

DEDICATED TO THE ADVANCEMENT OF PROFESSIONAL WOMEN

# WOMEN OF INFLUENCE MAGAZINE

## SHELLEY BROADER

PRESIDENT & CEO, WALMART CANADA  
Her values-based approach to business  
and how every role is a learning process

### WOMEN-AT-LAW

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AT THE TOP OF THE  
LEGAL PROFESSION

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# WOMEN-AT-LAW: THE PATHWAY TO CHANGE

## Diversity and Success at the Top of the Legal Profession

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SENIOR CLIENT PARTNER, THE BEDFORD CONSULTING GROUP,  
NORTH AMERICAN DIRECTOR OF BEDFORD LEGAL

*Although law schools have been graduating as many or more women than men for decades, women remain under-represented in the senior ranks of law firms. The legal profession is seeking to understand the barriers to success as women continue to exit private practice, often pursuing in-house counsel roles which uniquely place them in a position to enact and influence change within the firms they have left, and throughout the legal profession, across North America.*

### OVERVIEW

For centuries, the legal profession remained closed to women.

Late in the 19th century, a few trailblazing pioneers began to break down the barriers that paved the way for thousands of women lawyers who have sought a successful career in the profession ever since. In 1870, Ada Kepley became the first woman lawyer to graduate from Northwestern, a U.S. law school. In 1899, Clara Brett Martin became the first Canadian woman barrister. In 1921, McCarthy Tétrault, one of Canada's leading law firms, was the first Toronto firm to hire a female lawyer, Edith Sheppard. Hiring Sheppard was truly visionary leadership on McCarthy's part, in what was then not only a male-dominated profession, it was eight years *prior* to women being recognized as persons under the law in Canada in 1929.

Since the 1970s, an increasing influx of young women have sought a career in law. Indeed today, in both Canada and the U.S., women make up approximately half of all law school students, and

more than a third of all lawyers in the profession. Lauren Stiller Rikleen, a Boston attorney and celebrated commentator on women in the legal profession, observes however that these numbers only tell a small part of the story. Author of *Ending the Gauntlet: Removing Barriers to Women's Success in the Law*, Stiller Rikleen notes, "with increased numbers of women graduating and moving into private practice it seemed logical to assume that the female associates of the 1980s and 1990s would experience career advancement commensurate with their demographics. Accordingly, by the beginning of the new millennium, we should have seen a dramatic change in the composition of law firms' partnerships."

Today, in the U.S., although women represent approximately 45% of all law firm associates, they are less than 20% of all law firm partners. Further, according to the National Association for Legal Career Professionals, less than 2% of the partners at large law firms in the U.S. are minority women. In Canada, while the number of

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women joining the legal profession continues to grow, accounting for nearly 60% of Ontario's *youngest* lawyers, on average the number of women partners at most law firms remains at approximately 20%.

In 2010, the Law Society of Ontario commissioned the report, *Racialization and Gender of Lawyers in Ontario*. This study examined the demographics of the legal profession as far back as 1971, when women were just 5% of the lawyers in Ontario, compared to almost 40% by 2006. The report also revealed that female lawyers earn significantly less than their male counterparts. Indeed, even when factors such as age and type of legal work are accounted for, women make 20 to 30% *less* in mean earnings than male lawyers and were significantly less likely to be partners in private practice.

Even though more than half of the incoming young attorneys in North America are women, the current reality remains that on average 4 out of 5 partners in most law firms in both Canada and the United States are men. Ms. Stiller Rikleen concurs that there is no question, “that something happened on the way to the brass ring. Much of the story is about their struggle to break down the barriers women faced as they moved into the profession. What happened is that instead of moving up in law firms, women began exiting them.” With that followed over 20 years of in-depth studies and reports and an influx of diversity committees and initiatives to find out and understand *why this was happening* and to find creative solutions *to ensure that it stops*.

## WHY THE FIRM EXODUS? THE REPORTS AND THE FINDINGS

In 1995, Harvard Law students Suzanne Nossel and Elizabeth Westfall designed a project aimed at discovering what it was like to be a woman practicing at a top law firm in the United States. *Presumed Equal: What America's Top Women Lawyers Really Think About Their Firms*, surveyed over 4,000 women attorneys, from over 100 of the top firms to draw out general trends in their law firm experience. Currently in its 3rd edition, the impact of *Presumed Equal* was influential, with many U.S. firms using these findings to develop women's initiatives and diversity committees to correct the disparity in work experience or partnership opportunities for women, both within their own firms and across the country.

