLA made a particularly comprehensive submission to the working party and extended the scope of its inquiry beyond our terms of reference to discuss the position of:

- Academic women lawyers.
- Women lawyers in corporate structures.
- Maori women.
- Women in "non-legal" paid/unpaid work.

These groups of women would have been largely excluded from the ambit of the survey as its distribution was restricted to a random sample of members of the Auckland District Law Society currently holding a practising certificate.

Many of the submissions contained useful analyses of the causes of persisting discriminatory attitudes and practices. It became clear that much of the discrimination experienced by women within the profession is of a covert, rather than overt, nature. It was submitted that largely it stems from the dominance and continuance of male structures - the typical partnership being mainly, if not totally, male, requiring "100 per cent commitment" from its partners and employees, largely male-taught through the universities, operating on an 8:30am to 6pm basis which assumes partners and/or employees have the luxury of full-time domestic support (whether paid or unpaid).

It was submitted to the working party that these structures are perpetuated by both male and female socialisation or stereotyping - women coming into a male-dominated field may lack confidence, have few female role models to look to, feel they must "make it" within the existing structure, defer to men's methods/business practices to "fit in". Typically, women then demonstrate some ambivalence about the seeming necessity for them at some stage to choose between parenthood (or a more balanced life-style) and career. Often the decision to have children is seen as necessarily involving the sacrifice of the right to receive more interesting lucrative work and to gain advancement within the

power structure. In fact, 41 per cent of women surveyed with children aged 15 or less had considered resigning from their job because of child care difficulties - compared with one per cent of the corresponding group of males. This, it was submitted, shows the unacceptable stresses placed by current structures on the increasing number of able women lawyers coming into the profession today.

AWLA and others recommended the adoption of affirmative action policies and the establishment of educational campaigns directed at both women and men.

Particular aspects of the submissions will now be set out:

3.5.2 Summary of Submissions

3.5.2.1 Child Care

It was submitted that the child care needs of employees and partners should be examined by all firms. Consideration should be given to the possibility of establishing employer-sponsored or Law Society-sponsored child care facilities. In the US, studies have shown that the provision of employer-sponsored child care centres have:

- increased ability to attract employees.
- lowered absenteeism.
- improved employee attitudes.
- generated favourable publicity about the employer.
- improved community relations.
- reduced turnover.
- reduced lateness.

Clearly, the availability of more and better quality facilities will also aid in retaining highly qualified staff.

3.5.2.2 Tax Deductibility

Submissions indicated that the lack of tax deductibility options

concerning child care is a severe disincentive for women members who still seem to assume the primary role of arranging child care. The example was given of a lawyer earning \$30,000 PAYE being left with a disposable net annual income of \$7,500 after meeting child care costs. Such costs indicate that great dedication and financial resources are necessary for one to continue with a career in the face of such necessary outgoings. It was submitted that such costs should be deductible as they are typically incurred so as to allow the taxpayer to earn assessable income.

3.5.2.3 Maternity Leave

The Auckland Women Lawyers Association submitted that maternity leave should be addressed in every employment contract and Partnership Deed and that the profession should adopt the Public Service Association's provisions of:

- 12 months leave after 12 months service

- six months leave after six months service.

The submissions generally were in favour of employers formulating policies on maternity/paternity leave.

3.5.2.4 Flexible Employment Options

Submissions showed that the child care issue also ties in with the flexible working hours issue. Many people wished to have the facility of flexible working hours for various reasons, one of which was family commitments.

Clearly, more flexible hours are an essential part of easing the child care burden as it is then more possible for a parent to fit working hours in with the needs of children. This flexibility seems at the moment to be only available to partners.

Two alternatives to full-time work are part-time work and

job-sharing. Overseas studies have shown that part-time workers are more productive per hour worked, than their full-time counterparts.

The other factor to be linked into the child care question is maternity/paternity leave. Clearly, the ability to take a reasonable period of maternity leave is essential to a parent in providing child care in the early months.

3.5.2.5 The Effect of Mergers/Amalgamations on Women in Practice

Several submissions received discussed problems arising for women from the recent trend within the profession towards merger and amalgamation.

Whilst mergers are often seen as commercially and economically desirable by firms, the psychological impact on partners and staff is sometimes accorded insufficient weight. Generally, the immediate effect on women within a firm is a perceived "watering" of the ratio of female:male practitioners and/or partners. Accompanied by this is a perceived need to re-establish one's position within the new firm's hierarchy. Women staff solicitors nearing admission to partnership prior to merger have expressed the concern that although they have obtained the support and confidence of partners from their own side of the new firm, they are, upon the merger, put in the position of having to prove themselves again to the members of the other side of the new firm. Indeed, there have been situations where a woman partner was reduced to the status of associate on amalgamation where she was not acceptable to male partners of the other firm. Also there have been situations where female associates have had earlier promises of partnership delayed or retracted completely following a merger. While this demonstrates poor personnel management skills by the firms involved, it also highlights the particular need for clear communication of goals and objectives between employer and employee.

Many women were also concerned with the ill-defined status of "the associate" within law firms. They felt that it was a device often employed to divert women, in particular, from full partnerships whilst still attempting to accord them some increased status within the amalgamated firm's hierarchy and retaining them as senior practitioners. Generally it was seen as desirable that an associateship be promoted as a worthwhile object, being a "mid-way station" between being a staff member and a partner. Of course, the working party was told the dilemma could well be avoided if firms were to consider more profit-sharing/bonus-incentive schemes for employees.

3.5.2.6 The Elimination of Sexist/Exclusionary Language from the Profession

It was repeatedly emphasised that the existence of sexist/exclusionary language in legislation and within the profession is generally offensive, patronising and insensitive and completely unnecessary.

Complaints have been received that some male practitioners still address women practitioners as "my dear" and "love" and try to convey approval with such terms as "good girl" and "clever girl". It is certain that the same practitioners would never address a male practitioner (no matter how junior) as "good boy" or "clever boy". Similarly, the profession still largely seems to persist with outmoded forms of address, particularly in written correspondence. The use of "Messrs X, Y Z and Co" when writing to a firm which includes women partners is incorrect and unnecessary, as is the commencement "Dear Sirs". It similarly shows a lack of care in ascertaining or considering the gender of the person to whom one is writing. Often women practitioners who have signed earlier correspondence with their preferred title (be it "Ms, Miss or Mrs A Jones") receive replies directed to the attention of "Mr" Jones.

Submissions were received to the effect that failure to correct such inappropriate means of address amounts to a breach of Rule 3 of the Code of Ethics, namely, the duty of every practitioner to treat professional colleagues with the utmost courtesy and fairness (Rule 3.1).

3.5.2.7 The Elimination of Sexist Behaviour by Male Practitioners within the Profession

It was submitted that it is clear that sexist behaviour still exists within the profession. It is a particularly insidious form of discrimination and should be condemned and eliminated.

Examples of such behaviour are to be found in:

(a) Language

Referring to women practitioners as "my dear", "love", "good girl", "clever girl".

Referring to secretarial support staff as "my girl".

The forms of formal address in correspondence (referred to in para 6.0 above).

