



THE CANADIAN  
BAR ASSOCIATION

Women Lawyers Forum

# PAY EQUITY IN THE LEGAL PROFESSION

Funded by the  
Law For the Future Fund  
of the CBA

Co-Authored by Erin C. Cowling and the WLF Pay Equity Committee

Women Lawyers Forum

# PAY EQUITY IN THE LEGAL PROFESSION

**November 2021** © Canadian Bar Association 66 Slater St., Suite 1200, Ottawa, ON K1P 5H1

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Printed in Canada. Disponible en français.

The CBA acknowledges, with thanks, funding generously provided by The Law for the Future Fund.

ISBN: 978-1-927014-51-6

# Table of Contents

## Pay Equity in the Legal Profession

<b>I. Introduction.....</b>	<b>5</b>
<b>II. Executive Summary .....</b>	<b>5</b>
<b>III. Background .....</b>	<b>6</b>
<b>IV. Methodology.....</b>	<b>8</b>
A. Webinar.....	8
B. Focus Group Discussions.....	8
C. Anonymous Individual Survey .....	9
<b>V. Discussion .....</b>	<b>10</b>
A. Perceptions of Gender Pay Inequity in Legal Profession.....	10
B. Compensation and Compensation Structures .....	11
Perceptions of Compensation Fairness.....	14
C. Causes and Solutions for Gender Pay Inequity .....	15
Lack of Compensation Transparency: Workplace and Individual.....	15
Lack of Transparency: Workplace .....	16
Private Practice .....	16
Non-Profit .....	16
In-House .....	17
Government.....	17
Lack of Transparency: Individual.....	17
Confidentiality Provisions .....	17
Fear .....	18
Cultural Influence .....	18
Self-Worth Equated with Compensation.....	19
Solutions .....	19
Penalized For Being Biologically Capable of Bearing Children .....	20
Solutions .....	22
Denial of Opportunities and Unfair Allocation Practices .....	23
Solutions .....	23
Women Lawyers’ Contributions Undervalued .....	24
Solutions .....	25
<b>VI. Recommendations .....</b>	<b>25</b>
A. Government .....	26
B. Law Societies .....	26

C. Canadian Bar Association .....	26
D. Legal Workplaces .....	26
<b>VII. Acknowledgements .....</b>	<b>28</b>
<b>VIII. Appendix A: Survey Questions.....</b>	<b>29</b>
<b>IX. Appendix B: Focus Group Questions.....</b>	<b>33</b>
<b>X. Appendix C: Pay Equity Legislation in Canada.....</b>	<b>34</b>

# Pay Equity in the Legal Profession

## I. Introduction

This report describes the results of the Roundtable on Pay Equity in the Legal Profession (Roundtable), a national research initiative by the Canadian Bar Association's Women Lawyers Forum (WLF). The WLF's goal was to gather vital qualitative data about Canadian lawyers' experiences, perceptions, opinions and potential solutions to pay equity challenges, and to open a conversation about gender and pay equity in the legal profession through coordinated online engagement. The information in this report from the Roundtable will inform future WLF advocacy and, we hope, support others in their pursuit of pay equity in the legal profession.

## II. Executive Summary

The information and views expressed by Roundtable participants revealed common experiences, supporting other evidence that pay inequity and a gender pay gap exists in the legal profession in Canada. While several factors may contribute to pay inequity, through analysing the data collected, four main factors emerge:

1. Firms' and employers' lack of transparency and explicit confidentiality policies continue to shroud lawyer compensation (salaries and bonuses) in secrecy. Individual lawyers are also hesitant to discuss compensation and find such conversations to be sensitive. Both the lack of transparency and the hesitancy to discuss compensation are barriers to identifying pay discrepancies in the practice of law. This, in turn, undermines and prevents accountability for ensuring fair and equitable remuneration. Many Roundtable participants suggested mandatory compensation reporting as a way to make firms and workplaces be more transparent. However, some participants noted business and privacy concerns with this approach.
2. Many women lawyers feel "penalized"<sup>1</sup> for their biological capability to bear children, whether they are pregnant or even intend to become pregnant. Especially prevalent in private practice, participants observed that firms display an overarching "fear" or "expectation" that women of childbearing years will leave, which results in senior lawyers giving them fewer opportunities. Further, several participants who did choose to have children and take a leave noted being "overtly or covertly penalized" on their return. Normalizing parental and other types of extended leave and recognizing the benefits to the legal workplace of encouraging lawyers of all genders to take extended leaves, would lessen the penalization of women lawyers.
3. Some lawyers experienced issues with equitable allocation of files, noting that more lucrative files and better business development opportunities were offered to male associates, leading to faster career progression, earlier partnership and higher pay. Suggested solutions include unconscious bias training, greater diversity at the decision-making level and encouraging clients to expect and demand better representation on their files.
4. Finally, women lawyers feel they are not compensated for all their work, especially their non-billable contributions. Many participants had the impression that women are expected to contribute to administrative or "pink work" which is not valued by the firm, while the same expectations are not placed on men. Once again, participants suggested that unconscious bias training could assist with this issue, or systems with specific metrics could be put in place to quantify and value non-billable work.

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<sup>1</sup> Common words used by participants when expressing an idea are in quotation marks.

Not all the experiences of the Roundtable participants were negative, and there was evidence of some improvement in pay equity challenges in the legal profession. Also, while this research initiative focuses on gender pay inequity or the gender pay gap between “male” and “female” lawyers, WLF notes that gender is only one of many factors that affect pay inequity and that gender is non-binary.

### III. Background

Pay inequity continues to be a major issue for Canadian working women. For every dollar a man earns in Canada, a woman earns approximately 89 cents, as measured in hourly wages for full-time workers.<sup>2</sup> This pay inequity is not the same for all women. The gap widens to 67 cents for racialized women,<sup>3</sup> 65 cents for Indigenous women,<sup>4</sup> and 54 cents for women with disabilities.<sup>5</sup> Moreover, according to a 2021 survey by ADP Canada, the ongoing COVID-19 pandemic has had a greater impact on Canadian women than men, particularly working mothers, in terms of career growth, stress levels and the potential to seek new employment—all factors that affect earning potential.<sup>6</sup>

The legal profession is not immune to pay inequity. Studies among law firms in the United States and data from the United Kingdom indicate that, typically, women lawyers receive compensation at a lower rate than their male counterparts. In 2016, the CBA [passed a resolution](#) indicating its intentions to address the gender pay gap in general through various advocacy efforts, as well as calling on legal employers to review their compensation practices and procedures and undertake substantive and meaningful action to eradicate the gender pay gap.

