

**BALANCING THE 'OTHER' SCALE OF JUSTICE:  
NURTURING WORK-LIFE BALANCE WITHIN  
THE LEGAL PROFESSION**

by

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## **ABSTRACT**

The pursuit of work-life balance (WLB) is a prominent topic in academic research and media reports, with many scholars and commentators describing the challenges faced by members of the labour market in balancing their employment duties with their personal responsibilities/desires. The crisis is very pronounced in the legal profession, with its institutional culture that places employment interests above family obligations and personal desires. Vanquishing this crisis is imperative not only because of its negative effect on lawyer health, but also because the number of women practicing law in British Columbia is declining, even though there are more females than males in Canadian law schools.

This thesis determines that nurturing WLB within the legal profession requires the following: (1) Law schools must not only "teach law," but also "teach how to practice law" by initiating courses, workshops, and legal clinics that help students be more prepared for the rigours of the profession; (2) Alternative billing options to the billable hour system--which compensates lawyers and determines whether they are "partnership material" in firms--must be found because of its entrenchment of work-life conflict in the profession; (3) Legal employers must learn from the best practices of organizations

that are adopting innovative initiatives and successfully promoting WLB among their workers. Furthermore, they must encourage, rather than stigmatize, the use of these strategies, including flexible work arrangements (FWAs), part-time arrangements, compressed work-weeks, flex-time (i.e., time off for the provision of family care), telecommuting (i.e., working from home), and job sharing; (4) Lawyers must create, administer, and utilize the various workplace initiatives aimed at WLB--such as workshops, wellness initiatives, flexible work arrangements, etc.; and, (5) Professional organizations (such as bar associations and provincial law societies) must aid legal professionals in their pursuit of WLB by encouraging the use of FWAs, alternative billing options, and technological advances that promote employment flexibility.

While a cultural revolution will not occur overnight, the insights in this thesis will facilitate the legal profession's cultural transformation into a pro-WLB institution that helps its members successfully fulfill the many demands--professional and personal--they face in society.

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## **LIST OF ABBREVIATIONS**

<b>ABA</b>	American Bar Association
<b>ASA</b>	Attraction-Selection-Attrition cycle
<b>BC</b>	British Columbia
<b>BFOR</b>	Bona Fide Occupational Requirement
<b>CBA</b>	Canadian Bar Association
<b>CBABC</b>	British Columbia Branch of the Canadian Bar Association
<b>FWA</b>	Flexible Work Arrangement
<b>LSBC</b>	Law Society of British Columbia
<b>LSUC</b>	Law Society of Upper Canada
<b>P-E Fit</b>	Person-Environment Fit
<b>P-O Fit</b>	Person-Organization Fit
<b>UBC</b>	University of British Columbia
<b>UK</b>	United Kingdom
<b>US</b>	United States
<b>WLB</b>	Work-Life Balance
<b>WLC</b>	Work-Life Conflict

## GLOSSARY

*Alternative Billing Options* (also known as *alternative billing arrangements*): Variations of the hourly-fee billing arrangement between lawyers and their clients that dominates the legal practice landscape. Examples include value billing (also known as fixed fee billing), discounted hourly billing, and hybrid arrangements that combine two or more billing options.

*Articling*: Refers to the process by which a law school graduate becomes a practicing member of the legal profession. The articling process, which occurs under the auspices of a supervising lawyer (called a "principal"), and takes place after completion of the LL.B./J.D., which in British Columbia requires nine months of work experience under a supervising lawyer, and several months of professional legal training which culminates in the writing of a bar examination, which is known by many different terms across Canada. For instance, articling students in BC participate in the Law Society Admission Program, which consists of nine months of articles under a supervising lawyer, attendance at the Professional Legal Training Course (PLTC) for ten weeks, and passing two qualification exams. Fulfilling these requirements allows one to "qualify for call to the bar and admission as a solicitor of the Supreme Court of British Columbia",

hence becoming a member of the Law Society of BC, which is the independent regulatory body governing all lawyers in the province.

*Attraction-Selection-Attrition (ASA) Cycle:* The model put forth by the organizational psychologist Benjamin Schneider, who contends that organizations attract, select and retain people who share their values. In turn, as like-minded people are selected and retained within a firm, while others are rejected or depart, an organization becomes more homogeneous, thereby entrenching its workplace culture.

*Billable Hour Quota:* A law firm's expectation for the number of hours charged annually to clients by a lawyer. The target is usually determined by the lawyer's length of tenure at the firm. However, lawyers are expected to exceed their billable hour targets in order to show that they are "partnership material"--that is, worthy of the move from the rank of associate to that of firm partner.

*Change Agent:* A person who possesses sufficient knowledge and power to guide and facilitate the change process (be it cultural, technological, or social change) within an organization. Typically, change agents are members of the leadership ranks within an organization. However, any employee can be a change agent if he/she

has the knowledge, vision, and determination to detail problems, discuss possible solutions, and model desired behaviours.

*Contingency Fee Billing:* An alternative billing option to the billable hour arrangement whereby a lawyer and his/her client agree that any fee for service is only payable if there is a favourable result, such as a financial settlement.

*Face-Time:* The practice where people stay in the workplace and/or sit at their work stations (such as in their offices) past normal business hours and even when their employment tasks are completed to show that they are committed to their employer, as opposed to those who arrive and leave at standard office hours.

*Flexible Work Arrangements (FWAs):* Initiatives implemented by an organization that aim to help an employee fulfill his/her various life commitments--such as work duties, family obligations, and personal responsibilities--by providing more flexibility in his/her employment experience. Initiatives include part-time arrangements, compressed work-weeks, flex-time (i.e., time off for the provision of family care), tele-commuting/tele-working (i.e., working from home), and job sharing.

*Force Field Analysis Model:* Developed by psychologist Kurt Lewin to help people understand the change process, the model posits that there are "driving forces" on one side of the model that push organizations towards change--such as competition, demographic changes, economic crisis and innovative leadership. However, on the other side are "restraining forces" that aim to maintain the status quo --such as conservative leadership, economic costs associated with change, fear of the unknown, and a lack of foresight.

*Organizational Culture:* The basic pattern of shared assumptions, values, and beliefs that permeate an institution or group, such as a corporation.

*Organizational Theory* (also known as *organizational studies*, *organizational behaviour studies*, and *organizational behaviour theory*): The study of organizational designs and organizational structures, relationship of organizations with their external environment, and the behaviour of people within organizations.

*Person-Organization Fit (P-O Fit):* The term used in organizational behaviour studies to describe the congruence between a person's culture and that of his/her workplace. Specifically, a workplace attracts, selects and retains people who "fit" into its organizational

culture, while rejecting those who do not have the requisite "fitness" in terms of shared values, attitudes, and goals.

*Presenteeism*: The condition in which employees may be physically at work, but they are not there mentally or emotionally due to illness, pressures or conflicts they are facing in life, such as those associated with meeting family demands.

*Role*: The specific function played by a person in a social context, which involves particular behaviours, rights and obligations associated with that context. A person has many roles in life, such as those connected with work (i.e., employee, supervisor, etc.), family (i.e., parent, spouse, sibling, etc.), as well as those linked with personal pursuits (i.e., volunteer).

*Value Billing* (also known as *fixed fee billing*): An alternative billing option to the billable hour arrangement whereby a lawyer and his/her client enter into an agreement specifying the service to be performed, along with the fee that will be charged for that service.

*Virtual Law Firm*: A group of lawyers that are connected together with the appropriate computer and telecommunications technology so that they do not reside in a traditional "brick-and-mortar" office, which decreases overhead, staffing and real estate costs.

*Work-Life Balance (WLB):* A state of equilibrium in meeting the multi-faceted demands associated with life's many roles. Successfully finding a suitable WLB allows one to maintain an overall sense of harmony in life. However, many find it difficult to achieve a state of WLB--instead, they suffer from a crisis of work-life conflict.

*Work-Life Conflict (WLC)* (also known as *work-life imbalance*): The condition of dissonance that occurs when a person tries and fails to fulfill the various demands associated with his/her many roles. A conflict can occur when the responsibilities associated with one role make it difficult to fulfill the obligations associated with another role--such as meeting one's duties as an employee while simultaneously fulfilling one's responsibilities as a parent.

*Workplace Wellness Program* (also known as *workplace health and fitness program* and *workplace health promotion program*): The totality of initiatives implemented by an organization to improve the physical, emotional and mental health of its employees, such as: fitness centres at the workplace; courses and workshops on a multitude of subjects, including healthy eating habits and stress alleviation; work-life balance initiatives (such as flexible work arrangements); counselling services; health screenings and health fairs; and, healthy eating options in the workplace.

## ACKNOWLEDGEMENTS

No man is an Island, entire of itself; every man is a piece of the Continent, a part of the main...

John Donne, *Meditation XVII*

This opening quote illustrates the creative process of this thesis--I did not write it on my own; it was truly a collective effort.

My greatest inspiration is Ruchika, who is my B, G.L.C. (good luck charm), navigator (she's "Lead" and I'm "Read"), and most of all, my best friend and life partner. She is a truly impressive woman who (miraculously) sees past my faults and continually encourages me to reach my full potential. I am her biggest fan.

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Thank you.

To Ruchika, upon whose wings I soar.

It is not the strongest of the species that survive,  
nor the most intelligent, but rather the one most  
adaptable to change.

Clarence Darrow, renowned  
American defence attorney,  
explaining Charles Darwin's  
Theory of Evolution during the  
*State of Tennessee v. Scopes*,  
(*The Scopes Monkey Trial*), 1925

# CHAPTER 1. INTRODUCTION

## 1.1 Context

A prominent subject in academic research, media reports, and popular culture is the pursuit of "work-life balance" (WLB) by members of the labour market.<sup>1</sup> Indeed, it has been described as "the topic of the 21<sup>st</sup> Century for families, employers<sup>2</sup> and government."<sup>3</sup> What is WLB? WLB is achieved when one successfully manages the multi-faceted demands associated with life's many roles, including those associated with work (i.e., as an employee), family (i.e., as a spouse

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<sup>1</sup> See K. Bennhold, "In Sweden, Men Can Have It All" *The New York Times* (9 June 2010), online: The New York Times <[http://www.nytimes.com/2010/06/10/world/europe/10iht-sweden.html?scp=2&sq="work-life%20balance"&st=cse](http://www.nytimes.com/2010/06/10/world/europe/10iht-sweden.html?scp=2&sq=)> [Bennhold, *Have It All*]; S. Boesveld, "Losing the Joy of Having a Life" *The Globe and Mail* (10 April 2009), online: The Globe and Mail <<http://www.theglobeandmail.com/life/losing-the-joy-of-having-a-life/article975663>>; G. Galloway & J. Wingrove, "Canadians' Leisure Time Shrinking" *The Globe and Mail* (15 June 2010), online: The Globe and Mail <<http://www.theglobeandmail.com/news/national/canadians-leisure-time-shrinking/article1604253>>; N. Greenaway, "Canadians Caught in a Worsening 'Time Crunch,' Study Suggests" *The Vancouver Sun* (15 June 2010), online: The Vancouver Sun <<http://www.vancouversun.com/health/Canadians+caught+worsening+time+crunch+study+suggests/3154208/story.html>>; W. Immen, "Getting What You Need to Succeed on the Mommy Track" *The Globe and Mail* (7 May 2010), online: The Globe and Mail <<http://www.theglobeandmail.com/report-on-business/managing/weekend-workout/getting-what-you-need-to-succeed-on-the-mommy-track/article1561003>>; H. Scheacter, "Work-Life Balance" *The Globe and Mail* (24 September 2007), online: The Globe and Mail <<http://www.theglobeandmail.com/report-on-business/managing/morning-manager/work-life-balance/article783456>>; "Work-Life Balance: Fact or Fiction?" *The Globe and Mail* (16 June 2010), online: The Globe and Mail <<http://www.theglobeandmail.com/life/work-life-balance-fact-or-fiction/article1605340>>.

<sup>2</sup> Throughout this piece, the terms "employer", "company" and "organization" are used interchangeably to describe the same entity.

<sup>3</sup> J. Bagust & M. Thornton, "The Gender Trap: Flexible Work in Corporate Legal Practice" (2007) 45 *Osgoode Hall L.J.* 773 at 774 (Hein Online).

and/or parent), as well as those related to personal pursuits (i.e., as a volunteer).<sup>4</sup> Yet, research reveals that in the last twenty years, there is an increasing inability of workers to find WLB, which suggests that there is a new challenge in our labour market with serious implications for our economy. Consider the following:

- The average work week has increased from 42 to 45 hours per week over the past decade;<sup>5</sup>
- 40 percent of employees work more than 50 hours per week, compared to 25 percent in 1990;<sup>6</sup>
- 52 percent of employees take work home with them, up from 30 percent in 1990;<sup>7</sup> and,
- 28 percent of Canadians feel that family and friends resent the number of hours they spend at work.<sup>8</sup>

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<sup>4</sup> Hudson Highland Group, *The Case for Work/Life Balance: Closing the Gap Between Policy and Practice* (2005) at 3, online: Hudson Highland Group <[http://au.hudson.com/documents/emp\\_au\\_Hudson\\_Work-Life\\_A4\\_Std.pdf](http://au.hudson.com/documents/emp_au_Hudson_Work-Life_A4_Std.pdf)>.

<sup>5</sup> WarrenShepell Research Group, *Work-Life Issues: An EAP's Perspective* (2004) at 2, online: Shepell.fgi Services <<http://www.shepellfgiservices.com/research/latest.asp#>>.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

Key contributors to this lack of WLB include "long work hours, increased workloads, workplace cultures that inhibit work-life balance, workplaces that do not provide the flexibility needed to meet work, personal and family responsibilities, and lack of appropriate child and elder care resources."<sup>9</sup>

While workers in a variety of fields aim to reach WLB, its achievement may be most elusive in the legal profession. For instance, law students face a great deal of challenges to ensure that they meet not only academic demands, but also the pressures of attaining articling positions, and working (if necessary) to pay for the rising cost of legal education. Furthermore, lawyers experience inordinate pressures due to the conventional compensation structure in the profession, under which the amount of work performed as measured in annual billable hour targets and years of uninterrupted service are the deciding factors in whether an associate is accepted/elevated to law firm partnership status. The acute WLB challenge of the legal profession is corroborated by statistical evidence: 25 percent of workers in Canada report that their work demands make it difficult for them to meet their non-work responsibilities; but this rate doubles in

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<sup>9</sup> K. Korabik, D. Lero & J. Richardson, *Cost-Benefit Review of Work-Life Balance Practices* (2009) at 1, online: Canadian Association of Administrators of Labour Legislation <<http://www.caall-acalo.org/docs/Cost-Benefit%20Review.pdf>>.

the legal profession, where survey data reveals that over 50 percent of Canadian lawyers feeling challenged in their pursuit of WLB.<sup>10</sup>

The need to create a culture of WLB within the field is even more imperative given the statistical trend that the percentage of female entrants into the legal profession is increasing. Currently, females comprise 52 percent of the Canadian law school population. However, this does not translate into a higher number of practicing female lawyers in British Columbia (BC), as women represent approximately 34 percent of all practicing lawyers in the province and only 29 percent of lawyers in full-time private practice.<sup>11</sup> These alarming statistics derive from the field's failure to accommodate the needs of female lawyers--particularly needs associated with fulfilling family obligations,

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<sup>10</sup> Catalyst Canada, *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance* (2006) at 1, online: Catalyst Canada <<http://www.catalyst.org/file/18/2005%20canadian%20flex%20in%20law%20.pdf>> [Catalyst Canada, *Creating Opportunities*].

<sup>11</sup> Law Society of British Columbia, *Report of the Retention of Women in Law Task Force* (June 2009) at 4, online: Law Society of British Columbia <[http://www.lawsociety.bc.ca/publications\\_forms/report-committees/docs/Retention-of-womenTF.pdf](http://www.lawsociety.bc.ca/publications_forms/report-committees/docs/Retention-of-womenTF.pdf)> [Law Society of BC, *Retention of Women*].

because women, "by choice, default or tradition, tend to take on more than their share of child care and parenting responsibilities."<sup>12</sup>

Lawyers' pursuit of WLB is fraught with challenges given the stigma in the prevailing culture of the profession associated with the use of flexible work arrangements (FWAs).<sup>13</sup> Indeed, many Canadian lawyers feel that employing FWAs is career limiting--"forty-two percent [perceive] that users would be relegated to 'the B team.'"<sup>14</sup> Furthermore, 50 percent of female lawyers and 20 percent of male lawyers believe that FWAs limit their professional development because their usage makes them appear less committed to their employers.<sup>15</sup>

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<sup>12</sup> Physician Health Program of British Columbia, *Medicine and Motherhood: Can We Talk?: A Consensus Statement* (March 2010) at 11, online: Physician Health Program of British Columbia <<http://physicianhealth.com/sites/physicianhealth.com/files/Medicine%20and%20Motherhood%20-%20Can%20We%20Talk.pdf>> .

<sup>13</sup> "Flexible work arrangements" include part-time arrangements, compressed work-weeks, flex-time (such as time off for the provision of family care), tele-commuting/tele-working (working from home), job sharing, etc.

<sup>14</sup> Catalyst Canada, *Beyond a Reasonable Doubt: Lawyers State their Case on Job Flexibility* (2006) at 13, online: Catalyst Canada <<http://www.catalyst.org/file/19/beyondreasdoubtjobflexibility.pdf>> [Catalyst Canada, *Job Flexibility*].

<sup>15</sup> *Ibid.*

## 1.2 Purpose

The goal of this thesis is to suggest policies and practices that aim to change the way that work is organized and compensated in law firms in order to promote greater WLB. Thus, in order to reform legal practice in Canada, this thesis will provide recommendations about how law schools, law firms, and industry bodies (such as law societies and bar associations) can aid lawyers in their pursuit of WLB. It is contended that the legal profession has a culture of "work-life conflict" (WLC) that entrenches the belief that work takes priority over everything else in a lawyer's life.<sup>16</sup> Consequently, the legal profession's norms and values must evolve to become more accommodating of its members' efforts to fulfill all of their responsibilities and goals, whether these are associated with work, family, and/or personal pursuits.

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<sup>16</sup> "Work-life conflict" refers to the state of dissonance that takes place when a person tries and fails to fulfill the multitude of demands associated with life's roles. A conflict can occur when the responsibilities associated with a particular life role make it difficult to fulfill the duties associated with another life role--such as the conflict associated with meeting one's duties as an employee while simultaneously meeting one's responsibilities as a parent.

### **1.3 Research Question and Hypothesis**

The research question at the core of this thesis is: Can the work-life conflicts faced by members of the Canadian legal profession be addressed by the following changes?

- Adapting law school curricula to teach and train law students about how to overcome the challenges of legal education and legal practice;
- The use of alternative billing arrangements to compensate lawyers, as opposed to the billable hours system that dominates the legal profession in Canada; and,
- The employment of innovative technological advances, and the implementation and encouragement of FWAs and WLB initiatives in law firms and other legal workplaces in order to encourage workplace flexibility.

It is suggested that a paradigm shift is necessary in the legal profession to combat the culture of WLC that permeates the field. The hypothesis at the heart of this thesis is that this shift can only be addressed by changes in legal education, lawyer compensation, and legal practice. Moreover, engendering a culture of WLB in the legal profession requires a collaborative effort among all relevant parties in

Canada, including professional bodies (such as the CBA and its provincial branches), regulatory bodies (such as provincial law societies), law schools, and respected organizations that aim to improve WLB among workers.<sup>17</sup>

#### 1.4 Methodology

This thesis' research question and objectives produce a particular methodological approach that focuses on Canada and the United States (US), for several reasons. First, there are similarities in how law is taught and practiced in these two countries, which allows for the transmission of lessons and recommendations from one locale to the other. Second, there is an abundance of information originating from these nations about the practice of law and the struggles faced by law students and lawyers, in the form of online research, journal articles and reports from bar associations and regulatory bodies (such as provincial law societies). Third, interest groups in Canada and the US

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<sup>17</sup> For instance, in Canada, there is the *British Columbia Council for Families* (BCCF), online: BCCF <<http://www.bccf.ca>>; and, the *Canadian Index of Wellbeing Network* (CIW Network), online: CIW Network <<http://www.ciw.ca>>.

In the US, there is the *Sloan Work and Family Research Network* (SWFN), online SWFN <<http://wfnetwork.bc.edu>>; *Working Mother Media*, online: Working Mother Media <<http://www.workingmother.com>>; *Workplace Flexibility 2010*, online: Workplace Flexibility 2010 <<http://workplaceflexibility2010.org/>>; and, *Flex-Time Lawyers*, online: Flex-Time Lawyers <<http://flextimelawyers.com/index.asp>>. *Flex-Time Lawyers* is a consulting firm that advises law firms, corporations, lawyers and law students on WLB, the retention/promotion of female lawyers, and the implementation of innovative models of legal practice.

are working to foster WLB among members of the labour market,<sup>18</sup> and this thesis utilizes these entities' online collection of research to investigate case studies in WLB promotion, and to learn lessons that can be transferred across employment sectors and geographical locales.

Furthermore, the following research approaches are utilized within this thesis' methodology:

- The **theoretical approach** is applied to investigate the organizational theory concepts of "role", "culture", "work-life balance" and "work-life conflict."<sup>19</sup> Gaining this theoretical perspective provides an understanding of how values and norms that are antithetical to the pursuit of WLB become entrenched within a workplace culture, as well as how one can initiate cultural change.
- The **historical approach** is utilized to investigate the billable hour system, which not only influences

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<sup>18</sup> See *ibid.*

<sup>19</sup> See Business Dictionary, *Organization Theory*, online: Business Dictionary <<http://www.businessdictionary.com/definition/organization-theory.html>>. "Organizational theory" (also known as *organizational studies* and *organizational behaviour studies*) is defined as the "study of organizational designs and organizational structures, relationship of organizations with their external environment, and the behaviour of people within organizations."

compensation decisions, but also a person's partnership status, and has created a culture within legal practice that emphasizes work over family and personal pursuits.

- The **qualitative approach** is employed to explore studies conducted by various parties--such as bar associations, provincial law societies, interest groups, and social scientists--in order to investigate the experiences of those in the legal profession, and to detail best practices from corporate case studies and innovative law firms about how to cultivate WLB among lawyers and other members of the labour market.
- The **philosophical approach** is used to provide recommendations about how law schools, employers, professional organizations, and regulatory bodies can collaborate to help lawyers balance their work duties with their non-work responsibilities.

In addition, a variety of sources are used to achieve this thesis' research goals, including: (1) studies conducted by various entities--such as the CBA and its provincial branches, law societies, interest groups and academic researchers--that describe the experiences of

those in the profession, and spotlight the pressures they face; (2) popular sources--such as newspapers, websites and other media sources--to gain an understanding of the impact of work-life conflicts on members of the profession; (3) secondary sources--such as books, journal articles and online research--in order to learn about law students and their experiences in law school; and, (4) secondary sources--in the form of case studies that describe corporate strategies--in order to learn about best practices in engaging with the issue of WLB.

## **1.5 Thesis Organization**

Chapter 2 provides a theoretical foundation for this thesis by describing what is meant by the terms "role", "work-life balance", "work-life conflict", "organizational culture", and "organizational change", as understood through organizational behaviour theory. This is an important task because learning about why role conflicts occur and how culture is entrenched in a workplace are key initial steps in detailing recommendations about how to transform the norms and values within a profession in order to encourage WLB among its members.

Chapter 3 describes why supporting WLB is such an important task for organizations: (1) to adapt to changes in the labour market-- particularly the greying workforce, the feminization of the labour market, and generational shifts with respect to employees' desires; (2) to accommodate employees with needs that are protected under the human rights ground of "family status"; and, (3) to cultivate social and economic benefits, since studies reveal that there is a positive business case for organizations to implement WLB initiatives and encourage their usage among personnel.

Chapter 4 explores WLC in the legal profession by: (1) investigating lawyers' negative experiences in legal practice (through survey data), which exposes the profession's WLC culture; (2) discussing the negative economic, social and health consequences that flow from WLC and impact legal professionals and their employers; (3) analyzing the predominant compensation structure in the legal profession--the billable hour system--and providing potential solutions in the form of alternative billing options; (4) examining how law is taught in law school in order to determine whether curriculum changes are necessary to help train students for legal practice; (5) delineating best practices by exploring case studies of innovative law firms and other employers that utilize alternative billing options, FWAs,

technology, and other tools that aid lawyers in their pursuit of WLB; and, (6) providing recommendations about how the legal profession's institutional culture can evolve in order to encourage WLB among its members, and how law firms and other legal employers can help their employees achieve harmony between their work and non-work roles, responsibilities, and pursuits.

Chapter 5 concludes with a summary of the lessons learned concerning how legal employers can help lawyers achieve WLB, as well as a discussion of topics that require further research.

## **1.6 Foreshadowing**

This thesis reveals that crises can arise when a workplace does not adapt its culture to changes in the workforce and work environment.<sup>20</sup> In particular, organizations can enter the "success spiral"<sup>21</sup> when they maintain values, norms and strategies that led to economic and professional triumphs in the past, but do not align with present-day issues and future considerations, such as demographic changes in the labour market (for instance, the greying workforce and

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<sup>20</sup> L. Duxbury, *The RCMP: Yesterday, Today and Tomorrow* (2 November 2007) at 104, online: Dispersing the Fog Campaign <<http://dispersingthefog.com/report-2.pdf>> [Duxbury, *RCMP*].

<sup>21</sup> *Ibid.* at 6.

the feminization of the labour market). It is contended that many members of the legal profession (lawyers and law firms) are trapped in the success spiral, and consequently fail to recognize the economic and social benefits associated with WLB.

At the conclusion of this thesis, the reader will learn that the following events should occur in order to create a culture of WLB within the legal profession that will allow it to escape the success spiral:

- Law schools play an important role in changing the culture of the profession by not only "teaching law," but also "teaching how to practice law" by initiating courses, workshops, and legal clinics that educate students about how to properly balance all aspects of their lives as legal professionals.
- Alternatives to the billable hour system should be found and utilized, particularly because of its impact on female lawyers, who are leaving the profession at rates that are unsustainable in terms of client needs and the wasteful loss of human capital in educating and training female lawyers. Furthermore, teaching about novel models of legal practice is the duty of the CBA, its provincial branches, and law

societies across Canada, since they are the guardians of the legal profession and its members.

- Law firms should encourage the employment of FWAs and other WLB-friendly initiatives, rather than stigmatize their use, so that lawyers--particularly female professionals--feel comfortable about utilizing these strategies. Furthermore, they must utilize technological advances in the workplace and in their employees' homes in order to provide more flexibility in how legal services are provided to clients.
- Lawyers and other employees (such as legal assistants) should help create, administer, and use the various workplace strategies aimed at their achievement of WLB--such as workshops, wellness initiatives, FWAs, alternative practice management practices, and different compensation schemes.
- Professional organizations (such as bar associations and provincial law societies) should encourage the implementation and use of FWAs, as well as provide workshops that aid legal professionals in their pursuit of WLB.

By bridging a variety of disciplines (law, psychology, political science and sociology), this thesis explores how a pro-WLB culture can be engendered within the legal profession. Overcoming the perceived "scourge" of WLC is imperative because of its counterproductive impact on lawyers' physical, mental and emotional health, which in turn, can lessen their productivity as legal professionals. Yet, the analysis in this thesis is also applicable to other professions that suffer from a similar lack of WLB, including government,<sup>22</sup> law enforcement,<sup>23</sup> health care,<sup>24</sup> and accounting<sup>25</sup>.

This thesis is, therefore, a call-to-action for all impacted parties--employers, workers, professional bodies, interest groups, and various levels of government--to bring their skills and resources into play in

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<sup>22</sup> See New Zealand State Services Commission, *Work-Life Balance: A Resource for the State Services* (Wellington, NZ: State Services Commission, 2005), online: State Services Commission <[http://www.ssc.govt.nz/upload/downloadable\\_files/Work-Life\\_Balance\\_main\\_content\\_and\\_Supplement.pdf](http://www.ssc.govt.nz/upload/downloadable_files/Work-Life_Balance_main_content_and_Supplement.pdf)>.

<sup>23</sup> See Duxbury, *RCMP*, *supra* note 20.

<sup>24</sup> See G. Axelsson, I. Molin & R. Rylander, "Outcome of Pregnancy in Relation to Irregular and Inconvenient Work Schedules" (1989) 46 *Occup. Environ. Med.* 393; C. Bohm *et al.*, "Career and Parenting Satisfaction among Medical Students, Residents and Physician Teachers at a Canadian Medical School" (2000) 162 *CMAJ* 5 637; A. Bookman *et al.*, *Workforce Issues in the Greater Boston Health Care Industry: Implications for Work and Family* (November 2001), online: Massachusetts Institute of Technology <<http://dspace.mit.edu/bitstream/handle/1721.1/73111/wpc0001.pdf?sequence=1>>.

<sup>25</sup> See C. Cooper, S. Lewis & J. Smithson, *Flexible Futures: Flexible Working and Work-Life Integration in the Accountancy Profession* (October 2001), online: Institute for the Chartered Accountants in England and Wales <[http://www.icaew.com/index.cfm/route/120539/icaew\\_ga/pdf](http://www.icaew.com/index.cfm/route/120539/icaew_ga/pdf)>.

order to encourage the legal profession, and other sectors, to embrace WLB. Consequently, it should be a valuable resource to employers and employees alike, as well as unions, legislators, and post-secondary institutions and their students, who wish to counteract the negative consequences (personal, social, and economic) associated with WLC.

## **CHAPTER 2. THEORETICAL FRAMEWORK**

### **2.1 Context**

There is considerable evidence that that the legal profession requires its members to focus on work demands to the detriment of non-work responsibilities and pursuits, and thereby reinforces a culture of work-life conflict (WLC) among too many of its members. Yet, in order to provide recommendations about how the legal profession can transform into an institution that fosters work-life balance (WLB)<sup>26</sup>, one must understand the impact of social roles, the nature of WLC, the process by which culture is entrenched within an organization, and the dynamics associated with organizational change. Thus, Chapter 2 provides a theoretical foundation for this thesis by reviewing the following key concepts from organizational studies, namely: life role, balance, conflict, culture, and change.

### **2.2 Life Roles, Balance and Conflict**

According to William Shakespeare, "all the world's a stage."<sup>27</sup> Organizational behaviour theory acknowledges that on life's stage, we play many social roles in a variety of contexts. For instance, in the

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<sup>26</sup> Organizational strategies aimed at helping workers achieve WLB are discussed in Chapter 3, while initiatives specific to legal professionals are detailed in Chapter 4.

<sup>27</sup> W. Shakespeare, *As You Like It* (1693) at II.vii.139-166.

workplace, a person can be an employee, manager or a supervisor. In the home, people are spouses, parents, guardians, and/or siblings. Furthermore, individuals have roles outside of the work and family spheres--for instance, in relation to volunteer service, hobbies, and religious activities.<sup>28</sup> Moreover, all people aim to balance the demands and needs associated with their concurrent work and non-work roles.<sup>29</sup>

Work-life balance (WLB) refers to the capacity of members of the labour market to participate in various domains and manage the multifaceted demands associated with their social roles.<sup>30</sup> Moreover, WLB refers to more than the family sphere since "parents, single adults, and couples who do not have children, either by choice or circumstance, are all entitled to a work environment that allows them to participate in multiple roles."<sup>31</sup> Consequently, since the 1990s, the term "work-family balance" has given way to the term "work-life balance" due to the recognition that peoples' non-employment duties

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<sup>28</sup> Korabik, Lero & Richardson, *supra* note 9 at 15.

<sup>29</sup> D. Dobson, C. Lee & E. Reissing, "Work-Life Balance for Early Career Canadian Psychologists in Professional Programs" (2009) 50 Can. Psy. 74 at 75 (Hein Online).

<sup>30</sup> Hudson Highland Group, *supra* note 4 at 3.

<sup>31</sup> Dobson, Lee & Reissing, *supra* note 29 at 75.

and desires come in many forms and derive from different domains.<sup>32</sup>

Furthermore, the accomplishment of WLB goes beyond merely discharging responsibilities and devoting equal amounts of time to one's life roles.<sup>33</sup> According to Collins, Greenhaus and Shaw, WLB has three components:

1. Time balance: the amount of time given to work and non-work roles;
2. Involvement balance: the level of psychological involvement in, or commitment to, work and non-work roles; and,
3. Satisfaction balance: the level of satisfaction with work and non-work roles.<sup>34</sup>

Thus, successfully achieving WLB involves using similar levels of resources (i.e., time and psychological resources) in one's multiple

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<sup>32</sup> L. Duxbury & C. Higgins, *Work-Life Conflict in Canada in the New Millennium: Key Findings and Recommendations from the 2001 National Work-Life Conflict Study* (Ottawa: Health Canada, 2001) at 2, online: Health Canada <[http://www.hc-sc.gc.ca/ewh-semt/alt\\_formats/hecs-sesc/pdf/pubs/occup-travail/balancing\\_six-equilibre\\_six/balancing\\_six-equilibre\\_six-eng.pdf](http://www.hc-sc.gc.ca/ewh-semt/alt_formats/hecs-sesc/pdf/pubs/occup-travail/balancing_six-equilibre_six/balancing_six-equilibre_six-eng.pdf)> [Duxbury & Higgins, *New Millennium*].

<sup>33</sup> *Ibid.*

<sup>34</sup> K. Collins, J.H. Greenhaus & J.D. Shaw, "The relation between work-family balance and quality of life" (2003) 63 *J. Vocational Beh.* 510 at 514 (Hein Online).

roles, and cultivating high levels of satisfaction across these various roles.<sup>35</sup>

Problems arise when "worlds collide"--that is, when there are conflicts associated with fulfilling one's concurrent roles. Social psychologists contend that since an individual has a fixed amount of psychological and physiological resources available to fulfill his/her role obligations, the involvement in multiple roles may exhaust these resources in many people.<sup>36</sup> In order to adapt, a person makes trade-offs, such as devoting greater amounts of time to one role over another, and/or achieving life satisfaction in one domain at the expense of another.<sup>37</sup> Moreover, since work is "the cornerstone around which other activities must be made to fit,"<sup>38</sup> the time, physiological and psychological resources required to fulfill one's work roles usually depletes the resources available for other roles and activities. For instance, according to Lewis Coser, many people work for "greedy

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<sup>35</sup> Dobson, Lee & Reissing, *supra* note 29 at 75; L. Rubin, *The Career Experiences of Women with Children who are Working Alternative Arrangements in the Big Accounting Firms* (M.A., University of British Columbia, 2008) at 24, online: University of British Columbia <<https://circle.ubc.ca/handle/2429/5339>>.

<sup>36</sup> S. Aryee, E.S. Srinivas & H.H. Tan, "Rhythms of Life: Antecedents and Outcomes of Work-Family Balance in Employed Parents" (2005) 90 *J. App. Psy.* 132 at 133 (Science Direct).

<sup>37</sup> *Ibid.*

<sup>38</sup> L. Duxbury & C. Higgins, *Work-Life Balance in Saskatchewan: Realities and Challenges* (Saskatoon: Government of Saskatchewan, 1998) at 2.

institutions" that "seek exclusive and undivided loyalty and they attempt to reduce the claims of competing roles and status positions on those they wish to encompass in their boundaries."<sup>39</sup>

The result is that many people suffer from a state of WLC, which according to Duxbury and Higgins occurs when "the cumulative demands of work and non-work roles are incompatible in some respect, so that participation in one role is made more difficult by participation in the other role."<sup>40</sup> Furthermore, WLC has several different components:

...the practical aspects associated with time crunches and scheduling conflicts (i.e. an employee cannot be in two different places at the same time); and the perceptual aspect of feeling overwhelmed, overloaded or stressed by the pressures of multiple roles.<sup>41</sup>

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<sup>39</sup> L.A. Coser, *Greedy Institutions: Patterns of Undivided Commitment* (New York: Free Press, 1974) at 4. The term "greedy institutions" is used by L.A. Coser to refer to the high level of commitment that is required of members in certain organizations and groups, such as in the military, medical profession and the legal profession.

<sup>40</sup> *Ibid.*

<sup>41</sup> L. Duxbury, C. Higgins & S. Lyons, *Reducing Work-Life Conflict: What Works? What Doesn't?* (Ottawa: Health Canada, 2008) at 9, online: Health Canada <[http://www.hc-sc.gc.ca/ewh-semt/alt\\_formats/hecs-sesc/pdf/pubs/occup-travail/balancing-equilibre/full\\_report-rapport\\_complet-eng.pdf](http://www.hc-sc.gc.ca/ewh-semt/alt_formats/hecs-sesc/pdf/pubs/occup-travail/balancing-equilibre/full_report-rapport_complet-eng.pdf)>.