The tone of voice used by male practitioners to female practitioners can be:

- Patronising.
- Condescending.
- Bullying.

The labelling of assertive women as "aggressive", "feminist", "radical", "stropky" as contrasted with the labelling of assertive men as "strong-minded", "assertive", "firm".

(b) Socialising

Male partners and practitioners do congregate socially in predominantly male atmospheres - e.g. pubs, sports or other clubs or other such places where women do not always gather.

Social talk can be exclusionary if it centres on stereotypically male pursuits - e.g. rugby, cricket, and if it contains coarse, sexist jokes.

Women, although invited, feel as though they remain outside unless they participate as "one of the boys".

Such practices again demonstrate insensitivity to the needs of colleagues.

(c) Employment Interviews

Submissions received showed that questions are still being asked of women which would not be asked of a man, for example:

What do you think you will be doing when you are 25? Do you think you will be married?

(To an unmarried woman) - If you were married and your husband travelled overseas, would you travel with him?

Are you in love yet?

Have you got a "fella"?

What are your plans for marriage and/or parenthood?

This is supported by the results of the survey which show that at their employment interview:

- (i) Males are more likely to have discussed:
- Potential for advancement.

- Hobbies, interests.
- Career aspirations.
- Travel possibilities.

(ii) Females are more likely to have discussed:

- Why left previous job.
- Marriage/spouse/boyfriend (slightly).
- Possibility of parenthood.

[See Survey Findings: Vol. 1 pp 42-43 and Tabulations pp 175-178].

(d) Areas of Work

Some firms still assume that women are "better suited" to work in traditionally "low-status/fee earning" areas such as:

- Matrimonial/family law.
- District Court and High Court litigation.
- Criminal law.
- Residential conveyancing.

Entrenched attitudes which result in channelling women into these "personal law" areas as opposed to "corporate law" areas also stifles promotional prospects for women practitioners.

Also some partners are "problem-delegating authors" in that they do not delegate the good, interesting, lucrative work but only the tedious, low fee-earning "nuisance" work.

Both clients and firms require continuing education and consciousness-raising to realise that women lawyers are good lawyers and as such should be given challenges to meet if their personal and career satisfaction is to increase.

(e) Partnerships/In-house Administration Committees

There are still not enough women being admitted to partnerships and/or being included or consulted with in connection with administrative policy-making.

Women admitted to partnership often experience a sense of isolation from being one woman in an often large group of men. As the new partner they often feel forced to compromise/modify their views on women's issues or even refrain from expressing them at all. They also feel unable to have much influence in the decision-making process because of their newly admitted, junior status. Such frustrating perceptions would be eliminated if firms created an atmosphere which was both encouraging and stimulating to women.

(f) Court Practice

Whilst separate changing and toilet facilities have now been provided for women at the Auckland High Court, the Court of Appeal building still has no separate women's robing room despite being a new building. Provincial courtrooms also lack separate facilities for women, although hopefully this will change as more of the facilities are renovated and upgraded.

Some judges still also refuse to accept the use of "Ms" as a form of address and insist on knowing whether a practitioner is "Miss" or "Mrs". Such attitudes are not in keeping with modern social trends.

(g) Support Staff

Most offices now operate on the basis that secretaries work for more than one author - sometimes a secretary may work for up to four or five authors including one or more partners.

Generally the partner is male and one or more of the other authors may be female. Often the male partner's work is accorded priority over that of the female author for no other reason than that it is for "a partner" - it may not be as urgent, but it is still done first. This phenomenon is attributable to the traditional conditioning of women to believe that their status in their jobs and in the community as a whole is derived from their relationships to men. In the community, women traditionally derive their status firstly from their fathers and subsequently from their husbands. As a corollary in the workforce, the status of support staff is raised or lowered by the person for whom they are working. As a result, women working for male partners enjoy high self-esteem whereas those working for other women experience difficulties. This is despite the fact that many women authors endeavour to treat their secretaries on a more equal footing and prepare their work in the most accommodating way to ease support staff's task.

(h) Sexual Harassment

Continuance of sexual harassment in any form cannot be tolerated. As it is the employer's duty to provide a physically safe work environment, so it is the employer's responsibility to create an emotionally safe work environment.

This is echoed by the provisions of the Labour Relations Act 1987, which prohibits sexual harassment of employees and places a liability on employers for any sexual harassment carried out by an employee. Its provisions came into force on 1 August 1987.

It is a problem still confronting women practitioners from both within and outside the firm. It can be perpetrated by members of the same firm and by clients.

3.5.2.8 Academic Women

A comprehensive submission regarding the position of academic women lawyers was included in the main AWLA submission to the working party. In turn, it drew partly on the thorough report prepared by Margaret Wilson on The Status of Academic Women in New Zealand (July 1986). The Wilson Report confirmed that many of the issues already raised above are of common concern to professional women including:

The need to provide adequate child care facilities.

The need for improved conditions concerning maternity/parental leave.

The need for permanent part-time employment options with the same conditions of appointment or full-time appointments.

The need for a conscious policy of affirmative action, i.e. appointing women whose qualifications are equal to those of male applicants.

All recommendations made in the Wilson Report have been approved by the Association of University Teachers of NZ (AUTNZ). A national Status of Women Committee was to be convened at the end of March 1987 to seek implementation of the recommendations. For those interested in further details of the Wilson Report and of the submission concerning Auckland Academic Women, we refer you to the AWLA Submission to the working party July 1987 pp 21-33 and Appendix (copies held at Law Society, High Court Library, District Court library and University of Auckland library).

3.5.2.9 Corporate Women

There are an increasing number of women lawyers employed in both governmental and corporate areas of work. Many "in-house" lawyers have expressed a feeling of isolation from the profession and also within their own organisation.

3.5.2.10 Maori Women

The AWLA submission pointed out that while there are issues affecting all women lawyers, there are specific problems facing Maori women in the law.

- (a) There is a major financial prohibition on Maori women gaining a law degree. This will become a greater problem with the current trend towards instituting a "user pays" system.
- (b) Most Maori women lawyers tend to go into public service law rather than private sector law firms. This may reflect discrimination by private sector firms; it may reflect the importance of "service" for many Maori women.
- (c) Many Maori women feel at conflict with the monocultural (Pakeha) values which are an integral part of the legal system in New Zealand. They therefore become disenchanted or discouraged with the system at an early stage. Some of these situations are in the process of change. The recent successful Waitangi Tribunal claims are examples of activities raising the general public's awareness of Maori culture.

3.6 STATISTICAL SUMMARY: THE POSITION OF WOMEN IN THE PROFESSION

3.6.1 Enrolment and Graduation from the Faculty of Law of the University of Auckland.

The number of women enrolling at and graduating from the law faculties of New Zealand universities is probably the most accurate indication of future trends. The following relating to the Faculty of Law, Auckland University, is illustrative. The enrolments in Constitutional Law (paper 25.102) are taken as representative of the Law I intake for each year.

