

PROFESSIONAL DISCIPLINE AGAINST FEMALE LAWYERS IN QUEENSLAND

A Gendered Analysis

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In its most recent Annual Reports, the Queensland Legal Services Commission has released statistics relating to professional discipline against Queensland lawyers which reveal a disparity according to the sex of the lawyer. The Annual Report notes that female lawyers are proportionally three times less likely to receive complaints and prosecutions than male lawyers. This article discusses discipline in the context of the plethora of literature examining the experience and practice of women in the legal profession. While the article ultimately raises many unanswered questions, it is contended that the figures reflect the continuing barriers faced by women practising law in Queensland.

In its Annual Report for 2005–06, the Queensland Legal Services Commission (LSC), an independent statutory office administering professional discipline against lawyers, was the only disciplinary body in the country to document its collected data according to the category of ‘gender’.¹ From this data, it was immediately noticeable that there was a significantly lower rate of complaints against female lawyers than their male counterparts. In short, female solicitors received less than half as many complaints proportional to their representation in the profession.

While they accounted for 35.39 per cent of lawyers in Queensland, female solicitors only received 15.29 per cent of the conduct matter complaints² from

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¹ This category referred to the sex of the legal practitioner. Other data from the New South Wales Law Society have documented complaints in the past. However, a brief survey of other jurisdictions in Australia indicates that the relevant disciplinary bodies did not report a similar breakdown in terms of sex of the practitioner in recent years. For instance, the New South Wales Legal Services Commissioner’s Annual Report 2005–06 and the Victorian Legal Services Commissioner Annual Report 2005–06 do not report on the gender of the practitioner.

² ‘Conduct matters’ are defined by the LSC as matters that it must investigate or refer to the relevant professional body to investigate, and decide what further action to take, including prosecution. Conduct matter complaints will be referred to as ‘complaints’ hereafter. A further discussion of the LSC data is provided later in this article.

1 July 2005 to 30 June 2006.³ In 2004–05, complaints against male solicitors represented 9.78 per cent of the total amount of practising male solicitors, whereas in the same period there were complaints against only 3.57 per cent of the total amount of practising female solicitors. In 2005–06, complaints against male solicitors represented 11.57 per cent of the total amount of practising male solicitors, whereas in the same period there were complaints against only 3.81 per cent of the total amount of practising female solicitors.⁴ In the most recent figures released by the LSC in its Annual Report 2006–07, there is a drop in the percentage of complaints against female solicitors as a percentage of their representation in the profession (only about 2.5 per cent), while the rates of complaint against male solicitors as a percentage of their representation in the profession remained the same as for the last reporting year (11.57 per cent).⁵

The LSC therefore observed of the figures:

The data invites [sic] some obvious questions. Why is it, for example, that woman lawyers continue this year like last year to be considerably less than half as likely as their male counterparts to be subject to complaint?⁶

This article provides a response to this difficult question. At the outset, it is conceded that this examination is a first step in understanding the disciplinary figures. Further qualitative research is required within this jurisdiction. For instance, further research may reveal other factors affecting discipline, such as ‘different voice’ lawyering⁷ by women during their everyday practice or in dealing with complaints. Nevertheless, the data considered in this article provide a useful representative picture about the disciplinary situation in Queensland. They reveal gender discrepancies in rates of inquiry, complaint and prosecution. In addition, this article refers to studies of disciplinary records in other countries which have produced startlingly similar results (lower proportional rates of complaint against women). It is

³ In numerical terms, there were 83 complaints against female lawyers and 460 complaints against male solicitors in 2005–06. There were 2177 female lawyers and 3975 male lawyers with practising certificates issued by the Queensland Law Society: Legal Services Commission (2005–06), p 64. The LSC Annual Reports also document ‘consumer complaints’ by gender breakdown, which reflect the same proportional gap. For instance, in 2005–06 only 14.84 per cent of the respondent female solicitors received consumer complaints.

⁴ Legal Services Commission (2006), p 64.

⁵ Legal Services Commission (2007), p 85. Data produced by the LSC for this study from 1 July 2004 until 1 May 2007 report a similar proportional percentage of complaints against women: 15.48 per cent (262 out of 1693).

⁶ Legal Services Commission (2006), p 28. In its Annual Report 2006–07, the LSC also noted that women were three times less likely to be subject to complaints alleging misconduct: Legal Services Commission (2007), p 41.

⁷ This expression was coined by Carrie Menkel-Meadow in her landmark essay, ‘Portia in a Different Voice: Speculations on a Women’s Lawyering Process’ (1985).

contended that the similarities in discipline rates reflect an analogous experience of women within professions in Australia, the United States, Canada and the United Kingdom. This article discusses the large body of academic literature concerning women practising in the law in order to contend that these analyses have direct application to understanding the data. It is argued that the continuing sources of disadvantage they identify and the resultant dearth of experienced and senior female practitioners are significant causes of the lower complaint rate against female solicitors.

The first section of this article begins this analysis by describing the demographic composition of the Queensland profession (with reference to other jurisdictions). This discussion concludes that, while women's representation in the legal profession has been steadily growing, this is an insufficient explanation for the gender divide in complaints received in recent years. The second section of the article describes the data which form the basis of this study, and situates them within the Queensland disciplinary regime. This section explains an underlying assumption of the article that there is an observable difference in the public's perception of male and female lawyers' practice. The final section of the article examines the data with reference to the plethora of qualitative analyses of women's experience in legal practice. It is contended that continued professional barriers to women 'succeeding' in terms of promotion and receiving quality work may distort the discipline figures. Finally, the article poses, but does not answer, the related feminist question of whether women may practise in a 'different' way. No analysis of women's legal practice can avoid this question, which has occupied feminist commentators for some time.

Women in the Queensland Legal Profession: A Demographic Analysis

The Early Picture

In Queensland, women were admitted to practice early in the 1900s under the *Legal Practitioners Act 1905* (Qld).⁸ Una Prentice was the first woman law graduate from the University of Queensland in 1938. While she was one of the first graduates from this law school, her experience after graduating illustrates the lack of acceptance of women by the profession at that time, when her application for admission to practice was rejected several times.⁹ Once women were 'let into' the profession, they continued to occupy 'fringe dweller' status for many years. Margaret Thornton's detailed history of women's entry into the legal profession in Australia documents many interlocking structural and social barriers erected against women's acceptance as equal members of the profession:

⁸ Thornton (1996), pp 51–52. Queensland was somewhat different from other states as a university degree (LLB) was not required as a prerequisite for admission to practice, and indeed there was no independent Faculty of Law in the state until 1936. Thus there were several admitted female lawyers before this time, such as Agnes McWhinney (as the first solicitor) in 1915 and Katherine McGregor (as the first barrister) in 1926.

⁹ Thornton (1996), p 52.

While women were 'let in' to legal practice by the 1920s, I would suggest that the highly selective admittance that ensued fell considerably short of the 'feminisation' of the legal culture, whether construed in terms of numbers, stereotypically feminine forms of relating to others (for example, more caring), or the emergence of legal knowledge that takes cognisance of women's experience.¹⁰

Thus female lawyers were constructed as 'other' to the typical lawyer, who remained the 'benchmark male'.¹¹

While Thornton's picture of an unchanged profession appears to be indisputable in the early days of women's admittance, can we say that things have changed as a result of an influx of women into profession in recent years? One point which must be noted is that there was no slow growth in figures from 1915. Rosemary Hunter reports that between 1947 and 1975 the numbers of women only increased from 2.4 per cent to 7.5 per cent of the total Australian profession.¹² However, there was a marked increase each year after 1976 until women represented 26.3 per cent of the national profession in 1991.¹³ Therefore, in determining the impact of women on the legal profession, we must take into consideration that they represented a small cohort before the early 1980s.

These figures have two likely consequences. First, 'feminisation' of the profession, understood as either acceptance of women as competent and equal professionals or as engendering a cultural shift which takes account of female practices or experience, was less likely to occur when women represented a minority of practitioners. Expansion in the population of female lawyers in recent years should therefore instigate some professional changes. The final part of this article refers to the vast body of empirical and theoretical work which argues against such a conclusion. While formal regulatory and structural barriers may have been removed, Thornton's description of the 'fringe dweller' female lawyer appears to provide an applicable concept for today's profession.