Based on this significant research, *Presumed Equal* dismisses the premise that making partner is simply a choice, or an equal choice, for both men and women associates. “Although some may dismiss the disparity, as women's disproportionate lack of commitment to make partner, we cannot. Although many law firms have committed to creating an environment where *all* of their attorneys can succeed, a regrettable number of workplaces still harbor either subtle or overt discriminatory attitudes towards female attorneys. At present, the reluctance of a male-dominated partnership to mentor female attorneys, the persistence of gender biases regarding women's roles, and the tacit penalties that women endure for taking

advantage of maternity leave, to name only a few dynamics at play, still profoundly shape women's experience within the legal profession.”

In 2001, Catalyst released *Women in Law: Making the Case*, which studied the lack of women in leadership positions in the legal profession and how legal employers can fully capture the talent of women. In this report, Catalyst found that women lawyer's career paths were significantly affected by work-life issues and the advancement of women in law firms was directly impacted by difficulty balancing competing professional and personal demands.

North of the border, the Law Society of Upper Canada commissioned its first report in 1989, *Women in the Legal Profession*, which surveyed over 1,500 lawyers called to the Ontario Bar between 1975-1990, a historic period when women were entering the legal profession in sizable numbers for the first time. This same panel of lawyers were again surveyed in 1996, leading to the report, *Barriers and Opportunities Within Law: Women in a Changing Legal Profession*, followed by *Turning Points and Transitions: Women's Careers in the Legal Profession*, which examined the career paths of Ontario lawyers from 1990-2002. Bertha Wilson's 1993 report, *Touchstones for Change: Equality, Diversity and Accountability*, was also highly influential and has been credited for the initial wave of diversity committees that sprang up within law firms across Canada.



PHOTO BY KOUROSH KESHIRI

L TO R: KATE BROER, PARTNER, FRASER, MILNER, CASGRAIN LLP; KATHERINE POLLOCK, PARTNER, FASKEN MARTINEAU LLP; LUCILLE D'SOUZA, SENIOR COUNSEL AND DIVERSITY COMMITTEE CO-CHAIR, RBC LAW GROUP; MANJU JESSA, SENIOR COUNSEL AND DIVERSITY COMMITTEE CO-CHAIR, RBC LAW GROUP; TERRIE-LYNNE DEVONISH, CHIEF COUNSEL, AON CANADA; AND LISA HEIDMAN, SENIOR CLIENT PARTNER, THE BEDFORD CONSULTING GROUP, NORTH AMERICAN DIRECTOR OF BEDFORD LEGAL.

**“WOMEN NEED SPONSORS. INDIVIDUALS WHO WILL OPENLY RECOMMEND WOMEN LAWYERS FOR ASSIGNMENTS, OPPORTUNITIES, PROMOTIONS, AND WHO ARE WILLING TO LEVERAGE THEIR OWN POWER AND REPUTATION TO HELP WOMEN SUCCEED.”**

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The collective consensus of all of these reports is that there are many reasons for the exodus of female lawyers from law firms. The most commonly cited themes within these studies are issues of work/life balance and the excessive requirements for billable hours, combined with the continued resistance of most firms to meaningfully implement flexible work arrangements and policies. Many women lawyers who left private practice did so to gain some semblance of control over their time and lives, alternatively seeking careers as in-house counsels and within the not-for-profit and public sectors.

The significant work/family issues and the intensity of most firm's billable hour requirements are again only one part of the story. Dig deeper than the work-life balance issues, encourages Ms. Stiller Rikleen. "When women attorneys are asked why they left

private practice, many respond with a common theme. As associates, they were told to focus on their billable hour output as the critical measure by which they would be judged for partnership. They responded as advised, with a crushing focus on billable hours, which left little time to pay to client generation. Without focused support within the firm for sufficient mentoring and client opportunities, and with little time to pursue non-billable activities, many women have had difficulty meeting the ever elusive qualification of rainmaker, contributing to a high rate of attrition."

Katherine Pollock, an employment law partner at Fasken Martineau LLP ("Faskens"), is Chair of their Steering Committee on Women's Issues, a member of Fasken's Diversity Committee and is also tasked with preparing a report with concrete recommendations for retaining women

at the firm. Pollock notes, "there is no doubt that a significant factor why law firms across the country have such high attrition rates of women, is that there is simply not enough effective mentoring, and more specifically effective sponsorship, of women associates. Women need sponsors, that is, individuals who will openly recommend women lawyers for assignments, opportunities, promotions, and who are willing to leverage their own power and reputation to help women succeed." This observation is supported by Stiller Rikleen's findings that "a key reason why women have not reached partnership levels in sufficient numbers is the fact that they have lacked access to important informal networks within law firms, which provide the necessary mentoring, client exposure and client development opportunities critical to achieving partnership."