3.6.2 Enrolments in Constitutional Law (25.102)

<u>YEAR</u>	<u>MALE</u>	<u>FEMALE</u>	<u>% Women</u>
1982	107	101	48.6
1983	127	109	46.2
1984	128	129	50.2
1985	83	119	58.9
1986	109	85	43.8
1987	98	106	52.0
1988	101	109	51.9

3.6.3 Graduation from the Auckland University Faculty of Law

<u>GRADUATES</u>	<u>MALE</u>	<u>FEMALE</u>	<u>% WOMEN</u>	
May 1982	LLB	76	36	34.9
	LLB (Hons)	<u>8</u>	<u>9</u>	
	Total	84	45	
May 1983	LLB	56	42	46.5
	LLB (Hons)	<u>12</u>	<u>17</u>	
	Total	68	59	
May 1984	LLB	41	64	57.4
	LLB (Hons)	<u>11</u>	<u>6</u>	
	Total	52	70	
May 1985	LLB	59	49	43.8
	LLB (Hons)	<u>13</u>	<u>7</u>	
	Total	72	56	
May 1986	LLB	55	53	46.7
	LLB (Hons)	<u>17</u>	<u>10</u>	
	Total	72	63	
May 1987	LLB	64	57	49.0
	LLB (Hons)	<u>15</u>	<u>19</u>	
	Total	79	76	
May 1988	LLB	89	59	41.1
	LLB (Hons)	<u>17</u>	<u>15</u>	
	Total	106	74	

3.6.4 Number of Women Practising in the Profession in Auckland

<u>Year</u>	<u>Barrister</u>	<u>Barrister & Solicitor Principal/Sole Practitioner</u>	<u>Barrister & Solicitor Employee</u>	<u>Barrister & Solicitor Govt Dept</u>
1982	12	24	135	4
1983	11	32	135	7
1984	15	44	173	6
1985	18	49	212	8
1986	18	51	228	7
1987	13	73	(----392----)	
1988	20	89	338	15

3.6.5 Queen's Counsel

Pre 1987	Nil
1988	2

3.6.6 Involvement in Law Society Activities

Representation on Auckland District Law Society Council

1982	One Councillor
1983	One Councillor
1984	One Councillor
1985	Three Councillors
1986	Four Councillors
1987	Vice President and three Councillors
1988	President and three Councillors

Representation on Auckland District Law Society Subcommittees

1982	26	1986	48
1983	48	1987	55
1984	42	1988	45
1985	43		

3.7 RESEARCH ON OVERSEAS LAW

- 3.7.1 There is now a substantial mass of academic and popular writing in the area of women in the workforce, women in professions and women in specific professions (such as law). However, while much of the recent literature is good background for the task on which this working party was engaged, there was little that was specifically relevant to the work that had to be done. Statistics on the number of women lawyers in the U.S. or in various European countries, descriptions of the kinds of discrimination found in other countries and of ways to overcome it could provide only pointers as to the direction our inquiries should take. So, while note was taken of that background material and we express our grateful acknowledgement of the considerable number of contributions sent to us by interested parties in the form of press cuttings, articles from journals and other information, there was really only one piece of non-New Zealand research on which the committee directly relied.
- 3.7.2 That was the comparative study "Career Patterns in the Legal Profession and Career Expectation of Male and Female Law Students in W.A." by M Dixon and M Davies, published November 1985 by the University of Western Australia. When the time came for detailed work on the proposed survey, the Australian research and the findings that resulted from it were carefully examined.
- 3.7.3 Because of the budgetary constraints and the need to focus on the issues that seemed most pressing to the committee, certain lines of enquiry were omitted, especially in view of the fact that Margaret Wilson's research on graduates provided some of the information that it might otherwise have been considered necessary to obtain in our survey.
- 3.7.4 Among the areas Dixon and Davies covered in their W.A. study, we paid particular attention to the sections on "expectations" and "perceptions of practice and the profession". The brief prepared for Heylen, and the exhaustive discussions of the early drafts of the survey embodied the perceptions of various working party members of the relevance of these matters to the New Zealand situation.

PART 4: DISCUSSION BY THE WORKING PARTY OF KEY ISSUES

4.1 CHILD CARE

The Heylen survey clearly shows that issues relating to child care arrangements are of concern to the profession. This concern has also been reflected in submissions received.

The Heylen survey and the submissions received show that the major responsibility for child care arrangements falls on women with dependant children. This causes significant stress and problems for women which impacts detrimentally upon their job performance.

It is clear that the lack of affordable/flexible/good quality child care is significantly affecting women's ability to perform without undue stress in professional life.

After-school care is a significant problem for women. Women often find it difficult to accommodate the traditional 8.30 am to 6.00 pm job hours when they have children at school, as there are little adequate or suitable after-school child care facilities available.

It is of concern that 41 percent of female practitioners have considered resigning from their jobs because of child care difficulties. This indicates the significance of this issue and the fact that it can no longer be ignored by the profession.

Master Ann Gambrill said at her swearing in at the Auckland High Court on 7 August 1987 in relation to child care:

"The problem will become more crucial, as 50 per cent of the new graduates are women, and most professional families are now dual career families. This means that many of the younger members of the profession will be burdened with the responsibility and cost of arranging for child care, and the worry of trying to seek for it to extend beyond the hours of 9.00 am to 5.00 pm.

It is generally necessary only for a few short years, and if we fail both to recognise this particular need and to give support, assistance and flexibility we will lose a number of young members, particularly the women. I believe the profession and the public cannot afford this loss."

The working party does not believe that those practitioners who opt for a full-time nurturing role are in any way following a lesser role than those who attempt a dual role.

There are an increasing number of dual career families. The responsibility for parenting is increasingly a shared responsibility.

Therefore the following recommendations as to child care and increased flexibility in employment options have the potential to benefit both male and female practitioners.

Attention can be drawn to the lack of high-quality creche facilities in New Zealand. The experience of some overseas law firms who have provided creche facilities has been that they have found that they have been well used by both male and female practitioners, with consequent benefits to the firm.

Child care facilities must provide:

- (i) Services during extended hours, e.g. 7.00 am to 6.00 pm.
- (ii) Affordable fees.
- (iii) Convenient location to work.
- (iv) Care from ages 0 to 5 full-time.
- (v) Suitable after-school programmes with school collection service.
- (vi) High-quality care.

The working party encourages the provision of such services. We do not feel that there is a duty on firms or the Law Society to provide creche facilities but it is an important issue which should be discussed seriously and options for implementation should be looked at.

Recommendations

With the object of providing a suitable and sensitive service, recouping costs on a user pays basis and (if the demand becomes significant) to seek to ensure that this function is handled in the long term by a suitably high-quality child care facility:

1. The Auckland District Law Society should consider the option of:

- (a) Employing a child care co-ordinator to:

Advise firms or groups of firms on the establishment and running of child care facilities.

Co-ordinate the sharing of child care workers amongst members of the profession.

Assist in setting up child minding.

Co-ordinate an on-call/emergency network of child care workers to assist when regular or usual networks/arrangements breakdown temporarily.

Co-ordinate school holiday programmes, after-school programmes and homework workshops; or

- (b) Providing for an existing employee of the Society to assume the above functions.

- (c) In respect of the above functions, the Society could consider linking to other expert services in the community, including child care employment services.