In June 2019, the Law Society of England and Wales published a report on women in law,<sup>7</sup> which summarized its findings from 34 international roundtables held in 21 cities around the world. The research also included data from over 7,000 respondents from a global survey. While the roundtables addressed the general topic of women in law, one key finding was that a gender pay gap exists globally in the legal profession. The report also concluded that a lack of transparency about remuneration rates and bonuses exists across all regions, which prevents the identification of pay discrepancies.<sup>8</sup>

*In 2021, the American Bar Association released its report, [In Their Own Words: Experienced Women Lawyers Explain Why They are Leaving Their Law Firms and the Profession](#).<sup>9</sup> While this study focused on the exodus of women from law, the report also concluded that a gender pay gap exists.<sup>10</sup> “Pay disparity” was the reason most frequently cited by female participants for leaving their firms.<sup>11</sup> The “unfairness in distribution of*

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<sup>2</sup> Statistics Canada. Labour Force Survey, Table 14-10-0340-01 Employee wages by occupation, annual.

<sup>3</sup> Statistics Canada, 2016 Census. No. 98-400-X2016360.

<sup>4</sup> Statistics Canada, 2016 Census. No. 98-400-X2016268.

<sup>5</sup> Statistics Canada, 2012 Canadian Survey on Disability. Table 14-10-0283-01. Sources of income of adults with and without disabilities.

<sup>6</sup> ADP Canada, [“Workplace Gender Gap Hits Home: ADP Canada Survey,”](#) March 8, 2021

<sup>7</sup> Law Society of England and Wales, [International Women in Law Report: Findings from the International Women's Roundtables](#), June 19, 2019

<sup>8</sup> *Ibid.*, at 6.

<sup>9</sup> American Bar Association, [In Their Own Words: Experienced Women Lawyers Explain Why They are Leaving Their Law Firms and the Profession](#), 2021. This is the third report published by the ABA Initiative on Achieving Long-Term Careers for Women in Law. The first two reports were *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice* and *Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers of Women of Color*.

<sup>10</sup> *Ibid.*, at 4.

<sup>11</sup> *Ibid.*, at 8.

compensation was the deal breaker for respondents.”<sup>12</sup> The report noted that, “[w]ithout exception, every recent study of lawyers’ compensation has found a persistent income gap between women and men at law firms and that the pay gap is even worse for women of color.”<sup>13</sup> A 2020 survey by the National Association of Women in Law found that “[w]hen considering the full range of compensation, men made more across the board, with the reported range of compensation for men reaching higher amounts than the range of compensation offered to women at all attorney levels.”<sup>14</sup>

While the reports from the UK and the US are revealing and insightful, Canada lacks similar recent data specific to pay equity or the gender pay gap in the legal profession, particularly in private practice.

A 2012 study by Professor Ronit Dinovitzer of the University of Toronto examined gender pay disparities as part of a larger examination of the career paths of law graduates.<sup>15</sup> Although the study looked at a small subset of lawyers - those called to the bar in 2010 - the results showed a pay gap for those Canadian lawyers as early as their second year of practice, with a second-year male lawyer making \$5,500 more on average than their female colleagues. The study concluded that the female participants who worked full-time in law earned 93% of the male participants’ salaries across all practice settings. Men out-earned women in private law firms of all sizes, with the difference especially pronounced for those in solo practice; but even in the largest private firms with over 251 lawyers, women’s earnings were only 91% of men’s. By contrast, in the non-governmental and public education sectors, women earned higher median salaries than men.<sup>16</sup>

A 2020 survey report on Canadian in-house counsel<sup>17</sup> concluded that women are paid 11% less than men in the same roles. The gap widened even further at higher wage levels with 30% of males, compared to 19% of females, receiving a mean salary of over \$200,000.

Most recently, as part of *Power Gap*, an investigative series on the gender pay gap, The Globe and Mail reported that, in one law firm, female equity partners earned 25% less than male equity partners. Another firm self-reported that the gap between male and female equity partners was 17%.<sup>18</sup>

While some of these reports suggest that the gender pay gap in law is either slightly above (for equity partners) or slightly below the estimated 11% to 13% gap in the Canadian workforce overall, any gap is problematic for the profession.

The WLF has been working on the issue of pay equity for several years, attempting as a preliminary step to gather needed data. In 2018, the WLF conducted a partner compensation survey of Canadian law firms with more than fifty lawyers, the first ever national compensation survey of partners in law firms in Canada.<sup>19</sup> While the WLF obtained data about the composition of law firm partnerships, compensation decision-making processes and gender representation within decision-making bodies, the WLF was not able to gather data about compensation that would be needed to determine the existence and extent of a gender pay gap.

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<sup>12</sup> Ibid., at 8.

<sup>13</sup> Ibid., at 8.

<sup>14</sup> National Association of Women Lawyers, [2020 Survey Report on the Promotion and Retention of Women in Law Firms](#), April 19, 2021.

<sup>15</sup> Dinovitzer, Ronit, “[Law and Beyond: A National Study of Canadian Law Graduates](#),” May 27, 2015.

<sup>16</sup> Ibid., at 48.

<sup>17</sup> Canadian Corporate Counsel Association and The Counsel Network, [2020 In-House Counsel Compensation & Career Survey](#).

<sup>18</sup> Doolittle, Robyn, “[Toronto Law Firm’s Data Shows Progress on narrowing Gender Pay Equity Gap](#),” The Globe and Mail, April 5, 2021.

<sup>19</sup> Canadian Bar Association, Women Lawyers Forum, [Partner Compensation Survey Report](#), November 2020. Work undertaken with the support of the Law for the Future Fund, which provides grants for innovative projects in the field of law.

Faced with barriers in obtaining *quantitative* data on law firm partner compensation, the WLF sought to continue this conversation by collecting *qualitative* data which allows for a more nuanced approach. The WLF opened the dialogue to lawyers across Canada and gathered information directly from individual lawyers rather than organizations. Lawyers' perceptions and views on pay inequity and its extent, and ideas for potential solutions, is crucial information needed to assist legal workplaces and the legal profession in general, to address any gender pay gap that exists. The WLF decided to collect this qualitative data through a roundtable format with a goal of creating a safe and understanding space within which to discuss gender and pay equity issues. A roundtable would allow lawyers to discuss the nuances of the issues, identify some of the barriers to pay equity and collect data to better understand the issues in Canada.<sup>20</sup>

## IV. Methodology

The Roundtable on Pay Equity in the Legal Profession was held on April 21, 2021. Delivered virtually, the Roundtable was a means for the WLF to raise awareness of the issues and experiences in other jurisdictions and to gather both group and individual-level information on Canadian lawyers' experiences, opinions and proposed solutions to pay inequity in law. The Roundtable program consisted of two components: an educational component and a data gathering component.

### A. Webinar

The educational component was a 60-minute webinar featuring a panel of experts who spoke about the gender wage gap in the legal profession in their jurisdictions: Danielle Binsar, a labour and equality rights lawyer at Cavalluzzo LLP in Toronto; Karen Jensen, Canada's Federal Pay Equity Commissioner; Christina Blacklaws, a principal at Blacklaws Consulting and Past President of the Law Society of England and Wales; and Destiny Peery, a non-practicing lawyer, social scientist and principal consultant at the Red Bee Group and the principal investigator for the American Bar Association Commission on Women in the Profession.