In addition, a review of the literature describes four forms of WLC:

1. Role Overload: This form of WLC occurs when the "total demands on time and energy associated with the prescribed activities of multiple roles are too great to perform the roles adequately or comfortably."<sup>42</sup>
2. Work-to-family interference: This type of conflict occurs when work demands and responsibilities make it more difficult to fulfill family-role responsibilities (such as, long hours in paid work preventing attendance at a child's sporting event; preoccupation with the work role preventing an active enjoyment of family life; and work stresses spilling over into the home environment and increasing conflict with the family).<sup>43</sup>
3. Family-to-work interference: This type of WLC occurs when family demands and responsibilities make it difficult to fulfill work-role responsibilities (such as, a child's illness prevents attendance at work; and stresses at home makes

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<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

concentration at work difficult, causing a state of "presenteeism"<sup>44</sup>).<sup>45</sup>

4. Caregiver Strain: This is the state of WLC that occurs when a person cares for someone who cannot care for him/herself, such as supporting elderly parents.<sup>46</sup>

Organizational behaviour theory suggests that one of the key contributors to a worker's state of WLC is his/her workplace's organizational culture, which may devalue the achievement of WLB.<sup>47</sup> As will be discussed in Chapter 4 of this thesis, it is suggested that a key deficit in the legal profession's culture is that it sees only the billable hour profit criteria of value rather than the needs of the professional as a whole person--such as non-legal duties and desires--which creates alienation and a lack of loyalty, and leads, moreover, to recruitment/retention issues.

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<sup>44</sup> "Presenteeism" refers to the condition in which employees may be physically at work, but they are not there mentally or emotionally due to illness, pressures or conflicts they are facing in life, such as those associated with meeting family demands.

<sup>45</sup> Duxbury, Higgins & Lyons, *supra* note 41 at 9.

<sup>46</sup> *Ibid.*

<sup>47</sup> Korabik, Lero & Richardson, *supra* note 9 at 1; Duxbury & Higgins, *New Millennium*, *supra* note 32 at 17.

## 2.3 Organizational Culture

### 2.3.1 Defining the Concept

Organizational culture refers to "the basic pattern of shared assumptions, values, and beliefs considered to be the correct way of thinking about and acting on problems and opportunities facing the organization."<sup>48</sup> Culture plays two important functions in a workplace:

1. Culture serves as an *integrator* by dictating how members of the organization should relate to one another (e.g., the degree of cooperation and teamwork, problem-solving, decision-making, dialogue systems); by illustrating which behaviours are acceptable and which are not; and, by allocating authority, power and status within the organization;<sup>49</sup> and,
2. Culture--particularly leadership culture--helps an organization *adapt* to its external environment in order to survive in the long-run by determining organizational goals

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<sup>48</sup> S. McShane, *Canadian Organizational Behaviour*, 4<sup>th</sup> ed. (Toronto: McGraw-Hill, 2001) at 506.

<sup>49</sup> *Ibid.*

(be they economic or social in nature), as well as strategies for their achievement.<sup>50</sup>

Organizational culture has both visible and invisible elements. As depicted in Table 2.1, the first level of organizational culture involves visible *artefacts* and *perspectives*, which are "found in the physical and social environment in which members of the group work."<sup>51</sup> The second tier involves the invisible *values* and *beliefs*, which "form the evaluative basis upon which organizational members ground their judgments of situations, acts, objects, and people."<sup>52</sup> The third, and most basic level of culture, consists of *assumptions*, which are "the tacit premises that underlie all other levels of culture."<sup>53</sup>

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<sup>50</sup> *Ibid.*

<sup>51</sup> R.J. Daniels, "The Law Firm as an Efficient Community" (1992) 37 McGill L.J. 801 at 826 (Hein Online).

<sup>52</sup> *Ibid.* at 827.

<sup>53</sup> *Ibid.*

**Table 2.1 Elements and Levels of Organizational Culture<sup>54</sup>**

	<b>Level</b>	<b>Elements</b>	<b>Description</b>
<b>Visible</b>			
	Level I	Artefacts	Observable symbols and signs of an organization's culture. They include physical artefacts, such as physical structures, office configuration. They also include social artefacts, such as hierarchical structure, dress codes, language and slogans, stories, ceremonies, and espoused values
		Perspectives	Impart meaning to artefacts by prescribing behaviour and how decisions are made
<b>Invisible</b>			
	Level II	Values and Beliefs	What is acceptable/unacceptable behaviour; conscious reasons for all that occurs at Level I
	Level III	Underlying Assumptions	An organization's worldview that may be taken for granted by employees

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<sup>54</sup> Table adapted from: McShane, *supra* note 48 at 506-511; Duxbury, *RCMP, supra* note 20 at 103.

Understanding the invisible nature of culture is important because "while every organization has a culture, its members often fail to recognize its existence because they have become so conditioned to it."<sup>55</sup> Indeed, due to its invisibility, employees may not ascertain how workplace culture is the means by which "certain transcendent community values are transmitted" to them.<sup>56</sup>

The concept of organizational leadership is also important in the maintenance and impact of workplace culture and its various elements. Through their influence on culture, leaders (such as supervisors, department heads, and managing partners in law firms) are central in their organizations' ability "to adapt and respond to new trends and dynamics in their operating environments."<sup>57</sup> Schein clearly describes the role of leaders in relation to workplace culture:

It is the unique function of leadership to perceive the functional and dysfunctional elements of the existing culture and to manage cultural evolution and change in such a way that the group can survive in a changing environment. The bottom line for leaders is that if they do not become conscious

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<sup>55</sup> Duxbury, *ibid.* at 103.

<sup>56</sup> Daniels, *supra* note 51 at 825.

<sup>57</sup> Duxbury, *RCMP*, *supra* note 20 at 103.

of the cultures in which they are embedded, those cultures will manage them.<sup>58</sup>

Consequently, those playing leadership roles in organizations may be well advised to pay closer attention to the workplace culture and determine whether changes are necessary to adapt to new developments in their organizations (such as recruiting to fill knowledge deficits within the firm), and in their fields (such as investing in technology in order to compete with other corporations from the same industry).

### **2.3.2 Work-Life Balance Culture versus Work-Life Conflict Culture**

As mentioned previously, the likelihood of a worker successfully balancing the demands associated with his/her many life roles is predicated on his/her workplace culture. Indeed, there is an interactive relationship between workplace culture and role conflicts:

The unwritten rules, norms and expectations placed on an employee by the organization in which he or she works...is a better predictor of role overload than objective circumstances at work (i.e. job type, position), circumstances at home (i.e. family type,

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<sup>58</sup> E. Schein, *Organizational Culture and Leadership* (San Francisco, CA: Jossey-Bass Publishers, 1992) at 15.

life-cycle stage) or the actual amount of time spent in work or family roles.<sup>59</sup>

Thus, "healthy workplaces that facilitate work-life balance have the potential to optimise both employee well-being and organisational productivity."<sup>60</sup>

Yet, workplaces vary considerably with respect to their WLB practices and cultures.<sup>61</sup> According to Beauvais, Lyness and Thompson, a WLB culture consists of "the shared assumptions, beliefs and values regarding the extent to which an organization supports and values the integration of employees' work and family lives."<sup>62</sup> In contrast, an organizational culture may encourage WLC if it has three elements:

1. An expectation that employees will prioritize work above family and other spheres;<sup>63</sup>

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<sup>59</sup> Duxbury, Higgins, & Lyons, *supra* note 41 at 17.

<sup>60</sup> Dobson, Lee & Reissing, *supra* note 29 at 75.

<sup>61</sup> *Ibid.* at 76.

<sup>62</sup> L. Beauvais, K. Lyness & C. Thompson, "When work-family benefits are not enough: The influence of work-family culture on benefit utilization, organizational attachment, and work-family conflict" (1999) 54 J. of Voc. Beh. 392 at 394 (Hein Online).

<sup>63</sup> Duxbury & Higgins, *New Millennium*, *supra* note 32 at 78.

2. Perceived negative career consequences associated with utilizing work–family benefits or devoting time to family responsibilities;<sup>64</sup> and,
3. A lack of managerial support and sensitivity to employees' desires and responsibilities outside of work.<sup>65</sup>

Furthermore, Duxbury and Higgins identify four types of workplace cultures that encourage WLC:<sup>66</sup>

1. Culture of Hours: This refers to the "belief that one has to work long hours to succeed."<sup>67</sup> According to Duxbury and Higgins, a way to determine whether a company has a culture of hours is to ask a person whether he/she feels guilty if he/she leaves the office early?<sup>68</sup> Such feelings of guilt are engendered through an organizational culture that calculates an employee's worth by the hours worked and putting in "face-time," which is the practice when workers

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<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> C. Higgins & L. Duxbury, "Saying 'No' in a culture of hours, money and non-support" (2005) 69 *Ivey Bus. J.* 1 at 3, online: [http://www.iveybusinessjournal.com/view\\_article.asp?intArticle\\_ID=566](http://www.iveybusinessjournal.com/view_article.asp?intArticle_ID=566) > [Duxbury & Higgins, *Saying No*].

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

impress upon colleagues and managers that they are seemingly hard at work because of the long hours they spend at the employment setting (such as visibly sitting behind one's desk in the office, past normal business hours).<sup>69</sup>

2. Disconnected Culture: This refers to the predicament faced by many people who work for employers that have WLB policies and strategies, but "do not feel that they can take advantage of them because management does not encourage their use."<sup>70</sup> An organization's culture may lead to an employee feeling "that availing of family friendly working arrangements shows a lack of commitment to one's career."<sup>71</sup> As a result, WLB policies can be disconnected from practice due to a workplace culture that reinforces role conflicts.<sup>72</sup>

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<sup>69</sup> M. Neil, "Law Firm Face Time Still Required, Even in WiFi Era" (27 February 2008), online: American Bar Association Journal <[http://www.abajournal.com/news/article/law\\_firm\\_face\\_time\\_still\\_required\\_even\\_in\\_wifi\\_era](http://www.abajournal.com/news/article/law_firm_face_time_still_required_even_in_wifi_era)>.

<sup>70</sup> Duxbury & Higgins, *Saying No*, *supra* note 66 at 3.

<sup>71</sup> I. Bacik & E. Drew, "Struggling with juggling: Gender and work/life balance in the legal professions" (2006) 29 *Women's Studies Int. Forum* 136 at 139 (Science Direct).

<sup>72</sup> Higgins & Duxbury, *Saying No*, *supra* note 66 at 3.

3. Culture of Money: This refers to the belief that the economic bottom line takes precedent over all other considerations-- that is, "when budgets--not people--count."<sup>73</sup> Consequently, workers may face inordinate pressure to achieve financial results in the short term, while ignoring the fulfillment of personal responsibilities and desires. "Many public companies have this mindset because they are always working frantically to make each quarter's numbers exceed stock analysts' expectations."<sup>74</sup>
  
4. Myth of Separate Worlds: This refers to management's belief that employees' work and personal lives are separate.<sup>75</sup> Thus, those in management positions eagerly request their employees to stay at work longer to complete certain last-minute tasks or travel with short notice, without regard to their employees' family responsibilities or personal interests.<sup>76</sup>

In addition, Duxbury and Higgins contend that most important aspect of work culture that predicts the likelihood of WLC is the extent to

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<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

which an employee believes that his/her organization promotes a culture that is supportive of balance.<sup>77</sup> Moreover, there are no gender differences in their findings:

Organizational cultures that are non-supportive of balance, that emphasize hours and being present, and link career advancement to putting work first, are linked to increased role overload for both men and women.<sup>78</sup>

### **2.3.3 Maintaining Organizational Culture: Searching for the "Right Fit"**

Through its workplace culture, an employer aims to teach current and potential members "what and how [it does] things in the organization in order to succeed."<sup>79</sup> Moreover, "culture is a top priority at the more successful companies" because of evidence that "organizations with strong corporate cultures outperform peers."<sup>80</sup> In its *2010 Canadian Corporate Culture Study*, Waterstone Human Capital conducted a survey of Canadian executives from a variety of

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<sup>77</sup> Duxbury & Higgins, *New Millennium*, *supra* note 32 at 17.

<sup>78</sup> *Ibid.*

<sup>79</sup> Duxbury, *RCMP*, *supra* note 20 at 103.

<sup>80</sup> M. Parker, "Cultural Fit More Important Than Skills When Hiring" *The Vancouver Sun* (8 July 2010), online: Vancouver Sun <http://www.vancouversun.com/business/Cultural+more+important+than+skills+when+hiring/3249790/story.html>.

companies to find out how organizational culture impacts corporate performance.<sup>81</sup> The findings are very illuminating:

- 83 percent of respondents feel that cultural similarities are more important than skills when finding recruits for their organizations;<sup>82</sup>
- 71 percent of respondents say their organization's culture impacts its corporate bottom line by driving sales and revenue;<sup>83</sup>
- More than 80 percent of respondents agree or strongly agree that their organization's corporate culture impacts recruitment/retention efforts;<sup>84</sup> and,
- 77 percent of respondents say they measure their organization's corporate culture, which is double the rate in 2006.<sup>85</sup>

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<sup>81</sup> Waterstone Human Capital, *2010 Canadian Corporate Culture Study Results* (29 June 2010), online: <<http://www.waterstonehc.com/cmac/news-events/news/2010-canadian-corporate-culture-study-results>>.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

Consequently, employers use valuable resources to ensure that potential and current members share common values and attitudes, and that organizational culture is maintained. Thus, during the recruitment process, organizations continually proclaim that they seek employees that are "the right fit?"<sup>86</sup> The question arises: What does this phrase mean?

A key concept in organizational behaviour research is "person-environment fit" (P-E fit), which refers to the "congruence, match, or similarity between the person and environment."<sup>87</sup> A person participates in many social environments, including the family sphere, religious groups, community organizations, and workplaces.<sup>88</sup> Thus, investigating the relationship between an individual and his/her work environment is described as the study of "person-organization fit" (P-O

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<sup>86</sup> See the following law firm articling recruitment websites: Clark Wilson LLP, "Who are we looking for?", online: Clark Wilson LLP <<http://www.cwilson.com/articling/who/>>; Gowling Lafleur Henderson LLP (Gowlings), "Applying to Gowlings Vancouver", online: Gowlings LLP <<http://www.iwantgowlings.com/ArticlingProgram/applicationProcess.asp?id=7>>; and, McCarthy Tétrault LLP, "The McCarthy Tétrault Difference", online McCarthy Tétrault LLP <<http://www.mccarthy.ca/therightfit/en/>>--Please note that the phrase "right fit" is in the website address, itself.

<sup>87</sup> J.R. Edwards, "4 Person-Environment Fit in Organizations: An Assessment of Theoretical Progress" (2008) 2 *Academy of Management Annals* 167 at 168, online: University of North Carolina Kenan-Flagler Business School <<http://public.kenan-flagler.unc.edu/faculty/edwardsj/Edwards08a.pdf>>.

<sup>88</sup> *Ibid.*

fit), which refers to the alignment between a person's values and the culture or climate of his/her workplace.<sup>89</sup>

The work of industrial psychologist Benjamin Schneider-- particularly his attraction-selection-attrition (ASA) framework--is the "theoretical cornerstone in P-O fit research."<sup>90</sup> Schneider's central thesis is that within organizations, "situations are defined in terms of the attributes of the persons there"--in other words, it is "the people who create the place."<sup>91</sup> He argues that:

The people who are attracted to an organization, those selected by it, and those that choose to remain share the values of the organization to create a homogeneous workforce.<sup>92</sup>

Specifically, Schneider posits that an organization *attracts* and *selects* people with values, attitudes and goals that align with those within the

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<sup>89</sup> *Ibid.* at 206; J. Billsberry & P. Nelson, "The ASA Framework as Rhetoric" (2nd Annual Global e-Conference on Fit, Open University, 19 November 2008) at 1, online: Fit e-Conference <<http://www.fitconference.com/2008/wed02.pdf>>.

<sup>90</sup> K.J. Jansen & A.L. Kristof-Brown, "Issues of Person-Organization Fit" in C. Ostroff & T.A. Judge, eds., *Perspectives on Organizational Fit* (Mahwah, NJ: Lawrence Erlbaum Associates Publishers, 2007) 123 at 123.

<sup>91</sup> B. Schneider, "The People Make the Place" (1987) 40 *Personnel Psy.* 437 at 445 [Schneider, *People*].

<sup>92</sup> J. Billsberry, *The Role of Person-Organization Fit in Attraction and Selection Decisions* (Ph.D., University of Nottingham, 2003) at 31, online: University of Nottingham <<http://etheses.nottingham.ac.uk/911/1/397296.pdf>>.

organization, while dissimilar people are not retained (*attrition*).<sup>93</sup> Moreover, he "views the three processes of attraction, selection and attrition as a cycle that operates over time to create the proposed homogeneity."<sup>94</sup> In this cycle, Schneider places a great deal of emphasis on the founder or manager of an organization, who is described as the "hub from which all organizational processes emerge" since he/she establishes the goals that are to be achieved in the workplace, as well as the strategies used to accomplish these goals.<sup>95</sup>

Under the ASA framework, individuals are attracted to workplaces for a variety of reasons, including compensation rates, composition of the workforce, reputation of the organization, etc. Organizations then select those applicants for membership that have the desired attributes, in the form of education, work experience, attitudes, etc.--in other words, the desired culture.<sup>96</sup> Once selected, members undergo a process of "organizational socialization," whereby "individuals learn the values, expected behaviours, and social

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<sup>93</sup> Edwards, *supra* note 87 at 210; Billsberry & Nelson, *supra* note 89 at 1.

<sup>94</sup> Billsberry, *supra* note 92 at 38.

<sup>95</sup> Edwards, *supra* note 87 at 210; B. Schneider, "An Interactionist Perspective on Organizational Effectiveness" in K.S. Cameron & D.S. Whetten, eds., *Organizational Effectiveness: A Comparison of Multiple Models* (New York: Academic Press, 1983) 27 at 33.

<sup>96</sup> Billsberry, *supra* note 92 at 39.

knowledge necessary to assume their roles in an organization."<sup>97</sup> Through this process and by keeping track of a person's achievements and failures (through job performance reviews), organizations promote people with compatible values, eliminate those who do not fit in, or allow others to leave. According to Schneider, in the *attrition* phase, "people who do not fit an environment well will tend to leave it...so, while people may be attracted to a place, they may make errors, and finding they do not fit, they will leave."<sup>98</sup>

Under his "homogeneity hypothesis," Schneider contends that since an organization retains people who reinforce its culture, a workplace can become increasingly homogeneous in terms of the abilities, needs, orientations, experiences, and goals of personnel.<sup>99</sup> Moreover, while increased homogeneity can have positive outcomes--such as lubricating relations between similar co-workers<sup>100</sup>--he argues that an organization can become less adaptive to new trends and dynamics in its operating environment--such as technological,

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<sup>97</sup> McShane, *supra* note 48 at 542.

<sup>98</sup> Schneider, *People*, *supra* note 91 at 442.

<sup>99</sup> Edwards, *supra* note 87 at 210; Billsberry & Nelson, *supra* note 89 at 1.

<sup>100</sup> Edwards, *ibid.* at 211.

economic, social transformations--due to the common views that flow throughout a workplace.<sup>101</sup>

#### **2.3.4 Summary**

Due to the importance of organizational culture, a corporation should undergo "cultural assessments," whereby it reflects on workplace norms, values, behaviours and strategies to determine whether its culture aligns with its goals, be they economic or social in nature.<sup>102</sup> Through this process, an organization gains insight into how it operates and whether it must adapt to changes in society, be they social, technological, or economic adaptations. Yet, in addition to the use of better technology and/or changes in human resources management, many organizational leaders do not realize that one's workplace culture may also need to evolve in order help employees balance their various life roles. In fact, many institutions still have cultures that encourage WLC--such as the legal profession, which is the focus of this thesis. Consequently, we now turn to a discussion of how to foster change in the organizational setting, particularly in relation to bringing cultural change in a workplace.

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<sup>101</sup> Edwards, *ibid.*; Billsberry & Nelson, *supra* note 89 at 1.

<sup>102</sup> Parker, *supra* note 80.

## 2.4 Organizational Change

### 2.4.1 The Change Process

There are many dynamic forces at play within a workplace, and the combination of these forces can lead to either organizational change or stability. Psychologist Kurt Lewin developed the "force field analysis" model to help people understand the change process.<sup>103</sup> According to the model, there are "driving forces" that push organizations away from the status quo--such as competition, demographic changes, economic crises, and innovative leadership styles.<sup>104</sup> However, in opposition to these driving forces are "restraining forces," which hinder movement from the status quo--such as conservative forms of leadership, economic and social costs, and fear of the unknown.<sup>105</sup>

According to Lewin, organizational stability occurs when there is equilibrium between the driving and restraining forces, with equal strength in both directions.<sup>106</sup> However, in order to create the opportunity for organizational change, driving forces must outweigh

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<sup>103</sup> McShane, *supra* note 48 at 446; N. Langton & S.P. Robbins, *Organizational Behaviour: Concepts, Controversies, Applications*, 3rd ed. (Toronto: Pearson Education, 2003) at 542.

<sup>104</sup> McShane, *ibid.*; Langton & Robbins, *ibid.* at 543.

<sup>105</sup> McShane, *ibid.* at 448; Langton & Robbins, *ibid.*

<sup>106</sup> McShane, *ibid.* at 447.

the restraining forces, either by "making the driving forces stronger, weakening or removing the restraining forces, or a combination of both."<sup>107</sup> Furthermore, Lewin suggests that change involves the three steps of "unfreezing," "movement," and "refreezing" (Figure 2.1):<sup>108</sup>

**Figure 2.1 Lewin's Three-Step Change Process Model**



The first step is "unfreezing," which occurs when the driving forces outweigh the restraining processes, so that change can occur towards the desired condition.<sup>109</sup> The second step is "movement" to a new state--in other words, change. The third and final step is "refreezing," in which the organization remains in the desired condition permanently.<sup>110</sup> This final stage is important because unless the change--be it the adoption of new goals, the use of innovative technologies, or the implementation of novel human resource strategies--are solidified within the workplace, "there is a high chance that the change will be short-lived and that employees will try to

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<sup>107</sup> *Ibid.*

<sup>108</sup> Langton & Robbins, *supra* note 103 at 542.

<sup>109</sup> McShane, *supra* note 48 at 447.

<sup>110</sup> *Ibid.* at 449.

revert to the previous equilibrium state."<sup>111</sup> That is, the change will merely be a short-term "fad", and a return to the *status quo ante* will be inevitable.

#### **2.4.2 Change Agents**

Critical elements in setting the change process in motion are "change agents," who are people within organizations that "possess enough knowledge and power to guide and facilitate the change effort."<sup>112</sup> Typically, change agents are the leaders within an organization--such as managers, supervisors, directors, etc.--who have the authority to direct economic resources to implement initiatives, and shift the workplace culture by introducing different norms and values.<sup>113</sup> However, any employee can be a change agent if he/she has the knowledge, vision, and determination to detail problems, discuss possible solutions, and model desired behaviours.

The role of change agents cannot be overstated, particularly in conservative institutions that have maintained the same values and norms for generations, such as the legal profession. Change agents help organizations evolve by engaging and communicating with fellow

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<sup>111</sup> Langton & Robbins, *supra* note 103 at 543.

<sup>112</sup> *Ibid.* at 456.

<sup>113</sup> *Ibid.*

members about the change process.<sup>114</sup> For instance, they create the case for change by helping colleagues recognize why innovation is necessary,<sup>115</sup> and inform them about what to expect, which helps "reduce fears of the unknown and develop norms that are more consistent with the change effort."<sup>116</sup> In addition, change agents, particularly those in leadership positions, aid in creating structural change by ensuring that the transformation is supported by the necessary plans, tools and processes.<sup>117</sup>

In accordance with Schneider's "homogeneity hypothesis," however, finding change agents within an organization may be difficult given the common culture shared by members and leaders. This is why it is important to recognize that change agents can also come from outside the organization--for instance, interest groups that are engaged with particular social issues can drive change. Furthermore, administrative bodies that oversee a profession can also be change agents since they are responsible for the well-being of members. Specifically, such bodies must fully describe the negative issues that affect the profession, recommend possible solutions to alleviate crises,

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<sup>114</sup> Duxbury, *RCMP*, *supra* note 20 at 137.

<sup>115</sup> *Ibid.*

<sup>116</sup> McShane, *supra* note 48 at 450.

<sup>117</sup> Duxbury, *RCMP*, *supra* note 20 at 137.

and impose strategies that may be unpopular among those who seek to maintain the *status quo*. In the context of the legal profession, it is argued in Chapter 4 that the CBA and its provincial branches, as well as the provincial law societies, (which license and regulate lawyers in Canada), can act as change agents to create a culture of WLB among legal employers and professionals.

### **2.4.3 Types of Change**

There are several types of organizational change, which differ in order of magnitude. In general, organizational change refers to "planned change," which is "an intentional, goal-oriented activity" that is "proactive and purposeful."<sup>118</sup> The goals of planned change are two-fold: first, to improve the ability of the organization to adapt to new issues in its environment, be they technological, economic or social changes; and, second, to modify employee behaviour.<sup>119</sup> Furthermore, planned change comes in different forms. There is "first-order change," which refers to "linear and continuous" change that brings "no fundamental shifts in the assumptions that organizational members hold about the world or how the organization can improve its

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<sup>118</sup> Langton & Robbins, *supra* note 103 at 529.

<sup>119</sup> *Ibid.*

functioning."<sup>120</sup> Thus, first-order change can occur in relation to the Level I elements of organizational culture described in Table 2.1--the visible artefacts in the workplace and the behaviours between members. First-order change can also include "incremental change," whereby "small steps are taken towards the change effort's objectives," which gives time to organizational members to adapt to the new conditions.<sup>121</sup>

"Second-order change," which involves the invisible components of organizational culture, is multidimensional and entails "reframing assumptions about the organization and the world in which it operates."<sup>122</sup> This type of change can also be described as "quantum change," which occurs when an "organization breaks out of its existing ways and moves towards a totally different configuration of systems and structures."<sup>123</sup> Moreover, since second-order change usually involves radical shifts within an organization, it may be traumatic for members, as they learn new roles and absorb a new workplace culture.<sup>124</sup> One can argue that engendering a pro-WLB culture within

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<sup>120</sup> *Ibid.*

<sup>121</sup> McShane, *supra* note 48 at 459.

<sup>122</sup> Langton & Robbins, *supra* note 103 at 529.

<sup>123</sup> McShane, *supra* note 48 at 459.

<sup>124</sup> *Ibid.*

the legal profession is a type of second-order change that requires the support of various entities--lawyers, law firms, professional bodies, law schools--to allow for the shift to be permanent, rather than transitory.

## **2.5 Conclusion**

An individual plays a variety of roles as he/she travels through life--such as student, employee, friend, spouse, partner, parent, etc. Moreover, effectively balancing these various roles takes a great deal of personal effort. However, successfully juggling life's demands is more than an individual endeavour--it is also impacted by one's workplace culture. Indeed, "culture has been found to affect most of an organization's policies, decisions and activities and as such has been found to have a major impact on the success of the organization."<sup>125</sup> Yet, this review of organizational theory reveals that changing a workplace's culture is not a simple task since internal homogeneity narrows the "range of personalities, values and attitudes in the organization," and, therefore, can act as a resisting force in the change process.<sup>126</sup> Organizations may resist second-order change, which impacts the norms and values at the foundation of an

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<sup>125</sup> Duxbury, *RCMP*, *supra* note 20 at 103.

<sup>126</sup> Billsberry, *supra* note 92 at 44.

organization, because it can be traumatic and costly, as new roles are learned, and innovative strategies are implemented.<sup>127</sup>

The theoretical framework provided in this chapter reveals that heavy work demands in conjunction with an organizational culture that does not support the fulfillment of various social roles leads to WLC. However, unless employers adapt to their workers' call for more WLB, they may lose their edge in recruitment/retention, and face growing competition from companies and jurisdictions that are implementing innovative WLB strategies, particularly in a post-recession and tight labour market. They may also be losing investment in human capital by maintaining a less-productive or non-productive workforce. Yet, the adoption of such initiatives does not conclude the change process. Indeed, workplace initiatives aimed at combating WLC will not succeed if a company's organizational culture stigmatizes their use.<sup>128</sup>

As mentioned previously, companies may be hesitant to adopt strategies due to resisting forces, such as economic issues and conservative leadership. For instance, many organizations may not adopt WLB strategies unless there is a strong business case for their

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<sup>127</sup> McShane, *supra* note 48 at 459.

<sup>128</sup> J. Barrette, *Work/Family Balance: What Do We Really Know?* (Ottawa: Vanier Institute of the Family, 2009) at 16, online: Vanier Institute of the Family <[http://www.vifamily.ca/library/cft/barrette/work\\_family\\_balance.pdf](http://www.vifamily.ca/library/cft/barrette/work_family_balance.pdf)>.

implementation. In the current challenging economic climate, organizations will not invest in programs unless there is an identifiable return-on-investment (ROI). Thus, Chapter 3 discusses the social, economic, and legal reasons why encouraging WLB among current and potential employees is a labour market imperative for organizations.

## **Chapter 3. Providing Context: Why Nurturing Work-Life Balance is a Labour Market Imperative**

### **3.1 Setting the Stage**

This chapter describes some of the "driving forces"<sup>129</sup> that can start the change process in organizations in order to encourage the achievement of WLB among workers.<sup>130</sup> Specifically, three issues that make the pursuit of WLB an important task for organizations' long-term survival are discussed: (1) demographic changes in the labour market; (2) the strong business case for workers' achievement of WLB; and, (3) legal challenges associated with accommodating workers' WLB needs in relation to the human rights ground of "family status."

### **3.2 Labour Market Changes**

#### **3.2.1 Introduction**

It is contended that workplaces should encourage more WLB and be better at combating WLC in order to adapt to demographic changes that are occurring in the workforce. Specifically, the labour market is

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<sup>129</sup> McShane, *supra* note 48 at 446; Langton & Robbins, *supra* note 103 at 543.

<sup>130</sup> Chapter 3 investigates issues that make it imperative that all employers encourage WLB among all members of the labour market. Chapter 4 provides contextual information specific to the legal profession--such as a description of the feminization of the field, the WLC issues faced by lawyers, and the related health consequences that make the encouragement of WLB in the profession a priority.

aging at an increasing rate, and female participation in the workforce has been growing since the 1960s. Today, women outnumber men in the labour force because unemployment caused by the 2007-2008 recession affected more males than females. These shifts make the recruitment and retention of skilled people compelling human resources issues, particularly given Canada's impending shrinking labour market, as workers start to retire. One way for companies to respond to these labour market developments is by creating age-friendly and family-friendly workplaces through the implementation of WLB initiatives that account for workers' various roles.<sup>131</sup>

### **3.2.2 The Greying Workforce<sup>132</sup>**

The demographic statistics are clear: Canada's population is growing older. In 1956, 47 percent of Canadians were 25 years of age and under; in 2000, less than 33 percent were 25 and under; and, by

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<sup>131</sup> C. Moore & N. Spinks, "The Changing Workforce, Workplace and Nature of Work: Implications for Health Human Resource Management" (2007) 20 *Nursing Leadership* 26 at 27, online: Longwoods Publishing <<http://www.longwoods.com/product/download/code/19286>>.

<sup>132</sup> Concurrent to his thesis work at the University of British Columbia, the author was also completing a directed research project on the aging workforce for Professor Anthony Sheppard as a part of the LL.M. course requirements. Since research benefited both projects, this portion of the thesis replicates the findings in A. Mohan, "Adapting to the Greying Workforce: Learning Lessons from Case Studies" (June 2010) [unpublished, archived at University of British Columbia] at 7-9.

2026, this statistic will decrease to 25 percent.<sup>133</sup> Furthermore, those aged 65 or older made up less than 10 percent of the population in 1956, compared to 12 percent in 2000, 20 percent by 2026,<sup>134</sup> and 25 percent by 2031.<sup>135</sup> The nation's aging population has also led to an increase in the median age of a Canadian, from 35.3 years of age in 1996, 37.6 in 2001, to 45.8 by 2050.<sup>136</sup> In the provincial context, BC will see an increase of 70 percent of those 65 years and over, from 636,000 in 2008 to 1.1 million in 2023.<sup>137</sup> In contrast, the number of British Columbians aged 15 to 49 will decline by 0.3 percent.<sup>138</sup>

Due to the above-mentioned demographic changes, Canada's labour market is greying. For instance, workers aged 35 to 54

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<sup>133</sup> S. Schetagne, *Building Bridges Across Generations in the Workplace: A Response to Aging of the Workforce* (2001) at 2, online: Canadian Council on Social Development <<http://www.ccsd.ca/pubs/2001/bridges/bbeng.pdf>>.

<sup>134</sup> *Ibid.*

<sup>135</sup> C.M. Beach, *Canada's Aging Workforce: Participation, Productivity, and Living Standards* (November 2008) at 198, online: Bank of Canada <<http://www.bankofcanada.ca/en/conference/2008/beach.pdf>>.

<sup>136</sup> Certified General Accountants (CGA) Association of Canada, *Growing Up: The Social and Economic Implications of an Aging Population* (2005) at 18, online: CGA Association of Canada <[http://www.cga-canada.org/en-ca/ResearchReports/ca\\_rep\\_2005-01\\_growingUp\\_1.pdf](http://www.cga-canada.org/en-ca/ResearchReports/ca_rep_2005-01_growingUp_1.pdf)> [CGA Association of Canada, *Growing Up*].

<sup>137</sup> Alberta, Ministry of Employment and Immigration, *Mature Workers in Alberta and British Columbia: Understanding the Issues and Opportunities (A Discussion Document)* (August 2008) at 4, online: Ministry of Employment and Immigration <[http://employment.alberta.ca/documents/RRM/PC\\_mature\\_workers.pdf](http://employment.alberta.ca/documents/RRM/PC_mature_workers.pdf)>.

<sup>138</sup> Canadian Labour and Business Centre, *Skills Shortage in the Context of an Aging Workforce* (May 2006) at 8, online: National Adult Literacy Database <<http://www.nald.ca/library/research/CLBC/shortages2/shortages2.pdf>>.

represented 50 percent of the workforce in 2000, compared to 33 percent in 1975.<sup>139</sup> Furthermore, in the year 2000, 20 percent of Canadians active in the labour market were 45 to 54 years of age, and 8 percent were between 55 and 64.<sup>140</sup> This proportion will increase by 2021, with 25 percent of Canadians in the labour market being between 45 and 54, and 14 percent being 55 to 64 years of age.<sup>141</sup> Consequently, in 2006, the median age of a Canadian worker surpassed 40 years for the first time: "[it] rose from 39.5 years in 2001 to 41.2 years in 2006."<sup>142</sup>

There are several reasons for these demographic findings. First, "people as a whole are living longer, owing to improved health care, medical technology, higher living standards, and healthier lifestyles."<sup>143</sup> Indeed, Canada's life expectancy "has been increasing continuously, rising by 10 years from 69 years of age in 1950 to 79 in 2000,"<sup>144</sup> and 80.4 in 2006.<sup>145</sup> Second, Canada feels the immense

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<sup>139</sup> Schetagne, *supra* note 133 at 4.

<sup>140</sup> *Ibid.* at 5.

<sup>141</sup> *Ibid.*

<sup>142</sup> "Canadian Workforce Greying: StatsCan" *CBC News* (4 March 2008), online: CBC News <<http://www.cbc.ca/money/story/2008/03/04/censusworkforce.html>>.

<sup>143</sup> Beach, *supra* note 135 at 198.

<sup>144</sup> CGA Association of Canada, *Growing Up*, *supra* note 136 at 20.

impact of the post–World War II baby boomers--those born between 1946 and 1966--who account for over 8 million people in the country. In fact, "the baby boom was followed by a dramatic drop in fertility rates, so its effects on aging and rates of labour force participation are likely to be stronger in Canada than in just about any other developed country."<sup>146</sup>

Understanding the extent to which Canada's population is aging is important because it affects the level of talent available in the labour market. Indeed, the process of "wisdom withdrawal" is occurring in the labour market due to the early retirement of workers. For instance, "between 1987 and 1990, 29 percent of people retired before the age of 60."<sup>147</sup> This rate grew to 43 percent between 1997 and 2000.<sup>148</sup> Furthermore, the public sector has a great number of early retirees because of defined benefit pensions--"the average retirement age in 1999 was 58.5 years, compared to 61.3 years in private sector and

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<sup>145</sup> "Life Expectancy hits 80.4 years: Statistics Canada" *CBC News* (14 January 2008), online: CBC News <<http://www.cbc.ca/canada/story/2008/01/14/death-stats.html>>.