2. Alternatively, the Law Corporation (NZ) Limited (formerly the Law Practitioners' Co-op) might consider the establishment of such a service and/or invest in central premises which have suitability as a child care centre.

3. The Society should consider the possibility of sponsoring a child care centre/school holiday programme/after school care for use by all members.
4. Individual firms should consider the options of either totally or partially funded centres provided by:
 - (i) Individual firms, or
 - (ii) Several firms (not necessarily all legal) in combination.
5. Interested parties may refer to the Auckland Women Lawyers Association, who provide a child care centre kitset which sets out nine easy-to-follow steps for establishing a child care centre. Copies of the full kit are available at the Auckland District Law Society.

Summarised, these steps are:

- (i) Contact local resource people who can assist with background information on child care.
- (ii) Demonstrate and establish the need for a child care centre in your firm or building.
- (iii) Become conversant with the regulations and requirements essential to the provision of high quality child care.

The Child Care Centre Regulations 1985 (1985/48) apply to child care centres. These are premises that are or purport to be used mainly as child care premises as defined in the regulations.

Regulation 20 deals with premises.

Regulation 21 in the Second Schedule deals with sanitary facilities.

Regulations 22-27 deal with lighting, fire safety etc.

Regulation 28 in the Third Schedule deals with staffing.

Regulation 29 deals with supervisors.

There is a requirement in the First Schedule for outdoor space of five square metres per child. This poses problems in the inner city. However, the Education Department, which administers the regulations, deals with applications for a licence on a case by case basis.

- (iv) Investigate the options and availability of suitable locations to be utilised for a child care centre.
- (v) Assess equipment requirement in terms of:
 - (a) Furniture and fittings.
 - (b) Indoor/outdoor educational-play equipment.
- (vi) Enlist support and assistance for the project from both staff and partners of your firm.
- (vii) Assess the availability of trained or experienced staff to work with young children or those willing to undergo training.
- (viii) Prepare a draft budget for the operation of the child care centre.
- (ix) Demonstrate the willingness of prospective users to manage the centre.

4.2 TAX DEDUCTIBILITY

The issue of tax deductibility of child care expenses is one which should properly be addressed by the Law Society, even though it affects the general public. This is certainly an issue which affects a large number of women lawyers.

It had been submitted that a test case on this issue should be taken. It is clear and settled law that generally child care expenses are not deductible. The present tax position in relation to the non-deductibility of child care expenses appears to be:

1. Section 104 of the Income Tax Act 1976 requires that there is a sufficient relationship between the expenditure incurred and what it provided or sought to provide on the one hand and the income earning process on the other. That will always be a matter of degree and a question of fact. See Commissioner of Inland Revenue v Banks [1978] 2 NZLR 472.
2. Section 106 of the Income Tax Act 1976 prohibits deductions for any expenditure or loss to the extent to which it is of a private or domestic nature.

The statutory language of Section 104 contemplates apportionment. See Buckley & Young Limited v Commissioner of Inland Revenue [1978] 2 NZLR 485.

3. In Commissioner of Inland Revenue v Banks, Richardson J. at page 477 stated in obiter remarks:

"This is because unlike, for example, nursery fees paid for looking after the taxpayer's child which in the ordinary case are inherently of a private rather than a business character (Lodge v Federal Commissioner of Taxation (1972) 128 CLR 171), rates and insurances are not inherently, or prima facie, of either an income related or non-income related character".

4. In Lodge v The Commissioner of Taxation of the Commonwealth of Australia (1972) 128 CLR 171, the taxpayer derived income through the preparation as a contractor of solicitors' bills of cost. With the exception of a period of 3 weeks during the year she carried out her work at her

home. During the year she expended \$647.00 in nursery fees for her infant daughter, the purpose of such expenditure being to enable her to perform her work and to perform it efficiently. Section 51(1) of the Income Tax Assessment Act 1936-1971 contained the same wording as that in Section 104 of the Income Tax Act 1976.

Mason J. at pages 175-176 held:

"In the light of the authoritative observations concerning s.51(1) made by this Court in its earlier decisions I have no alternative but to arrive at the conclusion that the appellant's claim in this appeal cannot succeed. The expenditure was incurred for the purpose of earning assessable income and it was an essential prerequisite of the derivation of that income. Nevertheless its character as nursery fees for the appellant's child was neither relevant nor incidental to the preparation of bills of cost, the activities or operations by which the appellant gained or produced assessable income. The expenditure was not incurred in, or in the course of, preparing bills of cost.

If the appellant's case is approached on the footing that she was carrying on a business, because she was not an employee of Law Cost, the result in my opinion is no different. If it be correct to say, as I have held, that the expenditure was not incurred in preparing bills of cost, it follows in this case that it was not incurred in carrying on the business of preparing such bills of cost.

To this point I have not considered the question whether the expenditure was of a "private or domestic" nature. The relationship between the operative parts of s.51(1) and this exception has not been discussed at length. In this case the arguments were directed to the operative provisions rather than to the exception.

However, I should express my view that the expenditure in question was of a "private or domestic" nature and for that reason is excluded by s.51(1). In so saying I should make it clear that my view is consequential upon the earlier conclusion that the expenditure falls outside the general

provisions of s.51(1) and there is accordingly no relevant reason for holding the expenditure to be other than private or domestic expenditure on the care of the appellant's child. I express no opinion on the question whether an expenditure which is incurred in gaining or producing assessable income may nevertheless be of a "private or domestic" nature.

Although the expenditure which the appellant incurred in placing her daughter in a nursery was necessary to enable her to earn her income, that, as I see it, is not enough to satisfy the requirements of the law as it is expressed in s.51 of the Act and as it has been interpreted."

5. These cases were recently applied by the Taxation Review Authority in Case No. 88/14. The taxpayer carried on business from the basement of her home as a public typist and incurred child care costs. The authority held at page 5:

"I find that there is an insufficient nexus or linkage between the Objector's activities as a public typist and the child care expenditure. The latter was incurred to put her in the position of being able to carry out her public typing activities and achieve income accordingly. However, the expenditure was not incurred in the course of the public typing activity; it was not incurred in the actual production of assessable income; but as a prerequisite to being able to carry out that public typing activity.

Section 106 of the Act sets out a list of areas where deductibility is prohibited, notwithstanding the wording of s.104, unless otherwise expressly provided in the Act. Section 106(1)(j) expressly precludes deductibility for expenditure "to the extent to which it is of a private or domestic nature". I explained to the father-in-law, I find the day care expenditure to be inherently of a private or domestic nature, rather than of a business character. The day care expenditure is incurred in the course of rearing a child. It is a family expense. It is something quite distinct from running a public typing business. Accordingly it is precluded from deductibility by the express words of s.106(1)(j) of the Act."

The issue needs to be addressed by way of a change to the existing laws.

This is an issue on which the Law Society at a national level can make submissions.

Minority View

There was a minority view of the working party on this issue which can be briefly summarised as follows:

It is fundamental that any proposal for tax reform be fair as between similar taxpayers. The proposal of the majority would not be fair because it would introduce inequities as between:

- (i) Those couples who both chose to work in paid employment and claim child care expenses as tax deductible; and
- (ii) those other couples of whom one worked in paid employment and the other worked unpaid in caring for children.