“ EXCELLENCE AND HARD WORK ARE ONLY PART OF THE EQUATION. IT'S IMPERATIVE THAT YOUNG WOMEN LAWYERS UNDERSTAND AND FOCUS ON BUILDING THEIR BUSINESS DEVELOPMENT AND NETWORKING SKILLS FROM AN EARLY STAGE IN THEIR CAREER. ”

KATE BROER, PARTNER, FRASER, MILNER, CASGRAIN LLP

## WHAT IT TAKES TO BE SUCCESSFUL AT THE TOP FIRMS: MENTORS, SPONSORS, CLIENT DEVELOPMENT SKILLS AND A BOOK OF BUSINESS

Excessive billable hours is table stakes in private practice, but even high billables will not guarantee attaining or maintaining partnership if those billables are not derived, at least in part, from one's own book of business. In today's new economy, the path to partnership is about the ability to grow existing client relationships, to bring in new clients and work to the firm, and to develop a significant book of your own consistent business in the door.

Rainmaking, a skill set once held by a few key players in most law firms, is today, a fundamental requirement of every partner. Yet, a key metric upon which associates are now evaluated for partnership was never taught in law school or provided historically in most law firm training. Add to these challenges, that in a tough economy, lawyers notoriously become much more protective of their client relationships, and are less willing to introduce other lawyers to their clients. Indeed, a recent American Bar Association Journal Report, *Higher Hurdles for Women*, noted that women lawyers today believe they have even fewer opportunities for direct client contact than they had 20 years ago.

Fraser, Milner, Casgrain LLP (“FMC”), named one of Canada's Best Diversity Employers, has been an active firm leader on the diversity front for several years, in no small part due to the initiatives of Kate Broer, a partner and commercial litigator at FMC. Ms. Broer observes that, “to become partner in any firm today, it's simply not enough to work hard and be an excellent lawyer. Excellence and hard work are only part of the equation. It's imperative that young women lawyers understand

and focus on building their business development and networking skills from an early stage in their career. Just like hard work and excellence, these need to be thought of as core competencies and job requirements. Sitting in your office and doing great work and hoping someone notices you is not enough, even with high billable hours. We also expect our senior partners to include those more junior in their business development activities as much as possible, so they can build these important client development skills. We understand at FMC that developing this skill set is critical to the path for partnership, particularly for women.”

Jane DiRenzo Pigott, Managing Director of R3Group LLC, has spent more than two decades practicing law both within law firms and as in-house counsel and now consults on leadership, diversity and inclusion, has observed an additional complexity relating to women's business development. “One of the most effective ways to develop business in a law firm, especially one with institutionalized clients, is to inherit it. The most likely pathway for inherited business is from mentor to mentee. That requires the establishment of trust, which in turn is based, at least in part, on commonalities.” Historically and understandably, men have mentored those they were comfortable with, which were more often than not, other men.

Since men constitute the majority of senior firm leadership, women *must* be actively mentored and sponsored by men to enable their way to partnership. The studies have highlighted however, a discomfort amongst some male partners to develop a mentoring

relationship with female associates. According to DiRenzo Pigott, “in most firms, effective communication across genders is a skill that both partner and associate, and mentor and mentee must better develop.” Thus, firms that solely rely on informal mentoring relationships, while generally an effective form of sponsorship, in this instance for women associates, may not be enough. Therefore, law firms will likely benefit from instituting a wide variety of both informal *and* formal mentoring systems and networking initiatives to ensure equal access to firm expertise, guidance and sponsorships.

Of equal importance is that women lawyers must *also* mentor, network and share best practices and opportunities with *each other*. This includes opening doors, teaching each other how to effectively network, and how best to create a personal brand and business niche, both within and outside the firm. Katherine Pollock notes, “you cannot underestimate how crucial it is for women lawyers to bond, to find common ground and to share best practices and experiences. We can help each other, indeed we have a responsibility to do so.” DiRenzo Pigott adds, “it's clear that women have not yet taken full advantage of the power and leverage to actively help each other. If women attorneys (would more actively) share information, provide key introductions, facilitate conversations where we can get to know each other and actively pull each other up behind as we climb the ladder, then the pace of change at the leadership levels of law firms will accelerate. Only when there is a critical mass of women at the top of law firms, will the rules to this game change.”