<sup>146</sup> Beach, *supra* note 135 at 198.

<sup>147</sup> Certified General Accountants (CGA) Association of Canada, *Fact Sheet: Growing Up: The Social and Economic Implications of an Aging Population* (2005), online: CGA Association of Canada <[http://www.cga-canada.org/en-ca/ResearchAndAdvocacy/AreasOfInterest/AgingPopulation/Pages/ca\\_aging\\_factsheet.aspx](http://www.cga-canada.org/en-ca/ResearchAndAdvocacy/AreasOfInterest/AgingPopulation/Pages/ca_aging_factsheet.aspx)>.

<sup>148</sup> *Ibid.*

65.0 years for the self-employed."<sup>149</sup> Consequently, we are seeing a loss of personnel in the education, health care, and law enforcement sectors.<sup>150</sup>

Canada's aging population is also increasing "the demand for elder-care support and compassionate care leave,"<sup>151</sup> which causes role conflicts among those who care for the senior members of society. Recent studies show that 20 percent of Canadians provide unpaid elder-care, with women providing more support than men on a weekly basis (16 hours compared to 5 hours, respectively).<sup>152</sup> Furthermore, the burden on caregivers has increased due to Canadian families shrinking in size since the 1950s--"in 1951 caregivers had three to five siblings to share the responsibility; in 1991 they had one or two."<sup>153</sup> These demographic changes mean that an individual in the present-day may bear a greater burden to meet his/her elder-care responsibilities than Canadians in the past, which may necessitate workplace initiatives that help employees meet their various family responsibilities.

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<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*

<sup>151</sup> Moore & Spinks, *supra* note 131 at 29.

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

### 3.2.3 Feminization of the Labour Market

The Canadian workforce has almost an equal representation of men and women (52.7 percent versus 47.3 percent, respectively).<sup>154</sup> This has not always been the case. Indeed, female participation in the labour market has grown exponentially since the mid-20<sup>th</sup> century. For instance, fifty years ago, 83 percent of Canadian men were in the workforce, compared to only 23 percent of women.<sup>155</sup> However, at present, male participation in the labour market has decreased to 74 percent, while women's participation has grown to 62 percent.<sup>156</sup> In fact, since 2000, women aged 45 to 64 have "accounted for 80 percent of the total growth of the Canadian labour force."<sup>157</sup>

This demographic change has affected fertility, child-bearing and child-rearing in Canada.<sup>158</sup> First, Canada's fertility rate has fallen dramatically, from 3.9 children per female in the late 1950s to 1.59 in 2006, which is far below the replacement rate of 2.1 that is required to maintain a stationary population.<sup>159</sup> Consequently, there are less

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<sup>154</sup> Statistics Canada, *Labour Force, Employed and Unemployed, Numbers and Rates, by Province* (2009), online: Statistics Canada <<http://www40.statcan.gc.ca/l01/cst01/LABOR07A-eng.htm>>.

<sup>155</sup> Moore & Spinks, *supra* note 131 at 30.

<sup>156</sup> Beach, *supra* note 135 at 198.

<sup>157</sup> *Ibid.*

<sup>158</sup> Moore & Spinks, *supra* note 131 at 30.

<sup>159</sup> CGA Association of Canada, *Growing Up*, *supra* note 136 at 19.

young people in Canada--1.7 million children (four years and under) were accounted for in the 2001 Census, which is down 11 percent from 1991.<sup>160</sup> Furthermore, as the average age for a Canadian woman giving birth to her first child is now 27 years, and since many use the full duration of maternity leave, the talent and skills available in the labour market decline, given that the average length of maternity/parental leave for new mothers is 11 months.<sup>161</sup>

Many females who participate in the labour market are also working mothers, which mean that they have to fulfill family roles in conjunction with their work roles. Specifically, 66 percent of mothers with children under the age of 3 are in the workforce, along with 70 percent of mothers with children between 3 and 5 years of age, and 83 percent of mothers with children between 6 and 15.<sup>162</sup> Furthermore, "the participate rate of mothers aged 20 to 44 with children under the age of 16 jumped from 37 percent in 1976 to 70 percent in 1997."<sup>163</sup> As a result, working mothers face great demands on their time to fulfill their family and work responsibilities, as they "spend an average 17 years caring for a dependent child and a further 18 years caring for an

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<sup>160</sup> *Ibid.*

<sup>161</sup> Moore & Spinks, *supra* note 131 at 31.

<sup>162</sup> *Ibid.*

<sup>163</sup> Barrette, *supra* note 128 at 8.

elderly parent."<sup>164</sup> However, it is certainly true that fathers also feel the same stresses and conflicts associated with fulfilling their various roles. Yet, women feel the brunt of WLC stress because they, "by choice, default or tradition, tend to take on more than their share of child care and parenting responsibilities."<sup>165</sup>

### 3.2.4 Generational Shifts

In conjunction with the demographic changes described above, there are also generational shifts occurring in the labour market in relation to employees' life goals. Specifically, baby boomers and members of the "Generation X"<sup>166</sup> demographic cohort are being replaced by those from Generation Y,<sup>167</sup> who have different life desires

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<sup>164</sup> B. Byers & F.E. Pelletier, *Changing Times, New Ways of Working: Alternative Working Arrangements and Changes in Working Time* (Ottawa: Canadian Labour Market and Productivity Centre, 1997) at 22, online: National Adult Literacy Database <<http://www.nald.ca/library/research/CLBC/working/97apr07.pdf>>.

<sup>165</sup> Physician Health Program of British Columbia, *supra* note 12 at 11.

<sup>166</sup> "Generation X" refers to the demographic cohort consisting of people born between 1961 and 1974.

<sup>167</sup> P. Cheese, "Netting the Net Generation" (13 March 2008), online: Bloomberg Business Week <[http://www.businessweek.com/managing/content/mar2008/ca20080313\\_241443.htm?campaign\\_id=rss\\_null](http://www.businessweek.com/managing/content/mar2008/ca20080313_241443.htm?campaign_id=rss_null)>.

"Generation Y" refers to people born after the Generation X cohort, in the mid-1970s to the end of the 20<sup>th</sup> century. It is also known as the "Net Generation" and "Millennial Generation, and members of this cohort are called "Millennials".

and expectations of their employers.<sup>168</sup> According to Duxbury, Generation X employees and baby boomers are looking for stability in their labour market experiences.<sup>169</sup> Thus, they follow the "old model" of employment that instils loyalty to one's employer, job security, following rules, and climbing up the corporate ladder by "not rocking the boat."<sup>170</sup> Thus, since "they want a raise, promotion, [and] career development," Generation X employees will stay at their workplaces even if employers do not deliver on their promises.<sup>171</sup>

Many baby boomers may wish to continue in the workforce rather than retire due to economic constraints--such as post-retirement income levels that do not adequately meet their needs--and to cultivate substantial benefits--such as health care plans--which they receive from their long-standing employers. Yet, organizations play a recruitment/retention price when competing employers transform their cultures and provide social and economic benefits that these workers increasingly value, as they become veteran members of the labour force. These include important WLB benefits that allow for the

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<sup>168</sup> L. Duxbury, *Dealing with Work-Life Issues in the Workplace: Standing Still is Not an Option* (Kingston: Queen's University Industrial Relations Centre, 2004) at 19, online: <<http://irc.queensu.ca/resources/don-wood-lecture-series/dwls-linda-duxbury-on-work-life-conflict.pdf>> [Duxbury, *Standing Still*].

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.* at 20.

<sup>171</sup> *Ibid.* at 19.

fulfillment of non-work goals, including volunteering, mentorship, and caring for children and grandchildren.<sup>172</sup>

Members of Generation Y also have "a more free-spirited approach to work" which seeks "rapid career growth, greater demands for work-life balance, and the need for clear and frequent performance feedback."<sup>173</sup> They want "fun, challenging, interesting and exciting work with flexibility and balance."<sup>174</sup> In addition, instead of a boss, they want "a coach, a mentor, someone who listens to their concerns."<sup>175</sup> By witnessing their parents' work experiences, they have learned, first-hand, about the elusive challenges associated with the pursuit of WLB, and observed various negative outcomes in their employment and family settings, including burnout, job dissatisfaction and divorce.<sup>176</sup> Consequently, they are increasingly becoming "free agents" who will leave their organizations if they do not get what they want, and will search for employers that best enable them to fulfill their goals.<sup>177</sup>

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<sup>172</sup> See Mohan, *supra* note 132.

<sup>173</sup> Cheese, *supra* note 167.

<sup>174</sup> Duxbury, *Standing Still*, *supra* note 168 at 19.

<sup>175</sup> *Ibid.*

<sup>176</sup> *Ibid.*

<sup>177</sup> *Ibid.* at 20.

Human resources data and survey findings reveal the extent of this generational change. For instance, the percentage of private sector male workers who have been with the same employer for at least 10 years has fallen from 50 percent in 1973, to 35 percent in 2006.<sup>178</sup> Furthermore, "the proportion of those with 20-year tenures [has] dropped from 35 percent to 20 percent over the same period."<sup>179</sup> In addition, in a survey conducted by Harris Interaction in 2004, 47 percent of 18 to 34 year olds proclaimed that they "really care about the fate" of their employer, as opposed to 64 percent of those 55 and older.<sup>180</sup>

### **3.2.5 Summary**

The labour market changes in Canadian society are increasingly requiring adaptive measures from employers. Indeed, due to factors such as the shrinking labour pool, competition for talent, and new generation of workers who are free agents in the labour market, organizations need to readily adjust to the demands associated with attracting, training, and retaining people in the present-day. This is particularly crucial given that "estimates from human resource

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<sup>178</sup> R. Wartzman, "LeBron James: True to his Generation" *The Vancouver Sun* (15 July 2010) A11.

<sup>179</sup> *Ibid.*

<sup>180</sup> *Ibid.*

professionals and consultants indicate that to recruit a new staff member it costs [organizations] between two and four times the annual salary for the position."<sup>181</sup>

Due to the changing needs of employees, with one generation of workers supplanting another, organizations must therefore offer recruits more than merely "jobs."<sup>182</sup> Instead, they must acknowledge the variety of roles played by workers by showing their commitment to WLB through the implementation of strategies that help workers achieve balance. Indeed, survey data reveals that 57 percent of post-secondary students indicate that WLB is not only their primary desire in the labour market, but also that this goal does not diametrically oppose their career and personal aspirations.<sup>183</sup> Thus, in order for organizations to win the recruitment and retention battles in Canada's tight labour market, they should listen to the concerns of this cohort of labour market participants, particularly their call for greater support from employers of their WLB efforts.

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<sup>181</sup> Human Resources and Skills Development Canada, *The Business Case for Work-Life Balance*, online: Human Resources and Skills Development <[http://www.hrsdc.gc.ca/eng/lp/spila/wlb/16benefits\\_costs\\_businesscase.shtml](http://www.hrsdc.gc.ca/eng/lp/spila/wlb/16benefits_costs_businesscase.shtml)>.

<sup>182</sup> Duxbury, *Standing Still*, *supra* note 168 at 19.

<sup>183</sup> Human Resources and Skills Development Canada, *supra* note 181.

### 3.3 Business Case for Work-Life Balance

#### 3.3.1 Introduction

Studies reveal that there is a strong business case for organizations to implement and sustain WLB initiatives.<sup>184</sup> As a result, employers would be prudent to cultivate the economic and social benefits flowing from their workers achieving WLB. Indeed, the accumulated evidence of the negative effects of WLC on productivity and employee health has "built the business case for work-life balance practices."<sup>185</sup>

#### 3.3.2 Negative Consequences of Work-Life Conflict

According to various studies, WLC is linked to many negative health consequences.<sup>186</sup> For instance, workers suffer from poor dietary habits, obesity, sleep disturbances, burnout and depression.

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<sup>184</sup> Please note that the analysis in this section focuses on outcomes, rather than the strategies used to obtain these outcomes. Chapter 4 discusses WLB strategies by investigating case studies of organizations from various industries that are successfully encouraging WLB among their workers. Chapter 5 details lessons and recommendations from these case studies in order to discuss how a WLB culture can be nurtured within the legal profession.

<sup>185</sup> Korabik, Lero & Richardson, *supra* note 9 at 18.

<sup>186</sup> Hudson Highland Group, *supra* note 4 at 9-14; WarrenShepell Research Group, *supra* note 5 at 2; Korabik, Lero & Richardson, *ibid.* at 15-18; Duxbury, Higgins & Lyons, *supra* note 41 at 14-18; Human Resources and Skills Development Canada, *supra* note 181; K.E. Kelloway, E. Kelly & J. Mullen, "Health and well-being outcomes of the work-family interface" in K. Korabik, D.S. Lero & D.L. Whitehead, eds., *Handbook of Work-Family Integration: Research, Theory, and Best Practices* (San Diego, CA: Elsevier, 2008) 215.

Furthermore, sufferers of WLC are 30 times more likely to experience a mood disorder, 10 times more likely to have an anxiety disorder, and 11 times more likely to suffer from addictions (such as alcoholism).<sup>187</sup> In addition, studies find less effective parenting and higher rates of social and emotional difficulties among offspring of workers who suffer from WLC. Sufferers of WLC also exhibit high levels of tardiness and absenteeism--they miss twice as many workdays as those who report low levels of WLC-related stress.<sup>188</sup> Research also finds decreased job satisfaction and organizational commitment (i.e., a lack of willingness to exert extra effort on behalf of the employer), which increases the probability of employee turnover.<sup>189</sup> WLC also leads to an increased use of the health care system in terms of visits to physicians and mental health providers.<sup>190</sup>

There has been an escalation in these negative outcomes over the previous two decades. Duxbury and Higgins found that in 1991, 44 percent of workers reported high levels of stress, while the figure jumped to 55 percent in 2001.<sup>191</sup> Furthermore, 36 percent suffered

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<sup>187</sup> *Ibid.*

<sup>188</sup> *Ibid.*

<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*

<sup>191</sup> Duxbury & Higgins, *New Millennium*, *supra* note 32 at 9.

from depression in 2001, while that figure was 24 percent in 1991.<sup>192</sup> The level of life satisfaction also decreased between 1991 and 2001, from 45 percent to 41 percent, respectively.<sup>193</sup>

There are also immense financial costs associated with WLC. For instance, absenteeism caused by WLC costs the Canadian economy \$5.5 billion per year: high role overload costs \$3 billion per year in lost work time, while the figures are \$1 billion for work-to-family interference, \$500 million for family-to-work interference, and \$1 billion per year due to caregiver strain.<sup>194</sup> Health care costs associated with WLC are also enormous. For example, role overload leads to physician-related expenditures totalling \$1.8 billion per year, while inpatient hospital stays cost \$4 billion annually, and emergency hospital visits cost \$250 million per year.<sup>195</sup> In addition, work-to-family interference causes approximately \$2.8 billion in health care costs, with \$750 million in physician visits, \$2 billion in inpatient hospital stays, and \$100 million in hospital emergency visits.<sup>196</sup> Family-to-work interference costs \$500 million per year, with \$215 million per year in

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<sup>192</sup> *Ibid.*

<sup>193</sup> *Ibid.* at 10.

<sup>194</sup> Duxbury, Higgins & Lyons, *supra* note 41 at 15-18.

<sup>195</sup> *Ibid.* at 15

<sup>196</sup> *Ibid.* at 16.

physician visits, \$250 million annually in inpatient hospital stays and \$50 million per year hospital emergency visits.<sup>197</sup> Additionally, caregiver strain leads to \$5 billion in health care costs, with inpatient hospital stays costing \$4 billion per year, physician visits totalling \$1 billion per year, and hospital emergency visits costing \$100 million per year.<sup>198</sup> Organizations can save, on an annual basis, approximately \$125 per employee in prescription costs if they curtail caregiver strain.<sup>199</sup>

In sum, WLC has negative consequences for individuals, employers and the economy. Indeed, high levels of WLC impair a person's ability to successfully fulfill their family and personal roles, which can lead to physical and mental health problems. Moreover, this decreased state of worker health can cause "increased absenteeism, greater use of prescription medicine and employee assistance programs (EAP) and lower levels of creativity, innovation and risk taking, which, in turn, can all be expected to negatively impact an organization's bottom line and Canada's ability to be globally

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<sup>197</sup> *Ibid.* at 17.

<sup>198</sup> *Ibid.* at 18.

<sup>199</sup> *Ibid.*

competitive."<sup>200</sup> Thus, WLC and its negative impacts can spread across all spheres of society, much like a wild fire.

### **3.3.3 Positive Results flowing from Work-Life Balance**

There are many positive consequences associated with the implementation of WLB initiatives within organizations. For instance, studies reveal that "there is a consistent relationship between access to or use of work-family policies and job satisfaction."<sup>201</sup> Moreover, job satisfaction has been associated with reduced job stress, lower emotional exhaustion, fewer health-related symptoms, and increased productivity.<sup>202</sup> Furthermore, employees are more committed to their workplaces when they are satisfied with the range of WLB practices available to them and feel encouraged to use them.<sup>203</sup> In turn, greater levels of job satisfaction and organizational commitment allow for the recruitment and retention of talented people in the competitive labour market.<sup>204</sup>

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<sup>200</sup> *Ibid.*

<sup>201</sup> Korabik, Lero & Richardson, *supra* note 9 at 42.

<sup>202</sup> *Ibid.* at 43.

<sup>203</sup> *Ibid.*

<sup>204</sup> *Ibid.* at 50.

Research reveals that employers that help their workers achieve WLB can decrease absenteeism rates in the following ways: By 25 percent if they lower employee workloads from 50 hours per week to 45 hours per week; by 6 percent if they help workers eliminate high levels of work-to-family interference; by 3.5 percent if they help them lower family-to-work interference; and, by 8 percent if they help reduce caregiver strain.<sup>205</sup> With respect to health care costs, Duxbury states that decreasing role overload would reduce, on an annual basis, physician visits by 25 percent, hospital visits by 23 percent, and in-patient stays by 17 percent.<sup>206</sup>

### **3.3.4 Return-on-Investment from Work-Life Balance**

Many organizations have cultivated positive results from their WLB efforts. For instance, in terms of reduced costs, AT&T's tele-commuting strategy cost \$2.1 million to develop, but has saved the organization \$500 million since 1991.<sup>207</sup> Furthermore, the company has saved \$3,000 per office and a total of \$500 million through the elimination of office space that its tele-commuting members no longer

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<sup>205</sup> Duxbury, *Standing Still*, *supra* note 168 at 14.

<sup>206</sup> *Ibid.* at 17.

<sup>207</sup> Korabik, Lero & Richardson, *supra* note 9 at 61.

require.<sup>208</sup> In addition, due to IBM's insistence on tele-commuting, 25 percent of its worldwide staff works from home, saving the company \$700 million in office costs.<sup>209</sup> Furthermore, British Telecom has also saved \$400 million in property costs since implementing various FWAs, including as flex-work strategies.<sup>210</sup> "Aetna Life & Casualty Co. halved the rate of resignations among new mothers by extending its unpaid parental leave to six months, saving \$1 million per year in hiring and training expenses."<sup>211</sup>

With respect to work quality and productivity, in surveys conducted at Amway Corporation, Bristol-Myers Squibb, Honeywell, Kraft Foods, Lucent Technologies, and Motorola, "65 [percent] of managers and 87 [percent] of employees reported that a flexible arrangement had a positive or very positive impact on quality of work,"<sup>212</sup> while "70 [percent] of managers and 87 [percent] of employees reported that a flexible arrangement had a positive or very

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<sup>208</sup> Canadian Telework Association, *Cost-Benefits* (2008), online: InnoVisions Canada <<http://www.ivc.ca/costbenefits.htm>>.

<sup>209</sup> Korabik, Lero & Richardson, *supra* note 9 at 62.

<sup>210</sup> S. Vermeulen, *Business Case: Work/Life Balance* (11 December 2007), online: Work Info <[http://www.workinfo.com/articles/BC\\_worklife\\_balance.htm](http://www.workinfo.com/articles/BC_worklife_balance.htm)>.

<sup>211</sup> *Ibid.*

<sup>212</sup> Boston College Centre for Work & Family, *Measuring the Impact of Workplace Flexibility: Findings from the National Work Life Measurement Project* (2000) at 3, online: <[http://www.bc.edu/centers/cwf/research/publications/meta-elements/pdf/BCCWF\\_Flex\\_Impact\\_Final\\_Report.pdf](http://www.bc.edu/centers/cwf/research/publications/meta-elements/pdf/BCCWF_Flex_Impact_Final_Report.pdf)>.

positive impact on productivity."<sup>213</sup> Pfizer Canada reported a 30 percent increase in its translation department's productivity due to the provision of tele-commuting opportunities.<sup>214</sup> In addition, Cisco Systems claims that it has received \$277 million in productivity savings by providing FWAs.<sup>215</sup> With respect to tele-commuting, "69 percent of employees surveyed cited higher productivity when working from home and 75 percent said the timeliness of their work improved."<sup>216</sup>

There are also positive gains in terms of organizational esteem since employers can cultivate excellent reputations in the public sphere by implementing WLB strategies. Indeed, many surveys use the provision of WLB initiatives as a means to judge whether an organization is a "top employer."<sup>217</sup> In turn, raising one's reputation as

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<sup>213</sup> *Ibid.*

<sup>214</sup> Korabik, Lero & Richardson, *supra* note 9 at 63.

<sup>215</sup> D. Dubie, "Cisco Saves \$277 million through Telework Strategy" (25 June 2009), online: IT World Canada < <http://www.itworldcanada.com/news/cisco-saves-277-million-through-telework-strategy/136017>>.

<sup>216</sup> *Ibid.*

<sup>217</sup> See: BC's Top Employers, online: Canada's Top 100 <<http://www.canadastop100.com/bc/>>; *Canada's Top 100 Employers*, online: Canada's Top 100 <<http://www.canadastop100.com/index.html>>; *Canada's Top 100 Family-Friendly Employers*, online: Canada's Top 100 <<http://www.canadastop100.com/family/>>; *Canada's Top Employers for Young People*, online: Canada's Top 100 <[http://www.canadastop100.com/young\\_people/](http://www.canadastop100.com/young_people/)>; *Financial Post's Ten Best Companies to Work For*, online: Canada's Top 100 <<http://www.canadastop100.com/fp10/>>.

a "caring employer" can aid in retaining key personnel and attracting talented applicants. For instance, Arup Laboratories, a medical company in Utah, reports that by offering FWAs, it has doubled its workforce from 700 people in 1992, to 1,700 employees in 2004.<sup>218</sup> It also reduced turnover from 22 percent to 11 percent.<sup>219</sup> In addition, British Telecom's absenteeism rate is down to 3.1 percent (while the UK average is 8.5 percent), with resulting productivity improvements of 20 percent.<sup>220</sup> Furthermore, in surveys conducted at Amway Corporation, Bristol-Myers Squibb, Honeywell, Kraft Foods, Lucent Technologies, and Motorola, "76% of managers and 80% of employees indicated that FWAs had positive effects on retention."<sup>221</sup>

### **3.3.5 Summary**

As this portion of the thesis reveals, the disadvantages associated with WLC are immense, and negatively affect the worker, the employer, and society as a whole. "For the employee, consequences can have a negative impact on work and life satisfaction, on well-being, mental health, physical health and on

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<sup>218</sup> Korabik, Lero & Richardson, *supra* note 9 at 62.

<sup>219</sup> *Ibid.*

<sup>220</sup> Vermeulen, *supra* note 210.

<sup>221</sup> Boston College Centre for Work & Family, *supra* note 212 at 3.

individual performance in organizations."<sup>222</sup> For employers, the costs of not adequately dealing with members' WLC issues include poor performance, absenteeism, increased sick leave, higher rates of turnover, and increased recruitment and training costs.<sup>223</sup>

Enlightened organizations adapt in the management of their workers by implementing a variety of initiatives in collaboration with their employees' input, such as: FWAs, which include flex-time, time off for the provision of family care, job sharing, and telecommuting; child care supports, such as on-site or near-site care, subsidies, referral services, and parenting networks; and, re-designed career pathways that accommodate workers and their status as parents and caregivers.<sup>224</sup> Moreover, by implementing WLB practices and promoting their use by employees, organizations can cultivate many positive results. First, there are cost benefits associated with reductions in absenteeism, presenteeism, and turnover. In particular, "lower turnover rates not only result in lower recruitment and replacement costs, they also signify greater organizational

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<sup>222</sup> G. Schoenfeld, *Work-Life Balance: An MBA Alumni Report* (13 October 2005) at 1, online: Graduate Management Admission Council <[http://www.gmac.com/NR/rdonlyres/1BD3593C-5450-4A76-8CEA-8FE1BEAEE263/0/RR0509\\_WorkLifeBalance.pdf](http://www.gmac.com/NR/rdonlyres/1BD3593C-5450-4A76-8CEA-8FE1BEAEE263/0/RR0509_WorkLifeBalance.pdf)>.

<sup>223</sup> *Ibid.*

<sup>224</sup> Moore & Spinks, *supra* note 131 at 31; Mohan, *supra* note 132 at 31-33.

commitment, less loss of institutional or firm-specific knowledge and hence more ROI for the employer."<sup>225</sup> Second, successful WLB initiatives can provide for the cultivation of physically-fit, emotionally-fit, and mentally-fit employees, which in turn, can decrease health care costs. Third, productivity levels can be enhanced because of reductions in worker stress, absenteeism and burnout. Fourth, by implementing WLB initiatives, employers can engender high levels of organizational commitment from their employees, as well as attract new members, because this action sends the message that it is an enlightened and caring company.

### **3.4 Family Status Discrimination**

#### **3.4.1 Introduction**

"Family status" is a protected human rights ground in most Canadian jurisdictions. However, it has not received the same level of attention from courts and tribunals as other grounds, such as disability, age, and sex.<sup>226</sup> As a result, "it is arguably one of the least

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<sup>225</sup> Korabik, Lero & Richardson, *supra* note 9 at 55.

<sup>226</sup> E.J. McIntyre & J. Pickel, *Accommodating Family Responsibilities in the Workplace* (2008) at 2, online: Cavalluzzo Hayes Shilton McIntyre & Cornish LLP <<http://www.cavalluzzo.com/publications/newsletters/McIntyre&Pickel%20-%20paper%20on%20accommodation%20of%20family%20status.pdf>>.

understood grounds of protection under human rights legislation."<sup>227</sup> Adding to the confusion is that the definition of "family status" is not easily explained, particularly since many provincial human rights statutes do not define the term.

Family status discrimination is now increasingly under the spotlight due to demographic shifts, changes in family composition, and growing concerns about workers achieving WLB and finding equilibrium between their various work and family roles.<sup>228</sup> In particular, workers are bringing legal actions on the basis that their employers must accommodate their requests for flexibility in scheduling or for short-term leave arrangements due to needs associated with fulfilling family responsibilities, particularly in relation to child-care and elder-care. As a result, it is submitted that organizations must understand their employees' WLB needs and implement supportive initiatives in order to overcome the legal challenges associated with family status in the Canadian context. Legal research suggests that claims of family status discrimination in the employment setting, just like legal proceedings related to other human

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<sup>227</sup> C. Andree, M. Le Francois & J. Vermiere, *Family Status: Evolving Trends and the Need for Novel Accommodation* (2010) at 2, online: Gowlings LLP <<http://www.gowlings.com/courses/ELLSeries2010/pdfs/van/Family%20Status%20Pape.pdf>>.

<sup>228</sup> *Ibid.*

rights grounds, involve balancing workers' and their employers' economic and social interests, as well as their legal protections.

### 3.4.2 Statutory Protection of Family Status

The *Charter* does not explicitly protect against family status discrimination under its "equality clause" in section 15(1), which prohibits discrimination based on enumerated grounds:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.<sup>229</sup>

However, the *Canadian Human Rights Act* prohibits family status discrimination in sections 3(1) and 7:

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, **family status**, disability and conviction for which a pardon has been granted.<sup>230</sup> [Emphasis added]

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<sup>229</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s. 15(1) [*Charter*].

<sup>230</sup> *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, s. 3(1) [*CHRA*].

7. It is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any individual, or

(b) in the course of employment, to differentiate adversely in relation to an employee,

on a prohibited ground of discrimination.<sup>231</sup>

In the provincial context, the *BC Human Rights Code* prohibits family status discrimination in section 13(1), which states:

13 (1) A person must not

(a) refuse to employ or refuse to continue to employ a person, or

(b) discriminate against a person regarding employment or any term or condition of employment

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, **family status**, physical or mental disability, sex, sexual orientation or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the

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<sup>231</sup> *Ibid.*, s. 7.

employment or to the intended employment of that person.<sup>232</sup> [Emphasis added]

Family status is also a protected human rights ground in Alberta<sup>233</sup>, Saskatchewan<sup>234</sup>, Manitoba<sup>235</sup>, Ontario<sup>236</sup>, Nova Scotia<sup>237</sup>, Prince Edward Island<sup>238</sup>, Newfoundland and Labrador<sup>239</sup>, Yukon<sup>240</sup>, Northwest Territories<sup>241</sup>, and Nunavut<sup>242</sup>. The situation in Quebec and New Brunswick is confusing because while Quebec's *Charter of Human Rights and Freedoms* protects against discrimination of the grounds of "civil status" and "social condition,"<sup>243</sup> and New Brunswick's *Human Rights Act* protects against discrimination based on "marital status"

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<sup>232</sup> BC *Human Rights Code*, R.S.B.C. 1996, c. 210, s. 13 [BCHRC].

<sup>233</sup> Alberta *Human Rights Act*, R.S.A. 2000, c. A-25.5, s. 7(1) [AHRA].

<sup>234</sup> Saskatchewan *Human Rights Code*, S.S. 1979, c. S-24.1, s. 16(1) [SHRC].

<sup>235</sup> Manitoba *Human Rights Code*, C.C.S.M. c. H175, s. 9 [MHRC].

<sup>236</sup> Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, s. 5(1) [OHRC].

<sup>237</sup> Nova Scotia *Human Rights Act*, R.S.N.S. 1989, c. 212, s. 5(1)(h) [NSHRA].

<sup>238</sup> Prince Edward Island *Human Rights Act*, R.S.P.E.I. 1988, c. H-12.1, s. 6(1) [PEIHRA].

<sup>239</sup> Newfoundland and Labrador *Human Rights Act*, S.N.L. 2010, c. H-14, s. 9 [NLHRA].

<sup>240</sup> Yukon *Human Rights Act*, R.S.Y. 2002, c. 116, s. 7(k) [YHRA].

<sup>241</sup> Northwest Territories protects against discrimination on the ground of "family status" and "family affiliation"--*Northwest Territories Human Rights Act*, S.N.W.T. 2002, c. 18, ss. 5(1), 7(1) [NWTHTRA].

<sup>242</sup> Nunavut *Human Rights Act*, S.Nu. 2003, c. 12, s. 7 [NHRA].

<sup>243</sup> Quebec *Charter of Human Rights and Freedoms*, R.S.Q. c. C-12, s. 10 [Quebec Charter].

and "social condition,"<sup>244</sup> the protections "may or may not include protection from discrimination based on family status."<sup>245</sup>

### 3.4.3 Definition of Family Status

The definition of "family status" differs across Canada in the various human rights statutes, and falls into three categories:

1. Narrow Definition: Family status is defined as "the status of being in a parent and child relationship" in Ontario<sup>246</sup>, Saskatchewan<sup>247</sup>, Nova Scotia<sup>248</sup>, and Newfoundland and Labrador<sup>249</sup>. This definition seems to preclude all relationships other than those between parents and their children.<sup>250</sup>
2. Broad Definition: In Nunavut and Alberta, family status is defined broadly as "the status of being related to another person by blood, marriage or adoption,"<sup>251</sup> which seems to

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<sup>244</sup> New Brunswick *Human Rights Act*, R.S.N.B. 1973, c. H-11, s. 3(3) [NBHRA].

<sup>245</sup> McIntyre & Pickel, *supra* note 226 at 1.

<sup>246</sup> OHRC, *supra* note 236, s. 10(1).

<sup>247</sup> SHRC, *supra* note 234, s. 2.1(h.1).

<sup>248</sup> NSHRA, *supra* note 237, s. 3(h).

<sup>249</sup> Note that "child" includes adopted child and "parent" includes an adoptive parent--NLHRA, *supra* note 239, s. 2(e.1).

<sup>250</sup> Andree, Le Francois & Vermiere, *supra* note 227 at 3.

<sup>251</sup> NHRA, *supra* note 242, s. 1; AHRA, *supra* note 233, s. 44(1).

include obligations associated with different family relationships.

3. No Definition: The *CHRA* and *BCHRC* do not define family status.

In addition, while "the Supreme Court of Canada [has not] provided a detailed analysis of the definition and scope of family status,"<sup>252</sup> it has provided clarification concerning what family status protection entails:

To be free from discrimination based on the existence or absence of a relationship with another person (e.g. because you are a parent), but because of the identity of the person with whom you have a relationship (e.g. because you are X's parent).<sup>253</sup>

#### **3.4.4 Stages of Inquiry in Family Status Discrimination Claims**

There are two stages in determining whether an employer's inability to accommodate a worker's need for flexibility constitutes family status discrimination. The first step (associated with family status, sex, disability, etc.) is that the complainant has to demonstrate

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<sup>252</sup> Andree, Le Francois & Vermiere, *supra* note 227 at 3.

<sup>253</sup> *Ibid.*, citing *B. v. Ontario (Human Rights Commission)*, [2002] 3 S.C.R. 403.

a *prima facie* case of discrimination. If the complainant successfully passes this step, then the inquiry moves to the second stage, where the employer can defend its differential treatment on the ground that the practice is a *bona fide occupational requirement* (BFOR), or that further accommodative measures would result in undue hardship to the organization.

Family status discrimination claims are complex because Canadian jurisprudence reveals two conflicting approaches in determining whether there is a *prima facie* case of discrimination. The first approach--which is used in BC--is restrictive and requires an employee to demonstrate a serious interference with a substantial family obligation, and a change to employment terms and conditions.<sup>254</sup> Consequently, decision-makers using this approach "often do not ever reach the BFOR/accommodation step of the analysis" since the *prima facie* case for discrimination is not established.<sup>255</sup> The second approach, which is used in the federal jurisdiction and other provinces, disregards the restrictive approach used in BC, and analyzes family status in the same manner as other

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<sup>254</sup> *Ibid.*

<sup>255</sup> McIntyre & Pickel, *supra* note 226 at 5.

human rights grounds.<sup>256</sup> Specifically, decision-makers criticize the restrictiveness of the first approach on the basis that courts and tribunals, in determining whether there is *prima facie* discrimination, "take into account factors that may be more appropriately taken into account at the reasonable accommodation step of the analysis."<sup>257</sup> In sum, by examining these approaches and the tensions therein, it becomes apparent that organizations that fail to understand and adapt to their workers' family responsibilities not only face negative economic and social consequences, but also severe legal consequences.

### **3.4.5 Examining the Divergent Approaches in Family Status Discrimination Jurisprudence**

#### **3.4.5.1 Strict Approach to Family Status Discrimination**

The restrictive approach to family status discrimination derives from the BC Court of Appeal's decision in *H.S.A.B.C. v. Campbell River & North Island Transition Society*.<sup>258</sup> In this case, a female employee, who was the mother of a psychologically-disabled child, argued that the employer discriminated against her on the basis of family status

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<sup>256</sup> Andree, Le Francois & Vermiere, *supra* note 227 at 3.

<sup>257</sup> McIntyre & Pickel, *supra* note 226 at 5.

<sup>258</sup> *Health Sciences Association of British Columbia v. Campbell River and North Island Transition Society* (2004), 240 D.L.R. (4th) 479 (BCCA) [*Campbell River*].

because it did not accommodate her care-giving needs. Specifically, the employer changed the time when her shift ended, from 3 p.m. to 6 p.m., which disallowed her from caring for her child at the conclusion of the school day. At the initial level of proceedings, the arbitrator dismissed the grievance on the ground that "protections against family status discrimination only dealt with the status of being a parent and child, not with family responsibilities such as child care arrangements."<sup>259</sup> However, the BC Court of Appeal reversed this decision and remitted the grievance back to arbitration for a resolution on the employer's duty to accommodate.