The discussion was moderated by Robyn Doolittle, an investigative journalist with The Globe and Mail. The panellists discussed several issues related to the gender pay inequity in law, including the UK *Equality Act 2020 (Gender Pay Gap Information) Regulations*,<sup>21</sup> which require all employers with 250 or more employees to report their gender pay gap, and the new Canadian federal *Pay Equity Act*.<sup>22</sup>

The webinar discussion set the stage for the second part of the Roundtable program, the data gathering component, which was divided into two segments: invitation-only focus groups and anonymous surveys sent to the focus group participants.

To facilitate the sharing of personal information, the focus groups and survey were conducted anonymously to the greatest extent possible. The individual's identity, while available for program registration purposes, was not linked to the data collected. Further, participants were advised that the data collected would not be attributed to them if used in this report.

### B. Focus Group Discussions

The WLF's goal was to create a safe space for the focus group participants. The aim was for the discussion to be solution-oriented, inviting participants to discuss barriers to gender pay equity in the legal profession and to brainstorm solutions and strategies to overcome those barriers.

Focus group discussions were by invitation only, to reach a diverse group of participants (by age, year of

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<sup>20</sup> This initiative was funded in part by the Law for the Future Fund.

<sup>21</sup> [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](https://www.legislation.gov.uk) (legislation.gov.uk)

<sup>22</sup> [Pay Equity Act](#), S.C. 2018, c. 27, s. 416, in force August 31, 2021.



call, gender, practice setting, etc.) so the information gathered would represent as broad a cross-section of the Canadian legal profession as possible. Invitations were sent to all CBA Sections, to Branch Sections of the WLF, and to other lawyer organizations including the South Asian Bar Association, Canadian Association of Black Lawyers and Canadian Association of Muslim Women in Law. Each organization and CBA Section was asked to name a number of delegates to participate in the focus group discussions.

Seventy-nine participants registered:

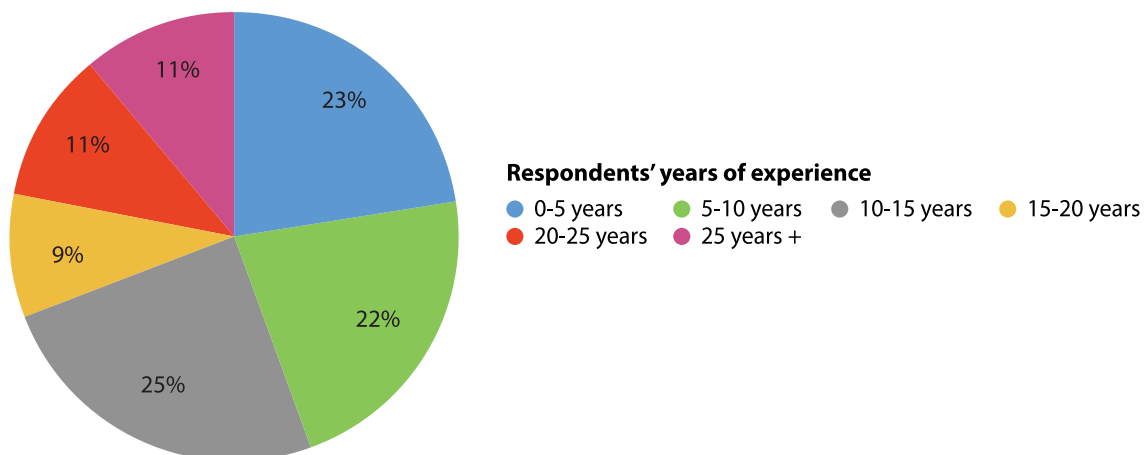
- 83.5% self-identified as female, 10.1% self-identified as male, and 6.3% did not specify a gender;
- ten provinces and two of three territories were represented; and
- 44.3% were from Ontario, 13.9% from Alberta, 11.4% from British Columbia, 12.7% from the Atlantic provinces and 3.8% from the Territories.

The one-hour discussions took place virtually, in breakout rooms with between six to eight participants in each focus group. Two facilitators assigned to each group guided the discussion with pre-set of questions,<sup>23</sup> although not all focus groups addressed every question in the allotted time. One or two notetakers were present to memorialize the qualitative data gathered.

### C. Anonymous Individual Survey

In addition to the qualitative data collected during the focus group discussions, time was reserved for the participants to complete an individual online survey with 34 multiple choice and open-ended questions<sup>24</sup> about their personal experiences, perceptions and opinions about pay equity, as well as specific questions seeking quantitative data on compensation. Respondents could choose to answer all or some of the questions. The WLF received 67 survey responses and most participants answered all 34 questions. The WLF elected not to ask the survey respondents to identify their gender, to preserve anonymity. Nevertheless, it can be extrapolated from the focus group demographics that most of the survey respondents also self-identified as female.

The respondents ranged widely in years of experience: 23% were in their first five years of practice, 22% had been practicing for 5–10 years, 25% for 10–15 years, 9% for 15–20 years, 11% for 20–25 years, and 11% for 25 or more years.



The majority of the survey respondents (68%) were in private practice. Of those in private practice, slightly more worked in large firms of 100 or more lawyers (38.6%) than in small law firms with 1–15 lawyers (29.5%) or mid-sized law firms with 15–100 lawyers (31.8%).

<sup>23</sup> See Appendix A.

<sup>24</sup> See Appendix B.

The remaining respondents worked in-house (13.4%), in a government setting (7.5%) or in not-for-profit settings such as NGOs, legal clinics and civil social organizations (9%).

Almost 60% of the respondents were employees, while 22% were owners (equity partners) and 18% were independent contractors, counsel or non-equity partners.

## V. Discussion

This part summarizes the data, personal experiences, perceptions and opinions on pay equity issues collected from the survey and the focus group discussions. Participants also proposed actions that individuals, workplaces, regulators and others can take to help improve gender pay equity issues in the legal profession.

### A. Perceptions of Gender Pay Inequity in Legal Profession

A clear consensus emerged among survey respondents that there is an issue with gender pay equity in the legal profession in Canada. Almost all survey respondents (98.5%) believed prior to attending the webinar and focus groups that there is gender pay disparity in the legal profession. One survey respondent who didn't hold this view prior to the roundtable commented afterwards: "I think I have a more nuanced view on the definition of pay inequity and the hurdles that can contribute to it."

Focus group participants gave examples of gender pay disparities. In one participant's workplace, where salary is based on billings, some men were paid more than women although they did not perform as well on this clear metric. Another participant supervised male and female lawyers in a government institution where pay equity is supposed to be the norm. Nevertheless, the participant noticed a "huge differential" in compensation between male and female lawyers and, when attempting to address the pay gap, was told: "Sometimes you have to offer more to people to get them to come in the door."