Pursuant to the majority's recommendation the former couple could claim child care expenses as deductible. Consequently, through the tax system they would be subsidised by the latter couple. The income of the latter couple would be limited to the one income and it would be devoted without tax relief to providing child care through the efforts of the one who cared for the children. The latter couple's contributions to tax would in effect subsidise the former couple's child care expenses.

If there are to be tax reforms on child care expenses they must be fully thought through, fair and sensitive to all of the social consequences. The majority recommendation does not meet that standard. Moreover, it should generally be borne in mind that parents have the primary responsibility of paying for the reasonable expenses of caring for their children.

Majority Recommendation

The Auckland District Law Society should lobby for a change in tax legislation to allow the deductibility of child care expenses.

4.3 MATERNITY/PATERNITY LEAVE

- 4.3.1 The Parental Leave and Employment Protection Act 1987 ("the Act") came into force on 1 October 1987. It prescribes minimum entitlements with respect to parental leave for male and female employees and seeks to protect the rights of employees during pregnancy and parental leave.

The Northern Clerical Workers' Union Award (legal employees) also sets out certain provisions concerning maternity leave.

However, both the Act and the award focus on unpaid parental leave.

A cause of major concern for those seeking maternity leave is the question of whether their job will be kept open for them to return to at the end of that leave.

- 4.3.2 Section 41 of the Act provides that where a period of parental leave is taken, the employer shall be presumed to be able to keep the employee's position open, until the end of the employee's parental leave. However there is an exception where the employee's position cannot be kept open:

- (a) Because a temporary replacement is not reasonably practicable due to the key position occupied within the employer's enterprise by the employee; or
- (b) Because of the occurrence of redundancy.

In determining whether or not a position is a "key position", s.41(2) provides that regard may be had, among other things, to:

- (a) The size of the employer's enterprise; and
- (b) The training period or skills required in the job.

4.3.3 Already cases have occurred (outside the legal profession) where women have not had their jobs held open during such leave on the basis that they were said to have been in "key positions". However, the trend of recent decisions is strongly towards the protection of the employee's right to return to work.

Regard should be paid to the recent Labour Court decision in Manukau City Council v Auckland Provincial District Local Authorities Officers' Industrial Union of Workers ALC 72/88 A.65/88. (Decision delivered by Finnigan J 20 July 1988).

In that case the administration officer in the City Secretary's department applied for parental leave under the Act and was told her position was a "key position" and could not be kept open. She challenged the council's decision in the Labour Court.

The Labour Court stated that it was necessary for the employer to establish that it was not reasonably practicable to put in a temporary replacement because of the key nature of the position (p.4). It referred to the example of temporary replacements being found for a judge on leave.

Judge Finnigan, when delivering the decision of the Court stated (p.5):

"The rights of the worker are intended by the Act to outweigh the rights of the employer. The entire concept and effect of the Act is that in certain circumstances workers may demand leave as of right and that the employer must make arrangements, whatever the cost, to ensure that the right is not infringed".

On the particular facts of this case, the worker succeeded in upholding her right to re-employment at the end of the parental leave.

The decision is significant in demonstrating the judicial approach to be taken to the Act, and all employers should consider it fully.

- 4.3.4 The working party feels that as far as women partners are concerned, the issue of maternity leave should be considered separately from any sabbatical leave arrangements.

This issue ought to be addressed in every employment contract and partnership agreement. The same principles equally apply to paternity leave.

The working party believes that it is unsatisfactory for employers to avoid consideration of maternity/parental leave requirements until a situation arises within their organisation/firm necessitating this. Such an attitude impedes the ability of employees to plan the course of their careers and family goals. There is a need for employers to deal with women employees in a spirit of encouragement and to promote their interests and development as valuable staff members and as partners. Without clear policy on maternity/parental leave, the interests of women employees are not being adequately met.

Recommendations

- 4.3.5 The Auckland District Law Society should encourage firms to:
- (a) Be committed to enabling women practitioners to pursue a career in an environment that is supportive of them;
 - (b) Recognise that women have the physiological responsibility of child bearing;
 - (c) Recognise that many women wish to pursue a career together with raising a family;
 - (d) Recognise that in our society women still usually carry the main responsibility for child care and family care.

4.3.6 Firms should provide adequate parental leave for their staff and partners. Any policies made must incorporate maximum flexibility, as each individual's needs and circumstances will be different. It would be for each firm to determine whether to adopt policies in excess of the obligations proposed by the Act or award.

However, the following is viewed as a list of issues which could be discussed.

- 4.3.6.1 The period that would enable a female partner to convalesce and return to normal health in order to resume the full responsibilities of being a partner;
- 4.3.6.2 When the period of parental leave begins and ends;
- 4.3.6.3 The effects of parental leave on earnings, seniority, and progression to parity;
- 4.3.6.4 The relationship of parental leave with other forms of leave; and
- 4.3.6.5 The availability of additional leave as that may be required and the conditions applying to it.
- 4.3.6.6 Similar issues should be addressed in respect of female practitioners who, although not partners, have been employed by the employer for a specified minimum period, such as two years, before maternity leave is required.
- 4.3.6.7 Attention is drawn to the fact that the Northern Clerical Workers' Union Award provides certain protection to a female employee who has completed 12 months' continuous service with the same employer before taking maternity leave. If re-engaged by the employer within six months after the birth of her child, she shall retain all service and long-service entitlements as if she had remained in continuous employment (with the exception of annual holiday and sick pay entitlement for the period of absence).

4.3.7 All employers should make themselves familiar with their obligations to employees under the terms of the Parental Leave and Employment Protection Act 1987.

4.4 SICKNESS LEAVE

We feel that there should be no need to remind the profession that provision be made for partners and employees to take time off to care for ill dependants at home.

4.5 FLEXIBLE EMPLOYMENT OPTIONS

Clearly, practitioners will be more able to maintain satisfactory career progress if more flexible employment options are available. More and more practitioners are in dual-income families where neither partner can rely on unpaid full-time domestic help. Flexible working hours on a "glide-time" basis could be of considerable assistance. Job-sharing is a viable option, as is part-time employment. The myth prevalent in many firms that a desire to work part-time demonstrates a lack of commitment should be dispelled. Those people striving to combine both family and career are probably intensively committed to both these activities. The more so as financial constrictions require more people to continue in the workforce to maintain a reasonable standard of living.

The working party has concluded that:

- (i) The particular needs of pregnant practitioners should be met with special regard to a policy in respect of leave and promotional prospects.
- (ii) The particular needs of parents (male or female) who want to pursue a dual nurturing and professional role need to be recognised and provided for in a flexible response from the profession.

- (iii) For those practitioners who do decide to take on a significant nurturing role while still practising, the profession will need to be more flexible in terms of working hours, career paths and providing paths to partnership.

The working party recommends that firms be encouraged to look for ways to implement alternatives within the present structures, so that people who are committed to pursuing a career in the law as well as having a family are not unfairly discriminated against. There is no need why this should not extend to the formation of partnerships allowing part-time partners. The Society could undertake an educational role in this regard.