The decision in *Campbell River* is important because while the Court held that family status also relates to family responsibilities, it rejected the approach from *Brown*<sup>260</sup> and *Woiden*<sup>261</sup>, which suggest that "any conflict between a work requirement and family responsibilities would constitute a *prima facie* case of discrimination."<sup>262</sup> The BC Court of Appeal rejected this broad approach on the basis that it "would subject employers to an unfairly

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<sup>259</sup> McIntyre & Pickel, *supra* note 226 at 6.

<sup>260</sup> *Brown v. Department of National Revenue (Customs and Excise)*, [1993] C.H.R.D. No. 7 (CHRT) [*Brown*].

<sup>261</sup> *Woiden v. Lynn*, [2002] C.H.R.D. No. 18 [*Woiden*].

<sup>262</sup> McIntyre & Pickel, *supra* note 226 at 6.

broad duty to accommodate all parents' obligations."<sup>263</sup> Instead, it held that a *prima facie* case of family status discrimination would only be made out if three elements are proven:

An employer imposes a "change" in a term or condition of employment;

This change results in a "serious interference" with family obligations; and,

The family obligation is a "substantial" family duty that only the particular employee can reasonably and practically fulfill.<sup>264</sup>

The BC Court of Appeal ruled that the complainant mother's circumstances met this test on the basis that the scheduling change implemented by the employer prevented her from fulfilling her work and non-work responsibilities because it did not allow her to provide adequate after-school care to her high-needs son.

The Court, more importantly, proclaimed that "in the vast majority of situations in which there is a conflict between a work requirement and a family obligation it would be difficult to make out a

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<sup>263</sup> Andree, Le Francois & Vermiere, *supra* note 227 at 4.

<sup>264</sup> *Ibid.*, citing *Campbell River*, *supra* note 258 at para. 39.

*prima facie* case."<sup>265</sup> Thus, because of *Campbell River*, the employer, in the vast majority of cases in BC, does not have to meet the burden of demonstrating a BFOR or that the duty to accommodate would lead to undue hardship, since most complainants will not be able to pass the strict conditions required to show *prima facie* family status discrimination.<sup>266</sup>

Subsequent rulings have used the test from *Campbell River* and, in most instances, have dismissed complaints at the first step of analysis--the *prima facie* discrimination stage--on one or more grounds, including: (1) the claims involve "everyday" obligations, rather than "substantial" family obligations; (2) the family's responsibilities arise from the employee's choices rather than from unavoidable circumstances; and (3) an employee has an primary obligation to ensure through proper scheduling of his/her time that there is no conflict between employment and family responsibilities.<sup>267</sup>

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<sup>265</sup> *Campbell River*, *ibid.*

<sup>266</sup> M. MacNeil, "Labour Law and Discrimination on the Basis of Marital and Family Status" (Labour Law Conference--The Charter and Human Rights at Work: 25 Years Later, University of Western Ontario, 27 October 2007) at 16, online: Carleton University <[http://http-server.carleton.ca/~mmacneil/Family\\_Status\\_MacNeilPaperRevisedAugust08.pdf](http://http-server.carleton.ca/~mmacneil/Family_Status_MacNeilPaperRevisedAugust08.pdf)>.

<sup>267</sup> McIntyre & Pickel, *supra* note 226 at 9.

In *Palik v. Lloydminster Public School Division No. 99*,<sup>268</sup> the mother of a diabetic, insulin-dependent teenager requested two days of unpaid leave to attend his hockey tournament, which was occurring in another city, in order to monitor his blood sugar levels.<sup>269</sup> Even though the employer denied her request, she attended the tournament, and lost her job upon her return. The Saskatchewan Human Rights Tribunal held that parental obligations could be viewed on a continuum with necessary duties on one end, and discretionary responsibilities on the other.<sup>270</sup> Furthermore, a determination of whether an obligation is a "substantial parental obligation" requires an objective assessment of the particular child's needs/maturity and the demands associated with meeting the obligations.<sup>271</sup> With respect to the complainant's facts, the "test [was] based on a reasonable person's assessment of whether participation in the hockey tournament was necessary for the son's well-being, and whether the mother's involvement was necessary."<sup>272</sup> While the Tribunal agreed that she was fulfilling a parental obligation

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<sup>268</sup> (2006), 58 C.H.R.R. D/149 (Sask. H.R.T.).

<sup>269</sup> D.M. Seale, *Case Law Snapshot post-Campbell River* (April 2010) at 1, online: DonnaSeale.com <<http://donnaseale.ca/wp-content/uploads/2010/05/Case-Law-Snapshot2.pdf>>.

<sup>270</sup> J. Ross, *Family Status: Accommodating Parental Obligations in the Workplace* (2007) at 24, online: Northwest Territories Human Rights Commission <[http://www.nwthumanrights.ca/cashra2007/documents/final\\_documents/8\\_ross\\_family\\_obligations.pdf](http://www.nwthumanrights.ca/cashra2007/documents/final_documents/8_ross_family_obligations.pdf)>.

<sup>271</sup> *Ibid.*

<sup>272</sup> *Ibid.*

by monitoring his blood sugar levels, it nevertheless dismissed her claim for family status discrimination on the basis that her son's participation in the hockey tournament was not essential to his well-being, and that "there had been no change in employer policy with respect to the granting of leaves, and even if there had been a change, it did not constitute a serious interference with the complainant's substantial parental obligation."<sup>273</sup>

In *British Columbia Public School Employers' Assn. v. B.C.T.F.*,<sup>274</sup> the complainant teacher was granted maternity leave for one year, but when she was expected to return to work, she requested an extension that involved a job sharing arrangement for six months because she wanted to spend more time with her first child, who was still breastfeeding, as well as suffering from sleeping difficulties.<sup>275</sup> After the employer denied her request, she brought a claim for family status discrimination, which was dismissed by the arbitrator on the ground that there was no *prima facie* discrimination because "the employee's circumstances were commonplace...[and] there were steps [she] could

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<sup>273</sup> MacNeil, *supra* note 266 at 16.

<sup>274</sup> (2006), 155 L.A.C. (4th) 411 (B.C.L.R.B.).

<sup>275</sup> Seale, *supra* note 269 at 3.

take to self accommodate (such as pumping, and having the child brought to the workplace to breastfeed)."<sup>276</sup>

In *Evans v. University of British Columbia*,<sup>277</sup> the employee was a mother who could not find daycare facilities for her son after parental leave. The BC Human Rights Tribunal dismissed the family status discrimination complaint on the basis that her circumstances were not "extraordinary" and that it was her responsibility to make suitable child-care arrangements during the period of her leave.<sup>278</sup> The Tribunal followed the "flood-gates" rationale in *Campbell River*, which fears that "a finding of *prima facie* discrimination [will] have to be made in virtually every instance a full-time employee [seeks] to go part-time based on family needs."<sup>279</sup>

In *Rawleigh v. Canada Safeway Limited*,<sup>280</sup> the employee was a father/husband whose wife had a degenerative eye condition that caused diminishing vision.<sup>281</sup> By 2002, his wife was declared to be legally blind, and she took leave from her job as a teacher, and

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<sup>276</sup> *Ibid.*

<sup>277</sup> [2007] B.C.H.R.T.D. No. 348, aff'd [2008] B.C.J. No. 1453 (S.C.).

<sup>278</sup> Andree, Le Francois & Vermiere, *supra* note 227 at 5.

<sup>279</sup> Ross, *supra* note 270 at 18.

<sup>280</sup> (2009) C.H.R.R. Doc. 09-2136 (Alta. H.R.P.).

<sup>281</sup> Seale, *supra* note 269 at 8.

subsequently required counselling to help her deal with emotional trauma deriving from her condition.<sup>282</sup> The complainant was a long-standing employee of the company whose work schedule was changed, with only a few days notice, to require him to work night shifts even though he never did so in the past, and in spite of his wife suffering from night blindness and other health conditions. The Tribunal found in favour of the employee after applying the *Campbell River* test. It held that "the requirement to work the night shift was a 'change' from the employee's previous schedule...and the employer was unable to establish it had accommodated Mr. Rawleigh to the point of undue hardship" because it did not explore all options, including a transfer to another store or to a part-time position.<sup>283</sup>

In *Falardeau v. Ferguson Moving (1990) Ltd.*,<sup>284</sup> the employee was a single father who had sole custody of his son. His employment as a mover included irregular and overtime hours.<sup>285</sup> His employer asked him to work overtime on one occasion, but he declared that he was unable to start a new job after 4 p.m. because he had to care for

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<sup>282</sup> *Ibid.* at 9.

<sup>283</sup> *Ibid.* at 10; Andree, Le Francois & Vermiere, *supra* note 218 at 6.

<sup>284</sup> 2009 BCHRT 272.

<sup>285</sup> Seale, *supra* note 269 at 8.

his child.<sup>286</sup> Upon his refusal, he was dismissed from his position on the basis that he was required to be available for all overtime work to meet customer needs. The Tribunal held that there was no *prima facie* case of family status discrimination because the facts involved normal parenting obligations rather than special family responsibilities. In particular, the Tribunal found that: (1) there was no change to the employee's work or child-care demands; (2) there was no evidence that his son required unique or special care; and, (3) there was no evidence that only he was qualified to care for him.<sup>287</sup>

### **3.4.5.2 Broad Approach to Family Status Discrimination**

In opposition to the approach used in *Campbell River* and the decisions described above, decision-makers in jurisdictions outside of BC contend that there is no justification to single out the family status ground and use "such a restricted approach for the determination of whether employer actions or policies constitute *prima facie* evidence of

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<sup>286</sup> D. Launay, *Employees' Family Obligations: To What Extent must they be Accommodated?* (2 February 2010) at 1, online: Fasken Martineau DuMoulin LLP <[http://www.fasken.com/files/Publication/4e7ab843-c4ac-4b37-849e-e842a6d23ca2/Presentation/PublicationAttachment/f0836708-88fc-45a5-b8b1-eb8b386d1128/HR\\_Space\\_-\\_February\\_2\\_\\_2010\\_-\\_Dominique\\_Launay\\_-\\_ENGL.pdf](http://www.fasken.com/files/Publication/4e7ab843-c4ac-4b37-849e-e842a6d23ca2/Presentation/PublicationAttachment/f0836708-88fc-45a5-b8b1-eb8b386d1128/HR_Space_-_February_2__2010_-_Dominique_Launay_-_ENGL.pdf)>.

<sup>287</sup> *Ibid.* at 2; Seale, *supra* note 269 at 8.

discrimination."<sup>288</sup> Instead, "these cases [assert] that all protected grounds under human rights legislation should be treated equally, requiring the duty to accommodate to be balanced against the hardship to the employer."<sup>289</sup>

The Canadian Human Rights Tribunal refused to apply *Campbell River* in its decision in *Hoyt v. Canadian National Railway*.<sup>290</sup> With respect to the facts, the employer placed the complainant on unpaid leave for three months, rather than accommodate her pregnancy.<sup>291</sup> The employer then offered her a different position after three and half months, which required her to work Saturdays when her husband was at work. She accepted the new position, but was unable to find a child-care provider for three of her Saturday shifts.<sup>292</sup> She requested a scheduling change to weekdays, but the employer denied this, declaring that she had to take unpaid leave for the three shifts.

The Tribunal, in ruling that CN discriminated against the employee based on family status, rejected the *Campbell River* approach. It held that "it was inappropriate to create a different *prima*

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<sup>288</sup> MacNeil, *supra* note 266 at 19.

<sup>289</sup> Andree, Le Francois & Vermiere, *supra* note 227 at 5.

<sup>290</sup> [2006] C.H.R.D. No. 33 [*Hoyt*].

<sup>291</sup> McIntyre & Pickel, *supra* note 226 at 12.

<sup>292</sup> *Ibid.* at 13.

*facie* case test for family status versus other prohibited grounds of discrimination."<sup>293</sup> Moreover, it found that the BC Court of Appeal's concerns about possible hardships suffered by employers in trying to accommodate family status was best left to the second stage of discrimination analysis, when the employer must show that its accommodative measures are proper and that going beyond them would create undue hardship, or that the differential treatment is a BFOR.<sup>294</sup>

The Tribunal held "that 'family status' included the specific parental duty to care for a child when child-care was unavailable."<sup>295</sup> Thus, the employee proved a *prima facie* case of discrimination by showing that "she was a parent incurring the duties and obligations of parenthood, had made attempts to self-accommodate but still needed help from her employer."<sup>296</sup> Furthermore, the Tribunal found that the employer failed to provide adequate accommodative measures because while it had workers who could cover the complainant's weekend shifts, it did not provide evidence about why using them

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<sup>293</sup> Seale, *supra* note 269 at 1.

<sup>294</sup> *Ibid.* at 2.

<sup>295</sup> J.G. Howard, *Accommodating Parental Duties: The New Frontier of Human Rights* (2008) at 1, online: Shapiro Hankinson & Knutson LLP <[http://www.shk.ca/docs/SHK\\_Accommodating\\_Parental\\_Duties.pdf](http://www.shk.ca/docs/SHK_Accommodating_Parental_Duties.pdf)>.

<sup>296</sup> *Ibid.*

would constitute undue hardship in meeting its duty to accommodate.<sup>297</sup>

The rationale in *Hoyt* was followed in the 2007 Federal Court decision in *Johnstone v. Canada (Attorney-General)*<sup>298</sup>, which involved a husband and wife working for the same employer. The employer's policy that required employees to work rotating shifts was held to be *prima facie* family status discrimination because it disallowed both parents from finding adequate child-care support.<sup>299</sup> Furthermore, the employer's offer to the complainant wife of a reduced-hours shift did not fulfill the organization's duty to accommodate because it compelled her to work part-time.<sup>300</sup> Moreover, the decision in *Johnstone* challenges *Campbell River* in two important ways:

1. It covers all workplace policies, not only changes to policies;<sup>301</sup> and,

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<sup>297</sup> *Ibid.* at 2.

<sup>298</sup> [2007] F.C.J. No. 43, aff'd [2008] F.C.J. No. 427 (C.A.).

<sup>299</sup> Andree, Le Francois & Vermiere, *supra* note 218 at 5.

<sup>300</sup> *Ibid.*

<sup>301</sup> HR Compliance Insider, *How Far Must You Go to Accommodate Scheduling Needs of Working Parents?* (March 2010), online: HR Compliance Insider <<http://www.hrcomplianceinsider.com/just-cause/hr-compliance/work-life-balance-how-far-must-you-go-to-accommodate-scheduling-needs-of-working-parents>>.

2. Employees only need to show that the policy had an adverse impact on them to make a *prima facie* case of family status discrimination, rather than the standard of proving a "serious interference" with "substantial family obligations."<sup>302</sup>

### **3.4.6 Family Status, Bona Fide Occupational Requirement and Reasonable Accommodation**

#### **3.4.6.1 Introduction**

As discussed above, in a family status discrimination proceeding, if the complainant proves *prima facie* discrimination, the case shifts to the employer to show that the impugned policy/practice is a BFOR or that it has met its duty to accommodate up to the point of undue hardship.<sup>303</sup> The next section examines the framework for accommodation analysis within family status discrimination cases.

#### **3.4.6.2 Framework for Bona Fide Occupational Requirement and the Duty to Accommodate<sup>304</sup>**

Human rights statutes across Canada contain BFOR provisions that enable employers to defend against claims of employment-

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<sup>302</sup> *Ibid.*

<sup>303</sup> *Ibid.*

<sup>304</sup> This section uses concurrent research material from Mohan, *supra* note 132.

related discrimination. For instance, section 15(1)(a) of the *CHRA* states the following:

15. (1) It is not a discriminatory practice if
- (a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a **bona fide occupational requirement**.<sup>305</sup> [Emphasis added]

Furthermore, section 13(4) of the *BCHRC* proclaims that the subsections on discrimination "do not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement."<sup>306</sup> In addition, "as part of the BFOR analysis, the employer must demonstrate that it has accommodated the employee up to the point of undue hardship."<sup>307</sup> That is, an organization is not required to accommodate a worker if the accommodation process would result in undue hardship to the employer. In the federal context, section 15(2) of the *CHRA* provides that "health, safety and cost" are to be considered in the undue hardship test:

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<sup>305</sup> *CHRA*, *supra* note 230, s. 15(1)(a).

<sup>306</sup> *BCHRC*, *supra* note 232, s. 13(4).

<sup>307</sup> McIntyre & Pickel, *supra* note 226 at 1.

Section 15...

(2) For any practice mentioned in paragraph (1)(a) to be considered to be based on a bona fide occupational requirement and for any practice mentioned in paragraph (1)(g) to be considered to have a bona fide justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose **undue hardship** on the person who would have to accommodate those needs, considering health, safety and cost.<sup>308</sup>  
[Emphasis mine]

The Supreme Court of Canada has tried to clarify the meaning and application of the concepts of accommodation, undue hardship and BFOR. In 1990, the Supreme Court identified six relevant factors in determining undue hardship in *Central Alberta*: financial cost; impact on a collective agreement; problems of employee morale; interchangeability of the work force and facilities; size of the employer's operations; and, safety.<sup>309</sup> In 1992, the Supreme Court explained in *Renaud*<sup>310</sup> that the accommodation process entails a

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<sup>308</sup> *BCHRC*, *supra* note 232, s. 15(2).

<sup>309</sup> *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, [1990] 2 S.C.R. 489, 72 D.L.R. (4th) 417 [*Central Alberta*].

<sup>310</sup> *Board of School Trustees, School District No. 23 (Central Okanagan) and the Canadian Union of Public Employees v. Renaud*, [1992] 2 S.C.R. 970 [*Renaud*].

bilateral obligation between the employer and the employee, which means that the employee must cooperate in the accommodation process. With respect to undue hardship on an employer, *Renaud* held that "any significant interference with the rights of others will amount to an undue hardship," including scheduling changes that "[place] an additional stress on other employees."<sup>311</sup>

In 1999, in their decisions in *Méiorin*<sup>312</sup> and *Grismer*,<sup>313</sup> the Supreme Court "provided a unified test to be applied consistently to all BFOR defences...[whereby] the employer or service provider must accommodate individuals to the point of undue hardship,"<sup>314</sup> and engage in individualized accommodation.<sup>315</sup> In *Méiorin*, by deciding that employers have to engage in individualized accommodation, the Supreme Court of Canada determined that employers must ask the

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<sup>311</sup> *Ibid.*

<sup>312</sup> *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union (B.C.G.S.E.U.)*, [1999] 3 S.C.R. 3, 176 D.L.R. (4th) 1 [*Méiorin*].

<sup>313</sup> *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868, 181 D.L.R. (4th) 385 [*Grismer*].

<sup>314</sup> Canadian Human Rights Commission, *Bona Fide Occupational Requirements and Bona Fide Justifications under the Canadian Human Rights Act: The Implications of Meiorin and Grismer* (March 2007) at 2, online: Canadian Human Rights Commission <<http://www.chrc-ccdp.ca/pdf/bfore.pdf>>.

<sup>315</sup> M. Lynk, *Disability and the Duty to Accommodate in the Canadian Workplace* at 3, online: Ontario Federation of Labour <[http://www.ofl.ca/uploads/library/disability\\_issues/ACCOMMODATION.pdf](http://www.ofl.ca/uploads/library/disability_issues/ACCOMMODATION.pdf)>.

following questions in dealing with situations that may require accommodation:

Have alternative approaches been investigated that do not have a discriminatory effect, such as individual testing?

If alternative standards have been investigated and found to be capable of fulfilling the employer's purpose, why were they not implemented?

Is it necessary to have all employees meet the single standard for the employer to meet its legitimate purpose? As well, could standards reflective of group or individual differences and capabilities be established?

Is there a way to do the job that is less discriminatory while still accomplishing the employer's business objectives?

Is the standard properly designed to ensure that the desired qualification is met without placing an undue burden on those to whom the standard applies?

Have other parties in the workplace--the union and the individual employee seeking accommodation--fully assisted in the search for a solution?<sup>316</sup>

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<sup>316</sup> *Ibid.*

Furthermore, in *Méiorin*, the Supreme Court established that the following questions arise in determining if a challenged practice is a BFOR:

Is there a standard, policy or practice that discriminates based on a prohibited ground?

Did the employer adopt the standard, policy or practice for a purpose rationally connected to the performance of the job?

Did the employer adopt the particular standard, policy or practice in an honest and good faith belief that it was necessary in order to fulfill that legitimate work-related purpose?

Is the standard, policy or practice reasonably necessary in order to fulfill that legitimate work-related purpose?<sup>317</sup>

In 2008, the Supreme Court further clarified the undue hardship test in its decision in *Hydro Québec*.<sup>318</sup> It held that:

The test is not whether it was impossible for the employer to accommodate the employee's characteristics. The employer does not have a duty

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<sup>317</sup> *Méiorin*, *supra* note 312.

<sup>318</sup> *Hydro-Québec v. Syndicat des employées de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, [2008] 2 S.C.R. 561, 294 D.L.R. (4th) 407 [*Hydro-Québec*].

to change working conditions in a fundamental way, but does have a duty, if it can do so without undue hardship, to arrange the employee's workplace or duties to enable the employee to do his or her work.<sup>319</sup>

### **3.4.6.3 Bona Fide Occupational Requirement and the Duty to Accommodate in the Family Status Realm**

The accommodation analysis stage in family status discrimination proceedings, just like cases involving other human rights grounds, will engage the statutory law and jurisprudence described above. Yet, in reality, "since most cases involving family status discrimination fail to clear the first hurdle of demonstrating a *prima facie* case, there is little consideration of the accommodation stage of the analysis in the case law."<sup>320</sup>

The issue was dealt with recently by the Alberta Human Rights Tribunal in *Rennie v. Peaches and Cream Skin Care*.<sup>321</sup> In that case, the complainant, who worked as an esthetician for twelve years, told the employer that she was unable to work a three-hour evening shift upon her return from maternity leave because she could not find

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<sup>319</sup> *Ibid.*

<sup>320</sup> McIntyre & Pickel, *supra* note 226 at 17.

<sup>321</sup> (2006), 59 C.H.R.R. D/42 (Alta. H.R.T.) [*Rennie*].

suitable child-care at night.<sup>322</sup> However, the employer contended that "the nature of the business required an esthetician with her particular skills...to provide services in the evening."<sup>323</sup> As a result, she was terminated from her position.

The Tribunal decided that there was a *prima facie* case of discrimination with respect to the employee's termination because it related to her family status/obligations. However, it held that the requirement to work an evening shift was a BFOR for her position.<sup>324</sup> Furthermore, on the basis of the factors delineated in *Central Alberta*, the Tribunal found that accommodating the employee by placing her on only day shifts, while others were required to work two evening shifts per week, constituted undue hardship because of "the costs involved, the morale of other employees, and problems with interchangeability of the workforce."<sup>325</sup> Thus, in spite of the lack of consideration of undue hardship in family status cases, *Rennie* follows the Supreme Court's holding in *Renaud* by demonstrating "the significant effort that must be made, when accommodating family

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<sup>322</sup> Seale, *supra* note 269 at 2.

<sup>323</sup> *Ibid.*

<sup>324</sup> *Ibid.*

<sup>325</sup> MacNeil, *supra* note 266 at 20.

responsibilities, of shaping arrangements so that they do not place an undue burden on other employees."<sup>326</sup>

### **3.4.7 Summary**

The conflict between workers' various life roles and their employment duties can produce many negative consequences, including individual issues (such as health concerns), and organizational issues (such as absenteeism and high rates of personnel turnover). Moreover, legal challenges can come from workers who believe that their employers are not sufficiently accommodating their family responsibilities. Thus, the question arises: What lessons must organizations heed in traversing the legal landscape of family status?

First, as the majority of employers in BC are governed by provincial law and not the federal *CHRA*, they must heed *Campbell River* and its holding that "ordinary" challenges associated with fulfilling common parenting obligations (such as making child care arrangements) do not usually prove that the employer has "changed" a term or condition of employment that results in a "serious interference" with "substantial" family obligations.

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<sup>326</sup> *Ibid.* at 21.

Second, the same cannot be said with respect to rulings in other provincial jurisdictions and those that govern federally-regulated employers, since they may use the broad standard found in *Hoyt* and *Johnstone*, whereby the complainant, in order to prove a *prima facie* case of family status discrimination, only needs to show that the employer's conduct had an adverse impact on his/her ability to fulfill family responsibilities.<sup>327</sup>

Third, *Rawleigh* reveals that, in Alberta, "family care-giving obligations outside of parent-child relationships have the potential to create further circumstances employers will need to consider" in ensuring that employees' needs are accommodated in a lawful manner.<sup>328</sup>

Fourth, all employers must consider the unique circumstances of their employees, since substantial changes--such as serious family illnesses, and mental and emotional difficulties incurred by children and elderly relatives--could create barriers in workers' ability to meet various obligations, which could necessitate accommodative measures. In other words, "if a situation is commonplace or preference-based,

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<sup>327</sup> Andree, Le Francois & Vermiere, *supra* note 227 at 6.

<sup>328</sup> *Ibid.*

there may be no obligation to accommodate. But where an employee's family responsibilities are unique or mandatory, the duty to accommodate may be triggered."<sup>329</sup>

Fifth, as per *Renaud*, *Méiorin*, and the other duty to accommodate cases described above, workers must participate in the accommodation process. Examples of employee actions include: informing employers of their accommodation needs (i.e., child care requirements); providing detailed information--such as describing the role conflicts and family stresses they face--in order to create and implement proper accommodative measures; and, availing themselves of resources outside of work (if any) that may reduce the need for accommodative measures from the employer, such as finding child-care facilities through peer networks.<sup>330</sup>

With Canadian human rights jurisprudence in mind, the following circumstances may give rise to claims of family status discrimination against employers:

- Rigid attendance management programs and absenteeism policies that do not accommodate the needs of persons with

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<sup>329</sup> Launay, *supra* note 286 at 2.

<sup>330</sup> McIntyre & Pickel, *supra* note 226 at 19.

various types of care-giving responsibilities;<sup>331</sup>

- The provision of paid or unpaid leaves of absences for employees with needs associated with disability and pregnancy, but the denial of such leaves to employees with care-giving responsibilities;<sup>332</sup>
- The refusal to rearrange work and overtime schedules, which does not give rise to undue hardship to the employer, in order to accommodate employees with care-giving responsibilities;<sup>333</sup> and,
- Travel or relocation requirements that do not acknowledge an employee's care-giving responsibilities.<sup>334</sup>

### **3.5 Conclusion**

It is safe to conclude that employees' pursuit of WLB should not be taken lightly, and that the current focus on achieving balance between one's work and non-work roles is not a labour market and human resources "fad." Indeed, organizations must engage with the

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<sup>331</sup> *Ibid.* at 4.

<sup>332</sup> *Ibid.*

<sup>333</sup> *Ibid.*

<sup>334</sup> *Ibid.*

issue of WLB in order to: (1) adapt to demographic changes occurring in Canadian society, (2) benefit from the strong business case for WLB; and, (3) combat the complex legal issues associated with family status discrimination claims in the employment setting.

It is imperative that all impacted parties--workers, employees, and governments--understand the economic, social and emotional costs associated with WLC, as well as the economic, social and emotional benefits linked to WLB, since this will ensure an appropriately high level of engagement with the issue. However, not all institutions have adapted their cultures to align with the labour market imperative that is WLB. In Chapter 4, it is contended that the legal profession must evolve in order to contend with the negative consequences of WLC, and cultivate the positive results associated with WLB.

## Chapter 4. Turning the 'Cultural' Tide in the Legal Profession

### 4.1 Introduction

Despite the evidence in Chapter 3 describing the reasons why WLB is a social, economic, and legal imperative, many institutions and sectors are insufficiently engaged with the issue. The central premise of this thesis is that the legal profession is one such sector, as it is guilty of being generally unsupportive of its members' pursuit of balance between their work and non-work responsibilities and desires. Specifically, instead of characterizing WLB as a positive goal for legal professionals to achieve, law firms portray WLB in a negative light, as something irrelevant to the real "business" of legal practice. Consequently, this portion of the thesis investigates the legal profession and whether it is, using Lewis Coser's phraseology, a "greedy institution,"<sup>335</sup> by: (1) examining the role of law schools in acculturating future lawyers, particularly the attitudinal, personality and value changes that occur among students, as well as the negative health impacts faced by students during this process; (2) describing the legal profession's WLC culture by examining its components, the role of the billable hours compensation/validation/assessment of optimal performance system in maintaining an anti-WLB culture,

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<sup>335</sup> Coser, *supra* note 39.

survey data about lawyers' experiences, and health care statistics about the physical and emotional toll legal professionals suffer due to a lack of balance in their lives; (3) exploring possible cultural shifts in legal education (such as curriculum changes) and the legal profession (such as through the implementation of alternative billing arrangements and FWAs) by investigating best practices from innovative comparable academic and corporate case studies.

## **4.2 Law Schools: Socializing Future Lawyers**

### **4.2.1 Education Process in Canadian Law Schools**

Legal careers can be varied, but in Canada and the US they begin with a law school education, whereby students complete three years or more to obtain a law degree, known as a LL.B. (Bachelor of Laws) or J.D. (Juris Doctor). Obtaining a law degree, for instance, may take up to six years since law schools in Canada also allow for part-time attendance, which allows people with concurrent life demands (such as family and work) to attain their degree in more than three years (usually six years).

Law schools across Canada have similar first year curricula, which consists of course work in core subjects, such as Criminal Law, Contract Law, Tort Law, Property Law and Constitutional Law.

Furthermore, while there are compulsory upper year courses that a student must take (such as a course on Evidence, as well as seminar-based courses that require original research and a paper), the second and third year curriculum is predominantly based on a student's preference.

Upon attainment of the law degree, graduates have a choice: either complete one year of articling under the supervision of a lawyer; move into another aspect of the legal profession; or, proceed into academia. With respect to the second option, many graduates may choose to forgo the practice of law and enter "non-traditional" legal fields, with the phrase "non-traditional" signifying not practicing law at all. For instance, graduates may decide to work within administrative bodies (such as the workers' compensation boards across Canada, human rights tribunals), government, or the private sector business community.

With respect to the third option, graduates may decide to further their education by attaining graduate degrees--such as the Master of Laws (LL.M.) and/or a doctorate (Ph.D.) in order to enter the academic ranks as professors. At one time, the LL.M. was the highest rank of graduate degree available--thus, many of the older generation of professors at Canadian and American law schools have LL.M. degrees.

There are course-based and thesis-based Master's programs that usually take one to two years to attain. However, the last decade has seen law school graduate programs now offer doctorate degrees, which usually requires four years of course work, compulsory exams, and a written thesis.

In terms of the first (and usual) option, students apply for articling positions that will begin at the conclusion of their law school experience (several months after their third year). Yet, many students apply for summer articling positions that take place in the time between the penultimate year (second year) and ultimate year (third year) of law school. In Ontario and other jurisdictions, however, students can attain summer articling positions after their first year of law school. There is a great deal of competition for these summer articling positions because organizations usually hire-back their summer students to fill articling positions.

Articling occurs under the auspices of a supervising lawyer, and takes place after completion of the LL.B./J.D. The articling process also requires several months of professional legal training which culminates in the writing of a bar examination, which is known by many different terms across Canada. For instance, articling students in BC participate

in the Law Society Admission Program, which consists of nine months of articles under a supervising lawyer, attendance at the Professional Legal Training Course (PLTC) for ten weeks, and passing two qualification exams. Fulfilling these requirements allows one to "qualify for call to the bar and admission as a solicitor of the Supreme Court of British Columbia", hence becoming a member of the Law Society of BC, which is the regulatory body governing all lawyers in the province.<sup>336</sup>

Once a person completes his/her articles, one of six outcomes can occur: (1) he/she can be hired back as a junior associate with the same firm; (2) he/she is not hired back, and can look for a junior associate position in another firm or organization; (3) he/she can enter self employment as a solo practitioner or in partnership; (4) he/she can begin a "non-traditional" legal position (such as employment within administrative bodies, government or in the private sector business community); (5) he/she can enter graduate school to attain an LL.M. and/or Ph.D. in law; or, (6) he/she can leave the legal profession and move onto other challenges.

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<sup>336</sup> Law Society of British Columbia, *Law Society Admission Program* (2010), online: Law Society of British Columbia <[http://www.lawsociety.bc.ca/licensing\\_membership/becoming\\_bc\\_lawyer/admission\\_program.html](http://www.lawsociety.bc.ca/licensing_membership/becoming_bc_lawyer/admission_program.html)>.

#### 4.2.2 Cultural Impact on Law Students

Law schools aim to train students to become successful legal professionals, either as lawyers or in other related fields. Thus, in conjunction with the provision of courses that teach students about jurisprudence and statutory law, law school has been described as "a sort of professional boot camp designed to beat preconceptions and attitudes out of students to teach them to 'think like lawyers.'"<sup>337</sup> Studies reveal, for instance, that law schools produce students who think alike as they move through their educational journey. A study conducted in 1996 that compared American and Korean undergraduates and law students found that the two nations' law students were more alike than their undergraduates in the Bachelor of Arts or Bachelor of Sciences programs on the basis of aggression and competitiveness.<sup>338</sup> Furthermore, a 1991 Australian study found that male and female law students converged in their levels of authoritarianism during law school, with male students becoming less

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<sup>337</sup> S.S. Daicoff, *Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (Washington, D.C.: American Psychological Association, 2004) at 69.

<sup>338</sup> *Ibid.*, citing E.F. Loftus & E-Y. Na, "Attitudes Toward Law and Prisoners, Conservative Authoritarianism, Attribution, and Internal-External Locus of Control: Korean and American Law Students and Undergraduates" (1998) 29 *J. Cross-Cultural Psy.* 595 at 611.

authoritarian and females becoming more authoritarian through the duration of their legal education.<sup>339</sup>

Several studies have also examined the attitudinal and personality changes that occur among law students. For instance, a report found that students became less idealistic during law school.<sup>340</sup> In particular, "their attitudes towards lawyers markedly worsened, becoming less certain, less positive, and more qualified."<sup>341</sup> In addition, a study found that students, by the second year of their law school experience, "become more aware of the difference between law school and the real world, less idealistic about and more disillusioned and disenchanted with the legal system and lawyering."<sup>342</sup> Furthermore, a research project that relied on data collected from a standardized personality test that was administered to students before and after their first year of law school found that students became "less philosophical and introspective; less interested in abstractions, ideas, and the scientific method; less dominant, confident, and

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<sup>339</sup> Diacoff, *ibid.*, citing R.B. Ball & R. Pestell, "Authoritarianism Among Medicine and Law Students" (1991) 25 *Austl. and N.Z. J. Psy.* 265 at 266.

<sup>340</sup> Diacoff, *ibid.*

<sup>341</sup> *Ibid.* at 70, citing D.S. Anderson *et al.*, "Conservatism in Recruits to the Professions" (1973) 9 *Austl. & N.Z. J. Soc.* 42.

<sup>342</sup> Diacoff, *ibid.*, citing L. Levine & K.M. Saunders, "Learning to Think Like a Lawyer" (1994) 29 *U.S.F. L. Rev.* 121 at 146.

sociable; and more anxious and conflicted.<sup>343</sup> Studies also find that students' goals and motives change during legal education. For instance, a 2001 study discovered that students at Florida State University Law School shifted their value systems from appreciating intrinsic goals (such as personal fulfilment and community service) to cherishing more extrinsic rewards (such as higher pay and positions at elite law firms).<sup>344</sup> Specifically, at the conclusion of their first year at law school and in comparison to their pre-law school values, students became less oriented toward "personal growth/self-acceptance, intimacy/emotional connection, and community/societal contribution and less likely to act for interest or inherent satisfaction."<sup>345</sup> Consequently, Dhanaraj suggests that law school "discourages students from becoming fully morally developed, causes emotional detachment, encourages students to devalue their personal convictions, and stifles imagination and personal creativity."<sup>346</sup>

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<sup>343</sup> Diacoff, *ibid.* at 72-73, citing J.M. Hedegard, "The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students" (1979) *Am. B. Found. Res. J.* 791 at 810.

<sup>344</sup> Diacoff, *supra* note 337 at 71, citing L.S. Krieger & K.M. Sheldon, "Does Law School Change Law Students? Values, Motives, and Well-Being in a First Year Class" (2001) [unpublished, archived at Florida State University].