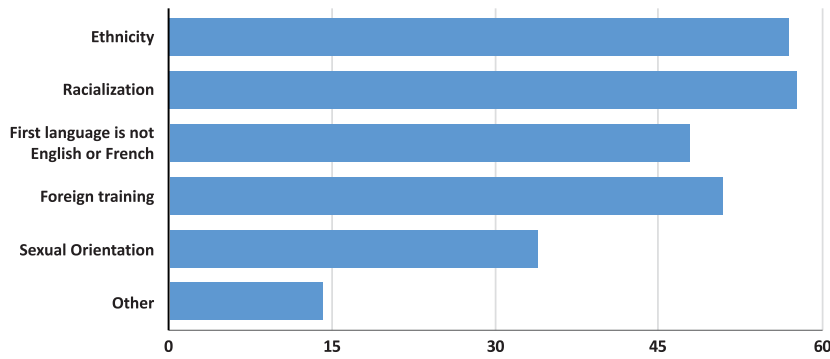
Some focus group participants noted that male colleagues are billed out at a higher rate than female colleagues of the same year of call, which likely affects compensation as the male colleague earns more for the firm. One participant asked management at her firm why a male colleague of the same year was billed out at \$25 more per hour than her. Management did not give a satisfactory answer. A survey respondent noted that in "over 60% of call years, the female associate is billed out at a lower rate than the male associate."

While some survey respondents had not experienced a gender pay inequity personally, the overall consensus among the focus groups was that there is gender pay inequity in law in general. Those who earned less had a more negative impression of pay equity in general and progress made. Survey respondents with higher salaries had a more favorable impression of improvements to gender pay equity, but on average, still only ranked their positive impressions at 3 on a scale of 1 to 5, with 1 being "not at all" and 5 being "it has completely improved and there is no longer a gender pay gap." Lawyers earning \$350,000 or more averaged a 3 when asked whether pay equity had improved in general since they started practicing law.

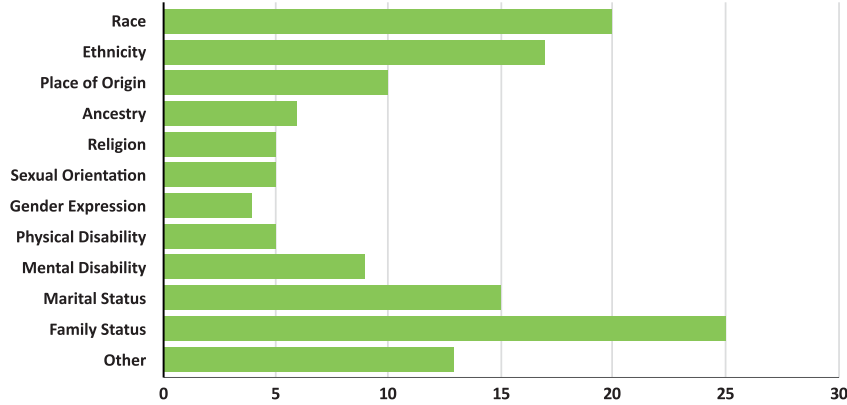
There were mixed reviews on whether pay equity had improved for survey respondents personally. Thirty-two percent of respondents said that pay equity had improved for them personally since they began practicing law while 29% said it had stayed the same, and 11% said it had gotten worse.

The majority of survey respondents said that identity factors other than gender have an impact on compensation, in general or for them personally. These factors include ethnicity, racialization, foreign training, sexual orientation, gender expression, language, religion, physical or mental disability, marital or family status, and age. Others commented that "being too emotional," "being outspoken," being a first-generation lawyer and "refusing to make law the be-all and end-all" of their life affected their compensation.

**Do you think any of the following identity markers also have an impact on compensation?**



**Is there another aspect of your identity (other than your gender identity), that you believe has affected your compensation?**

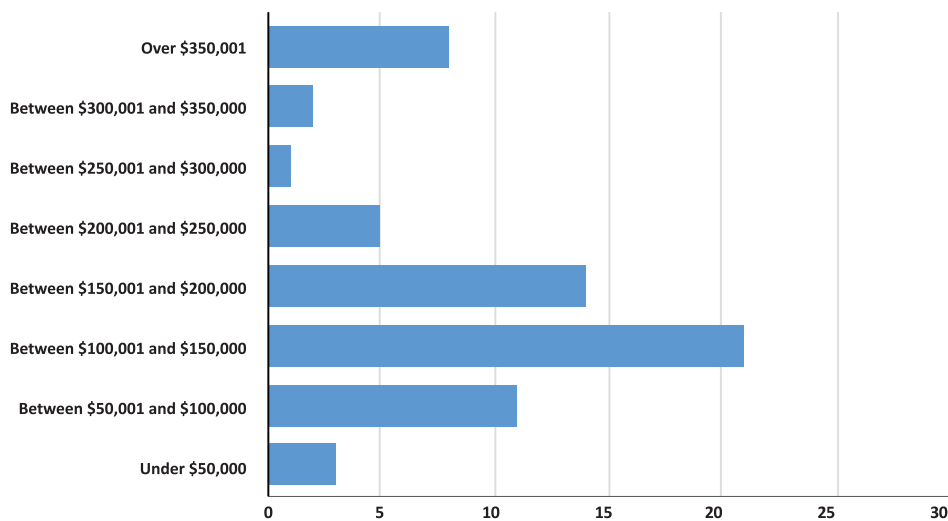


## B. Compensation and Compensation Structures

Clarifying how compensation is determined will help to understand underlying discrepancies in pay. This section of the report analyzes the data provided by survey respondents on their compensation, bonus payments and workplace compensation structures, and their beliefs on whether their compensation and compensation structures are fair.

Sixty-five survey respondents shared the range of their overall yearly compensation, excluding bonuses.

**What range does your yearly compensation fall into (excluding bonuses)?**

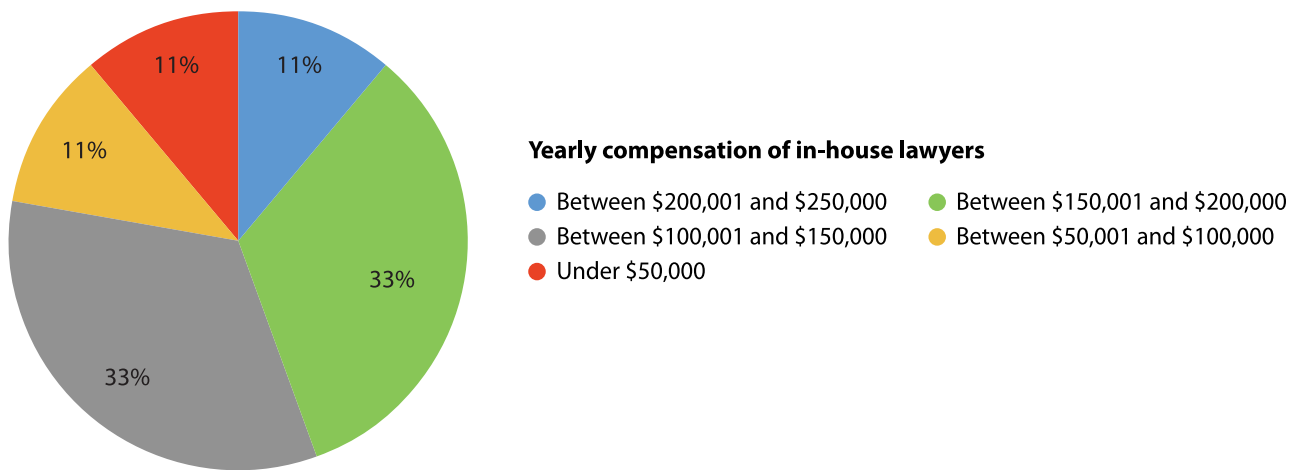


Of those who earned between \$100,001 and \$150,000, approximately 62% were in private practice, 10% in government, 14% in-house and 10% in the non-profit sector (e.g., NGO, legal clinic, civil society organization). Of those who earned between \$150,001 and \$250,000, 21% were in small firms with less than 15 lawyers, 10.5% in mid-sized firms with 15 to 100 lawyers, 21% in large firms with over 100 lawyers, 10.5% in government, 21% in-house and approximately 16% in a non-profit setting.