Second, a more obvious conclusion can be drawn from the small number of female lawyers. There will be very few complaints against this group. This is borne out in the discipline figures for Queensland, where there were no reported disciplinary proceedings against women until the 1980s. In Linda Haller's comprehensive study of lawyer discipline in Queensland from 1880 to 2002, she found that:

¹⁰ Thornton (1996), p 72.

¹¹ There are many other historical accounts which replicate this observation of women's early admission to practice. See, for instance, Mossman (2006), Pardon and Rahemtula (2005); Kirk (1995).

¹² Hunter (2002), p 92.

¹³ Hunter (2002), p 92. Between 1976 and 1991, there was a national increase of approximately 22 000 female lawyers.

The overwhelming majority of practitioners appearing before the tribunal were male. In the 70-year period of the study¹⁴, only 11 female practitioners faced a disciplinary hearing. This comprised only 2% of solicitors appearing before the tribunal. The first of these women did not appear until the 1980s, even though by then women represented 15% of solicitors in practice in Queensland. By the year 2000, the end of the period of the study, women comprised 27% of solicitors in practice and yet during the 1990s they represented only 8 of the 130 cases heard (6%).¹⁵

Haller's discipline data between 1986 and the end of the 1990s may reflect the low numbers of female lawyers. However, as she notes, by the end of that decade women's representation in the profession had dramatically increased. Since the early 1990s, women have been entering the legal profession in increasing numbers. For instance, the Queensland Law Society Annual Reports since 1991 document a steady increase in women solicitors as a percentage of the total solicitors practising in Queensland. It should therefore follow that complaints against female solicitors have risen in line with their numbers. In contrast, Haller's data for the 1990s documents a divergence in the numbers of complaints (only 6 per cent) and the numbers of female lawyers (from around 15 per cent to 27 per cent). This trend is continued in the most recent LSC data this article considers.

The Picture Today: More Women Practising Law

In a companion article which updates the data reviewed for the period 2001–05, Haller and Green found the trend continuing:¹⁶ 'in both 2005 and 2006 once account is taken of their relative numbers in legal practice, male solicitors were almost three times more likely to have a conduct matter recorded against them than a female solicitor'.¹⁷ The LSC data of complaints received since 2004 against solicitors (which includes unprosecuted matters) replicate Haller's description. These figures then suggest that there must be some other explanation for fewer complaints than there simply being a lack of female lawyers against whom to lodge a complaint.

One explanation is that there is a 'time lag' in operation — women will do 'better' in the discipline stakes as they advance in numbers and impact on the profession. This phrase has been used in the wider context of women's progression in the legal profession. In much of the literature, authors begin

¹⁴ Haller's study nominally begins when the legal profession was established in Queensland. However, her figures report professional discipline only after the establishment of a statutory scheme of discipline in the 1930s.

¹⁵ Haller (2001), p 4.

¹⁶ Haller and Green (2007), pp 146–48.

¹⁷ Haller and Green (2007), p 147. It is worth noting that Haller's analysis of Queensland discipline referred to cases where disciplinary charges were filed. The LSC data referred to in this article considers not only matters which involved a prosecution, but also where a complaint was made (which may not have proceeded to prosecution.) The data are discussed in detail in the next section.

with statements from some eminent legal professional (such as a Harvard Law Professor¹⁸ or a Lord Chancellor),¹⁹ commenting that women 'are doing remarkably well' or that there has been no cultural change since the entry of women into the profession. This appears to lead to the assertion, when contrary figures abound, that women's advancement is 'only a matter of time'.

As Rhode sarcastically contends: 'if time alone is viewed as an answer, ... [female] lawyers are in for a very long wait'.²⁰ Rhode refers to the significant and voluminous empirical research that has been conducted over the last 15 years documenting the disparity in figures of women graduating from law school and their progression within most Western legal professions.²¹ Women are graduating from law school in higher numbers than men,²² and have been doing so for some 20 years. Yet they are not achieving the same status. The Victorian Women Lawyers' report in 1999, *Taking Up the Challenge: Women in the Legal Profession*, notes the increase in women graduating law, but contends that many women do not go on to practise law or that they leave legal practice in the first few years.²³ In all Australian jurisdictions, there is a lower representation of women in the profession, and a higher rate of women leaving the profession early in their careers. In Victoria in 2002, 62 per cent of practitioners under 30 years old were female.²⁴ In the United States, the trend is the same. Paula Patton reports that half of law graduates are women, but they compose only 16.8 per cent of partners. Some 70.9 per cent of female law graduates begin work in law firms; however, 54.9 per cent have left within four years.²⁵ Lisa Webley and Liz Duff report that in England and Wales, 'three-fifths of women leave in their 30s' and the mean age of non-renewal of certificates for women is 40 years as compared with 52 years for men.²⁶ Not surprisingly, women also 'enjoy' lower commensurate compensation and less autonomy attached to their proportionally lower status.²⁷

¹⁸ Speech cited by Rhode (2002), p 10.

¹⁹ Sommerlad (2002), p 213.

²⁰ Rhode (2002), p 10.

²¹ For instance, see the recent Gender Appearance Survey conducted by Australian Women Lawyers in relation to female barristers appearances in court. Also see Hagan and Kay (1995); Menkel-Meadow (1995); Thornton (1996); Sommerlad and Sanderson (1998); Brockman (2001); Leiper (2007); Hunter (2005).

²² For instance, Sommerlad reports that in 2000 women accounted for 60.3 per cent of students enrolled. Sommerlad (2002), p 215.

²³ Victorian Women Lawyers (1999), p 1.

²⁴ Hunter (2002), p 96.

²⁵ Paula Patton (2004–05), p 174.

²⁶ Liz Duff and Lisa Webley (2007), p 375.

²⁷ Rosemary Hunter reports that in 1998–99 in New South Wales, 48.1 per cent of female solicitors earned less than \$50 000 per year as opposed to only 29.9 per cent of males. Only 4 per cent of female lawyers earned more than \$150 000 per year compared with 13.2 per cent of males: Hunter (2002), pp 96–97. This disparity in salary also appears to be due to a much higher rate of women working part time. Hunter's work also identified a vast disparity

In Queensland the pattern is the same. Since 1998, when women represented 26 per cent of the total population of solicitors in Queensland, there has been a steady increase by approximately 1–2 per cent each year.²⁸ Women now make up approximately 40 per cent²⁹ of the lawyers in Queensland. In a survey of 867 female solicitors with current practising certificates conducted by the Queensland Law Society in 2003, women were found to predominate in the younger parts of the profession.³⁰ Female solicitors represented 62 per cent of the solicitors participating in the survey under 29 years old.³¹ In the next bracket, 30–34 years, women represented 44.8 per cent of the total solicitors. As the age of practitioner increased, the amount of women solicitors dramatically decreased. Nearly 90 per cent of practitioners over 50 were male.

The Queensland Law Society survey Membership Report also documents a clustering of female solicitors in the early years of their career — women composed approximately 46 per cent of lawyers in practice for less than six years, but their representation dramatically decreased after this time; women were nearly three times more likely to be employed solicitors but were less than six times less likely to be a salaried partner.³² Within the large law firm sector, a survey conducted by *The Australian* newspaper demonstrates that this is a national trend, as women accounted for just 16.3 per cent of equity partners.³³ This recent snapshot indicates that the composition of the profession in gendered terms remains profoundly imbalanced.

in the gender balance of senior legal professionals at the Bar in Australia. For instance, the Australian Women Lawyer's recent Gender Appearance Survey Results released in August 2006 indicate that, in Queensland in particular, women are poorly represented in the higher ranks of the Bar and tend to work in 'people law areas': Australian Women Lawyers (2006); Hunter (2005), p 19.

²⁸ The Queensland Law Society Annual Report 2006–07 reports that the total number of solicitors is currently 7967. Of these, 3189 are women. In, 2005–06, some 38 per cent of the profession were women; in 2004–05, some 36 per cent of the profession were women; in 2003–04, some 34 per cent of the profession were women; in 2002–03, some 33 per cent of the profession were women; in 2001–02, some 31 per cent of the profession were women; in 2000–01, some 28 per cent of the profession were women; in 1999–00, some 27 per cent of the profession were women; in 1998–99, some 26 per cent of the profession were women. Combined figures as reported by the Queensland Law Society in their Annual Reports for these years.