<sup>345</sup> Diacoff, *ibid.*, citing Krieger & Sheldon, *ibid.*

<sup>346</sup> F. Fitzgerald, *Educating Lawyers: How Law Graduates Perceive First Year Law School Educational Practices* (Ph.D., University of British Columbia, 2005) at 18, online: University of British Columbia

### 4.2.3 Law Student Distress

The educational and socialization processes that students undergo at law schools yield negative consequences, and this has been documented for over forty years. For instance, research conducted in 1968 found that law students "felt alienated and tended to withdraw from law school and the practice of law."<sup>347</sup> According to Watson, this was primarily due to the use of the case method--whereby students are taught via lectures about cases, their holdings, and their relevance to the present day--"which tends to alienate students from the people-centered reality of every day law practice."<sup>348</sup> Furthermore, in a 1985 study, researchers gave a standardized psychiatric test to law students and medical students, and found that "law students had a higher rate of psychiatric distress than either medical students or people in general,"<sup>349</sup> in the form of anxiety, depression, hostility, obsessive-compulsivity, overall distress, intensity of symptoms, and total number of symptoms. Consequently, the study concluded that "law students

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<[https://circle.ubc.ca/bitstream/handle/2429/18544/ubc\\_2006-129913.pdf?sequence=1](https://circle.ubc.ca/bitstream/handle/2429/18544/ubc_2006-129913.pdf?sequence=1)>, citing S. Dhanaraj, "Making Lawyers Good People: Possibility or Pipe Dream?" (2001) 28 Ford. Urb. L. J. 2037.

<sup>347</sup> Fitzgerald, *supra* note 346 at 17, citing A.S. Watson, "The Quest for Professional Competence: Psychological Aspects of Legal Education" (1968) 37 Cin. L. Rev. 93.

<sup>348</sup> Fitzgerald, *ibid.*

<sup>349</sup> Diacoff, *supra* note 337 at 115, citing G.A.H. Benjamin & S.B. Shanfield, "Psychiatric Distress in Law Students" (1985) J. Legal Educ. 65 at 67.

are overall quite distressed."<sup>350</sup> In 1986, Benjamin *et al.* retested the individuals studied in the 1985 study by surveying law students before and after their first year of law school, and found that "symptoms of psychiatric distress increased significantly, to a level higher than the mean for the normal population, during first year law school."<sup>351</sup> Moreover, they found that the symptoms of obsessive-compulsiveness and paranoia increased throughout law school and did not decline during the initial years of legal practice. The study concluded that law student distress was related to "legal education's overemphasis on thinking and its under-emphasis on the development of interpersonal skills."<sup>352</sup> These findings were confirmed in a 1994 study that found that depression and other psychological disorders were common among first year law students because of increased levels of isolation from "themselves, each other, their professors, and virtually all previously successful coping mechanisms from their undergraduate experience."<sup>353</sup> In particular, Roach found that the distress faced by law students was due to "isolation from any direction, modeling, or

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<sup>350</sup> Benjamin & Shanfield, *ibid.* at 68.

<sup>351</sup> Fitzgerald, *supra* note 346 at 18, citing G.A.H. Benjamin *et al.*, "The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers" (1986) A.B.F. Res. J. 225 at 247.

<sup>352</sup> Fitzgerald, *ibid.*

<sup>353</sup> Fitzgerald, *ibid.* at 23, citing C.A. Roach, "A River Runs Through It: Tapping into the Informational Stream to Move Students from Isolation to Autonomy" (1994) 36 Ariz. L. Rev. 667.

explicit instruction about what specifically is expected of them during their first year."<sup>354</sup>

Research reveals that students decline mentally and emotionally when they enter law school, as compared to their pre-law health condition. In their study on law students at the University of Arizona, Dammeyer and Nunez discovered that while students were psychologically normal before law school (as revealed in psychological testing), in their first year of legal education and into their initial years of legal practice, they suffered from anxiety, hostility, and depression at levels that were eight to fifteen times higher than those in the general population.<sup>355</sup> These findings were confirmed in 2001, when Krieger and Sheldon discovered that students' mental health status deteriorated after their first year of law school.<sup>356</sup> There was a decline in law students' scores on various measures of well-being (such as positive mood, self-actualization, life-satisfaction), and there was an

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<sup>354</sup> Roach, *ibid.* at 672.

<sup>355</sup> Fitzgerald, *supra* note 346 at 18, citing M.M. Dammeyer & N. Nunez, "Anxiety and Depression among Law Students: Current Knowledge and Future Directions" (1999) 23 *Law and Human Beh.* 55 at 63.

<sup>356</sup> Krieger & Sheldon, *supra* note 344.

increase on the negative measures (such as physical symptoms, negative mood, and depression).<sup>357</sup>

Studies also reveal that one of the ways that law students cope with psychological distress is through substance abuse. In 1977, a study of Michigan law students found that students dealt with alienation and educational dissatisfaction by using alcohol and drugs at levels greater than the population norm for their age cohort.<sup>358</sup> Furthermore, "a 1994 report by the American Association of Law Schools found that law students began depending on alcohol more frequently as law school progressed, perhaps to deal with the stress and anxiety they experienced."<sup>359</sup> In particular, the usage of drugs by third-year law students was higher than among first- or second-year students.<sup>360</sup> Research also reveals that alcohol use and abuse is viewed as a "normal" part of law school life. A 1997 survey of 3,000 students at 15 law schools found that "more than half of the law students reported drinking more than they planned on occasion, and

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<sup>357</sup> Diacoff, *supra* note 337 at 73.

<sup>358</sup> P.D. Carrington & J.J. Conley, "The Alienation of Law Students" (1977) 75 Mich. L. Rev. 887.

<sup>359</sup> Diacoff, *supra* note 337 at 120, citing American Association of Law Schools, "Report of the AALS Special Committee on Problems of Substance Abuse in Law Schools" (1994) 44 J. Legal Educ. 35.

<sup>360</sup> Diacoff, *ibid.* at 135, n. 67.

one third said they drove while intoxicated."<sup>361</sup> Moreover, one third of students alleged that law professors become intoxicated around them, thereby "implicitly endorsing excessive drinking."<sup>362</sup>

#### 4.2.4 Summary

The socialization process within law schools aims to produce students that "think like lawyers." Thus, law school is important for the success of law firms because it teaches students about the proper norms and values required to be accepted as a member of the organization. Indeed, using the terms described in Chapter 2, law students learn the key *perspectives, values, and assumptions* that flow through a law firm. Moreover, aligning themselves with cultural artefacts that are common to the legal profession enables law students to be more easily accepted as members of the workplace team, and better conditioned to move up the employment ladder in order to successfully traverse the journey towards law firm partnership. Thus, in addition to receiving an academic education (through course work and legal writing), law students also gain a cultural education by learning the norms and values that are central to the legal profession.

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<sup>361</sup> *Ibid.* at 120, citing J.M. Burman, "Alcohol Abuse and Legal Education" (1997) 47 J. Legal Educ. 39.

<sup>362</sup> *Ibid.*

The fact is, however, that students have a choice of either conforming to these particular norms, or resisting the socialization process. The vast majority decide to conform because of a personal need to achieve high grades in order to obtain jobs of their choosing. Moreover, as revealed above, conformity leads law students to become more homogeneous in their motives and attitudes. In particular, studies reveal that they become "less motivated by intrinsic, internal values; more motivated by external rewards; and less philosophical, introspective, and interested in abstract ideas."<sup>363</sup> Indeed, the role of law schools in moulding students into proper members of the legal professional is succinctly described by Daicoff:

Despite our original differences in appearance, attitudes, and undergraduate major, by the end of law school we had almost all begun to look like the group of people we thought we would soon join.<sup>364</sup>

Through this socialization process, law students face various types of health-related conditions (anxiety, depression, and substance abuse). Yet, these conditions are not temporary states that disappear once students leave the competitive environment of their academic

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<sup>363</sup> Diacoff, *ibid.* at 75.

<sup>364</sup> *Ibid.*

institutions. Indeed, students face another competitive realm when they enter the legal profession, which defines "success" through the achievement of escalating salaries and law firm partnership at the detriment of fulfilling personal desires and responsibilities. Consequently, the next section will examine the challenges associated with lawyers' pursuit of WLB--challenges that are impacted by the profession's WLC culture, and lead to negative mental, emotional and physical health consequences.

### **4.3 Legal Profession's Work-Life Conflict Culture**

#### **4.3.1 Career Trajectory in the Legal Profession**

In order to practice law, a person has to be admitted to the Bar in his/her province. To be admitted to the BC Bar, for instance, a person requires a law degree; 12 months of articling experience, which includes several months in the Professional Legal Training Course; and passing two examinations.<sup>365</sup>

Upon completion of articles, a lawyer can be hired back by the firm as an associate lawyer, not hired back, decide to leave to move to

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<sup>365</sup> C. Newell, *Factors Identified to Enhance and Hinder Job Satisfaction Among Practicing Lawyers* (M.A., University of British Columbia, 1998) at 2, online: University of British Columbia < [https://circle.ubc.ca/bitstream/handle/2429/7984/ubc\\_1998-0293.pdf?sequence=1](https://circle.ubc.ca/bitstream/handle/2429/7984/ubc_1998-0293.pdf?sequence=1) > .

another firm, or follow another career path.<sup>366</sup> A new associate lawyer provides legal services to a firm's clientele on usually small to medium-sized transactions, in collaboration with senior lawyers and partners. However, as greater experience is gained, the files dealt with by the associate become more substantial, the level of oversight by partners diminishes, and he/she may eventually serve as "the lawyer responsible for coordinating all of a particular client's needs within the firm."<sup>367</sup>

This experience as an associate is important because it "provides partners with a deep pool of information upon which to base a decision regarding promotion to partnership."<sup>368</sup> Specifically, law firms consider associates as potential partners after 6 to 10 years of service, post-call. The partners within a law firm will look at the totality of an associate's career, and harkening back to the discussion on organizational culture in Chapter 2, will examine his/her "fit" with the firm's culture, including his/her participation in social events, interactions with colleagues, the level and quality of work, and personal commitment to the firm, which is usually based on the

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<sup>366</sup> The focus of this thesis is on the experience of lawyers who practice in law firms, rather than those who choose alternative careers (such as working for administrative tribunals and other legal organizations).

<sup>367</sup> Daniels, *supra* note 51 at 806.

<sup>368</sup> *Ibid.*

"ability to work the long hours required to produce enough 'billable'<sup>369</sup> hours for the law firm."<sup>370</sup> Consequently, this thesis will now turn to a discussion of the components of a law firm's organizational culture.

#### **4.3.2 Organizational Culture within Law Firms**

As discussed in Chapter 2, the culture that pervades a workplace is central to the formation of an organization's goals and the strategies used to achieve these goals. In the case of a law firm, members are socialized as to the components of its organizational culture. The first level of workplace culture consists of the firm's *artefacts*, which "are found in the physical and social environment" in which members work.<sup>371</sup> Examples of "physical artefacts" include where the office space is located (i.e., an imposing tower in the downtown core versus a low-rise building in the suburbs); the configuration of the office space (i.e., the provision of corner offices with scenic views to senior partners); and, the amenities and benefits provided to employees.<sup>372</sup> "Social artefacts" refer to the "hierarchical structure, common forms of

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<sup>369</sup> "Billable hours" refer to a law firm's expectation for the number of hours charged annually to clients by a lawyer. The target is usually determined by the lawyer's length of tenure at the firm. However, lawyers are expected to exceed their billable hour targets in order to show that they are "partnership material"--that is, worthy of the move from the rank of associate to that of firm partner.

<sup>370</sup> Newell, *supra* note 365 at 2.

<sup>371</sup> Daniels, *supra* note 51 at 826.

<sup>372</sup> *Ibid.*

expression, and shared stories and myths about group members, corporate founders, and leaders or notable employees."<sup>373</sup>

The second and third tiers of organizational culture are more abstract. The second level consists of *perspectives*, which are the "socially shared rules and norms applicable in a given situation" that impart "meaning to the objective elements of culture that are easily observed in a large organization."<sup>374</sup> They help lubricate social relations by governing how a lawyer addresses colleagues and superiors.<sup>375</sup> The third level of law firm culture includes the *values* and *assumptions* that ground members' judgments about objects, people, goals, and situations. In particular, "values are more abstract than perspectives, and include an organization's general goals, ideals, standards."<sup>376</sup>

It is contended that one of the barriers to adaptation within many law firms is a key cultural artefact that relates to how firms equate commitment: the billable hour system. This thesis will now turn

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<sup>373</sup> *Ibid.*

<sup>374</sup> *Ibid.*

<sup>375</sup> *Ibid.*

<sup>376</sup> *Ibid.* at 827.

to an examination of its role in maintaining a culture of WLC within the legal profession.

### **4.3.3 The Billable Hour as a Cultural Artefact**

#### **4.3.3.1 Rise of the Billable Hour**

As discussed above, cultural artefacts refer to both the physical and social structures in an organization, including methods used to relate with clients and personnel. One of the key cultural artefacts within a law firm is the concept of the billable hour, which, it is contended, has a negative influence on lawyers' pursuit of WLB.

In spite of its prevalence in the legal profession, the billable hour is a relatively new phenomenon in legal practice. In 1914, Reginald Heber Smith took over the Boston Legal Aid Society after graduating from Harvard Law School and asked the Harvard Business School to help him create a system to track and manage the organization's finances.<sup>377</sup> He initiated a system where lawyers were to keep detailed records of their time on different cases. In 1929, Smith joined the firm of Hale and Dorr as managing partner and he brought his accounting

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<sup>377</sup> J. Derrick, *Boo to Billable Hours* (Santa Barbara, CA: Podia Press, 2008) at ch. 2, online CaliforniaAppeals.com <[http://www.californiaappeals.com/lawyer/Boo\\_to\\_Billable\\_Hours\\_Chapter\\_2\\_history.html](http://www.californiaappeals.com/lawyer/Boo_to_Billable_Hours_Chapter_2_history.html)>; D. McCollam, "The Billable Hour: Are Its Days Numbered?" (December 2005), online: Law.com <<http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1132653918886&hbxlogin=1>>.

system with him, which included the use of a daily time sheet.<sup>378</sup> In the 1940s, Smith published a book on law firm management titled *Law Office Organization* that followed the premise that law was a business as much as a profession. That is, while a lawyer renders a service, he/she also sells the commodity of time.<sup>379</sup> Thus, in order to protect this commodity, Smith instructed on the production of the time sheet, with a decision that the tenth of the hour was the basic measurement unit because it allowed for simple calculations.<sup>380</sup>

In the 1940s, bar associations in most US states used fixed-fee billing practices for various legal services.<sup>381</sup> Billable hours did not gain pre-eminence until clients requested greater information about billing. Indeed, clients questioned the dollar amounts on lawyers' bills and demanded an answer to the question: "How long did this actually take?" Consequently, law firms began producing their time records (previously maintained solely for internal management purposes) to clients. As a result, by the start of the 1970s, most mid-sized and large firms shifted to billing solely by the hour for the vast majority of

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<sup>378</sup> R.H. Smith, *Law Office Management* (Chicago, Ill: American Bar Association, 1943).

<sup>379</sup> *Ibid.*

<sup>380</sup> *Ibid.*

<sup>381</sup> McCollam, *supra* note 377.

their work, with small firms and solo practitioners soon following suit.<sup>382</sup>

#### 4.3.3.2 The Billable Hour and Law Firm Culture

Many commentators have called for the demise of the billable hour.<sup>383</sup> In particular, they contend that its rise as the time management system in the legal profession has led to extremely high billable hour requirements for lawyers, which in turn, has become a false barometer for how well a lawyer is doing his/her job. Furthermore, it is suggested that law firms' reliance on the billable hour reveals that they are still built around the idea of the "ideal

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<sup>382</sup> Derrick, *supra* note 377.

<sup>383</sup> E.R. Chesler, "Kill the Billable Hour" (12 January 2009), online: Forbes.com <<http://www.forbes.com/forbes/2009/0112/026.html>>; A. Liptak, "On the Job: Stop the Clock? Critics Call the Billable Hour a Legal Fiction" *The New York Times* (29 October 2002), online: New York Times <<http://www.nytimes.com/2002/10/29/jobs/on-the-job-stop-the-clock-critics-call-the-billable-hour-a-legal-fiction.html?scp=6&sq=BILLABLE&st=cse>>; A. Miller, "The Bell is Tolling for the Billable Hour: 'Change is Here to Stay' (30 November 2009), online: Law.com <[http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202435806424&The\\_Bell\\_Is\\_Tolling\\_for\\_the\\_Billable\\_Hour\\_Change\\_Is\\_Here\\_to\\_Stay=&src=EMC-Email&et=editorial&bu=Corporate%20Counsel&pt=Corporate%20Counsel%20Daily%20Alerts&cn=cc20091129&kw=The%20Bell%20Is%20Tolling%20for%20the%20Billable%20Hour:%20'Change%20Is%20Here%20to%20Stay'](http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202435806424&The_Bell_Is_Tolling_for_the_Billable_Hour_Change_Is_Here_to_Stay=&src=EMC-Email&et=editorial&bu=Corporate%20Counsel&pt=Corporate%20Counsel%20Daily%20Alerts&cn=cc20091129&kw=The%20Bell%20Is%20Tolling%20for%20the%20Billable%20Hour:%20'Change%20Is%20Here%20to%20Stay'>)>; T.L. O'Brien, "Why Do So Few Women Reach the Top of Big Law Firms?" *The New York Times* (19 March 2006), online: New York Times <[http://www.nytimes.com/2006/03/19/business/yourmoney/19law.html?scp=25&sq="billable%20hours"&st=cse](http://www.nytimes.com/2006/03/19/business/yourmoney/19law.html?scp=25&sq=)>; S. Tavares, "Has the Billable Hour Run its Course?" *The Las Vegas Sun* (20 March 2009), online: Las Vegas Sun <<http://www.lasvegassun.com/news/2009/mar/20/has-billable-hour-run-its-course/>>; S. Turov, "The Billable Hour Must Die" (1 August 2007), online: ABA Journal <[http://www.abajournal.com/magazine/article/the\\_billable\\_hour\\_must\\_die/](http://www.abajournal.com/magazine/article/the_billable_hour_must_die/)>.

worker" from the 1950s, in which a person is able to work an infinite number of hours with no time off for family responsibilities.<sup>384</sup> Indeed, many law firms share the norm of "work devotion," which refers to the notion that one must have a single-minded allegiance to one's career because it is a calling.<sup>385</sup> Thus, law firms equate their members' devotion and commitment to them with the achievement of high billable hour totals and working long hours. As a result, many firms still emphasize "face-time" and the notion that a lawyer is a good worker and deserving of advancement because they spend an excessive number of hours in the office.<sup>386</sup> Moreover, since "commitment is equated with physical presence,"<sup>387</sup> lawyers use a number of face-time strategies to prove their loyalty to the firm, including:

- Sneaking out of the office, but leaving the light on to show that he/she is still at work; and,
- Leaving work, but keeping one's office doors open, with the lights still on and a coat hanging

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<sup>384</sup> S. Bornstein *et al.*, "Law Firms as Defendants: Family Responsibilities Discrimination in Legal Workplaces" (2006) 34 Pepp. L. Rev 393 at 400.

<sup>385</sup> *Ibid.* at 401.

<sup>386</sup> *Ibid.*

<sup>387</sup> *Ibid.*

on the chair to show they he/she is only temporarily out of the office.<sup>388</sup>

Thus, members who demonstrate a strong commitment to their firm's culture by working long hours (or showing that they do through face-time strategies), and obtaining high billable hour totals, prove themselves to be candidates for promotion from articling student to associate to partner.

The legal profession's organizational culture--with its focus on face-time--reveals that law firms have not adapted to changing demographics, and the shifting needs of workers (as described in Chapter 3). For instance, the emphasis on long hours as a sign of commitment significantly disadvantages female lawyers because "women continue to be the primary caregivers, even in dual-earner family households."<sup>389</sup> Furthermore, the older generation of lawyers followed the cultural dictate that sacrificing family life by working long hours (and tallying high billable hour totals) was a sign of "work devotion." However, with demographic changes in the labour market, and the shifting goals of younger workers, lawyers now want more from their chosen field due to an understanding that personal

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<sup>388</sup> *Ibid.*

<sup>389</sup> Bacik & Drew, *supra* note 71 at 137.

satisfaction is more holistic, with professional achievement being a part of the equation, and one's personal roles also playing an important role in one's self-worth.

#### **4.3.4 Legal Profession's Disconnected Culture**

Many law firms have instituted FWAs that are supposed to help their employees achieve more job flexibility. Moreover, "a plethora of reports by bar associations and law societies has advocated policies regarding workplace family accommodations."<sup>390</sup> Yet, as mentioned in Chapter 2, many workplaces suffer from a "disconnected culture" whereby organizations may have WLB policies and strategies, such as FWAs, but employees "do not feel that they can take advantage of them because management does not encourage their use."<sup>391</sup> In the legal profession, one sees many law firms with WLC cultures that lead a lawyer to believe "that availing of family friendly working arrangements shows a lack of commitment to one's career."<sup>392</sup> For instance, a survey conducted by the American Bar Association (ABA) of 1,400 lawyers found that "while 95 [percent] of firms have policies that allow part-time work, only 3 [percent] of lawyers actually work

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<sup>390</sup> E. Gorman & F. Kay, "Women in the Legal Profession" (2008) 4 Ann. Rev. Law Soc. Sci. 299 at 307 (Hein Online).

<sup>391</sup> Duxbury & Higgins, *Saying No*, *supra* note 66 at 3.

<sup>392</sup> Bacik & Drew, *supra* note 71 at 139.

part-time."<sup>393</sup> Furthermore, in their study of legal professionals in Ireland, Bacik and Drew found that lawyers were reluctant to use FWAs for several reasons:

1. Loss of promotion opportunities;
2. Loss of clients/earning potential; and,
3. Negative perceptions of colleagues.<sup>394</sup>

The lawyers surveyed felt that their careers were negatively impacted because of an organizational belief that availing of FWAs is a sign of a lack of commitment to one's work and workplace.<sup>395</sup>

In the Canadian context, Catalyst Canada conducted the *Flexibility in Canadian Law Firms* series of studies in 2005 to 2006 in order to learn about WLB issues among lawyers in the country. Its third study, entitled *Beyond a Reasonable Doubt: Lawyers State their Case on Job Flexibility*,<sup>396</sup> examined lawyers' perceptions regarding FWAs. The study found that approximately one in four Canadian

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<sup>393</sup> *Ibid.*

<sup>394</sup> *Ibid.* at 143.

<sup>395</sup> *Ibid.*

<sup>396</sup> Catalyst Canada, *Job Flexibility*, *supra* note 14 at 13.

lawyers (employed in law firms) report having used a FWA.<sup>397</sup> Moreover, 69 percent of those who have never used an FWA state that they would like to use one, while 86 percent who have used an FWA before state that they would like to repeat their usage.<sup>398</sup> Yet, most lawyers still perceive job flexibility options to be career-limiting: 42 percent believe that a lawyer who takes advantage of these initiatives will be sent to 'the B team' at the firm.<sup>399</sup> With respect to female lawyers, more than half (53 percent) believe that their use of FWAs limits their professional development and makes them appear less committed to their firms (versus only 21 percent of men who use FWAs).<sup>400</sup> Consequently, a majority of lawyers do not believe that lawyers who use either full- or part-time FWAs can ever become partner.<sup>401</sup>

#### **4.3.5 Work-Life Conflict and its Negative Impact on Lawyers**

##### **4.3.5.1 Health Impacts**

Paralleling the discussion on the business case for WLB initiatives in Chapter 3, studies relating to the health status of lawyers reveal

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<sup>397</sup> *Ibid.*

<sup>398</sup> *Ibid.* at 11.

<sup>399</sup> *Ibid.*

<sup>400</sup> *Ibid.*

<sup>401</sup> *Ibid.* at 4.

that they suffer various ailments at higher rates than members of the general public (Table 4.1):

**Table 4.1 Health Impacts, General Population vs. Lawyers**

Health Condition	General Population (percentage)	Lawyers (percentage)
Anxiety Disorder	<ul style="list-style-type: none"> <li>• 4%</li> </ul>	<ul style="list-style-type: none"> <li>• 20% Female Lawyers</li> <li>• 28% Male Lawyers</li> </ul>
Depression	<ul style="list-style-type: none"> <li>• 8.5% Males</li> <li>• 14.1% Females</li> </ul>	<ul style="list-style-type: none"> <li>• 10-18%</li> <li>• 20.8% Male Lawyers</li> <li>• 16% Female Lawyers</li> </ul>
Alcoholism	<ul style="list-style-type: none"> <li>• 10%</li> </ul>	<ul style="list-style-type: none"> <li>• 20%</li> <li>• 25%: Lawyers practicing over 20 years</li> <li>• 20%: Lawyers practicing under 20 years</li> </ul>

As detailed above, while research reveals that about 4 percent of adults suffer from generalized anxiety disorder, the rate increases to 20 percent for female lawyers and 28 percent for male lawyers.<sup>402</sup> In addition, depression occurs twice as frequently among lawyers (18 percent) than in the general adult population.<sup>403</sup> With respect to a

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<sup>402</sup> C.J.A. Beck, G.A.H. Benjamin & B.D. Sales, "Lawyer Distress: Alcohol Related Concerns Among a Sample of Practicing Lawyers" (1996) 10 J. L. & Health 1.

<sup>403</sup> Daicoff, *supra* note 337 at 8.

gendered breakdown of depression, "8.5 [percent] of males and 14.1 [percent] of females are depressed, compared to 16 [percent] of female lawyers and 20.8 [percent] of male lawyers."<sup>404</sup> In 1990, psychologists found that 19 percent of lawyers in Washington State were clinically depressed.<sup>405</sup> In addition, a quality-of-life survey by the North Carolina Bar Association in 1991 revealed that almost 26 percent of respondents exhibited symptoms of clinical depression, and almost 12 percent contemplated suicide at least once a month.<sup>406</sup>

Other sectors do not have the same levels of depression as found in the legal profession. For instance, a 1991 study at Johns Hopkins University found that of 28 occupations studied, lawyers were the most likely to suffer depression, and were more than 3.6 times more likely than the average person.<sup>407</sup> In addition, a study of 100 occupations in 1990 found that 10 percent of lawyers met the psychiatric criteria for depression, while this was true of only 3 to 5

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<sup>404</sup> *Ibid.* at 10.

<sup>405</sup> M. Dolan, "Surveys: Many Lawyers Disillusioned" Los Angeles Times (28 June 1995) E2; G.A.H. Benjamin, E.J. Darling & B.D. Sales, "The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers" (1990) 13 J. Law & Psychiatry 233.

<sup>406</sup> Daicoff, *supra* note 337; M. J. Sweeney, *The Devastation of Depression: Lawyers are at greater risk--It's an impairment to take seriously* (date unknown), Online: American Bar Association <<http://www.abanet.org/barserv/22-6dev.html>>.

<sup>407</sup> Daicoff, *ibid.* at 9; J.C. Anthony *et al.*, "Occupations and the Prevalence of Major Depressive Disorder" (1990) 32 J. Occupational Med. 1079.

percent of the general population.<sup>408</sup> Moreover, the study found that members of three professions were highly depressed: lawyers, secretaries, and pre-kindergarten and special education teachers.<sup>409</sup> Thus, "depression does not seem to simply go hand-in-hand with professional work. This problem seems to be specific to lawyers."<sup>410</sup>

In order to cope with their various issues, "lawyers tend to use alcohol to deal with the inordinate amount of stress they feel."<sup>411</sup> For instance, 37 percent of Wisconsin lawyers reported using alcohol regularly as a stress-reduction mechanism, while 46.5 percent declared that they sometimes used alcohol for this purpose.<sup>412</sup> Consequently, alcoholism occurs about "twice as frequently among lawyers as it does in the general adult population."<sup>413</sup> A survey conducted in 1990 found that 13 percent of lawyers drank six or more alcoholic drinks a day.<sup>414</sup> Furthermore, a 1996 study found that 20 percent of Arizona and Washington lawyers suffered from alcoholism,

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<sup>408</sup> Daicoff, *ibid.*

<sup>409</sup> *Ibid.*

<sup>410</sup> *Ibid.*

<sup>411</sup> *Ibid.* at 12.

<sup>412</sup> *Ibid.*

<sup>413</sup> *Ibid.* at 11.

<sup>414</sup> *Ibid.*

while the rate in general society is about 10 percent.<sup>415</sup> In addition, older lawyers have the highest incidence of alcoholism--25 percent of lawyers who have practiced 20 years or over suffer from the disease, compared to 18 percent of those who have practiced less than 20 years.<sup>416</sup>

#### **4.3.5.2 Impact on Female Lawyers**

The legal profession's lack of encouragement of WLB has had an immense impact on female lawyers. Yet, this is not a new dilemma--Leila Robinson, who was admitted to the Massachusetts State Bar in 1882, wondered whether "it is practicable for a woman to successfully fulfill the duties of wife, mother, and lawyer at the same time?"<sup>417</sup> Moreover, Robinson's concerns are echoed in the present day. A study by the American Bar Association in 2001 noted that the "proportion of women who doubt the possibility of combining work and family life has tripled over the last two decades, due at least in part to the exponential increase in expected billable hours."<sup>418</sup>

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<sup>415</sup> *Ibid.*; Sweeney, *supra* note 406.

<sup>416</sup> Diacoff, *ibid.* at 12.

<sup>417</sup> Bacik & Drew, *supra* note 71 at 138.

<sup>418</sup> *Ibid.* at 139.

In the Canadian context, Catalyst Canada, in its report entitled *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance*, surveyed lawyers about their experience with balancing their various responsibilities, and found that while many suffer from stress and management difficulties, the statistics are divided along gender-lines, as documented in Table 4.2:<sup>419</sup>

**Table 4.2 Canadian Lawyers' Views on Workplace Flexibility**

<b>Work-Life Balance Issue</b>	<b>Male Lawyer Response (percentage)</b>	<b>Female Lawyer Response (percentage)</b>
<ul style="list-style-type: none"> <li>Managing the concurrent demands of their work and personal/family responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>46% of male partners find it difficult</li> <li>66% of male associates find it difficult</li> </ul>	<ul style="list-style-type: none"> <li>69% of female partners find it difficult</li> <li>75% of female associates find it difficult</li> </ul>
<ul style="list-style-type: none"> <li>Overall work environment</li> </ul>	<ul style="list-style-type: none"> <li>68% of male partners are satisfied</li> <li>52% of male associates are satisfied</li> </ul>	<ul style="list-style-type: none"> <li>54% of female partners are satisfied</li> <li>42% of female associates are satisfied</li> </ul>
<ul style="list-style-type: none"> <li>A WLB-supportive environment is an important criterion in evaluating law firms</li> </ul>	<ul style="list-style-type: none"> <li>37% of male partners agree</li> <li>66% of male associates agree</li> </ul>	<ul style="list-style-type: none"> <li>62% of female partners agree</li> <li>84% of female associates agree</li> </ul>

<sup>419</sup> Catalyst Canada, *Creating Opportunities*, *supra* note 10.

Catalyst Canada found that 46 percent of male partners, 69 percent of female partners, 66 percent of male associates, and 75 percent of female associates find it difficult to manage the concurrent demands of their work and personal/family responsibilities.<sup>420</sup> In addition, a clear perception gap exists among lawyers on the issue of WLB: 84 percent of female associates, 66 percent of male associates, and 62 percent of female partners indicate that an environment more supportive of personal and family commitments is important when evaluating law firms as a place to work, compared to only 37 percent of male partners.<sup>421</sup> Furthermore, 68 percent of male partners are satisfied with their overall work environment, compared to 54 percent of female partners, 52 percent of male associates, and 42 percent of female associates.<sup>422</sup> In sum, the study reveals that while all lawyers experience WLB difficulties, the challenge of managing work and personal/family responsibilities is felt disproportionately by female members of the profession.

The result is that "women delay having children until their careers are established or so as to reduce conflict with the demands of

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<sup>420</sup> *Ibid.* at 14.

<sup>421</sup> *Ibid.* at 16.

<sup>422</sup> *Ibid.* at 9.

early career development."<sup>423</sup> Bacik and Drew found that female lawyers in Ireland underwent "postponed parenting," whereby they "delay having children due to their fears about the consequences of parenthood for their career progress."<sup>424</sup> Consequently, they found that 67 percent of male lawyers had children, as opposed to only 43 percent of female lawyers.<sup>425</sup> Furthermore, male lawyers were more likely to have families of greater than three children, while female lawyers had smaller families.<sup>426</sup> The predicament faced by female lawyers in deciding to have children is summed up by one of Bacik and Drew's focus group participants: "I would feel I was selling myself out, studying so long...I would like to be established as a solicitor before that."<sup>427</sup> Consequently, "many women lawyers forgo motherhood altogether."<sup>428</sup>

In 2009, the Law Society of BC's Retention of Women in Law Task Force released a report entitled *The Business Case for Retaining and Advancing Women Lawyers in Private Practice*,<sup>429</sup> which detailed

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<sup>423</sup> Gorman & Kay, *supra* note 390 at 307.

<sup>424</sup> Bacik & Drew, *supra* note 71 at 140.

<sup>425</sup> *Ibid.*

<sup>426</sup> *Ibid.*

<sup>427</sup> *Ibid.*

<sup>428</sup> Gorman & Kay, *supra* note 390 at 307.

<sup>429</sup> Law Society of British Columbia, *Retention of Women*, *supra* note 11.

the cultural obstacles that hamper female lawyers' opportunities for advancement:

- Hidden bias, stereotypes and assumptions about women and mothers significantly and negatively impact women's careers;
- Informal practices, such as random 'Hey, you' work assignment systems (which allow partners to distribute work to those they know best or feel most comfortable with), disadvantage women from having access to career-advancing work;
- Conflict between 24/7 professional expectations and cultural norms burden women with a disproportionate share of family and personal responsibilities; and,
- Lack of mentors and champions makes role models invisible to women.<sup>430</sup>

These cultural deficiencies have had a drastic impact on the participation of females in the legal profession, with the proportion of

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<sup>430</sup> *Ibid.* at 7.

female lawyers decreasing as the years, post-call, increase. For instance, in the BC context, the Federation of Law Societies of Canada found, in 2007, that for lawyers who have been in practice for 0 to 5 years, 51 percent are female and 49 percent male, whereas the breakdown for those in practice from 11 to 15 years is 43 percent female and 57 percent male.<sup>431</sup> Furthermore, according to the Law Society of BC, while women and men have entered the legal profession in numbers equal to or greater than men for more than a decade and in substantial numbers for 30 years, women represent only about 34 percent of all practicing lawyers in the province and only about 29 percent of lawyers in full-time private practice.<sup>432</sup> Furthermore, there are a disproportionate number of women who are no longer practicing within five years of call--of all women called to the bar in 2003, only 66 percent retained practicing status in 2008 compared with 80

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<sup>431</sup> For those in the profession from 21 to 25 years, 29 percent are female and 71 percent are male; and, for those with over 26 years of service, 11 percent are female, and 89 percent are male--Federation of Law Societies of Canada, *2007 Law Societies Statistics* at 5, online: Federation of Law Societies of Canada <<http://www.flsc.ca/en/pdf/statistics2007.pdf>>.

<sup>432</sup> Law Society of British Columbia, *Retention of Women*, *supra* note 11 at 4.

percent of men called in the same year.<sup>433</sup> Consequently, research suggests that at present rates, women will not reach parity with men in law firm partnerships until at least 2088.<sup>434</sup> Yet, it seems unlikely that parity will ever be reached due to the trend of female lawyers not being retained in legal practice in BC.

These statistics also reveal that there will be a shortage of lawyers in the province because the profession is aging. In 1998, 77 percent of BC's lawyers were under the age of 50, the average age was 43, and only about 18 percent of lawyers were between the ages of 51 – 60. By 2008, only 55 percent of the profession was under the age of 50, the average age increased to 47, and 29 percent of lawyers were between the ages of 51 – 60.<sup>435</sup> In addition, out of about 9,800 practicing lawyers in BC, over 1,100 were over age 60 and almost 200 were older than 70.<sup>436</sup> The result is that with female lawyers leaving

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<sup>433</sup> However, an August 2010 decision of the BC Supreme Court has failed to consider these demographic statistics. In *Danicek v. Alexander Holburn Beaudin & Lang*, a recently called lawyer was accidentally knocked to the floor at a law firm function by an intoxicated colleague. Justice Kelleher, in calculating the plaintiff's lost earning capacity, did not make any reduction in damages for the possibility that the plaintiff might leave the profession for any reason (such as for child-bearing). Instead, Justice Kelleher awarded \$6 million in lost earnings on the basis that the plaintiff would be a successful legal profession (such as become partner at either the defendant firm or another large firm), and not retire until age 65. See *Danicek v. Alexander Holburn Beaudin & Lang*, 2010 BCSC 1111.