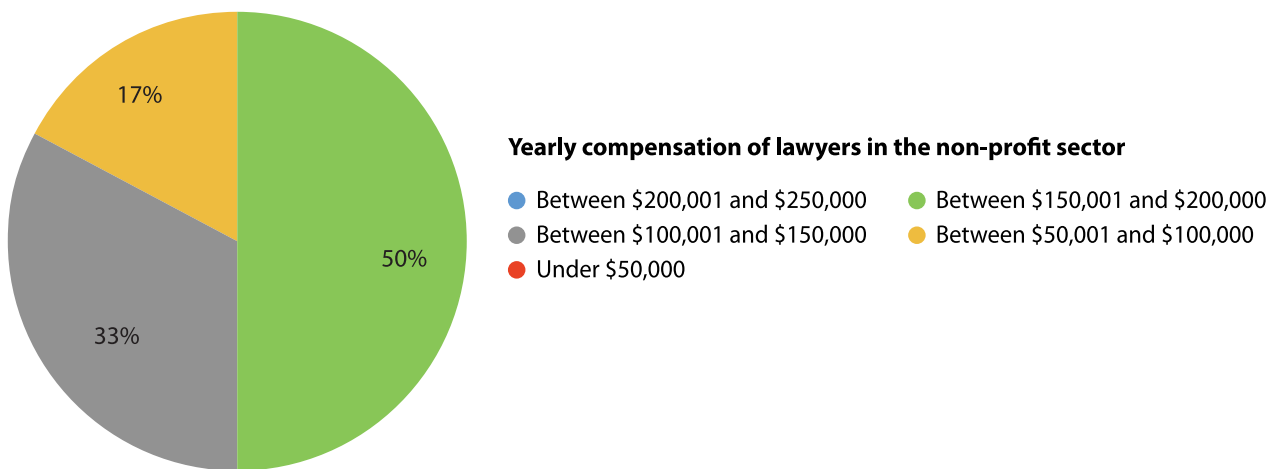
It is interesting that all those who earned over \$350,001 were in private practice, either at mid-size (37.5%) or at larger firms (62.5%).

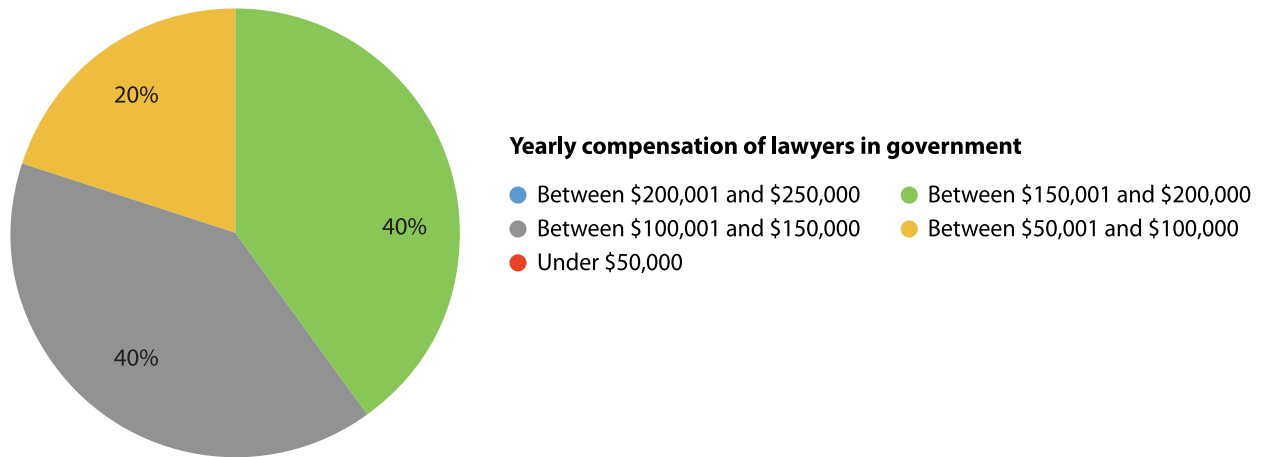
Of those in private practice with 0 to 5 years, 33% earned between \$100,001 and \$150,000, 53% earned between \$50,001 and \$100,000 and 13% earned less than \$50,000. By comparison, all those who earned over \$350,001 had practiced for over 10 years, with the majority (62.5%) having 10 to 20 years and 37.5% over 20 years of practice.

For respondents in in-house roles, all earned \$250,000 or less, with 11% earning under \$50,000, 11% earning between \$50,001 and \$100,000, 33% earning between \$100,001 and \$150,000, 33% earning between \$150,001 and \$200,000, and 11% earning between \$200,001 and \$250,000.



Respondents in the non-profit sector and in government earned \$200,000 or less in yearly compensation, with the vast majority earning between \$100,001 and \$200,000.





Survey respondents confirmed that the manner in which compensation is determined varies depending on practice settings.

Compensation for 44% of the survey respondents in private practice was based on “both monetary and subjective factors, but monetary factors weighed more heavily”. Monetary factors include billable hours, fees, cross-selling and client origination receipts. One survey respondent wrote:

There is lip service to non-bill[able] work but in reality, it has almost nil value in determining compensation.

For those practicing in government, the majority of respondents answered that compensation was determined on a “fixed scale based on seniority.” Additional comments included:

Fixed scale at time of hiring followed by salary based on performance which is somewhat subjective as a public sector organization, not based on billable hours or receipts.

Supposed to be based on tasks, experience and market but my employer has not been to the market in over 10 years!

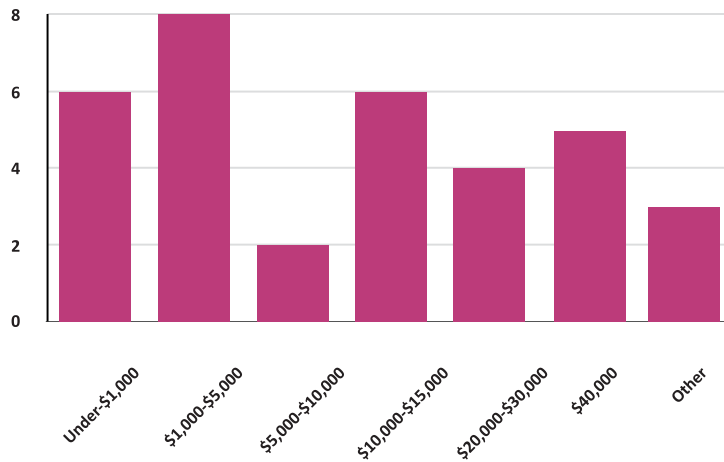
In-house respondents also cited “fixed scale based on seniority” as the main determination of compensation. However, one participant noted that “ranking on seniority” was influenced by biases.