²⁹ There appears to be some discrepancy between the figures of the QLS and those reported in the Annual Reports of the LSC.

³⁰ Hutchinson (2006).

³¹ Hutchinson (2006), p 14.

³² Hutchinson (2006), pp 15 and 21.

³³ Merritt (2007), p 33. This survey considered 28 of the nation's 'leading' law firms. It reported on growth in partners and employment figures over 2007. The survey can be found at www.theaustralian.news.com.au/business/legalaffairs

Discipline as a Factor of Age and Seniority

If we consider receiving a complaint as an indicator of success, then the LSC data indicate a low status for women practising in Queensland. How do disciplinary records connect with such work on women's progression in the profession? Discipline figures in Queensland (and internationally) indicate that the majority of complaints are made against senior lawyers with more than 10 years' experience in the law and those over 35 years of age.³⁴ There are differing accounts in the literature as to why this is the case. It is not within the scope of this article to consider such factors in any detail except as they intersect with this gendered analysis. For instance, senior lawyers have higher client visibility and contact and more responsibility for the conduct of matters. This reasonably plausible explanation for a higher complaint rate can be related to gender discrepancies in complaints, as female solicitors are less likely to occupy senior positions. While complaints are made against individual solicitors rather than the organisation or the supervising principal,³⁵ junior employees may simply lack opportunities to interact with clients, negotiate with other legal professionals or brief counsel and the visibility of instructing in court. It is contended in the final part of this article that this hierarchical separation is particularly marked in the larger firm culture.

This statistical connection has been drawn in other research. In the US context, Debora Moss Curtis and Billie Jo Kaufman contend that the gender difference in discipline figures they found can largely be explained as a factor of the 'gender difference in the *history* of the Bar'.³⁶ In their study of 15 years of disciplinary records of the Florida Bar in 2003, they found lower rates of discipline against female attorneys. On average between 1993 and 2003, only 11 per cent of complaints were against female attorneys.³⁷ They found that most women had been practising for a shorter period than the majority of the male attorneys. Their data confirmed that the majority of complaints (in 2001 about 66 per cent and in 2002 about 70 per cent) were made against attorneys who had been practising for between 10 and 30 years. They conclude that 'even though women's membership may be growing quickly within the Bar, it may be ten years or more before we see the percentages of women disciplined coming in line with the membership numbers'.³⁸

³⁴ For instance, the LSC *Annual Report 2005-6* documents that approximately 60 per cent of conduct matters were against respondent solicitors with between 10 and 29 years' experience. Hatamyar and Simmons' (2004) study of the US Bar indicates that complaints are disproportionately likely to be against lawyers in practice for more than 25 years. Hatamyar & Simmons (2004), p 831.

³⁵ It is of course possible that the LSC could prosecute a principle in relation to a failure to supervise a junior employee. See, for instance, *Baker v Queensland Legal Services Commissioner* [2006] QCA 145.

³⁶ Curtis and Kaufman (2003-04), p 693.

³⁷ The highest percentage of women disciplined was 14 per cent in 2001 while women constituted 29 per cent of the Bar in 2003, which was the highest percentage in its history. Curtis and Kaufmann (2003-04), pp 691-93.

³⁸ Curtis and Kaufman (2003-04), p 694.

There are a handful of similar studies conducted in the United States and Canada which have produced similar results. In his review of Upper Canadian discipline, Bruce Arnold found that there was a lower rate of complaints and discipline against women lawyers and lower rates of women accused of 'serious forms of misconduct'.³⁹ In Virginia, Canada, Brian Payne, Victoria Time and Sarah Raper found that 'nearly 90 percent of the sanctioned attorneys were males and just over ten percent were females' in their review of discipline cases between 1999 and 2002.⁴⁰ They estimate that this is proportionally less than three times lower than male attorneys as they estimate that 30–40 per cent of attorneys are female.⁴¹ Similarly, in their study of disciplinary records across the United States for the year 2000, Patricia Hatamyar and Kevin Simmons found lower proportional complaints against female attorneys.⁴²

While these other studies acknowledge the factor of age and seniority, they do not propose such a strong link between age or seniority and discipline rates. This article draws similar conclusions to those of Curtis and Kaufmann as to the significance of this factor. However, it is disputed that a change is likely simply as a matter of time. Indeed, it is contended that the recent LSC figures provide an additional indicator of the lack of career progression of women some 70 years after women were 'let in' to the profession. Even when we take into consideration a 'time lag' factor, women's representation in discipline should be growing.

However, when we examine the Queensland rates of complaint by reference to seniority and age of respondent, it becomes clear that there are different factors occurring between the sexes. Between 2004 and 2007, 31 per cent of total female respondents to a complaint — by far the majority age bracket for both men and women — had been in practice fewer than five years. The next highest percentage of female respondents was those between five and nine years in practice (at 26 per cent). Therefore, over half the complaints against female solicitors were made against relatively junior lawyers. This is in stark comparison to the figures for male solicitors, where the highest group receiving conduct matter complaints was solicitors with between 10 and

³⁹ Bruce Arnold (1998), pp 82–83.

⁴⁰ Payne et al (2004), pp 85–86. Another study of the Alabama bar in the late 1990s conducted by Payne and Stevens found that women were less complained about than men, but that they were more likely to be given a public reprimand and were more likely to be accused of failing to provide competent representation: Payne and Stevens (1999).

⁴¹ Payne et al (2004), p 87. The authors concede that these figures cannot be properly contextualised by numbers of licensed female attorneys (as the Virginia Bar does not maintain the percentages of male and females). Their estimate is based on national figures.

⁴² Complaints against female attorneys comprised only 11.7 per cent of the total complaints prosecuted, while women comprised 23 per cent of the attorney population. Hatamyar and Simmons (2004), p 799. Hatamyar and Simmons also report a 'gender gap' in the disciplinary records of the Oklahoma Bar as contained in the Oklahoma Disciplinary Commission's annual report for 2000. In that state, there were no complaints against women during 1999–2000 while women comprised 27 per cent of the attorneys. Hatamyar and Simmons (2004), pp 786 and n 2.

14 years' experience (18 per cent of male respondents). Only 1 per cent of female respondents had been in practice for over 25 years, compared with 11 per cent of male respondents (see Figure 1).

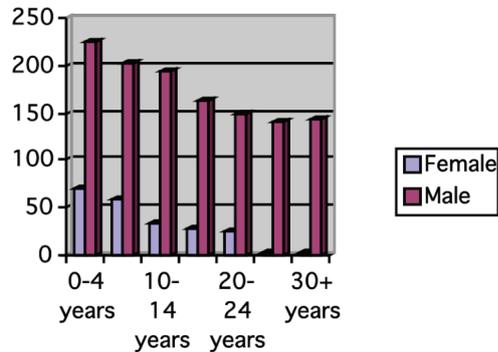


Figure 1: **CAPTION NEEDED**⁴³

The picture appears to become more complicated when we consider that 42 per cent of the complaints against female lawyers were against principals,⁴⁴ which was the highest group. Nevertheless, this is proportionally far lower than their male counterparts, where complaints against principals constituted 72 per cent of the male respondents (see Figure 2).⁴⁵

⁴³ The vertical axis refers to numbers of practitioners. The corresponding numbers of practitioners are: 0–4 years (female n=70, male n=225); 5–9 years (female n=58, male n=202); 10–14 years (female n=35, male n=194); 15–19 years (female n=28, male n=163); 20–24 years (female n=25, male n=148); 25–29 years (female n=3, male n=140); 30+ years (female n=3, male n=144).

⁴⁴ 'Principal' refers to a specific practising certificate issued by the Queensland Law Society under section 52 of the *Legal Profession Act 2007* (Qld). A principal for the purposes of the LSC data can include partners, solo practitioners, academics, government lawyers and so on.