“AS FORMER LAW FIRM ASSOCIATES, WE APPRECIATE THE IMPORTANCE OF CLIENT EXPOSURE AND OPPORTUNITY, AND HOW IMPORTANT DEVELOPING A BOOK OF ONE'S OWN BUSINESS IS, TO THE PATH TO LAW FIRM PARTNERSHIP. AS CLIENTS, WE KNOW WE CAN MAKE A DIFFERENCE, AND EFFECT CHANGE WITHIN THE LEGAL COMMUNITY BROADER AND THAT DOING SO, IS NOT ONLY KEY TO OUR DIVERSITY MISSION AND VISION AS A BANK, BUT CORE TO OUR BUSINESS STRATEGY AT RBC.”

MANJU JESSA AND LUCILLE D'SOUZA, SENIOR COUNSELS AND CO-CHAIRS OF RBC LAW GROUP'S DIVERSITY COMMITTEE

## THE BUSINESS CASE FOR DIVERSITY

Most major law firms recognize there is a business case for diversity. This includes recognizing the value of diversity of thought, experience and insight to solve complex business issues for their clients; the ability to effectively service diversified global markets; to increase associate productivity and performance; as well as the ability to attract and retain top talent, which includes developing supportive relationships with the very individuals that are exiting their firms, and who may indeed *become* their corporate clients. Pollock notes that, “maintaining a diverse workforce is one of Fasken’s top strategic business priorities”, further adding, “attracting and recruiting talented women lawyers isn’t a problem for most top firms. The challenge for all law firms across North America is convincing the best and the brightest women lawyers to stay.”

In 2005, Catalyst’s report, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* in Canadian law firms found that 62% of women associates intended to stay with their law firms for five years or less. Firms that fostered a more balanced work-life culture, increased advancement opportunities, availability of mentors, good quality of firm management, professional development opportunities and control over their work, stood a better chance of retaining top women in law. The study also noted that the financial cost of an associate’s departure was significant, approximately twice an associate’s salary. Adds Ms. Broer, “In addition to these costs, there is also the enormous cost to firms in losing personnel which should not only be measured in dollars, but also in

disruptions to internal teams and client relationships.”

Recently, more than 55 progressive law firms across Ontario, including some of the largest in Canada, (Blakes, Faskens, FMC, McCarthys, Oslers, Stikemans and Torsys to name a few) have pledged their support to the Law Society of Upper Canada’s new precedent-setting *Justicia Project*. The three-year pilot project is the first of its kind in Canada and includes representatives of medium and large firms committed to identifying and adopting principles and best practices that promote the retention and advancement of women lawyers in private practice. Each of the participating law firms have signed written commitments to achieve ambitious goals in four core areas: tracking gender demographics, flexible work arrangements, networking and business development and mentoring and leadership skills development for women.

Ms. Broer adds, “increasingly clients are demanding more diversity from their service providers often in the form of RFPs. Our clients understand that diverse perspectives lead to more effective and creative problem-solving. At FMC, we know that a team comprised of people with diverse perspectives leads to a better product and allows us to deliver better solutions to our clients. Our clients have also articulated the importance they place on diversity and inclusion, and have made clear their expectation that their outside counsel also make diversity a priority in their firms. The bottom line is, as law firms, we need to be responsive to our clients and their interests, and we’re listening.”

## THE INFLUENTIAL POWER OF IN-HOUSE COUNSEL

Not surprisingly, the number of women lawyers practicing in FP500 and Fortune 500 companies has grown significantly since the 1990s. What has also caught the attention of most law firms both in Canada and the U.S., is that women are not leaving the legal profession, many are simply leaving law firms and becoming in-house counsel and clients of their former firms. With this change, observes Stiller Rikleen, “women in-house counsel have a remarkable opportunity to use their purchasing power to change the face of the law firms they are leaving behind. By ensuring that other women lawyers are included in the competition for their business, they offer their colleagues critical client generation opportunities. Each time an in-house client hires a woman lawyer as outside counsel, she is helping that lawyer along the road to achieving and maintaining partnership.”