In non-profit settings, “fixed scale based on seniority” was the most common structure for compensation (50%). Some respondents also indicated that their compensation was determined through salary negotiation (33%) or based on solely subjective factors such as participation in firm activities/committees, mentoring, quality of work. (16.7%). One non-profit lawyer commented that:

Our salary grid is based on years of call and other subjective factors...and is very outdated and the subjective factors are hard to measure or figure out.

Lawyers’ compensation may include a bonus payment in some practice settings. While 52% of respondents stated that bonuses comprised part of their compensation (80% in private practice and 20% in-house), bonuses were not part of the government and non-profit respondents’ compensation.

What range did your total bonuses fall into last year?



The majority of private practice respondents (50%) replied that bonuses were determined by both monetary factors (billable hours, fees, cross-selling, client origination receipts, etc.) and subjective factors (participation in firm activities or committees, mentoring, quality of work, etc.), but monetary factors weigh more heavily.

For in-house lawyers, slightly more respondents said that their bonuses were based on “an equal combination of monetary and subjective factors” (42.8%). Others stated that their bonus structure was based solely on subjective factors, the financial results of the organization, or their performance and contribution.

### Perceptions of Compensation Fairness

More than half of the survey respondents (58%) said that their compensation and the compensation structure used by their organization was “fair.” This view was somewhat consistent across all practice settings: 57% in private practice held that view; 60% working in government, 67% of in-house counsel and 67% of non-profit lawyers. One respondent commented:

The managing partner at my firm made it clear that fair compensation is a priority and has always genuinely and enthusiastically promoted discussion about fair wages, and has gone as far as making a point of paying above what we consider ‘fair’ or market value.

Those newest to the profession (0–5 years) were the most content with their compensation and compensation structure (73.3%), followed by lawyers 5–10 years out (64.3%). Of lawyers with over 10 years of practice, only 52.7% believed their compensation was fair.

Among the 37.3% of respondents who did not think their compensation or their compensation structure was fair, comments included:

lawyers in my organization [are] underpaid between \$20,000 to \$40,000 compared to other similar organizations in the province.

I feel underpaid by a lot; it feels horrible to have to advocate and fight for a salary deserved; it makes employees feel unappreciated and focus so much energy on something that just should not be.

Of the 59.7% of the respondents who had raised issues related to their compensation with their organization, several spoke to immediate supervisors, allies who were more senior or compensation committees. Others raised the matter during a performance review or contract re-negotiation; and some used a formal compensation review or appeal process. One respondent commented:

I regularly use all mechanisms to address any salary concerns. Basically, I have raised a stink until I got paid what I saw as fair backed by statistics of the work I carry out. I recommend doing this at the individual level and I recommend it to all lawyers I work with and know.

One lawyer raised the issue of compensation during an interview, which they felt cost them the job. Another mentioned bringing compensation up at a firm recruiting event and that “it was very awkward.”

Respondents were asked to rate their feelings about the process if they had disputed or raised issues related to compensation on a scale of 1 to 5, with 1 being “terrible” and 5 being “very satisfied.” The average was 3. The same question was asked about their feelings about the outcome from raising compensation issues. Once again, the average was 3.

Fifty percent of those who disputed or raised issues about compensation felt that their compensation issue had been resolved.

Of the 38.5% of respondents who had never raised a compensation issue, almost half said this was because they never thought they were treated unfairly and were content with their compensation.

Others did not raise compensation issues for quite different reasons. Several respondents said they were very “uncomfortable” about raising compensation issues:

The one time I had an issue with it, I looked for another job rather than have to raise it with my employer at the time.

Others thought it was too “risky” to raise questions about compensation and explained they did not want to appear “ungrateful.” Some were worried they would be seen as acting “entitled” for asking for more pay than offered. Others were unsure how to approach the conversation because they were not sure what was fair compensation, without data to back it up.

Some respondents (8.3%) thought they were too junior or new to law to ask for a raise and wanted to wait until their next review to have the discussion. One mentioned being hesitant because of the organization’s budgetary restrictions. Others felt a need to prove their worth and wanted to build up an argument as to why they should be paid more before taking steps to increase their salary.

## **C. Causes and Solutions for Gender Pay Inequity**

The main perceived causes for gender pay inequity discussed in the focus groups were:

- lack of compensation transparency;
- penalization for the biological capability of having children;
- denial of opportunities and unfair allocation of files; and
- undervaluing women lawyers’ contributions to the workplace.

### **Lack of Compensation Transparency: Workplace and Individual**

Information is power. Lack of compensation transparency keeps potential pay discrepancies and inequities secret, and a problem cannot be fixed if it is not understood. While some workplaces were more open about compensation than others, there was consensus among focus group participants that data on compensation and bonuses is lacking. Participants expressed their frustration and feeling of powerlessness when attempting to negotiate salaries or determine if their compensation is fair without that vital data. Further, participants agreed that individual lawyers are hesitant to talk about compensation, which contributes to the overall lack transparency about compensation in the legal profession.

## **Lack of Transparency: Workplace**

Survey responses showed that the level of compensation transparency in the workplace varied by type of practice or firm, and firm culture.

### **Private Practice**

Respondents in private practice (66%) advised that they were aware of compensation for others at their firm, including law students, their peers, lawyers junior to them, and lawyers senior to them. Responses showed that salaries are somewhat more transparent for junior lawyers than for senior lawyers because associates' pay is determined by their year of call. Any bonus amounts or calculation of those bonus amounts, however, were not as transparent.

Of respondents in private practice, 36.4% said that junior lawyers' compensation was "utterly transparent," while 22.7% agreed with the statement that junior lawyers' compensation was "utterly opaque, I only know what I make."

The compensation of senior lawyers was perceived as less transparent. Only 22.7% of respondents in private practice thought that senior lawyers' compensation was "utterly transparent" while 31.8% thought that senior lawyers' compensation was "utterly opaque." At the equity partner stage, respondents mentioned that compensation was completely open and transparent to the other equity partners. However, some partners did not see associates' compensation.

Focus group participants believe that private practice firms were not transparent about compensation for fear of losing power. Compensation secrecy benefits employers, not employees. One participant commented that firms are afraid of being "found out". Private practice firms want to remain competitive and they fear they will give up some advantage by disclosing salary and compensation information, especially at the partnership level. If the compensation formula at a particular firm were made public, partners could compare their own compensation to that of their peers at other firms. Firms are afraid of losing partners with large books of business. If everyone can see what lawyers are paid, it creates power for the lawyers. Knowledge is power and, as one participant commented, "silence benefits the lawyers at the top."