<sup>434</sup> Law Society of British Columbia, *Retention of Women*, *supra* note 11 at 4.

<sup>435</sup> *Ibid.*

<sup>436</sup> *Ibid.*

the profession, there will not be enough talent to replace the loss of retiring older lawyers, who take their knowledge and expertise with them through the process of "wisdom withdrawal."

#### **4.3.6 Summary**

The implication of the above is clear: legal practice culture--particularly the equating of "commitment" with working long hours and high billable hour totals, and the institutional barriers around the use of FWAs--is antithetical to the pursuit of WLB. Moreover, while the profession's WLC culture impacts the health of all lawyers, its social consequences are immense on female lawyers, as evidenced in their ever-declining participation rates in the profession in BC, despite the feminization of law schools across Canada.

In order to ameliorate the situation faced by lawyers (both female and male), there must be cultural changes in not only how law is practiced, but also how law is taught, since law school, as revealed previously, is where students are taught to "think like lawyers." Thus, the next section the thesis investigates academic and corporate case studies in order to describe initiatives that may help law students better adapt to the educational process, as well as aid legal professionals in their pursuit of WLB.

## **4.4 Best Practices for the Way Forward**

### **4.4.1 Introduction**

A central theme running through this thesis is that the best way for law schools and the legal profession to adapt to their members' needs is by exploring best practices from academia and the corporate world to investigate how other parties are actively engaging with WLB. Consequently, best practices from Canada, the US and Europe will now be examined in order to provide useful lessons about how law schools can help students become successful members of their institutions; how professional regulatory bodies in the legal field (such as bar associations and law societies) can best engage with their constituents; and, how employers can aid lawyers in their pursuit of WLB.

### **4.4.2 Educational Best Practices at Law Schools**

#### **4.4.2.1 Rationale for Student-Centered Practices**

As detailed above, law school is a very stressful place for students. The fact is that "a healthy dose of stress can be a powerful motivator to achieve, and can create a unique bond between students."<sup>437</sup> Yet, "prolonged exposure to stress can cause burnout

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<sup>437</sup> J.O. Sonsteng *et al.*, "A Legal Education Renaissance: A Practical Approach for the Twenty-First Century" (2007) 34 Wm. Mitchell L. Rev. 303 at 339.

and withdrawal from active engagement in education."<sup>438</sup> Diacoff argues that law students suffer from a state of "learned helplessness" due to a multitude of educational factors that induce high levels of stress, including:

Time and performance pressure; lack of free time; difficulty and novelty of studying the law; competitive, demanding nature of the law school environment; and lack of opportunity to socialize or engage in recreation.<sup>439</sup>

Furthermore, Morin suggests that the educational process in law school--particularly the formality of legal reasoning, the lack of any discussion of values, and enormous work-loads--encourages personal disillusionment and disengagement.<sup>440</sup> Moreover, as a result of their stressful educational experiences in law school, students suffer negative health consequences in the form of higher rates of psychological disorders and substance abuse problems in comparison

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<sup>438</sup> *Ibid.* at 339, citing G.F. Hess, "Heads and Hearts: The Teaching and Learning Environment in Law School" (2002) 52 J. Legal Educ. 75 at 80.

<sup>439</sup> *Ibid.*, citing S.C. Segerstrom, "Perceptions of Stress and Control in the First Semester of Law School" (1996) 32 Williamette L. Rev. 593 at 600-602.

<sup>440</sup> Fitzgerald, *supra* note 346 at 21, citing L.A. Morin, "Legal Education: Reflections on Teaching Law as Right Livelihood: Cultivating Ethics, Professionalism and Commitment to Public Service from the Inside Out" (2000) Tulsa L.J. 227.

to their pre-law school state and in contrast to other members of the population.<sup>441</sup>

Fitzgerald, in her 2005 study of UBC Law graduates, found that law students suffer negative mental and emotional consequences due to an educational process that "does not promote deep learning" and causes students to become "overworked, generally confused and ultimately cynical."<sup>442</sup> She held that law schools have several common attributes that engender these negative impacts. First, she found that there is an over-emphasis on grades, particularly due to fellow students and lawyers remarking about the hyper-competition for a few, select jobs, and faculty members decreasing students' expectations of high marks through their discussion of the grading curve and law school challenges (such as the large amount of reading required on a weekly basis).<sup>443</sup>

Second, the content of a law school's curriculum--primarily reading and analyzing cases--while effective at teaching substantive law, does not effectively train students in legal reasoning,<sup>444</sup> causes

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<sup>441</sup> Diacoff, *supra* note 337 at 76.

<sup>442</sup> Fitzgerald, *supra* note 346 at 133.

<sup>443</sup> *Ibid.* at 145.

<sup>444</sup> *Ibid.* at 143.

students to have work-load issues, and makes them confused and cynical about the education process because there is a lack of direction about how to digest the material.<sup>445</sup> Furthermore, the lecture method, which may help students identify legal principles from cases and focus their attention on what to study for exams, "is not very useful for stimulating thought or developing higher level skills and can cause students to disengage" from the legal education experience.<sup>446</sup>

In order to deal with the negative impact of the education/socialization process on law students, various law schools have implemented adaptive curricula and student support strategies that can be easily integrated into the legal education setting in BC. Specifically, these strategies aim to decrease students' isolation (from other students, professors and law school staff) by providing institutional support to help them adapt to the legal education process. The academic institutions described in Table 4.3 all use a variety of strategies to aid their students:

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<sup>445</sup> *Ibid.* at 134-135.

<sup>446</sup> *Ibid.* at 137.

**Table 4.3 Description of Academic Case Studies<sup>447</sup>**

Country	Institution	Demographics
Canada		
	University of Toronto Faculty of Law	<ul style="list-style-type: none"> <li>• 670 total students</li> <li>• 190 students in the first-year program</li> <li>• 50% female/50% male</li> <li>• 30% visible minorities</li> </ul>
	University of Victoria Faculty of Law	<ul style="list-style-type: none"> <li>• 380 total students</li> <li>• 105 students in the first-year program</li> <li>• 55% female/45% male</li> <li>• 20% visible minorities</li> </ul>

<sup>447</sup> Table adapted from: University of Toronto Faculty of Law, *Factsheet* (2009), online: University of Toronto <[http://www.law.utoronto.ca/visitors\\_content.asp?itemPath=5/1/0/0/0&contentId=465#Body](http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/1/0/0/0&contentId=465#Body)>; University of Victoria Faculty of Law, *UVic Law FAQs*, online: UVic Faculty of Law <[http://law.uvic.ca/faq\\_general.php#2](http://law.uvic.ca/faq_general.php#2)>; City University of New York School of Law, *Fact Sheet 2009-2010* (September 2009), online: CUNY School of Law <<http://www.law.cuny.edu/about/cunylaw-fact-sheet.pdf>>; Harvard Law School, *Harvard Law School Fact Sheet* (2009), online: Harvard Law School <<http://www.law.harvard.edu/prospective/jd/apply/hls-fact-sheet.pdf>>; Hastings College of the Law, *Quick Facts*, online: Hastings College of the Law <<http://www.uchastings.edu/about/quick-facts.html>>; William & Mary Law School, *At a Glance*, online: William & Mary Law School <<http://law.wm.edu/about/factoids/index.php>>; Gonzaga School of Law, *Class Profile: Fall 2009* (2009), online: Gonzaga School of Law <[http://www.law.gonzaga.edu/Admissions/why\\_gonzaga/class\\_profile.asp](http://www.law.gonzaga.edu/Admissions/why_gonzaga/class_profile.asp)>; Stanford Law School, *Law School Facts*, online: Stanford Law School <[http://www.law.stanford.edu/school/facts/#degrees\\_and\\_admissions](http://www.law.stanford.edu/school/facts/#degrees_and_admissions)>; Syracuse College of Law, *Class Profile* (2009), online: Syracuse College of Law <<http://www.law.syr.edu/about/class-profile.aspx>>.

Country	Institution	Demographics
<b>United States</b>		
	City University of New York School of Law	<ul style="list-style-type: none"> <li>• 400 total students</li> <li>• 165 in the first-year program</li> <li>• 67% female/33% male</li> <li>• 37% visible minorities</li> </ul>
	Harvard University Law School	<ul style="list-style-type: none"> <li>• 1,800 total students</li> <li>• 48% women/52% male</li> <li>• 34% visible minorities</li> </ul>
	University of California Hastings College of the Law	<ul style="list-style-type: none"> <li>• 1,300 total students</li> <li>• 470 in the first year program</li> <li>• 49.2% female/50.2% male</li> <li>• 32.1% visible minorities</li> </ul>
	William and Mary Law School	<ul style="list-style-type: none"> <li>• 650 total students</li> <li>• 213 in the first-year program</li> <li>• 50% female/50% male</li> <li>• 19% visible minorities</li> </ul>
	Gonzaga University School of Law	<ul style="list-style-type: none"> <li>• 190 in the first-year program</li> <li>• 14% visible minorities</li> </ul>
	Stanford University College of Law	<ul style="list-style-type: none"> <li>• 170 in the first-year program</li> <li>• 47% female/52% male</li> <li>• 25% visible minorities</li> </ul>
	Syracuse University College of Law	<ul style="list-style-type: none"> <li>• 650 total students</li> <li>• 39% female/61% male</li> <li>• 23% visible minorities</li> </ul>

#### 4.4.2.2 Student Support Initiatives

As mentioned above, students feel anxious about their academic and professional futures because they are isolated "from any direction, modeling, or explicit instruction about what specifically is expected of them" during the legal education process.<sup>448</sup> Thus, law students require support systems to help them deal with the challenges associated with succeeding in law school. Consequently, many institutions offer mentoring programs and other initiatives for their students, particularly for those from visible minority groups who have not, historically, been members of the legal profession (such as First Nations students). It is suggested that all law students in BC and across Canada should have access to such initiatives, no matter their social backgrounds, in order to alleviate their stress and anxiety levels.

In the Canadian context, the University of Victoria Faculty of Law aims to help students adjust to the demands of legal education through its "Academic and Cultural Support Program", which was created to assist and guide the up-to twenty-five students that are admitted under the "Special Access" category or the Aboriginal

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<sup>448</sup> Fitzgerald, *supra* note 346, citing Roach, *supra* note 353 at 672.

category.<sup>449</sup> The Program provides workshops on study skills, exam preparation, time management and coping with stress.<sup>450</sup> The Program also has a student-tutoring component whereby "two upper-year students work with the [Program] and run numerous academic and cultural support activities, such as peer advising, tutoring, and other forms of assistance."<sup>451</sup>

At the University of Toronto Faculty of Law, students can avail themselves of the "Alumni-Student Mentor Program," which matches first-year students with recent graduates in order to achieve several student support and professional goals:

To welcome first-year students into the world of law and introduce them to lawyers in an informal setting that is outside the recruitment process; to give students an opportunity to learn about the legal profession from lawyers with diverse backgrounds working in various fields; and, to give students an

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<sup>449</sup> University of Victoria Faculty of law, *Academic and Cultural Support Program*, online: Victoria Faculty of Law <<http://law.uvic.ca/current/acsp.php>> [Victoria, *ACSP*].

Special Access applicants are those whose academic record has "been significantly delayed, interrupted or adversely affected by: physical, cultural, or economic factors; or family or similar responsibilities and the consequent need to attend to these responsibilities or to maintain employment"--University of Victoria Faculty of Law, *Special Access*, online: Victoria Faculty of Law <<http://law.uvic.ca/prospective/llb/special.php>>.

<sup>450</sup> *Ibid.*

<sup>451</sup> *Ibid.*

opportunity to find suitable role models in the legal community who will guide their academic and professional development.<sup>452</sup>

There are also examples of similar initiatives in the American context. For instance, Gonzaga Law School's "Alumni Mentoring Program" pairs first year law students with graduates in the community.<sup>453</sup> The purpose of the program is to "provide students with insights about the legal profession, the realities of practicing law, and the difficulties and satisfaction of a legal career."<sup>454</sup> The "Academic Support Program" (ASP) at the University of California Hastings College of the Law aims to help students develop "skills that are necessary to succeed in law school and on the bar exam."<sup>455</sup> Specifically, the ASP offers numerous supportive initiatives for law students, including:

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<sup>452</sup> University of Toronto Faculty of Law, *Alumni-Student Mentor Program*, online: Toronto Faculty of Law <[http://www.law.utoronto.ca/prosp\\_stdn\\_content.asp?itemPath=3/6/20/12/0&contentId=274&cType=webpages](http://www.law.utoronto.ca/prosp_stdn_content.asp?itemPath=3/6/20/12/0&contentId=274&cType=webpages)>.

<sup>453</sup> Gonzaga University School of Law, *1L Mentoring Program*, online: Gonzaga School of Law <[http://www.law.gonzaga.edu/students/mentor\\_program.asp](http://www.law.gonzaga.edu/students/mentor_program.asp)>.

<sup>454</sup> *Ibid.*

<sup>455</sup> Hastings College of the Law, *Academic Support*, online: Hastings College of the Law <<http://www.uchastings.edu/academics/jd-program/academic-support.html>>.

- Skills Workshops that are administered by "legal education consultants" to help students learn about case briefing, note-taking, outlining, exam writing, time and stress management;<sup>456</sup>
- Skills Sessions, which involve upper year students collaborating with section professors in order to develop learning materials and exercises to reinforce the skills taught in the Skills Workshops for first year students;<sup>457</sup> and,
- Labs that are administered by successful upper year students for students from all years of law school who want to gain feedback and learn skills in legal writing in a smaller learning environment.<sup>458</sup>

Harvard University is also home to several programs. First, Harvard Law School's "Academic Support Services" department provides advising and peer tutoring sessions.<sup>459</sup> Specifically, the

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<sup>456</sup> *Ibid.*

<sup>457</sup> *Ibid.*

<sup>458</sup> *Ibid.*

<sup>459</sup> Harvard Law School, *Academic Support Services*, online: Harvard Law School <<http://www.law.harvard.edu/current/student-services/academic-support-services.html>>.

sessions, which are arranged by upper-year students, cover "class preparation, note taking, outlining, exam preparation, and exam taking."<sup>460</sup> Second, Harvard Law School also supports "La Alianza", an "organization dedicated to providing support to Latino/a students" at the institution.<sup>461</sup> It provides academic assistance through the provision of "academic aids, used books, outlines and other study aids."<sup>462</sup> In addition, "workshops are held on brief writing, test taking, course selection, resume writing, and interviewing." First-year students are also provided with student mentors to help them adjust to the rigours of law school.<sup>463</sup> Furthermore, in order to balance the demands associated with academic life at Harvard Law School, La Alianza organizes numerous social events, including salsa dances, movie nights, and group trips.<sup>464</sup> Third, Harvard University has the "Course in Reading and Study Strategies," which is available to any student or lay-person (such as people who want to re-enter the labour market), whether they are members of the institution or not.<sup>465</sup> The

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<sup>460</sup> *Ibid.*

<sup>461</sup> La Alianza, *About*, online: La Alianza <<http://www.law.harvard.edu/students/orgs/alianza/about.html>>.

<sup>462</sup> *Ibid.*,

<sup>463</sup> *Ibid.*

<sup>464</sup> *Ibid.*

<sup>465</sup> Harvard University, *Harvard Course in Reading and Study Strategies*, online: Harvard University <<http://www.bsc.harvard.edu/rc.html>>.

Course teaches participants how to "apply active learning strategies to making notes, preparing for exams, and choosing how to use [one's] time and energy every day."<sup>466</sup> It was specifically designed for those "who need to read more, and more critically, than ever before and who, as a result, find themselves overwhelmed or disengaged."<sup>467</sup>

#### 4.4.2.2 Innovative Curricula

One of the key learnings from the research on the experiences of law students is that they not only require courses on substantive, doctrinal law, but also lessons on how to master the challenges associated with legal practice. In the Canadian context, the University of Victoria Faculty of Law has the nation's "only comprehensive common law co-operative education program,"<sup>468</sup> which aims to "combine the knowledge [students] gained in the classroom with practical experiences in the workplace."<sup>469</sup> Started in 1989, participants in the Co-op Program complete three, four-month work terms that alternate with their on-campus academic endeavours.<sup>470</sup>

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<sup>466</sup> *Ibid.*

<sup>467</sup> *Ibid.*

<sup>468</sup> University of Victoria Faculty of Law, *Law Co-op Program*, online: Victoria Faculty of Law <<http://law.uvic.ca/prospective/other/coop.php>>.

<sup>469</sup> *Ibid.*

<sup>470</sup> University of Victoria Faculty of Law, *Law Co-op Program Overview*, online: Victoria Faculty of Law <<http://coop.uvic.ca/lawcoop/index.php?page=overview>>.

While participating in the Co-op Program extends the length of the LL.B. degree by four to eight months, students gain practical learning experiences that complement theoretical coursework. Specifically, students are able to "apply and test their classroom knowledge in productive working environments, and develop professional skills required across a range of work settings."<sup>471</sup>

Co-op students learn practical legal practice skills because they are exposed to a variety of job settings and occupations during their work terms, including non-traditional areas of practice, which can help refine career plans by showing students the rigours of the profession.<sup>472</sup> In addition, "the varied work term locations allow students to experience new living and working environments, and to make valuable professional contacts."<sup>473</sup> Examples of Co-op Program placements include: Canadian and international law firms (for instance, in Singapore, Malaysia and France); the corporate sector as in-house counsel (for example, at BC Gas Ltd. and Vancouver Island Railway); BC Government ministries (such as the Office of the Attorney General, Community Aboriginal and Women's Services, and

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<sup>471</sup> University of Victoria Faculty of Law, *What is Co-operative Education?*, online: Victoria Faculty of Law <<http://coop.uvic.ca/lawcoop/index.php?page=whatis>>.

<sup>472</sup> *Ibid.*

<sup>473</sup> *Ibid.*

Water, Land and Air Protection); agencies and tribunals (including WorkSafeBC (the Workers' Compensation Board of BC)); and, not-for-profit organizations (such as, the Sierra Legal Defence Fund, the Together Against Poverty Society, and the Yukon Legal Services Society).<sup>474</sup>

Various American law schools have also integrated "a more practical, problem-solving approach into [their] traditional legal education."<sup>475</sup> For instance, Harvard Law School provides classes in finance, marketing, management, and creative and innovative thinking.<sup>476</sup> In addition, Stanford Law School's "3 Dimensional" (3D) degree program allows for "the study of other disciplines with team-oriented problem solving techniques and expanded clinical training to better enable students to represent clients."<sup>477</sup> The College of Law at Syracuse University offers a "General Counsel Transition" course, whereby students can obtain a "Corporate Counsel Certificate" to show that they can handle the issues facing an in-house lawyer, such as dealing with contracts, intellectual property, mergers, personnel

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<sup>474</sup> University of Victoria Faculty of Law, *Employer Profiles*, online: Victoria Faculty of Law <<http://coop.uvic.ca/lawcoop/index.php?page=profiles>>.

<sup>475</sup> Sonsteng, *supra* note 437 at 417.

<sup>476</sup> *Ibid.*, citing S. Pfeiffer, "Twas a Time for Change" *The Boston Globe* (7 May 2006) at D1.

<sup>477</sup> Sonsteng, *ibid.*, citing Stanford Law School, *A '3D' JD: Stanford Law School Announces New Model for Legal Education* (28 November 2006), online: Stanford Law School <<http://www.law.stanford.edu/news/pr/47/>>.

relations, and litigation management.<sup>478</sup> Furthermore, the College of William and Mary's Marshall-Wythe School of Law "expanded its skills-based curriculum by offering a course in law office management."<sup>479</sup> It includes sessions on human resource management, billing and document retention, and financial management.<sup>480</sup> The City University of New York (CUNY) Law School's goal is to integrate "practical experience, professional responsibility, and lawyering skills with doctrinal study at every level."<sup>481</sup> In order to fulfill this mission, it instituted a clinical training program that involves students from all years of law school. Specifically:

First-year students acquire clinical experience through simulation exercises conducted in a required year-long lawyering seminar; second-year students take an advanced one-semester lawyering seminar in a public interest law area of their choice; third-year students earn 12-16 credits in either a field placement program or a live-client clinic onsite at the Law School.<sup>482</sup>

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<sup>478</sup> Sonsteng, *ibid.*, citing C.C. Day, "Teaching Students How to Become In-House Counsel" (2001) 51 J. Legal Educ. 503.

<sup>479</sup> *Ibid.* at 421.

<sup>480</sup> *Ibid.*

<sup>481</sup> City University of New York School of Law, *Philosophy & Mission*, online: CUNY School of Law <<http://www.law.cuny.edu/about/philosophy.html>>.

<sup>482</sup> *Ibid.*

### 4.4.3 Professional Bodies' Endeavours

#### 4.4.3.1 Work-Life Balance Initiatives

Professional industry bodies in the legal profession (such as the CBA, provincial branches of the CBA, and provincial law societies) all have a similar mission: to be "the leader and voice of [the] legal profession in a complex, changing world"<sup>483</sup> and to be "the determined advocate of the profession."<sup>484</sup> Consequently, they play an important role in alleviating the stresses faced by lawyers, and helping them achieve WLB by educating members about the social and business case for being healthy in all facets of their lives, including the physical, mental and emotional spheres.

The CBA provides educational materials on its *CBA PracticeLink* website to supply "insight and hints to help lawyers balance the incessant pulls of both work and daily life."<sup>485</sup> Topics include: coping with stress; identifying depression; juggling family responsibilities; and case studies of law firms' wellness programs.<sup>486</sup> The BC Branch of the CBA (CBABC) also makes a concerted effort to help its member

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<sup>483</sup> CBA, *About the CBA*, online: CBA  
<[http://www.cba.org/bc/About\\_Us/main/default.aspx](http://www.cba.org/bc/About_Us/main/default.aspx)>.

<sup>484</sup> *Ibid.*

<sup>485</sup> CBA, *Life Balance*, online: CBA  
<<http://www.cba.org/cba/practicelink/bwl/default.aspx>>.

<sup>486</sup> *Ibid.*

lawyers balance the intrinsic pressures of practicing law with those associated with one's personal health by providing WLB tips, such as:

1. "Be realistic – Work-life balance is more like a teeter-totter: in real life, demands on you from work and your personal life constantly evolve and change. Therefore, develop strong home, community and work resources for support."<sup>487</sup>
2. "Be organized – Efficiency is key, and that means delegating work, prioritizing your tasks, and taking or maintaining control over things you have control over. Learn to say 'no.'"<sup>488</sup>
3. "Be disciplined – Work as productively as you can during the day and week to minimize opportunities for work to infringe upon other priorities such as exercise, rest, and time with family and friends."<sup>489</sup>

In addition, various WLB strategies are detailed on the CBABC website, including:

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<sup>487</sup> N. Byres, *Work Life Balance Committee: A Report from the Chair* (December 2004), online: CBABC  
<[http://www.cba.org/bc/bartalk\\_01\\_05/12\\_04/guest\\_byres.aspx](http://www.cba.org/bc/bartalk_01_05/12_04/guest_byres.aspx)>.

<sup>488</sup> *Ibid.*

<sup>489</sup> *Ibid.*

- "Make a commitment to wellness. This includes developing habits of healthful eating, getting enough sleep, and regular 'down' time";<sup>490</sup>
- "Set realistic expectations of yourself and others";<sup>491</sup>
- "Establish clear boundaries between work and personal time";<sup>492</sup>
- "Say 'no' to unreasonable requests and offer reasonable alternatives";<sup>493</sup> and,
- "Manage expectations with senior partners, colleagues and clients, and negotiate workable deadlines or tradeoffs."<sup>494</sup>

Furthermore, the CBABC created, in 2004, the *Work-Life Balance Committee*,<sup>495</sup> which transformed into the *Work-Life Balance Section* in 2009. It organizes the "Work-Life Balance Luncheon Speaker Series," as well as a number of workshops and educational resources on a range of topics, including: child and elder care; parenting; health and

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<sup>490</sup> N. Payeur, *Is Work-Life Balance Possible?*, (December 2004), online: CBABC <[http://www.cba.org/bc/bartalk\\_01\\_05/12\\_04/guest\\_payeur.aspx](http://www.cba.org/bc/bartalk_01_05/12_04/guest_payeur.aspx)>.

<sup>491</sup> *Ibid.*

<sup>492</sup> *Ibid.*

<sup>493</sup> *Ibid.*

<sup>494</sup> *Ibid.*

<sup>495</sup> Byres, *supra* note 487.

performance; and business practice.<sup>496</sup> Furthermore, in order to spread the message about the importance of supporting WLB within the legal profession, the CBABC instituted the *CBABC Work Life Balance Award* in 2008.<sup>497</sup> Specifically, the Award is:

...designed to reward innovation and creative thinking in work life balance and to recognize a CBABC member, law firm, or organization who demonstrates this balance in their practice or who is a leader in the development and implementation of work life balance strategies to assist others to achieve work life balance.<sup>498</sup>

The first recipient was the Criminal Justice Branch of the Ministry of the Attorney General of BC “for its exceptional promotion of work life balance in the legal profession.”<sup>499</sup> The second recipient was the Kelowna-based law firm of Pushor Mitchell.<sup>500</sup> In 2010, the CBABC bestowed two awards--one for an individual and one for a law firm/organization--to Nicole-Garton-Jones for her support of WLB in

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<sup>496</sup> CBABC, *Work Life Balance*, online: CBABC  
<[http://www.cba.org/BC/Practice\\_Resources/work\\_life/default.aspx](http://www.cba.org/BC/Practice_Resources/work_life/default.aspx)>.

<sup>497</sup> CBABC, *New Work Life Balance Award*, (April 2008), online: CBABC  
<[http://www.cba.org/bc/bartalk\\_06\\_10/04\\_08/wlb\\_award.aspx](http://www.cba.org/bc/bartalk_06_10/04_08/wlb_award.aspx)>.

<sup>498</sup> *Ibid.*

<sup>499</sup> CBABC, *Work Life Balance Award 2007-2008* (2 July 2008), online: CBABC  
<[http://www.cba.org/bc/public\\_media/news\\_2008/news\\_ag\\_07\\_02\\_08.aspx](http://www.cba.org/bc/public_media/news_2008/news_ag_07_02_08.aspx)>.

<sup>500</sup> CBABC, *Work Life Balance Award – 2008-2009* (30 June 2009), online: CBABC  
<[http://www.cba.org/BC/Public\\_Media/work\\_life\\_balance/2009.aspx](http://www.cba.org/BC/Public_Media/work_life_balance/2009.aspx)>.

her practice, and to the Continuing Legal Education Society of BC for its implementation of WLB strategies, respectively.<sup>501</sup>

#### **4.4.3.2 Retention of Female Lawyers**

As discussed in the beginning of this chapter, studies reveal that the rigours of practicing law have a disproportionate impact on female lawyers, who suffer professional setbacks when deciding to take time off to have children and raise a family, as this affects their trajectory on the partnership track. The result is a high attrition rate among female lawyers. Professional bodies across Canada have tried to combat this through research and mentorship programs. For instance, the CBA's *Women Lawyers Forum* "addresses the need for long term programs, plans and systems to achieve the broad mandate of promoting and supporting the enhancement of the stature and influence of women in the legal profession."<sup>502</sup> Furthermore, on the topic of WLB, in order to help women succeed in the legal profession, the "Women Lawyers Forum Mentoring Program" was "developed in order to address two issues that adversely affect women lawyers: to address the attrition rate and the fact that women may not be

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<sup>501</sup> CBABC, *CBABC Third Annual Work Life Balance Awards Luncheon* (29 June 2010), online: CBABC  
<[http://www.cba.org/bc/about\\_us/events\\_2010/wlb\\_2010.aspx](http://www.cba.org/bc/about_us/events_2010/wlb_2010.aspx)> [CBABC, *Third*].

<sup>502</sup> CBABC, *Women Lawyers Forum*, online: CBABC  
<[http://www.cba.org/BC/Sections\\_Groups/wlaw/default.aspx](http://www.cba.org/BC/Sections_Groups/wlaw/default.aspx)>.

naturally matched with a mentor.”<sup>503</sup> Matching new female lawyers with those who have experience in their field is an important knowledge transfer/coping tool because it provide for social support and the transfer of lessons about dealing “with the challenges of a demanding profession.”<sup>504</sup>

The Law Society of BC has also focused on supporting female members of the profession. As stated earlier, in 2009, the Retention of Women in Law Task Force released its report titled *The Business Case for Retaining and Advancing Women Lawyers in Private Practice*,<sup>505</sup> which detailed cultural obstacles that hamper female lawyers' opportunities for professional advancement, including stereotypes and assumptions about women and mothers, and a lack of female mentors and role models.<sup>506</sup> Moreover, the Report found that female lawyers are more likely to stay in work environments when they are satisfied with a number of key factors:

- Advancement opportunities;
- Availability of mentors;

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<sup>503</sup> D. Van Ginkel, *Mentoring Women Lawyers in British Columbia* (June 2007), online: CBABC <[http://www.cba.org/bc/bartalk\\_06\\_10/06\\_07/guest\\_van\\_ginkel.aspx](http://www.cba.org/bc/bartalk_06_10/06_07/guest_van_ginkel.aspx)>.

<sup>504</sup> *Ibid.*

<sup>505</sup> Law Society of British Columbia, *Retention of Women*, *supra* note 11.

<sup>506</sup> *Ibid.* at 7.

- Management of their organization;
- Professional development opportunities; and
- Control over their work.<sup>507</sup>

In the Ontario context, the Law Society of Upper Canada published a Report in May 2008<sup>508</sup> on the *Retention of Women in Private Practice Working Group*,<sup>509</sup> which offers recommendations about how to address the challenge of preserving female participation in the industry. Its conclusions centre on the special needs of female lawyers, who must manage the conflicting demands of legal practice, child-care, and parental-care, while also battling negative stereotypes about the use of FWAs: "Barriers faced by women are systemic and will require organizational and cultural change, along with a focus on the issue if meaningful change is to occur."<sup>510</sup> Moreover, the Report held that systemic cultural change would only occur through strong

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<sup>507</sup> *Ibid.* at 8.

<sup>508</sup> Law Society of Upper Canada, *Executive Summary of the Report of the Retention of Women in Private Practice Working Group* (May 2008), online: LSUC <[http://www.lsuc.on.ca/media/convmay08\\_retention\\_of\\_women\\_executive\\_summary.pdf](http://www.lsuc.on.ca/media/convmay08_retention_of_women_executive_summary.pdf)> [LSUC, *Executive Summary*].

<sup>509</sup> Law Society of Upper Canada, *Retention of Women in Private Practice Working Group*, online: LSUC <<http://www.lsuc.on.ca/about/b/equity/retentionofwomen/>>. For further information, see the press releases and other documents associated with the Report.

<sup>510</sup> LSUC, *Executive Summary*, *supra* note 508 at 5.

leadership and commitment from managing partners to implement a variety of initiatives.<sup>511</sup> First, in order to help diagnose gaps in female representation at all levels of profession, law firms should collect and analyse demographic data in order to start the process of creating strategies to recruit and retain female talent.<sup>512</sup> Second, law firms must adapt to the needs of the labour market and take advantage of the business and social case for flexibility by supporting a WLB organizational culture through the "adoption, acceptance and effective implementation of maternity/parental leaves and flexible work arrangements."<sup>513</sup> Third, as a key knowledge transfer tool for coping with the challenges of legal practice and learning from the experiences of their peers, law firms would be wise to create "programs to assist women to become leaders, both inside and outside their firms, such as effective mentoring programs, gender-based networking opportunities and leadership skills development opportunities."<sup>514</sup>

Due to these conclusions, the Law Society of Upper Canada has implemented several initiatives that aim to aid female lawyers in their search for WLB, thereby allowing them to continue in the profession.

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<sup>511</sup> *Ibid.* at 8-17.

<sup>512</sup> *Ibid.*

<sup>513</sup> *Ibid.*

<sup>514</sup> *Ibid.*

For instance, as a result of findings in the Report that "women in small firms and sole practices are particularly vulnerable because they do not have the financial or human resources to take leaves,"<sup>515</sup> it created a policy whereby benefits of \$3,000 would be paid to sole practitioners who "need help paying office rent and overhead while they are on maternity leave,"<sup>516</sup> and a "locum registry" of lawyers was created to document who can temporarily take over these members' legal practices while away.<sup>517</sup> Furthermore, in 2009, in collaboration with University of Toronto Law School, the Law Society of Upper Canada, created the "Women in Transition" Program to help "women who are planning a return to the legal world" after extended leave (such as for child-bearing).<sup>518</sup> The Program is aimed at the following:

- "Practicing lawyers considering a transition to non-traditional legal work";<sup>519</sup>

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<sup>515</sup> LSUC, *Executive Summary*, *supra* note 508 at 5.

<sup>516</sup> K. Makin, "Lawyer-moms aim to change law firms' punishing work culture" *The Globe and Mail* (11 April 2009).

<sup>517</sup> *Ibid.*

<sup>518</sup> Makin, *supra* note 516.

<sup>519</sup> University of Toronto Faculty of Law Institute for Executive Legal Education, *Women in Transition: Returning to Legal Practice or Considering an Alternative Career in Law*, online: Institute for Executive Legal Education <<http://www.law.utoronto.ca/ExecutiveEducation/Women10.html>> [Institute, *Women in Transition*].

- "Women who have left private practice to take of their families or pursue other interests, and wish to return to legal practice or a non-traditional law-related job";<sup>520</sup>
- "Women interested in part-time work, starting up their own law practice or joining other like-minded women in shared arrangements";<sup>521</sup> and,
- "Lawyers who just want to learn more about their options and meet with potential employers and network."<sup>522</sup>

The Program emphasizes "networking and learning new technological skills," and includes "a series of 10-minute, speed-dating-style encounters with female lawyers who succeeded in making the jump back to law."<sup>523</sup> The Program has successfully supported female lawyers who initially thought about leaving the profession. Indeed, Sushama, a participant in the 2009 edition of the Program, emphatically proclaims:

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<sup>520</sup> *Ibid.*

<sup>521</sup> *Ibid.*

<sup>522</sup> *Ibid.*

<sup>523</sup> *Ibid.* To view the 2010 schedule of the two-day session, see University of Toronto Faculty of Law Institute for Executive Legal Education, *Program*, online: Institute for Executive Legal Education <[http://www.law.utoronto.ca/ExecutiveEducation/Women10\\_program.html](http://www.law.utoronto.ca/ExecutiveEducation/Women10_program.html)>.

Thank you for creating the 'Women in Transition' event. It came at a time when I was considering resigning from the profession. It was good to be reminded that all those years of education and hard work may still mean something!<sup>524</sup>

#### **4.4.3.3 Discussion: More Action is Required**

It is contended that the various initiatives and recommendations described above, while useful, will not be successful unless the professional bodies across Canada act as "change agents" (as defined in Chapter 2) to transform the workplace cultures within law firms. First, the CBA, its provincial branches, and law societies focus their efforts on the effects of failing to achieve WLB (stress, depression, alcoholism, attrition of female lawyers, etc.), rather than directing their attention on the root causes of WLB. Thus, while they detail WLB policies and strategies on their websites and in their industry publications, they must also direct their attention towards making legal employers implement WLB initiatives, and encouraging their usage within firms. The fact is that lawyers do "not feel that they can take advantage of them because management does not encourage

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<sup>524</sup> University of Toronto Faculty of Law Institute for Executive Legal Education, *2009 Testimonials*, online: Institute for Executive Legal Education <[http://www.law.utoronto.ca/ExecutiveEducation/Women10\\_testimonial.html](http://www.law.utoronto.ca/ExecutiveEducation/Women10_testimonial.html)>.

their use."<sup>525</sup> The result is that many lawyers believe "that availing of family friendly working arrangements shows a lack of commitment to one's career."<sup>526</sup> As stated earlier in Chapter 4, 42 percent of lawyers believe that a colleague who takes advantage of these initiatives will automatically be sent to 'the B team.'<sup>527</sup> Indeed, it is contended that the encouragement and maintenance of anti-WLB attitudes within law firms across Canada is the reason why other provincial branches of the CBA have not created a Work-Life Balance Section comparable to that in BC. Yet, the situation in BC is not as positive as it may appear, since a large law firm has yet to win the CBABC Work-Life Balance Award. It is asserted that this is the case because the *status quo* has been maintained for the last several generations in BC's large and elite law firms, and has led to great economic success, which hampers efforts towards cultural change.