There is no doubt that all in-house legal counsels, both men and women, have the power to push for greater diversity within the legal profession by powerfully persuading law firms, through their purchasing power, to focus closely on their own diversity initiatives. Corporate counsels across North America have recognized that the key to developing the most effective inclusiveness and diversity strategy, is to join with their General Counsel peers in a collective effort. In 2004, General Counsels, from some of the largest and most influential companies in the U.S., including General Mills, DuPont, Prudential, Microsoft, Johnson

“THERE IS A REAL OPPORTUNITY FOR IN-HOUSE COUNSEL ACROSS CANADA TO INFLUENCE AND MAKE A SIGNIFICANT IMPACT ON THE LEGAL PROFESSION. BY RETAINING AND SUPPORTING FIRMS WHO ENSURE REAL INCLUSION AND DEVELOPMENT OF THE DIVERSE MEMBERS OF THEIR LEGAL TEAM, IN-HOUSE COUNSEL HAVE THE OPPORTUNITY TO CREATE POSITIVE CHANGE THAT WILL NOT ONLY OPEN FURTHER SENIOR CAREER PATHS FOR WOMEN IN THE PROFESSION, IT WILL BENEFIT CANADIAN BUSINESS.”

TERRIE-LYNNE DEVONISH, CHIEF COUNSEL, AON CANADA

& Johnson, The Coca-Cola Co., Walmart, and Bank of America, drafted and signed the “*Call to Action*” with a mission to hire or fire their firms, based in large part on their diversity performance. Today over 100 senior corporate counsels in the United States have become signatories, committing to foster diversity in the legal profession both within their organizations and, especially, in the outside law firms which supply their legal services. Following these initiatives in the United States, *A Call to Action Canada*, with a similar mission, launched in 2009.

In May 2011, David Allgood, Executive Vice President & General Counsel at RBC, was a founding signatory of a new Canadian initiative, *Legal Leaders for Diversity*. Today, over 60 major corporations including Aon, Bell, Bombardier, Dell, Kellogg’s, Manulife, HP, MTS Allstream, Shell and Xerox have each agreed to “promote diversity within their own corporate departments, to consider diversity in their hiring and purchasing practices and to encourage Canadian law firms to follow in their example.” Manju Jessa and Lucille D’Souza, both Senior Counsels and Co-Chairs of RBC’s Law Group’s Diversity Committee, are actively involved and leading many RBC initiatives which support diversity and inclusion in the legal community. These programs include informal agreements with some of RBC’s law firm partners to provide diverse candidates, including women, for RBC secondments. “It’s a tremendous opportunity to understand RBC’s business and legal needs and to cultivate key relationships within the business. As former law firm associates, we

appreciate the importance of client exposure and opportunity, and how important developing a book of one’s own business is, to the path to law firm partnership. As clients, we know we can make a difference and effect change within the legal community broader, and that doing so, is not only key to our diversity mission and vision as a bank, but core to our business strategy at RBC.”

Terrie-Lynne Devonish, Chief Counsel at Aon Canada, and a recent signatory to *Legal Leaders for Diversity*, says, “this is probably one of the first initiatives I’ve seen where there has been this much excitement and energy around it, so I’m very, very positive about it. We at Aon intend to continue to provide business opportunities for those law firms that best reflect Aon’s values, provide exceptional legal advice, and positively distinguish themselves in the diversity arena. A proven commitment to diversity is an important component to getting Aon Canada’s business.” Devonish adds, “there is a real opportunity for in-house counsel across Canada to influence and make a significant impact on the legal profession. By retaining and supporting firms who ensure real inclusion and development of the diverse members of their legal team, in-house counsel have the opportunity to create positive change that will not only open further senior career paths for women in the profession, it will benefit Canadian business.”

## LOOKING AHEAD: INCREASED OPPORTUNITIES FOR WOMEN’S ADVANCEMENT AT THE TOP

Highlighting the fundamental business development skill set required to achieve and maintain partnership, men *and* women leaders in the legal profession have a powerful opportunity to influence women’s advancement, both as senior partners and in-house counsels, by mentoring and sponsoring the career development of women associates, supporting their continued business development, and ensuring that the business case for diversity is both understood and implemented now. It is *equally* important for women lawyers to be part of this equation for change. Women are currently half of all law students and over a third of the entire legal profession in North America and the reports suggest this growth will only continue in the years ahead. There can, and should be, power in numbers. By sharing best practices, leveraging our networks, utilizing our influential power as partners and our economic power as clients, there is real potential, collectively as women-at-law, to level the playing field, changing and improving opportunities for women’s career advancement at the top of the legal profession both right now and in the many years ahead. ♦

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Lisa Heidman, LL.B., Senior Client Partner, The Bedford Consulting Group, North American Director of Bedford Legal, brings over 15 years of Legal, Board and Executive Search Experience working with Boards and their Senior Leadership Teams, placing Board, CEO and C-Suite Executives across functions. Appointed to the Board of Directors of Women of Influence in 2009, Lisa is a regular contributor to the Women of Influence Magazine. Lisa can be reached at [lheidman@bedfordgroup.com](mailto:lheidman@bedfordgroup.com).