Recommendations

4.5.1 The Auckland District Law Society should encourage firms to look at ways to implement flexible employment options so that those who are committed to pursuing a career in the law as well as having a family are not unfairly discriminated against.

4.5.2 The Society should assume an educational role by considering the option of:

(a) Employing an officer to:

- Run seminars and "in-house" sessions (directed at women as well as men) aimed at consciousness-raising concerning women's issues and employment policies as they affect women.
- Run confidence building/assertiveness training seminars for women and men.
- Institute programmes to encourage utilisation of part-time workers and job-sharing schemes.

- Assist partnerships/organisations employing women practitioners to develop suitable management policy concerning institution of flexible job structures, part-time work, job sharing and development of maternal/parental leave policy.
 - Liaise with the Management Advisory Service to provide further consultancy services to promote affirmative action programmes within firms and organisations.
 - Provide advice to firms and organisations concerning the institution of alternative, more flexible partnership structures including revision of profit-sharing policies within such structures; or
- (b) Providing for an existing employee of the Society to assume these functions.

The costs of options (a) or (b) could generally be met on a user pays basis. If the demand is significant, a more formalised structure (perhaps similar to the Management Advisory Service) could be developed.

4.6 PARTNERSHIPS

4.6.1 It is clear from the Heylen survey that this is a very real area of difficulty for women. The survey shows that:

- (i) Women are concentrated amongst employed solicitors while most partners or principals are males.
- (ii) Women appear to spend more time as graduate law clerks before becoming employed solicitors, and more time as employed solicitors before becoming partners.
- (iii) Males tend to achieve partnership in far shorter time than women.

- (iv) The ratio of male to female is heavily weighted to males amongst partners in all sizes of law firms.
- (v) Over half of all women practitioners believe that their progress is impeded, particularly by negative attitudes to women, and a lack of female partners in their firm, and to a lesser extent, family commitments. At the same time many males also feel impeded by aspects of their organisation.
- (vi) Most practitioners aspire to partnership, both women and men. Prospects for partnerships are not seen as good by women however, particularly those in larger firms. Again, this is attributed in part to anti-women attitudes.
- (vii) At the employment interview, there is a greater emphasis on discussing career aspirations and prospects with males. With women there is more emphasis on why the previous job was left and family circumstances.

Many of these difficulties would be overcome if:

- (a) Partnerships had criteria for admission to partnership and made the criteria known to employees.
- (b) Employers and employees were honest with each other in discussing their plans for partnership and employers regularly appraised and informed their employees whether the latter were meeting the firm's expectations.
- (c) It was clear that women would not put at risk their partnership prospects at some stage of their career by choosing a dual role of practitioner and parent.

4.6.2 From the submissions received, it is apparent that many of the issues which face women as employees within the profession still remain a problem once they are admitted as a partner. On the positive side, it seems that women experience fewer difficulties with others in the profession, i.e., male practitioners take

"partners" more seriously than staff solicitors. Accordingly women partners may not experience the more overt types of discrimination. However, the overall structures within the profession remain unchanged and therefore the problems of arranging flexible working hours, assistance with child care, recognition of skills other than fee production still confront the women partner.

Recommendations

- 4.6.3 Partnerships should make known to employees the criteria for partnership.
- 4.6.4. Employers should regularly appraise and inform their employees whether the latter are meeting their expectations.
- 4.6.5 Employers should make it clear that women would not put their partnership prospects at risk should they choose a dual role of partnership and parent at some stage of their career.

PART 5: OTHER ISSUES

5.1 EFFECT OF MERGERS/AMALGAMATIONS

From submissions received, it is clear that problems arise for all practitioners, particularly senior men and women within firms upon merger or amalgamation.

Recommendations

5.1.1 Employers and firms should be sensitive to the needs of their staff leading up to and following amalgamations and in particular:

- Clearly communicate the status of senior staff and intended promotional/partnership prospects to the other side of the amalgamation negotiations.
- Involve senior staff affected by any changes insofar as it affects their position within the new firm.

5.2 ELIMINATION OF SEXIST/EXCLUSIONARY LANGUAGE FROM THE PROFESSION

It must be self-evident that any language which assumes that the profession is male is archaic and inappropriate. Practitioners must change their habits. One common source of complaint arises from the style of addresses of letters.

Alternative forms of address can easily be adopted and are more clear and concise. If an introductory form of address to a firm shall be used, the alternatives to "Dear Sirs" are:

- "Dear Sirs and Mesdames"
- "Dear Colleagues"
- "Dear Principals"
- "Dear Partners"

Another course would be to simply head letters with:

- The name of the firm.
- The address.
- The name of the person for whose attention the letter is sent.
- The subject matter of the correspondence.

e.g. X Y & Co,

DX 007

Attention: Ms A Jones

Re: Pce of 11 Letterhead Place

Smith from White

Many firms have already adopted these alternative forms of address and are to be commended for it.

Recommendations

- 5.2.1 The Auckland District Law Society should take a lead in educating practitioners in the use of appropriate forms of address and in the avoidance of the use of sexist/exclusionary language.
- 5.2.2. The Society should discourage the continued use of outmoded forms of address in correspondence between firms and encourage the use of short form address recommended in para 5.2.
- 5.2.3 The Society should endorse and encourage the use of non gender-specific language in all its publications.
- 5.2.4. The Continuing Legal Education committee of the Auckland District Law Society should take care to advise and assist presenters of seminars to avoid the practice of referring to people, practitioners or clients generically as being male. The use of non gender-specific language should be encouraged.

5.3 ELIMINATION OF SEXIST BEHAVIOUR

Despite the changes to the Code of Ethics consequent upon the

report of the previous working party, we have been informed that in some instances sexist behaviour still occurs. Such instances can only be eliminated through further education.

Recommendations

5.3.1 The Auckland District Law Society should co-ordinate an educational campaign including:

- Running consciousness-raising programmes for both male and female staff.
- Running assertiveness-training programmes for male and female practitioners.

5.4 SEXUAL HARASSMENT

Sexual harassment is behaviour of a sexual nature, unwanted and unsought by the recipient. That behaviour can range from derogatory or insulting remarks through to unwanted sexual advances.

The survey disclosed that eight per cent of female practitioners surveyed were currently experiencing sexual harassment in the form of unwanted sexual advances from clients.

The survey also showed that while a majority of partners believe appropriate avenues existed for dealing with complaints of sexual harassment within their firms, most female employed solicitors surveyed either did not know of any avenues available or did not feel they were adequate.

Recommendations

5.4.1. The Auckland District Law Society should encourage all firms to provide and create awareness of appropriate avenues for dealing with complaints of sexual harassment.

5.4.2 The Society should provide and/or create awareness of channels for dealing with complaints through the Friends Panel and/or disciplinary proceedings (Sexual harassment constitutes a breach of Rule 3 of the Code of Ethics).

5.5 ACADEMIC WOMEN, CORPORATE WOMEN AND WOMEN EMPLOYED BY GOVERNMENT DEPARTMENTS

The position of academic women lawyers was largely excluded from investigation by the survey, as it was only circulated to members of the Auckland District Law Society holding practising certificates in May 1987.

