

## Not the right woman for the job

*Law Firms Should Be Able To Grill Recruits About Their Expected Lifestyles*

by Karen Selick

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In a paper presented to the Canadian Bar Association last month, Canada's Chief Justice Beverley McLachlin suggested that large private law firms must change in order to keep women lawyers in their firms.

Female attrition rates are high, she said, because firms still retain "an Edwardian male-dominated model, where the professional was expected to work long hours and give 100% devotion to his career."

My own assessment of life in a Bay Street firm is very similar to Madam Justice McLachlin's -- which is why I have never worked for one. However, unlike the Chief Justice, I'm content to let them toil on in their self-imposed wretchedness, rather than trying to overhaul them so they'll be more to my taste.

Judge McLachlin attempted to appeal to the firms' bottom lines, telling them: "A recent study has estimated the average cost to a law firm of an associate's departure at \$315,000 based on investment costs (such as recruitment and training), and separation costs."

That's a terrible waste, indeed, if true -- but one that could easily be reduced by allowing law firms and potential employees to sort themselves out into their proper pigeon-holes before hiring. Firms should be able to question applicants about their intended lifestyles and their ability to withstand the rigours of Bay Street. Do you expect to have children? Who will be looking after them while you're trapped downtown at midnight? Can your health stand the stress without giving you a heart attack or cancer?

This would at least give firms a chance to weed out applicants who may lack the competitiveness, drive or robust health necessary to survive. And it might clarify to some applicants, if they didn't already know, exactly what the firm's expectations for them would be. They might choose to spare themselves the torture immediately, rather than after several years of agony.

Unfortunately, questions like these are forbidden, both under the rules of professional conduct and the human rights codes. So the mismatches, the personal discomfort and the waste of money continue.

But what about that price tag of \$315,000 per associate? It certainly doesn't cost my small Belleville, Ont., law firm anywhere near that amount to lose an associate lawyer. I decided to check Judge McLachlin's footnoted source -- a report called *Beyond a Reasonable Doubt: Building the Business Case for Flexibility*. It's available online from Catalyst, a non-profit group that describes itself as "the leading research and advisory organization working to advance women in business."

The \$315,000 figure, it turns out, includes (among other things) all the salaries paid to associates when they were summer students and articling students. But five pages after it first presents this startling figure, the report confesses: "These costs do not capture the revenues associates generate while they are employed by their firms."

In other words, the \$315,000 figure is only one side of the coin. Firms pay out that much, on average, over the entire course of each departing associate's tenure. But they also earn income by billing clients for the work the associate performed.

How much income? The report doesn't say. It does say, however, that firms break-even on an associate provided that he or she stays at least 1.8 years. After that point, they actually make a profit, not a loss, on associates -- even those who eventually leave.

This is an entirely different picture from the one painted in Judge McLachlin's speech. Firms clearly aren't losing anywhere near \$315,000 when an associate leaves. They may be losing nothing at all. To know for sure, we'd have to know how long most associates stay -- that is, whether they exceed the break-even point of 1.8 years or not.

The Catalyst report is conspicuously silent on this point. But a 1991 study by the Law Society of British Columbia entitled *Women in the Legal Profession* may shed some light. It showed that female lawyers who had quit practicing had worked a median of 3.2 years. If this figure is still true in 2007, then law firms needn't be overly concerned about associate turnover. They're not losing a penny.

Also conspicuously absent from the Catalyst report is any consideration of what it would cost to make the kind of changes Judge McLachlin thinks might persuade associates to remain. If firms had to establish in-house day-care centres, or pay rent on unused office space while associates take sabbaticals or work part-time, the cost of keeping an associate could easily outweigh the cost of losing one.

What's perturbing is that the Catalyst study not only bamboozled Canada's Chief Justice with its alarming number, but it also apparently took in the *creme de la creme* among Canadian legal minds. Ten of Canada's leading law firms sponsored this research, but nobody spoke up when Judge McLachlin unwittingly misrepresented it.

-Karen Selick studied economics before she studied law, and commends it to her legal colleagues

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