Second, while initiatives aimed at helping to retain female lawyers in legal practice are vital, the fact is that law societies and bar associations have ignored why lawyers (male and female) suffer from higher rates of depression, stress, anxiety and alcoholism in

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<sup>525</sup> Duxbury & Higgins, *Saying No*, *supra* note 66 at 3.

<sup>526</sup> Bacik & Drew, *supra* note 71 at 139.

<sup>527</sup> Catalyst Canada, *Job Flexibility*, *supra* note 14 at 13.

comparison to members of other professions, and compared to those in the general population. Indeed, employers and professional bodies focus their attention on dealing with these negative conditions, rather than combating the causes of such conditions. For instance, the Law Society of BC's "Lawyer Assistance Program" (LAP) provides "confidential support, counselling, referrals and peer interventions for lawyers, their families, support staff and articulated students who suffer from alcohol or chemical dependencies, stress, depression or other personal problems."<sup>528</sup> A lawyer also has access to an "Employee Assistance Program" (EAP) through his/her health care benefits package, which also provides counselling and drug rehabilitation services. Yet, rather than investigate the underlying causes of lawyers' physical and emotional crises, law firms, bar associations, and law societies across Canada provide after-the-fact referral programs that merely deal with the negative consequences of legal practice, instead of sufficiently addressing workplace culture and the lack of WLB in the legal profession.

It is asserted that the professional bodies across Canada must act as change agents to encourage the legal profession to support WLB

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<sup>528</sup> Law Society of BC, *Lawyer Assistance Program*, online: Law Society of BC <[http://www.lawsociety.bc.ca/practice\\_support/assistance.html](http://www.lawsociety.bc.ca/practice_support/assistance.html)>.

and help lawyers gain greater flexibility in their lives. They can achieve this by doing the following:

1. They must publicize the evidence for the business case for WLB. As detailed in Chapter 3, the demographic changes in society (the aging workforce and the feminization of the labour market) make it necessary for law firms to recruit and retain much needed talent in the tight labour market. Moreover, the successful implementation and encouragement of WLB initiatives among workers has allowed organizations to achieve many positive economic results, including decreases in absenteeism and presenteeism, lower health care costs, greater employee morale, and higher corporate esteem (in the form of "top employer" accolades). Thus, the legal profession's industry bodies should be touting the social and economic case for WLB to its members to help push the culture change process forward.

2. The professional bodies should also reinforce that articulated students, associates, and senior lawyers have legal protections under the family status human rights ground (which was discussed in Chapter 3). In the provincial context, the Law Society of BC and the CBABC, for instance, should

provide workshops not only about how law firms and other legal employers can implement and support WLB in law firms, but also how employers must comply with statutory law and jurisprudence concerning family status by providing leave options, and other FWAs.

It is asserted that without these actions from the CBA, its branches, and provincial law societies, there will not be any momentum for law firms to adapt to their employees' WLB needs.

#### **4.4.4 Corporate Best Practices**

##### **4.4.4.1 Description of Case Studies**

This section of the thesis investigates fourteen case studies from Canada, the US and the United Kingdom (UK) that provide useful lessons about how employers can best engage with their workers to help them in their pursuit of WLB. Specifically, the case studies allow for the delineation of key insights about the promotion of WLB, particularly the rationale for a pro-WLB cultural shift within the organizations, successful initiatives, and positive impacts.<sup>529</sup> The companies studied are described in Table 4.4:

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<sup>529</sup> Please note that due to some similarities found between the organizations, this section will not describe each firm's reasons for engaging with the issue of WLB, and nor will it describe the strategies used within each case study. Instead, it will describe the most illuminative reasons and innovative best practices within the case studies.

**Table 4.4 Description of Corporate Case Studies**<sup>530</sup>

Country	Organization	Demographics	Sector
Canada			
	Delta Hotels	7,000 employees in Canada	Hospitality
	Kraft Canada	97,000 employees worldwide	Food Production

<sup>530</sup> Table adapted from: Delta Hotels, *About Us*, online: Delta Hotels <<http://www.deltahotels.com/en/about>>; Eli Lilly and Company, *Facts at a Glance* (2010), online: Eli Lilly and Company <<http://lilly.com/about/facts/>>; K. Giglio, *Workplace Flexibility Case Studies*, online: Sloan Work and Family Research Network <<http://wfnetwork.bc.edu/template.php?name=casestudy>>; Georgetown University Law Center, *Flexible Work Arrangements: Selected Case Studies* (2010), online: Workplace Flexibility 2010 <[http://workplaceflexibility2010.org/images/uploads/FWA\\_CaseStudies.pdf](http://workplaceflexibility2010.org/images/uploads/FWA_CaseStudies.pdf)>; Kraft Foods, *2009 Fact Sheet* (2010), online: Kraft Foods <[http://www.kraftfoodscompany.com/assets/pdf/kraft\\_foods\\_fact\\_sheet.pdf](http://www.kraftfoodscompany.com/assets/pdf/kraft_foods_fact_sheet.pdf)>; McGladrey, *About McGladrey*, online: McGladrey <<http://mcgladrey.com/About/About?itemid=195&mid=195>>; Marriott International, *Meet Our Global Workforce* (2010), online: <[http://www.marriott.com/marriott.mi?page=diversity\\_workforce](http://www.marriott.com/marriott.mi?page=diversity_workforce)>; PricewaterhouseCoopers, *About Us*, online: PricewaterhouseCoopers <<http://www.pwc.com/gx/en/about-pwc/index.jhtml>>; 3M, *3M Facts*, online: 3M <[http://solutions.3m.com/wps/portal/3M/en\\_US/about-3M/information/about/3MFacts/](http://solutions.3m.com/wps/portal/3M/en_US/about-3M/information/about/3MFacts/)>; Work Foundation, *Royal Bank of Scotland Group: Your time - Making flexibility at work, work* (April 2005), online: Work Foundation <<http://www.theworkfoundation.com/Assets/Docs/RBS.pdf>> [Work Foundation, *RBS*]; Work Foundation, *Unilever: Developing an approach that is consistently applied across a large business* (June 2003) at 1, online: Work Foundation <<http://www.theworkfoundation.com/Assets/Docs/unilever.pdf>> [Work Foundation, *Unilever*].

<b>Country</b>	<b>Organization</b>	<b>Demographics</b>	<b>Sector</b>
<b>United States</b>			
	3M	31,500 employees in the US	Science and Manufacturing
	AFLAC	4,000 employees in the US	Insurance
	Cisco Systems	39,000 employees worldwide	Technology
	First Tennessee Bank	8,000 employees in the US	Financial Services
	KPMG	100,000 employees worldwide	Audit, Assurance, Tax and Consulting
	Marriott International	146,000 employees worldwide	Hospitality
	McGladrey & Pullen	32,000 employees worldwide	Audit and Assurance
	Pricewaterhouse Coopers	163,000 employees worldwide	Audit, Assurance, Tax and Consulting
	Timberland	5,200 employees	Apparel Production and Marketing

Country	Organization	Demographics	Sector
<b>United Kingdom</b>			
	Eli Lilly and Company	39,000 employees worldwide	Pharmaceuticals
	Royal Bank of Scotland	102,000 employees in the UK	Financial Services
	Unilever	12,500 employees in the UK	Consumer Goods Manufacturing and Marketing

#### 4.4.4.2 Impetus for Cultural Shifts

The case studies reveal that an organization's cultural evolution to promote WLB among its employees is rooted in: (1) crisis management, where the organization has decided it needs to drastically change its management style in order to economically survive in the short run; and/or, (2) business strategy, where senior managers decide, through their assessment of the business case for WLB, that the viability of their organization will be enhanced through initiatives aimed at lessening staff members WLC-related conditions by

helping them find an equilibrium between work and personal responsibilities and desires.

Kraft Canada decided to support WLB after a national employee survey found that "finding balance was a major challenge for most Kraft employees."<sup>531</sup> According to Vicki Quigg, the company's Manager of Work-Life Harmony and Wellness:

It's hard to find that balance of working hard and at the same time making time for the other things in life that are important. But employees did tell us that they feel stretched.<sup>532</sup>

The company further understood that unless it developed a flexible workplace culture, "adding programs to one's HR department or policies to one's HR manual [would] collect dust."<sup>533</sup> For this reason, Kraft Canada adopted a process of instituting a WLB culture within the organization in three steps:

1. The first step, in 1999, was to conduct focus groups to investigate the challenges faced by employees, as well as

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<sup>531</sup> Human Resources and Skills Development Canada, *Corporate Profiles: Kraft Canada* (July 2001), online: Human Resources and Skills Development Canada <[http://www.hrsdc.gc.ca/eng/lp/spila/wlb/ell/10kraft\\_canada.shtml](http://www.hrsdc.gc.ca/eng/lp/spila/wlb/ell/10kraft_canada.shtml)> [HRSDC, *Kraft*].

<sup>532</sup> *Ibid.*

<sup>533</sup> *Ibid.*

discover what types of WLB initiatives they would like to see implemented.<sup>534</sup> The recommendations from the sessions led to the creation of the "Work-Life Harmony Initiative."<sup>535</sup>

2. The second step was to create its "Work-Life Vision and Philosophy" in 2000, which set out Kraft Canada's goals and objectives.<sup>536</sup>
3. The third step, undertaken in 2001, was to implement the program.<sup>537</sup>

Kraft Canada understood that the corporate culture would not change unless senior leadership gained the trust of its employees. Thus, at various events, workshops and focus groups, senior executives took the time "to assure employees that the executive team [understood] and [related] to the challenges they face," which made "a big different to levels of morale and trust."<sup>538</sup> For instance, Dan Butler, Kraft Canada's Chief Operating Officer (COO), used an opportunity provided

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<sup>534</sup> *Ibid.*

<sup>535</sup> *Ibid.*

<sup>536</sup> *Ibid.*

<sup>537</sup> *Ibid.*

<sup>538</sup> *Ibid.*

by a staff meeting to discuss his own work-life challenges as a father of four, and how he works on juggling his multiple responsibilities."<sup>539</sup>

KPMG decided to focus on job sharing as a means to provide workplace flexibility for its workers due to an occurrence within its employee ranks wherein "two individuals wanted to reduce their hours and it worked for that specific job."<sup>540</sup> When more workers were able to successfully meet their work and personal needs through job-sharing, "the firm began to promote it more actively and developed a wide range of flexible work options as part of [its] Employer of Choice initiatives,"<sup>541</sup> which aims to help it attract and retain talented people in the labour market. The first obvious benefit it receives from having a job sharing program is that it is able to retain two employees who otherwise might look at other options, including the possibility of leaving the company.<sup>542</sup>

First Tennessee Bank, in 1992, in light of evidence that work schedules and attendance policies were problematic for employees in meeting their personal responsibilities, created a task force that

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<sup>539</sup> *Ibid.*

<sup>540</sup> Georgetown University Law Center, *supra* note 530 at 8.

<sup>541</sup> *Ibid.*

<sup>542</sup> *Ibid.*

travelled for three months to various cities in order to survey and train 1,000 managers about WLB challenges and solutions.<sup>543</sup> However, the company understood that merely introducing initiatives would not lead to success--it had to encourage an organizational culture that "communicates the message that flexibility is for everyone."<sup>544</sup> It did this, in the early stages of its WLB efforts, by including three men on the original task force, which "helped change the widespread assumption that flexibility was merely a 'women's issues.'"<sup>545</sup> Furthermore, in order to show single workers that WLB is applicable to them, they ensure that their marketing of initiatives targets a broad, rather than narrow, segment of its employee-base by not defining "'family' in any company policies."<sup>546</sup>

The UK subsidiary of Eli Lilly and Company Ltd. decided to focus on WLB in 1995 when an internal survey showed that only 30 percent of employees felt that they adequately balanced their professional and personal demands.<sup>547</sup> Senior management of the company realized

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<sup>543</sup> *Ibid.* at 5.

<sup>544</sup> *Ibid.*

<sup>545</sup> *Ibid.*

<sup>546</sup> *Ibid.*

<sup>547</sup> Work Foundation, *Eli Lilly and Company Ltd. (Lilly UK): Attracting and retaining high calibre employees* (date unknown) at 1, online: Work Foundation <<http://www.theworkfoundation.com/Assets/Docs/Publications/EliLilly.pdf>>.

that it had to encourage an organizational culture of flexibility by engaging with its staff and helping managers understand the business case for WLB. As a result, it first set up a project team that created a toolkit with various examples of FWAs and alternative working practices to help line managers "balance their business challenges with the needs of their employees."<sup>548</sup> Furthermore, even though the organization's WLB program was launched in 1996, it continues, in 2010, to gather employee feedback to ensure that the initiatives, policies and communication tools are adaptive to employees' current needs. It engenders a strong WLB culture through surveys, focus groups, and other feedback mechanisms,<sup>549</sup> which send a message to its staff that it cares about their well-being and is not complacent about their needs and how best to fulfill them.<sup>550</sup>

#### **4.4.4.3 Best Practices from the Case Studies**

"WLB practices" have been defined as "deliberate organizational changes in policies, programs or organizational culture that are designed to reduce WLC and enable employees to be more effective at

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<sup>548</sup> *Ibid.*

<sup>549</sup> *Ibid.*

<sup>550</sup> *Ibid.*

work and in other roles."<sup>551</sup> The next portion of the thesis details WLB practices that are broadly representative of developments in this field, and can be transferred to the legal profession, as well as other sectors. The best practices can be grouped in the following two categories:

1. **Workplace Flexibility:** Employers have implemented a variety of FWAs, including flex-time (alternative starting and ending hours); compressed work-weeks (a full-time workload in less than the standard number of days); tele-commuting (some or all duties performed from home); part-time workload; time off for the provision of child-care and elder-care; job sharing; and, re-designed career pathways that allow workers to move to positions that allow for the fulfilment of non-work goals, such as the provision of volunteer service. Examples of best practices include:

- Through its work-life program, the audit and accounting firm of McGladrey & Pullen offers "flex years" to its employees, which allows them "to take off a portion of the year and prorate their salary over the entire year, with full benefits."<sup>552</sup> This enables employees to fulfill other needs.

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<sup>551</sup> Korabik, Lero & Richardson, *supra* note 9 at 19.

<sup>552</sup> D. McCann, *Work-life Programs: How the Big Seven Flex* (23 July 2008), online: CFO.com <<http://www.cfo.com/article.cfm/11785171?f=singlepage>>.

For instance, Jay Matsen, a member of the firm's Seattle office, is a fire-fighter during the summer.<sup>553</sup> According to Matsen, "McGladrey & Pullen is one of the few public accounting firms that really understands the importance of having a flexible work environment."<sup>554</sup> In addition, the firm's "flex career" program allows members to leave the organization for up to five years and be welcomed back after their sabbatical. The program provides resources to these employees to "help them stay connected with the organization and industry, and [it] will pay for any continuing education courses they take."<sup>555</sup>

- PricewaterhouseCoopers provides a "Social Service" sabbatical, which allows employees to take leaves of three to six months to "devote time to volunteer and charitable activities."<sup>556</sup>
- KPMG's "shared leave" program allows members to "donate their own paid time off to employees who are

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<sup>553</sup> McGladrey & Pullen, *Jay Matsen: A WorkLife Case Study*, online: McGladrey & Pullen <[http://mcgladreypullen.com/Careers/WorkLife\\_Jay.html](http://mcgladreypullen.com/Careers/WorkLife_Jay.html)>.

<sup>554</sup> *Ibid.*

<sup>555</sup> McCann, *supra* note 552.

<sup>556</sup> *Ibid.*

faced with unexpected life emergencies but [do not] have sufficient remaining vacation time."<sup>557</sup>

- Cisco Systems, the networking technology company, takes advantage of its broadband technology by providing employees with tele-commuting opportunities.<sup>558</sup> Specifically, "employees are free to work when and where they like," as long as work objectives are completed.<sup>559</sup>
- AFLAC, the insurance company, provides various types of shift scheduling options to help their workers meet family needs. Specifically, it has a 4-day, 10-hour work-week, as well as a 3-day, 12-hour work week.<sup>560</sup>
- Timberland, the producer and marketer of apparel, instituted its "Path of Service" initiative to give employees

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<sup>557</sup> *Ibid.*

<sup>558</sup> K. Giglio, *Workplace Flexibility Case Study: Cisco Systems and Telework* (date unknown) at 1, online: Sloan Work and Family Research Network <<http://wfnetwork.bc.edu/pdfs/cisco.pdf>> [Giglio, *Cisco*].

<sup>559</sup> *Ibid.*

<sup>560</sup> K. Giglio, *Workplace Flexibility Case Study: AFLAC's Full-time Schedule Options* (date unknown) at 1, online: Sloan Work and Family Research Network <<http://wfnetwork.bc.edu/pdfs/AFLAC.pdf>> [Giglio, *AFLAC*].

an opportunity to serve their communities.<sup>561</sup> Under the initiative, "employees are granted 40 hours of paid time off per year upon hire, allowing them to spend time serving in their community."<sup>562</sup> In order to qualify for this program, "the employee's service activity must advance, assist or enrich the community in the environment, education, health or social/human service."<sup>563</sup>

- Unilever UK has been able to retain employees through its flexible working options (including part-time working, telecommuting, job sharing, and flexible hours), and its leave options that provide maternity, paternity and adoptive leave policies in excess of UK statutory requirements.<sup>564</sup>

2. **Knowledge Transfer:** Companies with WLB cultures also provide resources, workshops and courses that help their employees meet their various personal responsibilities. Best practices include:

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<sup>561</sup> K. Giglio, *Workplace Flexibility Case Study: Timberland and the Path of Service* (date unknown) at 1, online: Sloan Work and Family Research Network <<http://wfnetwork.bc.edu/pdfs/timberland.pdf>> [Giglio, *Timberland*].

<sup>562</sup> *Ibid.*

<sup>563</sup> *Ibid.*

<sup>564</sup> Work Foundation, *Unilever*, *supra* note 530 at 1.

- Delta Hotels has focused on "training good managers, and inspiring a supportive environment where employees feel valued."<sup>565</sup> Thus, it aims to engender a high degree of trust between managers and workers by encouraging employee feedback through online mechanisms, surveys, and managerial performance reviews.<sup>566</sup>
- Marriott International provides fathering courses and seminars--such as "Effective Fathering" and "Daddy Stress/Daddy Success"--"that teach fathers from different parts of the company how to lead richer lives with their families."<sup>567</sup>
- 3M provides WLB information to its employees through several mechanisms: a "Family CareLink Resource and Information Service," which is a "free, confidential information service on balancing work and family responsibilities"; a booklet that is sent to each employee's

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<sup>565</sup> Human Resources and Skills Development Canada, *Organizational Profiles: Delta Hotels* (July 2001), online: Human Resources and Skills Development Canada <[http://www.hrsdc.gc.ca/eng/lp/spila/wlb/ell/06delta\\_hotels.shtml](http://www.hrsdc.gc.ca/eng/lp/spila/wlb/ell/06delta_hotels.shtml)>.

<sup>566</sup> *Ibid.*

<sup>567</sup> Human Resources and Skills Development Canada, *Experience and Lessons Learned: Innovative Practices* (January 2007), online: Human Resources and Skills Development Canada <[http://www.hrsdc.gc.ca/eng/lp/spila/wlb/ell/01innovative\\_practices.shtml](http://www.hrsdc.gc.ca/eng/lp/spila/wlb/ell/01innovative_practices.shtml)>.

residence; and, through information available on the company's intranet website.<sup>568</sup>

- Kraft Canada's "Work-Life Harmony Awareness" workshop aims "to raise personal and team awareness of how work-life issues might be impacting productivity, morale, and wellness."<sup>569</sup> The Workshop has four components:<sup>570</sup>

1. Respect: This component teaches leaders the role they play in creating a respectful environment, and demonstrates to employees the importance of relating to one another respectfully;<sup>571</sup>
2. Self-Awareness: This module helps individuals develop a personal understanding of WLB goals, draft a vision or mission statement, and create an action plan for how to achieve these goals;<sup>572</sup>
3. Flexibility: This component communicates the WLB culture that the company wants to develop and

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<sup>568</sup> *Ibid.*

<sup>569</sup> HRSDC, *Kraft*, *supra* note 531.

<sup>570</sup> *Ibid.*

<sup>571</sup> *Ibid.*

<sup>572</sup> *Ibid.*

strengthen, and encourages managers to broaden the parameters regarding how, when, and where work is performed;<sup>573</sup> and,

4. Programs: The final module provides an explanation of the availability and appropriate uses of WLB policies at Kraft, ensuring that employees understand all the available options, as well as the best ways to use them.<sup>574</sup>

- The Royal Bank of Scotland, the fifth largest bank in the world, has 120,000 employees worldwide, 60 percent of which are female. In order to adapt to the needs of its employees, particularly its female-base, it instituted a range of FWAs in 2002, including part-time work, job-sharing, compassionate leave, study leave, and others.<sup>575</sup> The key lesson from the company's experience is the way it communicates WLB initiatives and encourages their use among employees. The company's departments each nominate a "Business Champion" who works on the WLB

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<sup>573</sup> *Ibid.*

<sup>574</sup> *Ibid.*

<sup>575</sup> Work Foundation, *RBS*, *supra* note 530 at 1.

project and ensures that policies and initiatives are communicated to employees and managers.<sup>576</sup> Furthermore, all employees have access to up-to-date information through: the company's intranet site, which provides surveys and case studies about successful individual and office practices; "HRdirect," which is a telephone service for line managers and employees; "HelpDirect," which is the company's employee assistance program; and, "Your Magazine," which is the company's internal newsletter.<sup>577</sup>

#### **4.4.4.4 Positive Results**

The various companies described above have gained positive economic and social results due to their WLB initiatives. Examples include:

- According to employee feedback, the WLB initiatives at McGladrey & Pullen have been a success, as participants "report they have greater balance in their lives, work harder, met and often surpassed their business goals and were more

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<sup>576</sup> *Ibid.*

<sup>577</sup> *Ibid.* at 1-2.

apt to stay with the organization rather than look for employment elsewhere."<sup>578</sup>

- Due to its various WLB initiatives, PricewaterhouseCoopers was named a "Top 100 Best Company for Working Mothers" in the US by *Working Mother* magazine in 2009.<sup>579</sup> In addition, according to internal surveys, the proportion of employees who agreed that they had sufficient levels of WLB increased from 40 percent in 1999 to 60 percent in 2003.<sup>580</sup>
- KPMG was named one of "Canada's Top 100 Employers" and one of "Canada's Top Family-Friendly Employers" in 2009.<sup>581</sup>
- Cisco Systems has realized several benefits: it achieved \$195 million in employee productivity gains in 2003 due to its encouragement of tele-commuting; and, employees who tele-commuted reported that they gained a productivity

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<sup>578</sup> McGladrey & Pullen, *RSM McGladrey Inc. & Pullen LLP "walk the talk" on Work Life* (9 August 2005), online: McGladrey & Pullen <[http://mcgladreypullen.com/Generated\\_HTML/News/WorkLife.html](http://mcgladreypullen.com/Generated_HTML/News/WorkLife.html)>.

<sup>579</sup> *Working Mother Magazine*, "Working Mother 100 Best Companies 2009: PricewaterhouseCoopers", online: Working Mother Magazine <<http://www.workingmother.com/BestCompanies/hall-of-fame/2009/09/pricewaterhousecoopers>>.

<sup>580</sup> Work Foundation, *PricewaterhouseCoopers* (date unknown), online: Work Foundation <<http://www.theworkfoundation.com/Assets/Docs/PWC.pdf>>.

<sup>581</sup> R. Caballero & R. Yerema, *KPMG* (2 November 2009), online: ELUTA.ca <<http://www.eluta.ca/top-employer-kpmg>>.

advantage of 30 minutes per day due to working at home and not having to commute to the office.<sup>582</sup>

- AFLAC's compressed work-week options, as well as its other FWAs, have allowed employee retention within its call centre operations to go from 87 percent to 94 percent.<sup>583</sup>
- Timberland was named a "Top 100 Best Company for Working Mothers" by *Working Mother* magazine in 2006.<sup>584</sup> In addition, its Path of Service program has achieved a great deal of employee engagement, with 95 percent of workers using their Path of Service benefit to contribute more than 300,000 hours to serve community organizations.<sup>585</sup>
- Marriott International has received numerous accolades, including: *Fortune Magazine*, from 1998 to 2007, named it one of the "100 Best Companies to Work For"; and, it was

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<sup>582</sup> Giglio, *Cisco*, *supra* note 558 at 2.

<sup>583</sup> Giglio, *AFLAC*, *supra* note 560 at 1.

<sup>584</sup> Timberland, *The Timberland Company Named a 2006 Working Mother 100 Best Company by Working Mother Magazine* (25 September 2006), online: Timberland <<http://www.timberland.com/corp/index.jsp?page=pressrelease&eid=8500008022>>.

<sup>585</sup> Giglio, *Timberland*, *supra* note 561.

named a "Top 100 Best Company for Working Mothers" by *Working Mother* magazine from 1993 to 2005.<sup>586</sup>

- Unilever UK, according to internal reports, has been able to retain 60 percent of employees who would have left the organization if they were unable to utilize FWAs.<sup>587</sup> In addition, absenteeism rates have fallen at manufacturing sites, where "employees can job share on shifts or swap shifts to meet emergency needs."<sup>588</sup>

#### **4.4.5 Alternative Models of Legal Practice**

##### **4.4.5.1 Introduction**

Law firms are rethinking how they deliver legal services, not only because of WLB issues, but also due to the global economic downturn, which has led to the contraction of jobs and business opportunities.<sup>589</sup> For instance, many firms are using alternative billing practices to attract potential clients with the lure of cost certainty. Furthermore, others have created "virtual law firms" that allow lawyers to work from

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<sup>586</sup> Marriott International, *Awards & Recognition*, online: Marriott International <<http://www.marriott.com/corporateinfo/social-responsibility/social-responsibility-awards.mi>>.

<sup>587</sup> Work Foundation, *Unilever*, *supra* note 530 at 1.

<sup>588</sup> *Ibid.* at 2.

<sup>589</sup> D. Lat, *The 21st Century Lawyer: New Models for Practicing Law* (6 April 2009), online: Flex-Time Lawyers <<http://flextimelawyers.com/news/news59.pdf>>.

home or at a client's location, which lowers the expenses associated with running an office, and, in turn, leads to lower costs for the client. This section investigates these practices, and provides examples of their usage in the legal profession.

#### **4.4.5.2 Alternative Billing Options**

Alternative billing options have been praised as a means to "avoid some of the traps of [the] billable hour practice."<sup>590</sup> Examples include:<sup>591</sup>

- Discounted hourly rates, which is "the easiest variation on straight billable hours."<sup>592</sup>
- Blended billing, "which allows firms to bill a set hourly rate regardless of who is doing the work" in the firm.<sup>593</sup>

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<sup>590</sup> S.S. Fortney, "Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements" (2000) 69 UMKC L. Rev. 239 at 296.

<sup>591</sup> See J.A. Rose, *Implementing an Alternative Billing Program*, online: Joel A. Rose.com <[http://www.joelarose.com/articles/managing\\_billing\\_systems.html](http://www.joelarose.com/articles/managing_billing_systems.html)>.

<sup>592</sup> American Bar Association, *ABA Commission on Billable Hours Report: 2001-2002* (August 2002) at 16, online: American Bar Association <<http://www.abanet.org/careercounsel/billable/toolkit/bhcomplete.pdf>>.

<sup>593</sup> *Ibid.* at 17.

- Value billing, also known as "fixed-fee" billing, which is "a system in which lawyer and client negotiate an agreed-upon fee for a [service]."<sup>594</sup>
- Unit pricing, a variation of value billing, where fees are "determined for various tasks or phases of a matter, with payment being made upon the successful completion of the agreed upon task or phase."<sup>595</sup>
- Outcome-based billing, which is "a rewards-based system grounded on budgetary compliance and case results."<sup>596</sup> Examples include contingent fee arrangements and the provision of a base fee with an additional "success fee" for desired results.<sup>597</sup>
- Hybrid approaches that utilize various alternative arrangements, such as a flat fee plus hourly costs; an

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<sup>594</sup> A. Cook, "Hourly Billing: A Thing of the Past?" in R.C. Reed, ed., *Beyond the Billable Hour: An Anthology of Alternative Billing Methods* (Chicago, Ill.: American Bar Association, 1989) 31 at 31.

<sup>595</sup> Rose, *supra* note 591.

<sup>596</sup> American Bar Association, *supra* note 592 at 18.

<sup>597</sup> *Ibid.*

hourly rate plus contingency fees; or a fixed fee plus expenses plus a contingent fee.<sup>598</sup>

Commentators argue that the *status quo* in the legal profession "diminishes the quality of life of the professional by viciously segregating his or her time into billable and non-billable segment" and by "[focusing] on efforts, not results."<sup>599</sup> Thus, many call for the end of "high minimum billing requirements [and] limiting the number of hours that attorneys work,"<sup>600</sup> and/or replacing high billing requirements with the payment of bonuses for high billable hour totals.<sup>601</sup> Implementing alternative billing arrangements, it is argued, would "positively change firm culture and directly address attorney dissatisfaction and other problems created by the 'hours derby.'"<sup>602</sup>

Deborah Henry of *Flex-Time Lawyers*<sup>603</sup>--a US consulting firm that advises law students, lawyers and legal employers on WLB and

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<sup>598</sup> *Ibid.*

<sup>599</sup> R. Baker, J. Barnett & D. Morris, *Declaration of Independence* (1 January 2001), online: Verasage Institute <<http://www.verasage.com/index.php/declaration/comments/declaration/>>.

<sup>600</sup> *Ibid.* See E.B. Daniels *et al.*, "Increase Profits and Savings Through Work/Life Balance" ACC Docket (November 2009), online: Flex-Time Lawyers <<http://flextimelawyers.com/pdf/art16.pdf>>.

<sup>601</sup> *Ibid.*

<sup>602</sup> Fortney, *supra* note 590 at 296.

<sup>603</sup> *Flex-Time Lawyers*, online: Flex-Time Lawyers <<http://flextimelawyers.com/index.asp>>.

the retention of female lawyers--contends that completing dismantling the billable hour system is difficult because it has been entrenched for so long.<sup>604</sup> Consequently, she suggests that the best option for firms is to set various "target billable hour tracks" that are determined by "office, department, level of experience and individual performance."<sup>605</sup> For instance, a law firm could create six target hour tracks of 1200, 1500, 1600, 1700, 1800 and 2000 hours if it finds that its lawyers' totals cluster around these figures.<sup>606</sup> Lawyer compensation would be "determined by firms setting salaries at the highest target for each associate class, and then adjusting salaries downward for attorneys in the lower target track"--for instance, lawyers that bill 2,000 hours would be paid \$200,000, while an associate with a 1,500 target would be paid \$150,000. Furthermore, salaries and position on the partnership track would be adjusted to reflect work quality, non-billable contributions (in the form of pro bono work and/or community service) and business generation.<sup>607</sup> Thus, a lawyer with a lower total of hours than his/her colleague would not be

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<sup>604</sup> D. Henry, *Face the FACTS: Implement a Multiple Target Billable Hours Approach to Address the Economic Downturn* (24 March 2009) at 1, online: Flex-Time Lawyers <<http://flextimelawyers.com/pdf/art15.pdf>>.

<sup>605</sup> *Ibid.*

<sup>606</sup> *Ibid.* at 2.

<sup>607</sup> *Ibid.*

detrimentally impacted in partnership decisions because answering the question of whether he/she is "partnership material" would be more holistic in nature.

#### **4.4.5.3 The Virtual Law Firm**

Many employers now provide "virtual workplaces" that allow their workers to tele-commute (i.e. work from sites away from the home office).<sup>608</sup> This trend is being driven by several business rationalities. First, there are reductions in real estate expenses--for instance, "IBM saves 40 to 60 percent per site annually by eliminating offices for all employees except those that truly need them."<sup>609</sup> Second, there is evidence of increased productivity--for example, IBM reported gains of 15 to 20 percent due to its tele-commuting employees.<sup>610</sup> Third, there is also evidence of higher profits--Hewlett-Packard "doubled revenue per salesperson after moving its sales people to virtual workplace arrangements."<sup>611</sup>

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<sup>608</sup> W. Cascio, "Virtual Workplaces: Implications for Organizational Behaviour" in C.L. Cooper & D.M. Rousseau, eds., *Trends in Organizational Behaviour: The Virtual Organization* (New York: John Wiley & Sons, 1999) 1 at 3.

<sup>609</sup> *Ibid.*

<sup>610</sup> *Ibid.*

<sup>611</sup> *Ibid.*

In 1996, Richard Susskind--a renowned scholar that considers the impact of information technology on the way law is practiced--predicted that technological breakthroughs would bring lawyers "under one virtual roof, enabling effective, practical collaboration amongst individuals who may even be thousands of miles apart."<sup>612</sup>

Furthermore:

With the availability of groupware, intranet techniques, video conferencing and telecommunications generally, it would be no longer necessary for lawyers...to be physically co-located at all times in order for them to work together on the same case.<sup>613</sup>

Susskind's prediction is coming true, as legal employers--in order to decrease the costs associated with running a "brick-and-mortar" office, provide more flexibility to their employees, and provide specialized services to their clients--have morphed into "virtual law firms." According to Kashi, a virtual law firm has several important characteristics:

- It has a stable core group of lawyers;<sup>614</sup>

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<sup>612</sup> R. Susskind, *The Future of Law: Facing the Challenges of Information Technology* (New York: Oxford University Press, 1996) at xxviii.

<sup>613</sup> *Ibid.*

<sup>614</sup> J. Kashi, *Building a Virtual Law Firm: Changes and Opportunities* (January 2004), online: American Bar Association <<http://www.abanet.org/lpm/lpt/articles/ftr01042.html>>.

- It has established collaborative relationships with other, specialized law firms that possess expertise;<sup>615</sup>
- It is connected together with the appropriate computer and telecommunications technology;<sup>616</sup> and,
- It expands and reduces personnel as needed (for instance, due to economic booms and downturns).<sup>617</sup>

The question arises: What do virtual law firms look like? The next section provides several case studies that answer this question.

#### **4.4.5.4 Legal Practice Innovators**

This section examines three law firms that utilize alternative models of practice management that move away from billable hour targets, use different compensation models, and take advantage of technological advances to provide flexibility to their employees and to their clients. The organizations are described in Table 4.5:

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<sup>615</sup> *Ibid.*

<sup>616</sup> *Ibid.*

<sup>617</sup> *Ibid.*

**Table 4.5 Description of Law Firm Case Studies<sup>618</sup>**

<b>Organization</b>	<b>Office Locations</b>	<b>Demographics</b>
Heritage Law	West Vancouver, BC Vancouver, BC	11 members and 100% female: 6 lawyers and 5 support staff
Shepherd Law Group	Boston, Massachusetts	3 lawyers
Axiom Legal Solutions	New York, Boston, Chicago, Los Angeles, San Francisco, Washington, DC, and London, England	350 lawyers

### 1. Heritage Law

Founded by Nicole Garton-Jones, the Vancouver, BC-based *Heritage Law*<sup>619</sup> is able to nurture WLB among its members because of its focus on technology, alternative billing practices, and innovative compensation schemes.<sup>620</sup> First, while Heritage Law retains traditional

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<sup>618</sup> Table adapted from: S. Grainger, "Enterprising Models" *Law Business Review* (March 2010) at 1, online: Axiom Law <<http://www.axiomlaw.com/Docs/LawBusinessReview-April2010.pdf>>; Heritage Law, *People*, online: Heritage Law <<http://www.bcheritagelaw.com/lawyers-in-vancouver/>>; Shepherd Law Group, *Shepherd Professionals*, online: Shepherd Law Group <<http://www.shepherdlawgroup.com/professionals.php>>.

<sup>619</sup> *Heritage Law*, online: Heritage Law <<http://www.bcheritagelaw.com/>>.