⁴⁵ Finally, the LSC *Annual Report 2006–07* reports that not only more years in practice and higher status, but also the age of the practitioner, can be a risk factor for attracting complaints. The highest number of conduct matter complaints is against practitioners aged between 45 and 49 (18 per cent), the next highest groups are those between 40 and 44 and 50 and 54 (15.18 per cent). While the percentage of female solicitors within the total number of solicitors of these age groups is not available, it is likely that it is proportionally lower than their total representation. By way of comparison against total number of lawyers, the Queensland Law Society's 79th Annual Report of 2006–07 reports the relative numbers of lawyers by age: in 2006–07, 298 lawyers were 24 or less years of age; 1464 lawyers were 25–29 years old; 1259 lawyers were 30–34 years old; 1159 lawyers were 35–39 years old; 909 lawyers were 40–44 years old; 907 lawyers were 45–49 years old; 809 lawyers were 50–54 years old; 568 lawyers were 55–59 years old; 337 lawyers were 60–64 years old; 143 lawyers were 65–69 years old; and 104 lawyers were 70-plus years old.

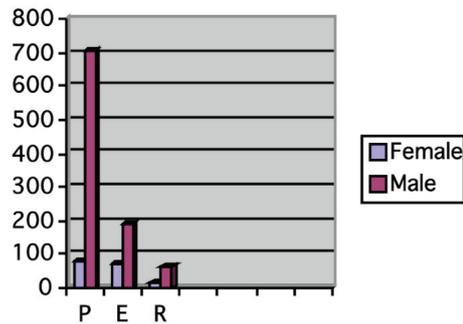


Figure 2 **CAPTION**⁴⁶

At first glance, the data indicate that inexperienced employee female solicitors represent a higher risk group than their male colleagues. However, the raw figures show that there are still fewer complaints against junior women than junior men — only 23 per cent of the complaints against lawyers in practice for less than five years were women. When we consider the figures cited earlier, which document the recent influx of women into the profession,⁴⁷ the proportional rate of complaint against junior female solicitors is half that of their male peers. Two contentions are made of the above data. First, the asymmetrical trend of discipline according to gender reflects a distinctly junior population of female lawyers. Second, the proportionally lower rates of complaint against junior female solicitors require further investigation. This is not explained by reference to a lack of promotion opportunities, time spent in practice, or any ‘time lag’ thesis. The final part of this article attempts to provide some explanation for this disproportionate data. It is claimed that the many accounts in academic literature of differing opportunities for junior male and female solicitors may provide an insight into the discrepancy in rates of complaint. In particular, junior female solicitors may receive less work which requires assumption of responsibility or client contact. In this way, junior female solicitors avoid significant risk factors for receiving complaints.

Our Data

Discipline in Queensland

All discipline — against barristers and solicitors — is now in the hands of the Legal Services Commission, which decides who will be pursued for discipline under section 447 of the *Legal Profession Act 2007* (Qld) (the Act).

⁴⁶ The vertical axis refers to numbers of practitioners. The horizontal axis refers to type of practising certificate. ‘P’ refers to principal (female n=81, male n=704), ‘E’ refers to employee (female n=74, male n=188) and ‘R’ (female n=19, male n=62) refers to restricted (issued in the first 18 months to two years) certificates.

⁴⁷ Female solicitors comprise 46 per cent of lawyers in practice for less than six years.

Complaints can be made to the LSC or the Queensland Law Society (QLS) or Queensland Bar Association (QBA). The LSC can investigate matters or refer the matters to the QLS or QBA for investigation.⁴⁸ The QLS or QBA must then include a recommendation to the LSC of whether the matter should be prosecuted.⁴⁹ The LSC has a relatively broad discretion when deciding whether to prosecute, including consideration as to whether pursuing the complaint is in the 'public interest'.⁵⁰ The LSC decides whether any charges against a practitioner will be heard by either the Legal Practice Committee or Legal Practice Tribunal.⁵¹ Appeals from these decisions are heard by the Court of Appeal in the Queensland Supreme Court.

The Act replicates the requirements introduced in 2004 for the LSC to publish 'disciplinary action' against a legal practitioner taken under the Act in the form of a discipline register.⁵² 'Disciplinary action' is defined in section 471 of the Act as resulting from a finding of two categories of charges: 'professional misconduct' or 'unsatisfactory professional conduct'. 'Professional misconduct', the more serious charge, is defined in the Act as including 'conduct [that] involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence and conduct' and 'conduct ... that would, if established, justify a finding that a person is not a fit and proper person to engage in legal practice'.⁵³ The standard referred to is not defined in the Act,⁵⁴ but jurisprudence on similarly defined charges suggests

⁴⁸ Leslie Levin notes, however, that there may be a discrepancy in the standards applied by the different bodies such that the LSC will consider certain conduct more serious than the relevant member body, and therefore refer more matters for disciplinary action. This is an interesting point and deserves more attention, as there may be a significant effect over time in relation to certain types of conduct, such as lack of communication complaints. Whether this would have any measurable effect on the gender differences in complaints and discipline is difficult to estimate or predict. Levin (2006), p 192.

⁴⁹ *Legal Profession Act 2007*, s 439.

⁵⁰ *Legal Profession Act 2007*, s 448(1)(b). The LSC has interpreted this discretion to require it to initiate prosecution where there is a reasonable likelihood of a finding of (serious) unsatisfactory professional conduct or professional misconduct which 'warrants a disciplinary response as a measure of the community's disapproval, for example, or to "send a message" to other practitioners by way of deterrence, or both': Legal Services Commission (2006), p 10. The LSC has published its guidelines which are available at www.lsc.qld.gov.au.

⁵¹ The Legal Practice Tribunal can make the following orders: strike off, suspension or cancellation of practising certificate, refusal to grant or renew a certificate or an appointment of a receiver. Section 471(c) of the Act also provides that the LSC must publish an order prohibiting the employment of an employee for up to five years (which is a power of the LPC under section 458(4)). The Legal Practice Committee hears matters considered to be less serious in nature. It has a similar function and powers to the Tribunal, but it cannot impose the more serious sanctions such as suspensions, removal from the roll and the highest fines.

⁵² *Legal Profession Act 2007*, s 472.

⁵³ *Legal Profession Act 2007*, s 419.

⁵⁴ Although note this section defines the degree of failure to conform to the standard as including 'substantial' or 'consistent'. Thus, while there is little jurisprudence on the new

that it is to be measured against that of another competent lawyer practising in the relevant area.⁵⁵ However, it should be noted that these cases predate the section in its current form, which now includes a reference to the expectations of 'a member of the public' where it is of a serious and consistent nature. Section 418 of the Act similarly defines 'unsatisfactory professional conduct' in relation to the expectations of the public rather than the profession.⁵⁶ In relation to gender, this statutory change instigates a potentially radical professional shift as it inserts public perceptions of legal professional practice as a relevant legal guide to proper practice.⁵⁷ In other words, where the legal profession no longer retains full governance of itself (both institutionally and doctrinally) there is more room for difference to be appreciated and accommodated.

The Data

The LSC has interpreted its reporting function widely since its inception in 2004. It not only publishes all disciplinary hearings under the Act,⁵⁸ but also data on all 'inquiries' and 'complaints' (contained in the LSC Annual Report). Leslie Levin contends that this decision was made in the interests of greater transparency of the discipline system.⁵⁹ This article therefore refers to LSC data not only obtained from disciplinary hearing reports, but also complaints made which may not have been prosecuted or even investigated (such as 'consumer disputes' which are disputes between consumers and lawyers

provisions, it appears that the widened concept of unsatisfactory professional conduct may encompass a failure to meet the standard on a single occasion. Section 420 of the Act sets out instances of conduct is capable of constituting either charge which includes contravention of the law, a serious conviction, charging excessive legal costs, etc. This list makes it clear that discipline may be imposed in respect of conduct that is not within the lawyer's legal practice. While the data discussed herein therefore includes such conduct, the focus of this article is on conduct occurring in connection with the practice of law. There is no evidence in the data that the focus should be broadened to include non-professional conduct (ie that women are statistically different to men in this area).

⁵⁵ *Heydon v NRMA* (2000) 51 NSWLR 1.

⁵⁶ 'Unsatisfactory professional conduct' is defined as including 'conduct ... that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent' lawyer. The LSC has understood this definition, in the context of its new powers, to be a broadening of the old concept of 'unprofessional conduct' to include 'honest mistakes, errors of judgment and poor standards of service of kinds that cause consumers to feel a legitimate sense of grievance': Legal Services Commission (2006), p 8.