However, the working party considers that there is a need to recognise the issues facing such women and to promote their position. The presence of women lawyers in teaching positions has beneficial effects in encouraging women students to recognise and achieve their full potential.

We note that the Society has significantly reduced the practising certificate fee for academic lawyers effective from 1/2/88 from \$409.00 to \$284.00.

A non-practising affiliation fee of \$65.00 is available to those academic lawyers or lawyers temporarily out of the legal workforce in return for which the affiliates receive Northern News and other publications distributed by the Society.

5.6 MAORI WOMEN

The working party recommends to the Society that all endeavour to increase their awareness of and sensitivity to areas in the system which particularly affect Maori women. We believe that this is an area which warrants further study.

PART 6: CONCLUSION

It is important that the profession's focus shift to promoting a positive confidence in the future of women in the profession. Women have made significant progress in the profession over recent years and this will undoubtedly continue. Women make good lawyers and provide an excellent service in all areas of the profession's work. There is a great demand for good lawyers and an acute need for excellence of service.

While in the past, women have been under represented at partnership level and in the areas of practice relating to commercial law, commercial litigation, taxation, banking and finance, the pattern is changing. Some members of the working party felt that the focus needed to shift from what might be seen as a negative over-concentration on discrimination to a positive confidence in the future. The working party was unanimous that the will of the profession is needed to continue to promote and hasten positive change.

There is a need for all lawyers to remove all forms of discrimination against women in the profession. Women lawyers should be able to look to their future with full confidence in their own abilities and with the full support of all members of the profession.

The working party believes that the profession now knows that women do make good lawyers and that there is a great need for and a shortage of good lawyers. The thrust of these recommendations is to ensure that women practitioners may and do take advantage of all the opportunities available to them and thereby meet the need for skilled lawyers in all areas of practice.

The working party also recognises the need to maintain and promote within the profession the principle of equality between male and female practitioners and the facility for both to advance their careers on individual merit. For women, this process will be enhanced by the implementation of these recommendations.

PART 7: SUMMARY OF RECOMMENDATIONS

- 7.1 CHILD CARE (See pp. 69-73)
- 7.1.1 With the object of providing a service and recouping costs on a user pays basis, the Auckland District Law Society should consider employing a child care co-ordinator to advise on child care and co-ordinate various options either by itself or by working in with other child care services.
- 7.1.2 The Law Corporation (NZ) Limited, formerly the Law Practitioners Co-operative, might also consider providing similar services or investing in suitable premises.
- 7.1.3 The Society should consider sponsoring various child care centres or programmes.
- 7.1.4 Similar options should be considered by individual firms or groups of firms.
- 7.1.5 The Auckland Women Lawyers Association has provided a helpful child care kitset setting out the steps to follow in setting up a centre.
- 7.2 TAX DEDUCTIBILITY (MAJORITY RECOMMENDATION) (See pp. 73-78)
- 7.2.1 The Society should lobby for a change in tax legislation to allow the deductability of child care expenses (This is the only specific recommendation which is not unanimous).
- 7.3 PARENTAL LEAVE (See Maternity/Paternity Leave pp. 78-82).
- 7.3.1 The Society should encourage firms to enable women to pursue a career while recognising their role in child bearing and child rearing.

7.3.2 Firms should provide flexible parental leave for staff and partners.

7.3.3 Employers should make themselves familiar with their statutory and judicially amplified obligations to employees.

7.4 FLEXIBLE EMPLOYMENT OPTIONS (See pp. 82-84).

7.4.1 The Society should encourage firms to implement flexible employment options to avoid unfair discrimination against those who wish to pursue a legal career and have a family.

7.4.2 With the costs generally being met on a user pays basis, the Society should consider employing an officer to advise and run programmes, promote equal employment policies and flexible employment options, raise consciousness and build confidence for women and men.

7.5 PARTNERSHIP (See pp. 84-86)

7.5.1 Partnerships should make known to employees the criteria for partnership.

7.5.2 Employers should inform employees whether they are meeting the firm's expectations.

7.5.3 Employers should make it clear that women will not put their partnership prospects at risk if they choose a dual role of partnership and parenthood.

7.6 MERGERS/AMALGAMATIONS (See p. 87)

7.6.1 Firms should be sensitive to the needs and expectations of their staff, inform and consult where possible.

7.7 ELIMINATION OF SEXIST LANGUAGE (See pp. 87-88)

7.7.1 The Society should take a lead in educating practitioners and encourage the use of non-sexist language and forms of address especially in the presentation of seminars, publications and correspondence.

7.8 ELIMINATION OF SEXIST BEHAVIOUR (See pp. 88-89)

7.8.1 The Society should co-ordinate educational programmes to help to identify and eliminate sexist behaviour for staff and practitioners in their day to day activities.

7.9 SEXUAL HARASSMENT (See p. 89)

7.9.1 The Society should encourage firms to be aware of ways of dealing with sexual harassment problems including having recourse to the Friends Panel and/or disciplinary proceedings.

E.C. MINOGUE

N.J. SHIEFF

JOINT CONVENORS

PART 8: ANALYSIS AND SUMMARY OF THE REPORT OF THE
1981 WORKING PARTY ON WOMEN IN THE LEGAL PROFESSION

[The second working party, in considering the position of women in the legal profession, carried out an analysis and summary of the report of the 1981 working party. The analysis and summary follows]:

- 8.1 The report of the 1981 Working Party on Women in the Legal Profession was hailed publicly by many as compelling in its revelation of the fact of discrimination, and in its bringing home the essential unfairness of discrimination in denying women lawyers equal treatment and equal opportunities. The then president of the Auckland District Law Society, Mr E.W. Thomas, Q.C., maintained that "[such discrimination] was contrary to the basic precepts of law and justice."

Privately some members of the profession regarded the report as flawed.

- 8.2 The real effectiveness of the 1981 report can now be measured by analysing the extent to which its recommendations have been implemented.

- 8.3 There were 17 recommendations.

- 8.4 Five of the recommendations were implemented as follows:

Recommendation 1

The endorsement of the unacceptability of discrimination.

Recommendation 3

The resultant changes in the code of ethics.

Recommendation 4

The sending of the report to every member of the Auckland District Law Society.

Recommendation 11

The resolution to form an independent standing committee (Committee on Women in the Profession - CWIP) to assist and advise on the implementation of the report's recommendations.

Recommendation 5 (Partial)

The establishment of this working party (although the three year starting date from 1981 was overlooked).

Resolution

The resolution to publicise the category of non-practising member.

Resolution

The resolution to publicise the existing locum register

Of the remaining recommendations, six were referred to the committee to be formed and five were the subject of no action.

The recommendations on pages 41 to 45 of the 1981 working party Report were discussed at the Auckland District Law Society Council's meeting of 8 February 1982 and decisions reached as follows (the 1981 working party recommendations are given first).

COUNCIL DECISIONS ON THE 1981 WORKING PARTY REPORT

1981 Recommendation 1

The Society endorse the principle that discrimination in the profession on the ground of sex relating to:

- employment opportunities
 - allocation of work
 - remuneration
 - partnership prospects, and
 - relations between practitioners
- is totally unacceptable.