<sup>620</sup> N. Garton-Jones, *Practicing Law on the Road: The Role of the Cloud and the Emergence of the Virtual Law Firm* (19 January 2010), online: Slaw.ca <<http://www.slaw.ca/2010/01/19/practicing-law-on-the-road-the-role-of-the-cloud-and-the-emergence-of-the-virtual-law-firm/>>.

offices for client meetings, it is paperless and uses practice management software to manage billing, time tracking, contacts, appointments, and documents.<sup>621</sup> The firm encourages tele-commuting by providing staff with the tools to log onto one remote, secure server over the Internet, which contains all Firm data and software applications.<sup>622</sup> Heritage Law also has a VoIP phone system that enables staff in different locations to use the same phone line and system, and there is also a remote answering service that answers client calls during the business day if a member is out of the office and routes the message to the correct person.<sup>623</sup> In addition, all staff members have a computer, high speed Internet, a VoIP phone and a scanner at their home offices.<sup>624</sup>

Second, Heritage Law also has a scheduling and compensation system that moves away from the billable hour system in order to recruit and retain lawyer talent through the provision of workplace flexibility. Its lawyers, "who were mid-level associates who left larger firm looking for greater [WLB]," are "contractors and earn a

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<sup>621</sup> Heritage Law, *Join Us*, online: Heritage Law <<http://www.bcheritagelaw.com/joinus/>>.

<sup>622</sup> *Ibid.*

<sup>623</sup> *Ibid.*

<sup>624</sup> *Ibid.*

percentage of billed time and flat fees."<sup>625</sup> Once they meet minimum billable targets, the lawyers "determine the amount of their earnings by how much they work."<sup>626</sup> Specifically, each staff member tells Heritage Law the "days and hours they are available to work so the firm can plan around accepting and allocating new client files."<sup>627</sup> All members of Heritage Law are able to structure their own schedules as they wish with the condition that "client work is completed in a timely and efficient manner and sufficient notice is given of absences and time off."<sup>628</sup>

Third, Heritage Law has also moved away from the billable hour system by giving clients what it calls "value pricing."<sup>629</sup> Before representation begins, it works with potential clients to "arrive at a customized price for specific services," and "they know in advance the amount they will owe and the maximum amount of resources they will have to dedicate to the matter."<sup>630</sup> Heritage Law provides the following billing options to clients: a pre-agreed flat fee; a monthly retainer; a

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<sup>625</sup> Garton-Jones, *supra* note 620.

<sup>626</sup> *Ibid.*

<sup>627</sup> *Ibid.*

<sup>628</sup> *Ibid.*

<sup>629</sup> Heritage Law, *Value Pricing*, online: Heritage Law  
<<https://www.bcheritagelaw.com/bcheritagelaw-valuepricing/>>.

<sup>630</sup> *Ibid.*

one-time fee that is limited to a specific time frame; and, an hourly billing system that has a price cap.<sup>631</sup>

Nicole Garton-Jones founded Heritage Law with a view towards encouraging workplace flexibility through the use of innovative technology, compensation practices, and scheduling options. She contends that the firm's flexible work environment has "enabled Heritage Law to have access to and hire highly skilled staff, to the benefit of both the firm and clients alike."<sup>632</sup> One can argue that she has been successful since she was awarded the *CBABC Work Life Balance Award* in 2010 for "demonstrating and promoting [WLB] in the legal profession."<sup>633</sup>

## 2. Shepherd Law Group

*Shepherd Law Group*<sup>634</sup> (*Shepherd Law*) is a small Boston, Massachusetts law firm that "has banned the billable hour, refusing to take clients who insist on paying on an hourly basis."<sup>635</sup> A central

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<sup>631</sup> *Ibid.*

<sup>632</sup> Garton-Jones, *supra* note 620.

<sup>633</sup> CBABC, *Third*, *supra* note 501.

<sup>634</sup> *Shepherd Law Group*, online: Shepherd Law Group <<http://www.shepherdlawgroup.com/index.php>>.

<sup>635</sup> S. Pfeiffer, "Beat the clock" *The Boston Globe* (8 October 2007), online: Boston Globe <[http://www.boston.com/business/articles/2007/10/08/beat\\_the\\_clock/](http://www.boston.com/business/articles/2007/10/08/beat_the_clock/)>.

component of its organizational culture is a belief that "hourly billing pits the interests of the client against the interests of the law firm" because "if a project takes longer to complete--which is bad for the client--the law firm makes more money--which is good for the law firm."<sup>636</sup>

Shepherd Law uses an approach it calls "Up-Front Pricing," which provides fixed-fee billing. The process to determine the cost of a legal service occurs in three steps: first, members of Shepherd Law to meet with a potential client about his/her problem(s); second, it investigates the best course of action in connection with the client's business goals; and, third, Shepherd Law then tells the client what its services will cost.<sup>637</sup> "Fees for unlimited legal advice range from \$1,000 to \$30,000 a year, depending on a client's legal needs."<sup>638</sup> Yet, "there are separate flat fees for training, such as sexual harassment workshops, and for advocacy work such as collective bargaining, mediations, arbitrations, and trials."<sup>639</sup>

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<sup>636</sup> Shepherd Law Group, *Up-Front Pricing FAQ*, online: Shepherd Law Group <[http://www.shepherdlawgroup.com/approach\\_FAQ2.php](http://www.shepherdlawgroup.com/approach_FAQ2.php)>.

<sup>637</sup> *Ibid.*

<sup>638</sup> Pfeiffer, *supra* note 635.

<sup>639</sup> *Ibid.*

This model, according to Jay Shepherd (the founder) has allowed Shepherd Law to elegantly meet its clients' needs, and in turn, be very economically successful. For instance, "partners can get together to brainstorm strategies--something that would have required billing for several different attorneys," and caused clients to become very concerned if those sessions were charged by the hour.<sup>640</sup> In addition, proclaiming that the firm "does not take the billable hour as gospel is also quite handy as a marketing tool."<sup>641</sup> Shepherd states that "clients hear about flat rates and they are almost automatically interested."<sup>642</sup> For instance, Caritas Christi Health Care System--the hospital network owned by the Roman Catholic Archdiocese of Boston--decided to send its legal matters to Shepherd Law because its legal expenditures were "out of control."<sup>643</sup> "By switching to a flat annual fee, the hospital network's legal bills for employment issues are about 30 percent less than it had been paying to its former law firms, Ropes & Gray and Murphy, Hesse, Toomey & Lehane."<sup>644</sup> In 2007, due to the influx of clients, Shepherd Law doubled its 2006 revenue even though it did not

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<sup>640</sup> D. Gianlanella, "Taming the Billable Beast" (1 February 2008), online: ABA Journal <[http://www.abajournal.com/magazine/article/taming\\_the\\_billable\\_beast/](http://www.abajournal.com/magazine/article/taming_the_billable_beast/)>.

<sup>641</sup> *Ibid.*

<sup>642</sup> *Ibid.*

<sup>643</sup> Pfeiffer, *supra* note 635.

<sup>644</sup> *Ibid.*

bill any hours.<sup>645</sup> Thus, the Shepherd Law example reveals that a law firm can end the billable hour system within its workplace without compromising its economic livelihood.

### 3. Axiom Legal Solutions

Launched in 2000, Axiom Legal Solutions<sup>646</sup> (*Axiom Law*) is attracting disenchanted lawyers to its ranks, as well as a client-base that includes some of the largest companies in the US.<sup>647</sup> In 2000, Mark Harris, a former associate at the New York firm Davis Polk & Wardwell, and his entrepreneur friend, Alec Guettel, co-founded Axiom Law with a different business model as opposed to other law firms. First, Axiom Law "operates with minimal office space and no costly partnership pyramid,"<sup>648</sup> because it "essentially functions as a high-end temporary agency."<sup>649</sup> Rather than provide lawyers with "25-floor vistas and the mahogany paneling and the fine art of the walls and the

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<sup>645</sup> *Ibid.*

<sup>646</sup> *Axiom Legal Solutions*, online: Axiom Law <<http://www.axiomlaw.com/>>.

<sup>647</sup> A. Maitland, "Take the law into your own hands" *The Financial Times* (27 November 2007), online: Financial Times <<http://www.ft.com/cms/s/0/c79bbc62-9c8a-11dc-bcd8-0000779fd2ac.html>>.

<sup>648</sup> *Ibid.*

<sup>649</sup> A. Jones, "Finding Happiness On the Slow(er) Track" *The Wall Street Journal* (5 December 2006), online: Wall Street Journal <[http://online.wsj.com/public/article/SB116284098664614692-ahPzXNkscGedtCnLm9\\_LnKbsiU0\\_20061212.html](http://online.wsj.com/public/article/SB116284098664614692-ahPzXNkscGedtCnLm9_LnKbsiU0_20061212.html)>.

law library that nobody [goes] to,"<sup>650</sup> lawyers "get sent out to [clients' offices], where they might spend anywhere from several days to several months or more working on legal projects."<sup>651</sup> Furthermore, Axiom Law's branches across the US and in London are not traditional law offices--instead, they are "no-frill" buildings where staff members perform "marketing, client service, accounting, finance, and other functions."<sup>652</sup> If lawyers have to meet as a team or see clients, the various offices have desks that are shared among all members (for instance, the New York office has 20 desks).<sup>653</sup> The result is that Axiom Law "[hires] out experienced lawyers to corporate clients at a third to half the rate" of other law firms."<sup>654</sup> Specifically, it charges \$150 to \$180 per hour because it saves on overhead costs that are traditionally associated with law firm offices.<sup>655</sup>

Second, Axiom Law differentiates itself from other law firms because it "[does not] hire new law school graduates or train junior

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<sup>650</sup> S.T. Taylor, "Tomorrow: A Sneak Preview for these Firms" (2010) 36 Law Practice 38, online: American Bar Association <<http://www.abanet.org/lpm/magazine/articles/v36/is1/pg38.shtml>>.

<sup>651</sup> *Ibid.*

<sup>652</sup> Taylor, *supra* note 650.

<sup>653</sup> *Ibid.*

<sup>654</sup> Maitland, *supra* note 647.

<sup>655</sup> E. Young, "Lawyers just as needed" *San Francisco Business Times* (15 September 2006), online: Axiom Law <<http://www.axiomlaw.com/Docs/SF%20Biz%20Times.pdf>>.

lawyers."<sup>656</sup> Instead, most members are "from some of the nation's top firms who were weary of the work-till-you-drop demands."<sup>657</sup> Specifically, it "targets graduates of top-tier law schools and refugees from top firms who may have grown tired of billing 2200 hours a year, but who [do not] want to take a full-time in-house job or abandon legal practice entirely."<sup>658</sup> Thus, rather than enticing recruits with large salaries--"most Axiom lawyers make between the high-\$100,000s and mid-\$200,000s"<sup>659</sup>--it attracts lawyers by allowing them to choose their projects, manage their own hours and fulfill outside interests.<sup>660</sup> For instance, Thomas Lee, who is placed with Cisco Systems in San Jose, California, experiences a predictable 50-hour work-week, and then is able to devote time to writing fiction, which he was unable to do as an associate lawyer in New York at Davis Polk & Wardwell, and then at Manatt, Phelps & Phillips.<sup>661</sup> Marlene McLarty is also another former member of a large New York City law firm who joined Axiom Law due to its flexibility--in fact, "she credits Axiom [Law] with the

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<sup>656</sup> Taylor, *supra* note 650.

<sup>657</sup> *Ibid.*

<sup>658</sup> Jones, *supra* note 649.

<sup>659</sup> *Ibid.*

<sup>660</sup> Grainger, *supra* note 618 at 1.

<sup>661</sup> Jones, *supra* note 649.

fact that she [is] still a lawyer."<sup>662</sup> She left her former law firm due to the birth of her second child, and stayed home for over a year in order to wait for a part-time opportunity, but the lack of success made her suspect that she had to undergo "a career change or an eventual return to full-time work."<sup>663</sup> However, after learning about Axiom Law, she applied and was hired in 2006. She now works "four days a week, part time, at a financial services company 10 minutes away from her home."<sup>664</sup> The flexibility afforded to lawyers at Axiom Law is summed up by Elna Mehta: "I can be part-time and not feel guilty about it...At Axiom, I am moving my career forward."<sup>665</sup>

Due to its model of legal practice, Axiom has attracted a highly-credentialed staff and has grown from one location in 2000 (in New York City) to branches in New York City, Boston, Chicago, Los Angeles, San Francisco, Washington, D.C., and London, England. Furthermore, by attracting a range of elite clients--including Amazon, Cisco, Electronic Arts, and UBS--and losing 90 percent of the physical overhead associated with traditional law firms, it has been able

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<sup>662</sup> S. Ruby, "Antidote for Law Firm Burnout" *Stanford Business* (November 2007), online: Axiom Law < <http://www.axiomlaw.com/Docs/Stanford-Business.pdf> >.

<sup>663</sup> *Ibid.*

<sup>664</sup> *Ibid.*

<sup>665</sup> A. Oberthur, "Firm aims to strip inefficiencies from practice" *San Francisco Business Times* (11 January 2007), online: Axiom Law <<http://www.axiomlaw.com/Docs/sf%20business%20times.pdf>>.

increase revenue from \$31 million USD in 2006 to \$60 million USD in 2009.<sup>666</sup>

#### **4.4.6 Summary**

At the core of this thesis is the key lesson that legal employers will not recognize the best way forward in engaging with the issue of WLB unless they understand why the matter is so important (i.e., due to demographic issues, legal concerns associated with family status discrimination claims, and the negative social and health impacts on students and lawyers), and become aware of what others are doing to create flexible workplaces. The case studies reveal that employers use many strategies--such as compressed work-weeks, flex-time, job sharing, tele-commuting, and various leave options--to help their members achieve WLB. Furthermore, the innovative models of legal practice used by Heritage Law, Shepherd Law Group and Axiom Legal Solutions all take advantage of technological advances to allow lawyers to work from home or at the client's location; use alternative billing options to counter the billable hour system; and attract talented lawyers who are disenchanted with the traditional law firm experience by offering greater flexibility.

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<sup>666</sup> Maitland, *supra* note 647.

The aim in this penultimate chapter has been to add to the knowledge about managing human capital by delineating best practices from the academic and corporate realms about how to engage with law students and help current members of the legal profession in their pursuit of WLB. The final chapter summarizes the key learnings from the research, and provides recommendations for how stakeholders (i.e., law schools, legal employers, and professional bodies) can collaborate to change the culture of legal practice in order to not only encourage employers to implement WLB initiatives, but also to promote their usage among members of the profession.

## **Chapter 5. Conclusions**

### **5.1 The Business and Social Case for Balance**

The issue of WLB is receiving a great deal of attention in the corporate world. With organizations attempting to respond to demographic changes, the challenge of recruiting and retaining talent in a competitive labour market, and shifting work values (as one generation replaces another in the workforce), employers are beginning to realize that supporting workers' WLB efforts is a key way to adapt to these changes. Furthermore, organizations want to leverage the economic and social benefits associated with WLB (such as low rates of absenteeism, fewer physician visits, and less turnover) while negating the negative consequences (such as turnover costs, and higher rates of presenteeism, anxiety, depression and sleeplessness) linked with their employees suffering from role conflicts and other forms of WLC.

The need to avoid WLC may be most acute in the legal profession, since nearly 67 percent of Canadian lawyers report that it is not only difficult for them to balance their work demands with their personal responsibilities, but that they also routinely put work before

the personal sphere.<sup>667</sup> Moreover, the loss of human capital may pose a serious deficit in the need to service clients if trends continue, especially if baby-boomers retire. Furthermore, the issue of retaining talent is made even more vital given that 50 percent of Canadian lawyers report that the top factor in choosing to work at another firm is the search for an environment that is more supportive of family and personal commitments.<sup>668</sup> Indeed, the economic costs of losing an associate are immense, with the average turnover cost per associate in a Canadian law firm being \$315,000 (the total of recruitment and training costs, as well as the loss of revenue).<sup>669</sup> Thus, there is an economic and social imperative for law firms to engage with the issue of WLB.

## **5.2 Culture, Balance and Conflict**

Organizational theory reveals that the actions, behaviours, and attitudes among law firm members are influenced by workplace culture. Thus, crises can arise when a workplace does not adapt its

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<sup>667</sup> Catalyst Canada, *Creating Opportunities*, *supra* note 10 at 8.

<sup>668</sup> Catalyst Canada, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (Toronto: Catalyst Canada, 2005) at 5, online: Catalyst Canada <<http://www.catalyst.org/file/17/canadalaw3%2014%2005%20final.pdf>>.

<sup>669</sup> *Ibid.* at 6.

culture to changes in the labour market and business environment.<sup>670</sup> As stated in Chapter 1, organizations can enter a "success spiral"<sup>671</sup> when they maintain values, norms and strategies that led to economic and professional triumphs in the past, but do not align with present-day issues and future considerations, including: demographic changes in the labour market (i.e., the greying workforce and resulting "wisdom withdrawal"; the feminization of the labour market; and generational shifts in employment goals); legal challenges associated with the human rights ground of family status in Canada; and, the rise of innovative business models that utilize WLB initiatives and technological tools in order to encourage greater workplace flexibility for members of the labour market.

The key assertion in this thesis is that members of the legal profession (lawyers and law firms) are trapped in the success spiral, and consequently fail to recognize the economic and social case for WLB. Law firms' attitudes about achieving WLB or settling for WLC are impacted by the various elements of WLC culture that engulf them, including the organizational cultures of money, long hours, and separate worlds, all of which over-emphasize the achievement of

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<sup>670</sup> Duxbury, *RCMP*, *supra* note 20 at 104

<sup>671</sup> *Ibid.* at 6.

employment goals (such as tallying large billable hour totals) to the detriment of fulfilling family responsibilities and personal goals. One can argue that this WLC culture come from a client-centred place, in that they rise and take hold in law firms (as well as other workplaces) because of a fear that clients will move to other firms if they do not receive the full attention of staff at all hours.

WLC gridlock is also found in law firms that have instituted initiatives--such as FWAs--purportedly aimed at helping their employees attain WLB. In many instances, however, this endeavour is a charade, as the legal profession is also infected by disconnected workplace cultures, whereby lawyers are discouraged--through guilt, and/or a lack of social and economic support--from utilizing the very initiatives that are supposed to aid them in their pursuit of fulfilling their concurrent professional and personal goals.

A lawyer may not even feel that WLB initiatives are necessary because of socialization processes that have occurred early in his/her legal career, which from the very outset, has taught the legal professional to revere money, long hours, and the iconic role model of the "committed worker" who stoically cherishes work over other life realms. Indeed, law schools may actively contribute to this labour market conundrum because students are taught not only jurisprudence

and statutory law, but also about how they can maximize their value to their future employers and show that they are "the right fit" for legal practice through their strict focus on work, while ignoring their personal pursuits, and by not asking questions during job interviews about family-friendly initiatives since they might jeopardize their chances of the very employment that they seek. Many questions arise: Why must law students face only the choice between "live to work" or "work to live" for their careers? Since legal practice leads the labour market in high levels of stress, anxiety, and depression among its professionals, should law admissions recruiters tell potential students that this is what the real life of legal practice is all about? Why cannot law students "have it all" through a holistic reshuffling of the legal profession, from top to bottom, by injecting WLB into the equation?

According to Schneider's ASA model of human resource management, professionals within law firms have several options: (1) become socialized to the firm's values and seek professional development to the detriment of personal pursuits; (2) remain with the firm, yet try to juggle work and non-work responsibilities, which may result in a lack of career advancement; (3) leave the firm and move to another workplace that allows for the discharge of one's needs (i.e., employment, personal, family needs); or, (4) leave the

profession entirely. The statistics regarding the attrition of women in legal practice in BC reveal that many female lawyers are taking the fourth route, which is unfair not only to them, but also to male members who seek diversity in their firms, and to members of society who require their expertise to successfully navigate through legal challenges.

### **5.3 Lessons and Recommendations for the Legal Profession**

The analysis in this thesis reveals that engendering cultural shifts in individual organizations and employment sectors--such as the legal profession--so that WLB is held in high regard, will take a journey of many steps. Indeed, as Chapter 2 reveals, starting the change process takes the combined efforts of many different stakeholders. Thus, research, data, and recommendations in this thesis are meant to be a new educational resource for all relevant parties to show how they might bring their skills and resources into play in order to successfully embrace more WLB into law firm management. The findings of this research indicate that the following four areas should be addressed in order for the legal profession to make inroads in the adoption of WLB.

First, law firms and professional industry bodies (the CBA, its provincial branches, and law societies) must learn more about the business case for WLB and adapt to the needs of their members in order to stave off challenges associated with recruiting talented people to fill knowledge-gaps, and stemming the economic and social costs associated with not being able to retain valued team members. For this purpose, they should pay more attention to WLB case studies, in both the legal profession and other work settings, in order to identify and implement strategies that will work for their constituents, such as flex-time schemes, job sharing plans, tele-commuting facilities, leave programs, and so forth.

These initiatives will not be successful unless cultural impediments to their utilization and usefulness are removed. Indeed, while many firms have WLB policies in place--which are usually advertised on their websites to signal that they are "employers of choice"--they are rarely utilized by members due to negative stereotypes linked to their usage. Indeed, in a survey of Canadian lawyers, 42 percent believed that users of FWAs would be relegated to 'the B team'--in other words, "removed from the fast track to partnership, diverted from the best assignments and clients, and

shunted into niche areas of practice."<sup>672</sup> In view of this hurdle, central to the cultural change process is the need to cause attitudinal shifts concerning what makes a "successful lawyer." Law firms should communicate the value of family life and personal endeavours (such as volunteering efforts) in creating thriving legal professionals, as well as signal that lawyers are welcome to use FWAs and other WLB initiatives without fear of ruining their careers by impeding their journey towards partnership. Furthermore, law firms must teach new recruits that having priorities other than work is not an impediment to serving clients at the highest possible level. Consequently, members of senior management--including a firm's managing partner--will be important "change agents" in obtaining employee buy-in regarding these efforts. Indeed, lawyers will not utilize these strategies just because they are told to do so; instead, they must see law firm leaders model the actions and behaviours aimed at achieving WLB.<sup>673</sup>

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<sup>672</sup> Catalyst Canada, *Job Flexibility*, *supra* note 14 at 13.

<sup>673</sup> A. Mohan & J. Weiler. "A Canada –United States Comparative Analysis of Workplace Wellness Programs: The New Frontier of Human Resource Management and Law Reform" (A Report prepared for the Foundation for Legal Research) (January 2009) at 10 [unpublished, archived at the Foundation for Legal Research]; A. Mohan, A. Soltan & J. Weiler, "A Canada-United States Comparative Analysis of the Legal Issues Involved in the Workplace Wellness Program Implementation and Compliance" (A Report prepared for the Law Foundation of British Columbia) (Sept. 2009) at 4 [unpublished, archived at the Law Foundation of British Columbia].

Another cultural barrier to the achievement of WLB in the legal profession is the rigid adherence to the billable hour scheme because this system may reinforce values and norms that can be antithetical to the pursuit of WLB, particularly if it results in excessive homage to the false goals of money, long hours, and separate worlds of work and life. Consequently, there must be changes as to how lawyers' contribution to the firm is calculated. Indeed, the number of hours it takes to complete a legal service may not be the best way to describe the quality of work provided. As the case studies on Heritage Law, the Shepherd Law Group and Axiom Legal Services reveal, in order to provide greater flexibility to employees and clients, law firms would be wise to experiment with technological advances and alternative billing options that allow law firms to be compensated without a pre-occupation on tallying the time spent on a file, because this billing system may provide a better option for both the client and the legal service provider.

Second, younger lawyers must work with their employers to help to facilitate the acceptance of WLB into their organizations. In other words, new lawyers must participate in the change process within law

firms by bringing new ideas and perspectives to their new firms to challenge older systems that might not be appropriate in view of the negative impacts that they are having on lawyers' health, family life, and client service levels. Recruits must make it clear that the availability of WLB initiatives is a key consideration in determining whether a firm is "the right fit" for them. Furthermore, they can operate as change agents by acting as role models and utilizing initiatives within their respective workplaces--such as active participation in workshops, wellness initiatives, flexible work arrangements, volunteer opportunities, etc.--that allow them to not only achieve their professional goals, but also fulfill their personal desires, and become new icons of what it takes to be a "successful lawyer." Moreover, they have to participate in the creation, administration and evolution of these initiatives within their organizations. Any worker (a lawyer, doctor, accountant, teacher, etc.) is not simply a member within an organization, or a "program participant"--he/she is also an employer's partner in asserting the case for WLB programs, implementing various initiatives, and analyzing their effectiveness through data collection and surveys.

Third, government and the public sector can play a critical role in helping to promote WLB among members of the labour market. Public

sector organizations--such as those associated with education, law enforcement and the civil service--have the size and need for public accountability to be new role models experimenting with programs that promote WLB. They can act as change agents by demonstrating their commitment to the equilibrium between work and non-work roles by implementing and sustaining WLB initiatives that are adaptive to their needs and those of its members, and by making the results of these piloting and testing programs available for others to learn from and embrace.

Fourth, other stakeholders also have the ability to be respected change agents. For instance, law firms would be wise to collaborate with players in the justice system--such as law schools, regulatory bodies, as well as other organizations--focused on the achievement of WLB, in order to develop more expertise and share best practices know-how, and thereby help create long-lasting strategies that gain traction among a greater variety of employee cohorts and workplaces in the economy.<sup>674</sup>

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<sup>674</sup> For instance, in Canada, there is the *British Columbia Council for Families* (BCCF), online: BCCF <<http://www.bccf.ca>>; and, the *Canadian Index of Wellbeing Network* (CIW Network), online: CIW Network <<http://www.ciw.ca>>.

In the US, there is the *Sloan Work and Family Research Network* (SWFN), online SWFN <<http://wfnetwork.bc.edu>>; *Working Mother Media*, online: Working Mother Media <<http://www.workingmother.com>>; *Workplace Flexibility 2010*, online: Workplace Flexibility 2010 <<http://workplaceflexibility2010.org/>>; *Flex-Time Lawyers*, online: Flex-Time Lawyers <<http://flextimelawyers.com/index.asp>>.

Fifth, the CBA and its provincial branches, as well as provincial law societies should ensure that legal professionals are physically, emotionally and mentally fit to perform to the best of their abilities for the public. Towards this end, these senior organizations should fund research into successful WLB strategies that are appropriate for the profession, as well as fully describe the negative impact of WLC on the profession (such as the lack of women in law firm partnership positions). Mentorship programs designed and fostered by these professional bodies can also aid young lawyers in learning about successfully navigating the pitfalls of legal practice, while fulfilling personal goals (such as volunteering, and playing sports), as well as maintaining strong personal relationships.

The collective efforts of these various stakeholders can help to foster greater WLB culture within the legal profession by following these recommendations:<sup>675</sup>

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<sup>675</sup> Adapted from: Law Society of British Columbia, *Retention of Women*, *supra* note 11 at 16; Duxbury & Higgins, *New Millennium*, *supra* note 32 at 65-69; Catalyst, *Women in Law: Making the Case* (New York: Catalyst, 2001) at 63-83; Human Resources and Skills Development Canada, *Moving Beyond Policies and Programs to Bring About Culture Change* (February 2005), online: Human Resources and Skills Development Canada <[http://www.hrsdc.gc.ca/eng/lp/spila/wlb/imt/09culture\\_change.shtml#6](http://www.hrsdc.gc.ca/eng/lp/spila/wlb/imt/09culture_change.shtml#6)>.

- Showing law students--through courses, workshops and role models--that rather than "living to work," they can "work to live" in their careers;
- Recognizing that a lawyer is a "whole person," thereby respecting his/her personal and employment roles equally;
- Assessing performance based on work quality, rather the quantity of time worked (i.e., billable hours);
- Raising awareness of biases against the pursuit of WLB and stereotypes of professionals who use FWAs;
- Understanding the legal protections workers have due to anti-family status discrimination jurisprudence and statutory law, which necessitates employers to create and implement of WLB strategies, as well as interview their employees to learn about their changing needs, which may require accommodative measures in relation to work scheduling;
- Acknowledging the business case for WLB, particularly the human resources need to recruit and retain talent in a tight labour market, especially in light of statistics that reveal that females are leaving the legal profession;

- Promoting workplace flexibility through the creation and implementation of WLB initiatives, including FWAs (such as part-time work schedules, flex-time, job-sharing, tele-commuting), and re-designed career pathways that allow lawyers to re-enter the profession after extended leave (such as for women who originally left for maternity leave, and now want to return to the profession);
- Promoting mentorship programs and networking opportunities to help male and female lawyers learn about the positive and negative experiences of others who are pursuing WLB;
- Providing innovative technologies in the office setting and at lawyers' homes in order to allow for tele-commuting, expedient client meetings, and rapid transmission of legal documents between firm and client, and from firm to legal body (courts, tribunals, arbitrators, etc.);
- Instilling high levels of trust between all levels of the law firm (managing partners, partners, associates, junior associates, and legal assistants) so that WLB strategies can be tried, tested, and adapted to new challenges and economic realities facing the organization;

- Encouraging upward and downward communication and feedback regarding lawyers' wants and clients' needs; and,
- Publicizing successful role models at all levels of the firm--from the managing partner to the articling student--who use and encourage WLB initiatives, and achieve a level of WLB that is appropriate to their lives.

#### **5.4 Future Research Opportunities**

This study offers reasons why WLB should be a concern for members of the labour market, and why and how the legal profession can encourage WLB among its members. Yet, there are issues that still require greater analysis, including:

##### **1. Qualitative Research of Lawyers**

The methodological approach used in this thesis did not include interviewing and surveying lawyers to learn about the challenges they face in their pursuit of WLB. Instead, data collected in various studies was used because of constraints associated with completing the thesis and course requirements within the desired timeline. However, qualitative research may be conducted during graduate work towards a Ph.D., which provides more time to create a research plan, produce

relevant survey instruments, and obtain the necessary approvals from university personnel and law firm authorities.

Future research endeavours could explore the stresses faced by lawyers in Vancouver, BC by using data collected from interviewing and surveying sole practitioners, as well as members of boutique firms, medium-sized firms, and large, full-service firms. Furthermore, by interviewing managing partners and human resource managers, one could learn about the strategies used to help legal professionals achieve WLB (if any); the reasons behind their utilization; and, the processes associated with their creation, implementation and maintenance.

To learn why lawyers are streaming out of law firms, interviews and surveys of professionals who have moved to other law-related employers could be conducted, such as those in: government ministries; the Crown Prosecution Service; the Law Society of BC; regulatory agencies (such as the BC Securities Commission); WorkSafeBC (the Workers' Compensation Board of BC); the corporate world as in-house counsel; and academia (as law professors). Furthermore, in order to discover what lures lawyers into these workplaces, the following issues could be explored: how work is allocated in these organizations; the compensation/benefits packages

provided by these employers; and, the range of wellness and WLB initiatives available to employees.

## **2. The Pursuit of WLB in other Professions**

This thesis focuses on the challenges facing lawyers in their search for balance in fulfilling their various roles and responsibilities. The fact is that members of other professions face similar obstacles, including those in medicine, academia, law enforcement, and accounting. Future studies can examine these sectors' organizational cultures, and whether they promote role conflicts and other forms of WLC, in order to detail lessons and recommendations that are applicable to the legal profession. Furthermore, research can be conducted on the negative consequences of WLC in terms of mental illness, turnover, and the lack of diversity. In addition, qualitative research--through interviews and surveys of members in these fields, as well as supervisors, and administrators in regulatory bodies--could provide lessons and best practices about the effectiveness of various strategies used to encourage WLB.

An example of an organization that may impart important lessons about the culture change process is the Royal Canadian Mounted Police (RCMP), whose values, norms and code of conduct have been

maintained over the course of many generations. Duxbury, in her study on the RCMP, finds that it must "introduce initiatives which increase an employee's sense of control" over their work due to the negative consequences of WLC, including absenteeism, burnout, high EAP use, and so forth.<sup>676</sup> In order to do this, Duxbury contends that the RCMP must change the following dimensions of its organizational culture: the reliance on hours worked as the arbiter of a successful employee; the situation where staff are made to pick either work or family, not both; and, the disconnect between "policy and practice" since many employees do not feel comfortable using the available WLB initiatives.<sup>677</sup> Yet, she suggests that the RCMP is culture "change averse" because of the following factors: administrators and senior officers have failed to properly communicate proposed changes to staff in the past; the RCMP has previously implemented change without consulting its members, which has decreased the level of trust within the organization; implementation strategies/guidelines have been lacking; and, changes have been poorly resourced.<sup>678</sup> In sum, this brief examination of the RCMP reveals that one can learn a great deal about creating a supportive WLB culture from not only a workplace's

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<sup>676</sup> Duxbury, *RCMP*, *supra* note 20 at 150.

<sup>677</sup> *Ibid.* at 153.

<sup>678</sup> *Ibid.* at 146.

best practices, but also an organization's "harmful practices" and negative results.

### **3. The Role of Public Policy as Change Agents**

Future research could explore the role of government, through legal reform, in helping to positively impact the experiences of workers as they pursue WLB. Preliminary research reveals that various levels of government must institute policies and programs that encourage flexibility and choice for the workforce, such as changes to tax policy and pension plans, as well as inducements for companies to initiate WLB initiatives.<sup>679</sup> Through these measures, governments can act as change agents by incentivizing organizational investment in WLB initiatives, funding the analytical tools necessary to test their effectiveness, as well as encouraging employees to utilize the initiatives within their workplaces.

Preliminary research reveals that public policy initiatives have been used in Sweden to give citizens a sufficient amount of parental leave to care for their families, and to ensure that fathers play a greater role in rearing their children. Before 1995, "parents in Sweden

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<sup>679</sup> Mohan & Weiler, *supra* note 673 at 86-94; Mohan, Soltan & Weiler, *supra* note 673 at 97-108.

were already allowed to share nine months of paid parental leave...but few fathers took advantage" of this program.<sup>680</sup> However, in 1995, Sweden introduced the "first dedicated father month--30 days of paid parental leave that could not be transferred to the mother--to encourage reluctant men" to share in child-care and household tasks.<sup>681</sup> A second month of "father's leave" was introduced in 2002.<sup>682</sup> Consequently, parents now have access to 13 months of parental leave, of which two months are exclusively for fathers.<sup>683</sup>

The Swedish Government endorses the role of fathers in the country through public advertising campaigns that "actively promote the positive impact of fathers' involvement in caring for their children,"<sup>684</sup> as well as through written materials for new fathers that highlight "the importance of early and close contact between father and child."<sup>685</sup> Such policies are part of the Swedish Government's WLB

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<sup>680</sup> K. Bennhold, "The Father of Sweden's Fathers' Leave" *The New York Times* (9 June 2010), online: New York Times <[http://www.nytimes.com/2010/06/10/world/europe/10iht-swedenside.html?\\_r=1](http://www.nytimes.com/2010/06/10/world/europe/10iht-swedenside.html?_r=1)>.

<sup>681</sup> *Ibid.*

<sup>682</sup> *Ibid.*

<sup>683</sup> Bennhold, *Have It All*, *supra* note 1.

<sup>684</sup> Human Resources and Skills Development Canada, *Improving Work-Life Balance - What Are Other Countries Doing?* (August 2007), online: Human Resources and Skills Development Canada <<http://www.hrsdc.gc.ca/eng/lp/spila/wlb/iwlb/16sweden.shtml#leave>>.

<sup>685</sup> *Ibid.*

culture that includes state-sponsored elder-care for grandparents, and the availability of 6-hour work-days for parents of new-born children who are re-entering the workforce.<sup>686</sup> Moreover, the values and norms within this WLB culture are impacting various Swedish companies, who are encouraging their workers to utilize both corporate and public WLB initiatives. For instance, "41 percent of companies reported in 2006 that they had made a formal decision to encourage fathers to take parental leave, up from only 2 percent in 1993."<sup>687</sup> Thus, Swedish employers have culturally adapted to workers' shifting needs and values. As stated by Goran Henriksson, the head of human resources at Ericsson, the telecommunications company: "Graduates used to look for big paychecks...now they want work-life balance."<sup>688</sup>

## 5.5 Summary

By bridging a variety of disciplines (law, psychology, political science and sociology), this thesis explores how a WLB culture can be supported within the legal profession. Overcoming the perceived "scourge" of WLC is imperative because of its counterproductive impact on lawyers' physical, mental and emotional health, which in

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<sup>686</sup> Bennhold, *Have It All*, *supra* note 1.

<sup>687</sup> *Ibid.*

<sup>688</sup> *Ibid.*

turn, can lessen their productivity as legal professionals for the general public. Yet, the analysis in this thesis is also applicable to other professions that suffer from a similar lack of WLB, including government, law enforcement, health care, and accounting.

This thesis is, therefore, a call-to-action for all impacted parties--employers, workers, professional bodies, interest groups, and various levels of government--to bring their skills and resources into play in order to encourage WLB among all members of the labour market. Consequently, it should be a valuable resource to employers and employees alike, as well as unions, legislators, and post-secondary institutions and their students, who wish to counteract the negative consequences (personal, social, and economic) associated with WLC.

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