⁵⁷ It is not suggested that peer judgment of professional conduct is no longer a primary element in assessing conduct. This emphasis is illustrated in the articulation of the objectives of professional discipline in case law as 'protection of the public' and protection of the reputation of the profession: *Mellifont v Queensland Law Society Incorporated* [1981] Qd R 17 at 30; and *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 297 at 286.

⁵⁸ Reports of disciplinary action taken in Queensland from 1996 can be found on the LSC website at www.lsc.qld.gov.au/searchReg.htm.

⁵⁹ Levin (2006), p 193.

without an allegation of unsatisfactory professional conduct or professional misconduct).

The majority of the data relied upon in this article have been collected between 1 July 2004 and 1 May 2007.⁶⁰ These data are composed of publicly obtainable information contained in the Annual Reports of the LSC for 2005–06 and 2006–07 that covers the period from 1 July 2006 to 31 June 2007, as well as reports generated by the LSC for the purposes of this research which provide further gender breakdowns of the complaint data.

This article primarily refers to the solicitors' branch of the legal profession in Queensland. While the LSC has the potential to collect data on barristers,⁶¹ it has limited information on discipline imposed on this branch of the profession before 2004. The Annual Report 2006–07 provides limited information as to complaints received against barristers in relation to their professional representation.⁶² Information relating to gender breakdowns of discipline only refers to solicitors.⁶³ Thus this article describes complaints against solicitors for empirical reasons. It also quarantines the analysis due to substantive differences in practices of the branches.⁶⁴ For instance, barristers practise in very different workplaces and face differing constraints and

⁶⁰ There is also reference to data contained in the LSC Annual Report 2006–07 that covers the period from 1 July 2006 to 31 June 2007.

⁶¹ Since the enactment of the *Legal Profession Act 2004* (Qld), the legal profession has merged in respect of admission and discipline (while certification remains divided). The Legal Services Commission has sole jurisdiction over professional discipline of solicitors and barristers. However, until 2004 the Bar Association was not required to report on disciplinary action taken against its members.

⁶² This comparison is made from certificates issued by the Bar Association of Queensland at 1 July 2006 when there were 853 barristers: Legal Services Commission (2007), p 66.

⁶³ However, total complaint and prosecution figures relate to both branches of the profession.

⁶⁴ Complaints against barristers reported since 2004 have been statistically insignificant. There were only two respondent barristers subject to a consumer dispute, 17 barristers subject to conduct matter complaints and two respondent barristers subject to prosecution, in the period from 2004–07. Similarly, the discipline register also only provides two cases of discipline imposed on female barristers since 1996. While these figures may suggest that there is another notable anomaly – female barristers may be disciplined in even lower numbers than female solicitors — these figures are unreliable. The enactment of section 296 of the *Legal Profession Act 2004* (Qld) (now section 472 of the *Legal Profession Act 2007* (Qld)) required that findings of the most serious charge — professional misconduct — be published on the discipline register. Before that time, it was left to the discretion of the Bar Association what it reported publicly or to its members. Occasionally there were reports on cases published in the *Queensland Bar News*, which is only available to members. Haller conducted a survey of the *Queensland Bar News* from 1980 to May 2002, which found only two disciplinary matters were reported in this publication in that 22-year period. Both cases appear to involve male barristers. Haller also reports that the Bar Association informed her that the tribunal heard only 10 disciplinary matters from 1992–2002. Unfortunately, none of these matters reported the sex of the respondent. Haller (2006), p 304.

demands.⁶⁵ A limited range of work that may be performed by a barrister and limited contact with clients may have differing affects on discipline figures.⁶⁶

A Brief Breakdown of Complaints

The LSC records initial inquiries, consumer complaints, conduct matter complaints and prosecutions. Complaints may be made by anyone – the client, other lawyers, a court. Many of the inquiries and complaints received by the LSC do not proceed to the stage of investigation or prosecution. For instance, the LSC⁶⁷ received 8,541 inquiries from the public or practitioners during 2006-7. The majority of these inquires were resolved by providing information, and only 496 complainants were provided with a complaint form.⁶⁸ Similarly, of the 600 conduct matter complaints considered by the LSC during that period, only 42 were referred for prosecution.⁶⁹

While the LSC does not collate reliable data on the sex of the solicitor at the inquiry stage, data relating to consumer disputes, conduct matter disputes and prosecutions is available according to gender.⁷⁰ In each category, a disparity on gender lines can be observed for 2006-7.⁷¹

Table 1: Consumer complaints by gender

<i>Sex</i>	<i>Size of profession</i>	<i>% of total</i>	<i>No. of respondent solicitors</i>	<i>% of total respondent solicitors</i>	<i>% of profession representation</i>
Male	4011	62.88	52	74.29	1.3
Female	2368	37.12	18	25.71	0.76

⁶⁵ See, for example, Rosemary Hunter's work in Hunter (2005).

⁶⁶ For instance, the *Legal Profession (Barristers) Rule 2007* (Qld), rules 77 and 78 provide that barristers may only perform a limited range of legal functions. Barristers are entitled to receive 'direct briefs' under rule 85. However, the barrister must inform the client of their limited practice. These factors are likely to limit the numbers of clients with direct contact with a barrister. In most cases, the barrister will be 'briefed' by a solicitor (as a principal, rather than client agent, in a contractual arrangement) and primarily conduct his or her work in sole consultation with that solicitor.

⁶⁷ This figure also includes inquiries received by the Queensland Law Society.

⁶⁸ Legal Services Commission (2007), p 68.

⁶⁹ Legal Services Commission (2007), p 83. There were 37 complaints referred to the Legal Practice Tribunal and five complaints referred to the Legal Practice Committee. There were also four complaints referred to an 'other investigative process'. The majority of complaints were considered to be 'no reasonable likelihood' of success in prosecution as determined under section 247(1)(a) of the *Legal Profession Act 2007* (Qld) and 114 considered to not to be in 'the public interest' to prosecute.

⁷⁰ This data only related to solicitors.

⁷¹ The tabular representation of the LSC data is produced by the author, but it is similar to the presentation of the data in the LSC Annual Report 2006-07.

Table 2: Conduct matter complaints by gender

<i>Sex</i>	<i>Size of profession</i>	<i>% of total</i>	<i>No. of respondent solicitors</i>	<i>% of total respondent solicitors</i>	<i>% of profession representation</i>
Male	4011	62.88	457	86.72	11.39
Female	2368	37.12	70	13.28	2.96

Table 3: Prosecutions by gender

<i>Sex</i>	<i>Size of profession</i>	<i>% of total</i>	<i>No. of respondent solicitors</i>	<i>% of total respondent solicitors</i>	<i>% of profession representation</i>
Male	4011	62.88	21	87.50	0.85
Female	2368	37.12	3	12.50	0.21

A preliminary observation can be made of these figures which underpins the focus of this last part of the article. It appears that the disciplinary process (complaint handling and definition) does not produce the discrepancy in discipline against male and female practitioners in Queensland. Other research concerning discipline has suggested that women may receive different disciplinary outcomes. There is some support in the Queensland discipline figures for this conclusion. For instance, between 2004 and 2007, male solicitors were twice as likely to have conduct matter complaints referred to the Legal Practice Tribunal than women.⁷² It could be postulated that women may 'deal with' complaints better than their male colleagues so as to prevent an escalation of the matter to prosecution. At the level of a conduct matter, the LSC data indicates that this is not the case as the rate of dismissal of a complaint for male and female solicitors is roughly the same.⁷³

Arnold contends of his study of the Canadian profession that men may receive more severe sentences when prosecuted. A review of the Queensland discipline register since 1996 indicates that, while women receive significantly fewer severe sanctions (such as suspensions and removal from the role), this is largely due to fewer prosecutions. Indeed, of the 15 reported prosecutions

⁷² Six per cent of complaints were against men (n=109) compared with 3 per cent of complaints against women (n=7).