Some focus group participants said that even less information on compensation was available to lawyers in smaller firms or firms where lockstep pay is not the norm. In smaller firms, participants agreed that there are always decision-makers, but the system "is not transparent" and there is a "high degree of secrecy." One criminal lawyer noted that, in their experience, there was no set time to talk about salary or pay in smaller criminal firms. It was up to individual lawyers to raise the topic. As an employee, they knew they had to raise the issue, otherwise their compensation would stay the same "forever, potentially." As an employer, this same participant now waits for their employees to come to them.

Others observed an "informal transparency" at their firm as most lawyers were open about their compensation: "People usually know what is going on because of hearsay." One senior associate in private practice shared that they had open conversations with partners at their firm about compensation. Another private practice lawyer told of "a good conversation" they had with a male colleague (a peer) who was very open about his fixed compensation and bonus.

### **Non-Profit**

Lack of transparency about compensation and compensation structures was noted by some lawyers who worked in the non-profit sector. One participant observed that "it is a bit of a mystery what we may or may not be paid."



## **In-House**

In-house, compensation bands or ranges are often used. Participants noted that while they knew the salary ranges for their colleagues, they could not “pinpoint to the penny” what their colleagues earned. They thought this provided “information without breaching everyone’s privacy.” Another in-house counsel shared that while they were responsible for hiring lawyers, they did not know the new lawyers’ salaries. The organization did not advertise compensation and instead asked job candidates for their salary expectations. One in-house counsel wrote on the survey: “I wish I knew more about how decisions are made so that I felt better equipped to argue my worth.”

## **Government**

Several participants mentioned public sector salary disclosure lists required by legislation, otherwise known as sunshine lists, for provincial or municipal employees. A sunshine list, published annually, shows salary, benefits or severance information of public sector employees who make more than the threshold amount. Some public sector participants agreed that the sunshine list is helpful as individual pay disclosure forces their workplace to face pay equity issues in a way that aggregate data will not always do.

One participant shared that they used this publicly available information when making a job change or moving to a field where there were salary grids or ranges. It was easy to find the information and quite different from this person’s experience in private practice.

Some had concerns with public disclosure of an individual’s compensation. One lawyer shared that, when they were in private practice, they would use the sunshine list to compare against their private practice salary. However, they felt differently when their salary was disclosed after joining the government:

I felt like I was disclosing something that not everybody is disclosing. You want to know what other people make, but you do not want people to know what you make.

Others expressed no concern with the public disclosure of their salary. They know they can review their colleagues’ compensation, but they “really don’t care.”

## **Lack of Transparency: Individual**

Most participants agreed that, overall, individual lawyers are sensitive and hesitant to discuss their own compensation. Only 4.5% of the survey respondents were “very comfortable” and would tell anyone about their compensation. Just under 20% of respondents disagreed, stating they were “very uncomfortable” and did not talk about it. The remaining respondents fell in the middle ground, with the average being 2.6 on the scale of 1 to 5.

Despite this hesitancy, 97% of the survey respondents provided their compensation and bonus information. This could be because the survey was anonymous and amounts were expressed in ranges.

This hesitancy to discuss individual compensation was also reflected in the focus group discussions, with the discomfort arising from workplace compensation confidentiality agreements, family and cultural views on money, feelings of fear and shame, and the tendency for lawyers to equate their self-worth with how much they earn.

## **Confidentiality Provisions**

According to the survey, 30% of respondents were subject to employment contracts or firm policies that expressly prohibit them from discussing their compensation with others. However, of those respondents, 50% stated that, despite the prohibition, they speak about their compensation anyway.

Several focus group participants in private practice referred to contractual requirements imposed by their workplaces to keep their compensation confidential, and which actively dissuaded compensation conversations. Participants referred to strict confidentiality policies, non-disclosure agreements, and salary or bonus letters explicitly labelled “confidential.” Participants also cited a duty of confidentiality to their employer as a reason not to disclose their pay to others.

Even without formal confidentiality policies, there is often an “unwritten rule to not disclose your salary,” and workplaces have told individuals “not to talk about it.” One lawyer mentioned that management actively discouraged associates from talking about pay, explaining that the firm wanted “to keep it unique to each person.”

One participant noted that not just associates are discouraged from talking about compensation and pay equity, and partners “get punitively treated for some of these topics.” This person added that it “sends a chill to everyone” and stated they could “speak with [their] colleagues outside [their] firm more easily than with those within [their] firm.” This was their experience at three different private practice firms. Also, a partner at a firm noted that:

As you move up in [a firm], there is less transparency and less conversation. You can tell associates not to chat with each other, but they will, because that’s the appropriate thing.

The fact that confidentiality is a large part of a lawyer’s practice was cited as a barrier to open and transparent conversations about individual compensation: “It is the way we conduct our business...It is in our nature to disclose only what we have to disclose, when we have to disclose it.”

Nevertheless, one participant noted that while lawyers are expected to keep their compensation secret, they thought that everyone talks about it and, in their experience, there are not a lot of secrets, at least not at the big firms.

## **Fear**

“Fear” was frequently cited as a reason for lawyers’ hesitancy. Participants expressed a fear of reprisal and a risk to their job security if they were to challenge or discuss compensation issues. There was a fear of being labelled a “troublemaker.” Some thought that students are bolder to speak up about these things but there are “ramifications for speaking out.” One participant spoke of “an inherent risk” in raising pay equity issues with partners and “an inherent suspicion.” Another participant thought that there was also a “fear” of finding out that other lawyers make more or less than them, and they were unsure if they even wanted to know the answer at an individual level.

## **Cultural Influence**

Participants in the focus groups said that compensation was a “taboo” subject for many in Canada and there was a feeling of “shame” connected with talking about how much you earn. One participant described it as an “internalized, culturally ingrained shame.” Others agreed that Canadians in general are a “private culture” and are reluctant to discuss pay. Being polite is part of Canadian culture and it is impolite to talk about money. One participant from Quebec noted that there were historical, cultural and religious reasons why discussing money was seen very negatively in that province.

Participants’ childhoods and their parents’ perceptions around talking about compensation also contributed to their hesitancy. Some participants said it was “ingrained” in them since childhood that “you do not talk about money”. They were taught that individuals should not compare themselves to others and they should not care about what other people earn. This seemed to be the case for many families. One individual noted that they had a “very WASP-y upbringing. [Pay] just wasn’t a topic that was discussed.” Another participant who identified themselves as Muslim shared that issues of money were seen as “very

taboo” in her culture, “so people don’t come to the table with the confidence and comfort level to discuss money issues” and some will avoid the discussion unless forced to discuss it.

## Self-Worth Equated with Compensation

Conversations about pay equity were seen as sensitive because lawyers tend to equate their value and self-worth with how much money they earn. One participant noted: “Our worth is really measured in .1s”. Participants who made less than their peers would wonder “What is wrong with *me?*”, instead of “What is wrong with *the system?*”

A “sense of shame” was mentioned, but in the context of making less (or more) than their peers. If a colleague was paid more or given a larger bonus, the lawyer would feel that the colleague was valued more by the firm, which in turn made the lawyer feel defensive. On the other hand, there was a feeling of “shame” when a lawyer earned a bonus. While they wanted to disclose their bonus, they did not want to make a colleague who did not get a bonus feel bad. One participant commented that “lawyers want to know what others make but they also don’t want others to know what they make.”