Decision

The Council resolved to endorse this recommendation (ACTION)

1981 Recommendation 2

The Society adopt a positive educational role in promoting an awareness in the profession of:

- the discrimination against women and other problems encountered by women in the profession.
- the consequences of discrimination against women, and
- the capacity of women to meet conventional career objectives in the profession.

Decision

The Council took no action on this recommendation (NO ACTION)

1981 Recommendation 3

The Council promote the inclusion in the New Zealand Law Society Code of Ethics of provisions giving effect to the principles enumerated in Recommendation 1.

Decision

The Council resolved to refer this recommendation to the N.Z.L.S. for consideration as to whether an ethical rule is desirable (ACTION)

1981 Recommendation 4

The Council prepare a report for distribution to the profession outlining the forms of discrimination found to exist in the profession and recommending the positive steps which can be taken to ensure equality of treatment and opportunity in the profession.

Decision

The Council resolved to send a copy of the report, abridged in such manner as may be acceptable to the working party, to every member of the Society (ACTION)

1981 Recommendation 5

The Council promote further and continuing research into the position of women in the profession for the purpose of assessing the progress of women, and to better identify and overcome the particular difficulties they face. Specifically the Council could aim to establish another working party in three years time, or less, to carry out and report on further surveys.

Decision

The Council resolved to refer this matter to the committee to be set up under Recommendation 11 (REFERRED TO COMMITTEE)

1981 Recommendation 6

The Council keep permanent records of persons admitted to the profession, whether practising or not, for the purpose of facilitating such research.

Decision

The Council resolved that the Secretariat should provide the committee to be set up under Recommendation 11 with details of present records and indicate how the records could be made fuller in order to facilitate the research contemplated in Recommendation 5. (REFERRED TO COMMITTEE)

1981 Recommendation 7

The Council stress to the profession that in some respects discrimination on the ground of sex is unlawful.

Decision

The Council resolved to take no action on this recommendation.

(NO ACTION)

1981 Recommendation 8

The Council re-affirm that discrimination on the ground of sex is unprofessional conduct and may in appropriate circumstances, be the subject of disciplinary proceedings.

Decision

The Council resolved to take no action on this recommendation.

(NO ACTION)

1981 Recommendation 9

The Council express its concern to the New Zealand Law Society in respect of the submission made to the Parliamentary Select Committee relating to clause 16 of the Human Rights Commission Bill and recommend to the New Zealand Law Society that it seek an amendment to the corresponding section (Section 19) of the Human Rights Commission Act 1977 to make the provisions relating to partnership applicable to partnerships of all sizes.

Decision

The Council resolved to take no action on this recommendation. (NO ACTION)

1981 Recommendation 10

The Council acknowledge that the Society has a responsibility to:

- (a) Initiate and oversee research programmes on women in the profession.

- (b) Receive and investigate complaints and suggestions relating to discrimination or other problems experienced by women.
- (c) Consider any legislation affecting women in the profession.
- (d) Ensure that all necessary information relating to the position of women in the profession is communicated to the profession in Law Society publications.
- (e) Encourage and assist its women members to work together to achieve the objectives referred to in these recommendations, to promote greater self confidence and to investigate the practical ways of alleviating the difficulties faced by women.

Decision

The Council resolved to seek proposals for implementing this recommendation from the committee to be set up under Recommendation 11. (REFERRED TO COMMITTEE)

1981 Recommendation 11

The Council establish a committee with independent status to assist in and advise on the implementation of these recommendations and to take specific responsibility for the matters referred to in Recommendation 10.

Decision

The Council resolved to establish a committee answerable to the Council, with not less than one member of the committee being a member of the Council, to assist in and advise on the implementation of the recommendations in the report. Miss Potter and the incoming President were to nominate members of the committee for approval by the Council. (ACTION)

(Committee on Women in Profession CWIP established)

1981 Recommendation 12

The Council co-operate with women in the profession, or any group or co-operative of women, in assisting to establish and maintain facilities for co-ordinating child care and other household services.

Decision

The Council resolved to refer this matter to the committee to be set up under Recommendation 11. (REFERRED TO COMMITTEE)

1981 Recommendation 13

The Council investigate and promote moves to make the employment of women with children more attractive to employers by appropriate tax reforms or the provision of other financial incentives relating to child minding and associated expenses.

Decision

The Council resolved to refer this matter to the committee to be set up under Recommendation 11. (REFERRED TO COMMITTEE)

1981 Recommendation 14

The Council be conscious of the sensitivities of its women members to symbols of discrimination, inside or outside the profession, and take steps to cease any practices which are inconsistent with its resolve to eliminate discrimination within the profession.

Decision

The Council resolved to take no action on this recommendation. (NO ACTION)

1981 Recommendation 15

The Council promote the establishment of a special category of membership for those not holding current practising certificates which would entitle such members to receive newsletters, receive notice of and attend continuing legal education programmes, participate in legal office observation schemes and attend the Society's social functions.

Decision

The Council, noting that such a service was provided to non-practising members, resolved to publicise this category of membership. (LIMITED ACTION)

1981 Recommendation 16

The Council establish and publicise a register of practitioners who are available for short term locum employment.

Decision

The Council resolved to give the existing locum register more publicity. (LIMITED ACTION)

1981 Recommendation 17

The Council consider the preparation of a booklet explaining the legal and financial structure of legal partnerships and the matters which require consideration upon the admission of a new partner or the retirement of an existing partner.

Decision

The Council resolved to suggest to the committee to be set up under Recommendation 11 that it discuss with the Accountants and Lawyers Forum and/or the Continuing Legal Education committee the possibility of a seminar or other educational device in this

area. The incoming President was to be invited to commission a special report on partnerships, the members of the group or committee involved to be selected by him [or her] and the new Council. (REFERRED TO COMMITTEE)

IMPLEMENTATION OF THE 1981 WORKING PARTY REPORT

- 8.5 It is accepted that the recommendations of the 1981 report were in many instances general statements of principle requiring endorsement only. These required no further action. Other recommendations were non specific.
- 8.6 The work of implementing the report was left to the standing committee (CWIP) which the Council resolved to establish. CWIP had a limited period of activity and is not now functioning. Had that committee kept functioning, it may well have been that this working party would not have been necessary. We conclude that the task left to a committee of voluntary members under constant pressure of work (and having regard to the scope of the recommendations to be implemented), was unduly burdensome and that the committee's demise was inevitable.
- 8.7 Two areas of crucial concern raised by the 1981 working party and seen by it as relatively disadvantaging women much more than men were:
- (a) Practical responses to child care problems, and
 - (b) The need for taxation reform regarding child care.

These issues were raised as Recommendations 12 and 13 by the 1981 working party and remain unaddressed and not furthered by the Society.

Similarly, despite a clear recommendation to do so, (1981 Recommendation 6) the Council has not ensured that sufficient permanent records are kept of persons admitted to the profession whether practising or not. The working party has had added

difficulties due to the unavailability of necessary statistical information. It was partly for this reason that an up-to-date survey by the Heylen Research Centre was considered necessary.

[A summary of the Heylen survey of members of the legal profession within the Auckland District Law Society can be found in Part 3 of this report.]