⁷³ Eighty-five per cent of complaints were against women and 82 per cent of complaints were against men. During this time, women were slightly more likely to have the complaint dismissed as having no reasonable likelihood of successful prosecution (67 per cent of complaints against women compared with 61 per cent of complaints against men). Men were more likely to have the complaint dismissed on the grounds that there is 'no public interest' in prosecuting the complaint (21 per cent of complaints against men compared with 18 per cent of complaints against women). For reasons of confidentiality, further information as to how these claims were assessed is unavailable.

where a serious sanction was imposed on female practitioners since 1996, six resulted from an earlier criminal prosecution and three involved a form of contempt of court. Therefore, it appears that when facing serious sanction, women have engaged in a reasonably high proportion of criminal or dishonest behaviour.⁷⁴ The author could find no evidence in the reports that similar behaviours by practitioners resulted in differing sanctions imposed along gender lines. It is also noted that recent changes to professional regulation which contemplate community rather than professional expectations have removed institutionalised factors which arguably imposed gender disadvantage.

Other studies in this area have tended to consider only disciplinary records (those matters prosecuted). When only such data are considered, the investigation and prosecution process must be a crucial factor. This study demonstrates that a discrepancy between male and female solicitors can be observed at all levels. In the context of the data examined herein, gendered considerations of those receiving and considering complaints or structural disciplinary factors appear to have little weight. In short, we must consider other factors relating to how women practise the law and how they are perceived by the public and other professionals.

The next part of this article examines LSC conduct matter complaint data with regard to the conclusions that can be drawn about how female practitioners practise law and are regarded by the public. Further breakdown of conduct complaints has been obtained which provides the basis for this discussion, as to:

- areas of law in which conduct matters arose;
- number and nature of the complaint made classified as a conduct matter;⁷⁵
- results of the investigation and assessment of the matter (ie withdrawn, prosecuted, etc.);
- total years the respondent solicitor had been admitted; and
- the complainant type.

Professionalism and Gender

Feminisation of the Legal Profession

The first section of this article documented a demographic shift which has occurred in the legal profession in Australia and many other jurisdictions.

⁷⁴ Indeed, this small sample of reported behaviour appears to indicate that women engage in similarly serious professional and non-professional offences to men. This is contrary to a body of criminology studies which contends that men are more likely to engage in serious criminal activity. See, for instance, Daly (1989) and the discussion in Hatamyar and Simmons (2004).

⁷⁵ The nature of complaint is recorded by the complaint-handler at the LSC. Complaints are recorded under headings such as 'unethical conduct', 'instructions — not followed/acting without', 'negligence' 'overcharged' 'misleading/dishonest conduct', 'conflict of interest', 'disbursements', 'delay', 'lack of communication', 'referred to the ombudsman'. Due to confidentiality requirements, this study does not consider the further details as to what type of conduct fell within these categories.

Women are coming to the law in increasing numbers. However, recent figures indicate that women have failed to attain equal status at all levels of the profession. The previous part of this article contended that a link that can be drawn between experience and seniority, and rates of complaint.

It was further suggested that there is sufficiently compelling data over at least 10 years in Queensland that women are leaving the profession early in their careers, and before they have attained high status. Therefore, while the present lack of depth of women in the upper echelons of the profession may explain lower complaint rates, there is little reason to suspect that this will change given the passage of time. It is difficult to argue for more complaints against female solicitors. Nevertheless, this article contends that the discipline figures reflect a dismal professional experience of women in Queensland (and elsewhere).

This part examines in more depth the complaints data in light of a significant body of qualitative literature considering why women are not 'succeeding'⁷⁶ in their legal careers. It is difficult to reflect back from such data to speculate on women's experience in legal practice. However, it is contended that connecting other gendered analyses of the legal profession provides further insights into complaints. In particular, it is argued that gendered stereotypes and organisational structures may provide some insight into the lower rates of complaints against the large body of junior female solicitors.

Organisational Size and Structure

Margaret Thornton, Hilary Sommerlad, Cynthia Epstein, Deborah Rhode and many others have documented the influx of women into the profession in the last 25 years. However, far from the 'feminisation' of the legal profession, these authors trace how the profession has 'recreated the "woman problem" in different form'.⁷⁷ This, they contend, explains why women are not occupying senior positions, being pushed into certain areas of law and leaving the profession in great numbers. There are varying accounts of the societal and professional impediments encountered by female lawyers which have produced this seemingly intractable result. This article necessarily describes a small sample of this large body of work.⁷⁸ It is concerned to draw from this work useful analyses which may cast light on the discrepancy in discipline figures.

⁷⁶ It is conceded that this is necessarily a subjective concept. For more discussion on this issue, see Deborah Rhode's (2002) discussion of the 'myth of choice' as a common explanation for persistent gender inequalities in the legal profession. She contends that 'women lawyers face lingering double standards and double binds' as they juggle competing work and family responsibilities as well as competing narratives about the ideal lawyers and the ideal mother.

⁷⁷ Rhode (2002), p 10.

⁷⁸ There is a vast literature concerning women in the 'modern' legal profession. To name just a few studies that have not been referred to: the NSW Keys Young Report (October 1995), Goodluck (1996); Hon Justice Malcolm CJ's report for Western Australian Law Society (30 June 1994); Hunter and McKelvie (1998); Menkel-Meadow (1995); Reichman and Sterling (2004-05); Corcos (1997-98).

Sommerlad's work provides a useful theoretical platform as she emphasises that any analysis of legal professionalism must pay attention to what she calls 'legal specialisms' and different working environments. This observation has been noted particularly in literature considering discipline. Many writers in the field note that the size of the practice and the area of law in which the lawyer practises are important factors determining rates of discipline. The following discussion examines the discipline data in respect of these types of practice.

Solo practitioners face the highest risk of being subject to complaint.⁷⁹ The LSC Annual Report 2006–07 reports that the majority of conduct matters were against solo practitioners (61.76 per cent of the respondent lawyers). Levin's work documents a myriad of difficulties faced by small practitioners in the United States, including changing technologies, over bureaucratisation, specialisation and continuous time pressures.⁸⁰ She also notes that in many cases solo and small practitioners believe that they are unfairly treated by the disciplinary system.

These factors may intersect with consideration of the sex of legal practitioner. In other jurisdictions, women are reported to work primarily in solo practices.⁸¹ However, the Queensland Law Society survey Membership Report found that there were more male solicitors in smaller firms (over 50 per cent of the male solicitors surveyed). While there was also a large percentage of women working in organisation with less than two partners,⁸² the survey found that there were a much greater percentage of female solicitors working in large law firms with over 20 partners (approximately 23 per cent of the female solicitors surveyed), which was almost double the male representation. Female solicitors working in small or solo practice will be subject to the same risk factors as their male colleagues. However, when we consider overall discipline trends, it is contended that the lower population of women working in such practices may provide some explanation for an overall lower rate of complaint.

A concomitant point is that the congregation of women into the large law firm sector subjects many female solicitors to a differing range of pressures associated with that legal specialism.⁸³ For some time, commentators have

⁷⁹ In the United States, Leslie Levin argues that the vast majority of complaints are made against sole practitioners. Levin (2001, 2004–05). The New South Wales Law Reform Commission report in 2000 similarly reported that 46.5 per cent of discipline cases (in 1998–99) were sole practitioners, while they made up only 18 per cent of lawyers in New South Wales.

⁸⁰ Levin (2001, 2004–05).

⁸¹ Hatmayar and Simmons (2004), p 830.

⁸² The survey found that approximately 36 per cent of the female solicitors surveyed were working in an organisation with fewer than two partners.

⁸³ It is also conceded that junior employee solicitors in large firms may also enjoy greater training and supervision than those in smaller practices. This factor was strongly relied upon by Curtis and Kaufmann as a further explanation of a gendered discrepancy in discipline rates. Curtis and Kaufman (2004), p 693.

noted a trend towards commercialisation of the profession.⁸⁴ Sommerlad's work documents technological advances, as well as the growth in 'mega-firms', as resulting in 'increased concentration of capital and stratification and a revolution in traditional perspectives on, for instance, the nature and sustainability of partnership, marketing and client relationships'.⁸⁵ It is arguable that modernisation and the increased dominance of the commercial professional paradigm may provide a better opportunity for women to genuinely compete on 'merit' and for reasons of sharing the financial burden among more partners.⁸⁶ However, most qualitative studies conclude that, while technological advances have changed how we practise law, the profession operates on the basis of the 'benchmark male', and women remain 'fringe dwellers' in the field. Sommerlad and Sanderson contend that their studies illustrate 'it is still possible to speak of a hegemonic professionalism' where female lawyers perceive that they must compete with the 'boys' club' and a perceived lack of 'commitment'.⁸⁷ This ideology of complete devotion and commitment to the profession (which may mean the employer or the client) is an important aspect — possibly even central tenet — of modern legal professionalism. Freidson's idea of the profession as devotion seems to be borne out in many of the practices of law firms.⁸⁸

Epstein's work has long noted that commercialised legal practice has a gendered effect. In particular, she underscores the importance of the practice of requiring a large time commitment to the workplace. On the one hand, 'face time' at work is a seemingly neutral part of the commercial ideology described above. On the other, it functions as the 'disciplinary engine in the process of differentiation, the hierarchical ordering of that difference and the general naturalisation of things as they are, including male power'.⁸⁹ Within this professional paradigm, women are often designated as 'deviant, weak professionals'⁹⁰ when they seek to avail themselves of flexible working practices.⁹¹ These options are rarely institutionalised practices, and rely on ad

⁸⁴ See, for instance, Hanlon (1999).

⁸⁵ Sommerlad (2002), p 215.

⁸⁶ Sommerlad notes that in individual instances, such as in small practices, economic concerns have pushed aside any prevailing prejudice, requiring the firm to seek a broad base for sharing the expenses of the business: Sommerlad (2002), p 223. Similarly, Liz Duff and Lisa Webley argue that 'the commercialization of legal practice may have led to a commodification of the professional project that actively undermines the value placed on *all* solicitors'. Duff and Webley (2007), p 376 (my emphasis).

⁸⁷ Sommerlad (2002), p 216. See also Sommerlad (1998) for a discussion of the culture of 'commitment' as an underlying factor in promotion decisions.

⁸⁸ Friedson (1992).

⁸⁹ Epstein (1995), p 4.

⁹⁰ Sommerlad (2002), p 218.

⁹¹ Sommerlad and Epstein report studies in England and United States which found that taking up flexible working policies often resulted in stigmatisation and negative prospects for promotion. Sommerlad (2002), p 222 citing comments made by the former chair of Association of Women Solicitors. See also Epstein et al (1999).

hoc observance and the individual manager for implementation. Therefore, there is a perception that women are the architects of their own lack of success as they *choose* not to 'invest' as much as men in their careers.⁹²

These analyses depict a changing workforce which does not accommodate many women's needs and may cast doubt on their competency and commitment. While the discipline figures indicate that women are successfully managing these pressures so as to avoid receiving complaints, female solicitors' resultant lack of status may represent a more influential factor. Such analyses of women's experience of professional barriers not only explain the statistical data described earlier in the article, they also provide insights as to why junior women receive fewer complaints. All junior solicitors in large law firms are likely have less contact with clients and other legal professionals. However, Patton's description of the difficulties faced by a new cohort of women into the profession may explain fewer complaints against junior *female* solicitors in Queensland.⁹³ For instance, Patton notes that internal competitiveness in large firms — the client is the lawyer's not the firm's — disadvantages new female entrants. Where a woman is designated as lacking commitment, there may be an uneven allocation of responsibility within the organisation. Similarly, where women have access to flexible working practices, this may disadvantage them in the competition to service or attract clients. In addition, Patton contends that a continued system of personalism and patronage, 'based on the continual re forging of interpersonal trust and loyalty' between senior and junior men can be observed in seemingly neutral systems of appointment and promotion. Junior women, on the other hand, are less likely to be able to avail themselves of useful mentoring programs, particularly where there remains a dearth of senior females in the profession. It is arguable that there is a significant intersection between such informal organisational barriers and the LSC discipline figures. Female solicitors may struggle to obtain work which involves interaction with clients and other lawyers, and responsibility for important files. Lack of opportunity to gain such experience will not only result in a higher dissatisfaction rate amongst women, but may explain a resultantly lower visibility of junior female solicitors.⁹⁴

Area of Law

The LSC data, reflecting discipline figures across the world, document the majority of complaints as concerning family law, personal injury and

⁹² As Webley and Duff point out, even where women 'choose to invest in their careers' by not having children, there is still reliable evidence that women are disadvantaged by nature of their biological potential (to have babies). Duff and Webley (2007), p 377.

⁹³ Paula Paton's research identified many practical barriers to women's satisfaction and progression in private legal firms. She also documented the change in the US profession since the 1980s from a 'client service orientation' to 'client production orientation'. Paton (2004–05), p 178.

⁹⁴ This point was also raised as a possible factor for differing disciplinary rates by Curtis and Kaufman (2004), p 693.

conveyancing matters. The area of family law represented 20.67 per cent of all conduct matter complaints finalised in 2006–07, closely followed by conveyancing matters representing 19.83 per cent of conduct matter complaints.⁹⁵ As a preliminary matter, there is a possible intersection of factors of type of organisation and area of law. Solo or small practices are the predominant providers of legal services such as personal injury and conveyancing.⁹⁶ As observed in the previous section, the majority of solo or small practice lawyers are male. When contextualised in this way, the gender imbalance of the data may be partially explained — female solicitors practise in areas of law that are less subject to complaint.

However, irrespective of size of the organisation,⁹⁷ women in Australia (and the United States and Canada) appear to practise in large numbers in family law. The Keys Young report in relation to the New South Wales legal profession found that female lawyers tended to work in family law and crime.⁹⁸ The Queensland Law Society ‘Membership Report’ found that in 2003, 23.8 per cent of female respondents worked in family law compared with 16.4 per cent of male respondents.⁹⁹

It may reasonably be postulated then that we should expect a higher percentage of complaints against women in family law areas as a product of female solicitors’ specialisation in that area. This conclusion is borne out in the LSC data: the largest area of law in which female solicitors received complaints was family law (36 per cent of complaints against women). In contrast, only 16 per cent of complaints against male solicitors were in respect of family law matters. Nevertheless, when we compare the data in numerical terms, the trend of lower complaints against women continues. There were 268 complaints against male solicitors and only 95 against female solicitors in relation to family law matters. Therefore, complaints against female practitioners in relation to this area represented only 26 per cent of the complaints. While this is nearly double the percentage of complaints received by women in Queensland, when we put this in the context of the high rate of women working in this area of law, we can conclude that there is no anomalous situation in this area of law.

⁹⁵ This appears to be similar in most jurisdictions. The LSC Annual Report 2006–07 similarly reports that the highest numbers of inquiries was about conveyancing and property law (25 per cent) and family law (17 per cent).

⁹⁶ While the size of the practice may influence the level of complaints received, this is not the only possible rationale for a high level of complaints in relation to these areas of law. While it is not within the scope of this article to consider this issue, there has been a large amount of work primarily in the United States which has provided explanations for vulnerabilities of lawyers practising in these areas. See, for instance, Leslie Levin’s work (2001, 2004–05, 2006).

⁹⁷ In respect of family law practices, the author is not aware of any authoritative research in Queensland which provides information on the average size of such family law providers.

⁹⁸ New South Wales Department for Women (1995), p 65.

⁹⁹ Hutchinson (2006), p 28. Hatamyar and Simmons make the same observation on their data from the United States (while they refer to ‘domestic matters’ compared to criminal matters). Hatamyar and Simmons (2004), p 818.

As their male counterparts, female solicitors are most likely to receive complaints about their family law practice. This appears to indicate that female solicitors in a supposedly 'feminine' area of law are performing no better, and no worse, than their sisters in the rest of the profession. On the other hand, perhaps women are receiving fewer overall complaints because so many have chosen to practise in family law, to which they are best suited. Perhaps it is in this area of law that women are able to reverse the commercialisation effect.

Those writing about women in the law issue a caution when making such a claim. Sharon Bolton and Daniel Muzio contend that *because of* the influx of women into the profession, an 'internal closure strategy' has emerged. This phenomenon has created gendered segmentation of the professional workforce based on 'the ideology of women's difference'.¹⁰⁰ Drawing on a similar thesis, Carrie Menkel-Meadow infers that women are 'falling prey to gender-based segregation predicated by stereotypical predictions about their abilities and characteristics, for example, "women function well as family lawyers"'.¹⁰¹ Menkel-Meadow cites as evidence a noticeable grouping of women in certain areas of the law that are the 'lower echelons' of the profession, including the underpaid area of family law.¹⁰²

While the LSC discipline figures cannot be relied upon to provide any evidence of such a 'push' factor, it is arguable that they constitute further evidence of a dearth of female solicitors working in commercial areas of law. For instance, women did not receive a statistically significant amount of litigation or commercial law complaints. On the other hand, male lawyers received complaints in respect of such areas only marginally less than family law, personal injuries and conveyancing matters. The QLS Membership Survey also documents that male solicitors predominate in the areas of conveyancing, commercial law, criminal and wills and estates.¹⁰³ That women are not receiving complaints in these areas, far from providing a good report for women, may simply indicate another aspect of women's marginalisation into supposedly 'feminised' areas of law.¹⁰⁴

Do Women Practise 'Differently'?

Despite the lowly status of women dominated areas of law, women may *choose* to practise in certain areas of law for a variety of reasons. For instance, Sommerlad and Sanderson suggest that female lawyers may be drawn to a different form of practice (such as care and understanding) that is characteristic of this area of law.¹⁰⁵ Regardless of how they find themselves practising in

¹⁰⁰ Bolton and Muzio (2007), p 48.

¹⁰¹ Menkel-Meadow (1997), p 19.

¹⁰² Menkel-Meadow (1997), p 19.

¹⁰³ Hutchinson (2006), p 28. In relation to commercial law, for instance, 32.9 per cent of male respondents as against 21.9 per cent of female respondents worked in this area.

¹⁰⁴ Thornton observes this gendered segregation in the Australian legal profession, which she claims is related to, and excused by, perceived client preference and a perception that women are 'not suited to high finance'. Thornton (1996), p 191.

¹⁰⁵ Sommerlad and Sanderson (1998).

certain 'feminised' areas of law, women can capitalise on this area of speciality. Can we suggest, then, that where women practise (by choice or otherwise) they do this better than men? There is a long-running debate within feminist jurisprudence as to whether women have a distinctive way of lawyering — a 'different voice'. 'Difference feminism' or an ethic of care privileges connection, care and context, which are contrasted with the more aggressive and adversarial style classically associated with legal practice.¹⁰⁶ It is not within the scope of this article to engage in the 'different voice' debate. Rather, this article approaches this question from an obtuse angle. It provides a description of the evidence in the discipline data as to perceptions by the public of how male and female solicitors practise. As the LSC data relies on complaints received, it cannot be asserted that this data presents an unobscured picture of the practice of male or female practitioners. The majority of complaints are received from clients. These clients may complain for a variety of reasons, including in relation to unrealistic expectations of a solicitor's role¹⁰⁷ or personal prejudices. Such factors cannot be discounted. Unfortunately, the data do not provide any insights as to the application of such preconceptions or prejudices in the complaints process.

Nevertheless, some indication of differing practices by male and female solicitors (albeit through the lens of public perception) may be inferred from the LSC data. The evidence provided by the LSC data is, however, difficult to interpret. The figures do not indicate any proportional discrepancy between women and men in certain types of matters subject to complaint. 'Unethical conduct' represents the type of matter most complained of for all solicitors (at 13 per cent); there was little proportional statistical difference in any other area. This data indicate that women are not perceived to be acting differently. In particular, there is no evidence that women are understood as behaving in a more caring or ethical manner. Similarly, the complaints against male and female solicitors are overwhelmingly made by the same people — clients.¹⁰⁸ Thus there is no statistical evidence that client prejudice or preference may be an influencing factor.¹⁰⁹

On the other hand, women appear to have far fewer multiple complaints made against them.¹¹⁰ There is only one reported case in the Solicitors'

¹⁰⁶ This concept was formed in contrast to what is understood to be the persuasive form of legal practice and doctrine which favors hierarchical and 'justice reasoning'.

¹⁰⁷ However, the conduct matter complaint data (on which the following discussion relies) represents complaints that have been adjudged by the LSC to have sufficient seriousness and relevance for further investigation.

¹⁰⁸ Sixty per cent of complaints against female solicitors and 64 per cent of complaints against male solicitors were made by clients.

¹⁰⁹ This is raised as a possible factor in light of empirical research in the area. For instance, Bryna Bogoch's linguistic study of female lawyers in Israel found that clients tended to express greater deference to male lawyers and were more likely to mistake a female lawyer for a social worker: Bogoch (1997), p 681.

¹¹⁰ Seventy-six per cent of complaints against female lawyers were the first complaint received against the individual lawyer and only 64 per cent of complaints against male lawyers were

Complaints Tribunal of a female solicitor with a prior sanction imposed.¹¹¹ The data may suggest that male lawyers' conduct (subject to complaint) is of a more serious (unethical or criminal) nature so as to attract multiple complaints. On the other hand, these figures may, as discussed in the previous section, simply reflect the fact that women are proportionally less likely to have been practising for as long as men.

The LSC data therefore indicate mixed results. Women are far less likely than men to engage in criminal or serious dishonesty and are less likely to be repeat offenders. On the other hand, in terms of total complaints, women and men are subject to the same types of complaint and complainant. Many conclusions can be drawn from these figures. Some of those writing about discipline and gender internationally speculate that men are more likely to engage in criminal behaviour than women,¹¹² and some argue that women may be favoured by gendered practices (such as 'chivalry') within the complaints and discipline process.¹¹³ The literature relating to women in the legal profession described above suggests that women may practise differently by virtue of continued pressures to prove their competency and commitment, and because they have fewer opportunities at a junior level. The discipline figures do not possess sufficient reach to provide further insight into whether women are working harder to keep their clients and colleagues satisfied. These are questions for further research.

Conclusion

This article has employed critical approaches by feminist legal scholars to the legal professionalism. These qualitative explanations of women's experience in legal practice have been put forward aware of the debate amongst those who write about gender and the legal profession as to where such discussions should be centred. As Harriet Silius contends, there has been a tendency in many empirical studies of this topic to overlook the theoretical approach and therefore simply apply an 'additive' approach.¹¹⁴ The danger is that these 'types of studies [do not] ask what the male perspectives of earlier approaches mean or what kind of theoretical consequences the addition of women or gender imply'.¹¹⁵ With this warning in mind, this article has attempted to contextualise the empirical data in Queensland within a detailed exploration of how gender impacts on women's lives in the profession. The analysis therefore seeks to provide an alternative perspective on how gendered stereotypes and structures within workplaces may influence the receipt of complaints.

the first complaint; 16 per cent compared with 21 per cent of complaints were a second complaint.

¹¹¹ This case was a prosecution of Jennifer Cheney in 2002 (SCT/55).

¹¹² Arnold (1998), pp 73–74.

¹¹³ Hatamyar and Simmons (2004), p 811.

¹¹⁴ Silius describes much empirical work as filling in gaps or correcting biases in canonical functionalist (such as Talcott Parsons) or economic (such as Max Weber) descriptions of the legal profession

¹¹⁵ Silius (2003), p 137.

The article has situated the LSC data in the context of empirical data available in Queensland and other jurisdictions to assert that it is significantly affected by a discrepancy between male and female solicitors' representation in the profession. It is contended that, when placed in this context, the results are startling. The legal profession has historically been male dominated. Thus a 'time lag' factor may have produced an asymmetrical representation of men and women in the profession in the 1980s and into the 1990s. However, the strong participation of women in the profession for more than 15 years should have altered its composition profoundly. Other research continues to demonstrate that where there is change, it is a very slow and uneven progression. Today women in Queensland are less likely to occupy senior legal positions, are more likely to leave the law earlier than their male colleagues, and are proportionally younger. This article has contended that the composition of the legal profession has a direct relationship to the complaints data examined herein. The most senior practitioners are most likely to receive complaints. It follows that female solicitors receive proportionally fewer complaints on the basis of their more junior status. Similarly, it is speculated that the plethora of academic literature asserting differing experiences of junior lawyers according to gender may explain why junior female solicitors in Queensland receive proportionally fewer complaints. The article also raises the possibility that the type of practice and area of law in which women predominately practise may explain differing levels of complaints received. Finally, the article suggests that a further examination as to whether women may practise, or be perceived to practise, in a different way to their male peers is required.

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