## Solutions

An overwhelming majority of survey respondents (82%) would support mandatory compensation reporting by legal workplaces either to regulators (law societies) or to the government. Some participants suggested that the law societies should be mandated with collecting and analyzing compensation information and holding law firms accountable.

The main reason for supporting mandatory disclosure was to “assist in promoting gender pay equity.” Respondents agreed that it would create transparency and trust within the workplace, reduce the culture of pay secrecy and assist members of the profession in negotiating their compensation. One respondent cautioned that while they supported mandatory reporting in general:

Not all legal work is the same—not all legal work carries with it the same demands. Law firms at the end of the day are businesses that need to consider competitive issues.

The focus group participants had mixed views on whether data on lawyer compensation should remain confidential or be subject to mandatory disclosure. Several participants supported mandatory reporting, like that in the UK and similar to that required for the number of women or representation of equity seeking groups on boards.

Participants suggested that statistics on pay disparities should be tracked and published. Without the data, it is not clear who is lagging, but it is also not clear which workplaces should be applauded for making change. If organizations pledge to be accountable to the public, to the clients they serve, to their constituents and shareholders, it will help. One participant commented:

I believe all private law firms should have full reporting on billable and non-billable contributions and track and set targets and requirements across the firm for those contributions and then pay comparably for those contributions.

A common opinion was that “if you cannot measure it, you cannot manage it” and that mandatory compensation reporting is necessary to achieve accountability and transparency.

Mandatory reporting was also thought to be essential to gather the data lawyers need to advocate for themselves in salary negotiations. Without it, they do not know what compensation is reasonable. One in-house participant observed that when recruiting, female candidates tended to provide lower salary expectations, when asked, than male candidates. Others observed similar inequities right out of law school where male candidates would often cite a higher salary expectation and, as a result, start out at a higher

salary than female colleagues. Compensation transparency would change this dynamic by taking out the guesswork.

Of the 13.4% respondents who said they would not support mandatory compensation reporting, the main reason was “personal privacy concerns.” Other reasons included: it is not the job of the law society or government; there are better ways to encourage change without government reporting; it would not do anything to improve gender pay equity; it might result in cosmetic change to avoid effecting true change; it would cause resentment in the workplace; it would level compensation toward the bottom line and incite jealousy; it would cause some people to be paid too much; and they would not want their clients to know how much they make.

Some respondents were uncomfortable with mandatory reporting on an individual level but were comfortable with aggregate data reporting. Legal workplaces could report an average or a mean, or bands for various years of call, “to give transparency about the range of salaries without necessitating the release of a specific dollar value for those who are uncomfortable sharing” what they earn. Others suggested that employers should be required to post pay ranges on job postings and that it was an unfair practice to force applicants to state salary expectations or what they earned in previous roles.

Focus group participants opposed to mandatory disclosure said that legal workplaces, without regulator or government interference, had a responsibility to be transparent and to disclose any pay disparities that exist. Legal workplaces needed to “open their eyes” and “be the leader” in this.

Others said that pay transparency, while informative, would not improve the gender pay gap and the profession needs to look beyond dollar amounts to how firms operate, particularly their hiring, retention and leave policies. Legal workplaces should be transparent about the criteria used to determine compensation at all levels. Some participants said it was hard to be transparent around partner compensation because firms are not comparing “apples to apples”; but partners need to know what criteria will place them in a higher or lower range. As one participant observed, “there has to be some criteria by which you determine compensation and that’s not transparent at all.”

### **Penalized For Being Biologically Capable of Bearing Children**

One common refrain that emerged from the focus group discussions is that women of child-bearing age are perceived to be a potential flight risk and firms “are perpetually waiting for [them]...to leave.” This gendered perception arises because a female lawyer could get pregnant, whether or not they are pregnant or even have a desire to have children. Women are seen as “unpredictable” and can “flit in and out of a file and client relationship” because of *potential* maternity leave. The firm viewing women as “unpredictable” often results in holding back opportunities, which ultimately affects the lawyer’s compensation or bonus. One participant shared that they were not picked to work on a major file because they had just married and the firm was concerned they would take a maternity leave.

Conversely, male lawyers are seen as “stable,” a “stable force,” “reliable” or a “mainstay” as it is assumed they will not take extended leaves. Due to this perception of stability, male lawyers are more readily promoted to clients, the expectation being that they will provide legal services in a “predictable way.”

One participant observed from a management perspective that “there is an inherent fear if you hire female associates that you will end up losing them.” This individual candidly shared:

I do not think it is something to be proud of, but I can tell you that it is something I have thought of myself...I’m now in a role where I have been hiring associates... and I’m thinking about the long-term health and needs of the firm and the partners. In my head, I am thinking that one of these days, we’re going to be losing three or four associates...people are going to go on maternity leave. It is a real business concern. I do not have an answer to what it should be, but these are things I think

about all the time—both as a female associate and as a mother, as someone who is involved in the management and administration of the firm.

The issue becomes starker for women who do eventually have children and take leave, with several stories of discrimination emerging from the focus group participants. One participant spoke about a law firm that revoked a hire-back offer to an articling student when they found out the student was pregnant. As the student was just starting out, they felt they could not “fight a law firm” as it would “decimate” their career. When another lawyer told their firm that they were pregnant, on the surface the firm was supportive and said all the right things, but in reality the lawyer stopped receiving new files.

Leaves affect career progression, access to clients and opportunities which, in turn, affect equity partnership admission and compensation. The reality is that lawyers who do not take leave gain more experience and have a more competitive partnership application.

Other participants experienced a direct impact on their compensation when they took leave. One private practice lawyer saw a decrease in pay. Before going on maternity leave, they were billing slightly more than a male associate who was making the same salary despite being one or two years junior. Upon returning from maternity leave, the firm decreased the lawyer’s salary by \$10,000 and increased the male associate’s salary by \$10,000. By taking a maternity leave, this lawyer was now \$20,000 behind the junior male associate. According to the participant, to be penalized for giving birth was very “disheartening.”

Others “lost a year” of salary growth when they took leave because their compensation was based on years of experience and not year of call. This was the case even though, some participants noted, their billing rates were still based on their year of call, which increased the money they earned for the firm.

Several participants spoke of their own experience or of others who returned from a maternity leave only to be “covertly or overtly penalized” to the point that they would quit. Examples included lawyers giving their files to colleagues while on leave and not having the files returned. This resulted in having to rebuild their practice from scratch, which they found to be challenging and “taxing.” One participant viewed this as a “necessary evil of taking parental leave.” One lawyer in criminal defence observed that: “It’s rare that there is any guarantee that someone will even have a position after leave” and that there was a high degree of attrition among female criminal defence lawyers.

Others thought that there is an understanding in firms that a woman who takes all her entitled leave is “not committed to the job.” One participant was supposed to go on leave for six months but only took three because they were new to the firm and worried about job security. Some participants overheard conversations about women lawyers being on the “mommy track.” Some said that being vocal about family obligations had a chilling effect on a woman’s career. One lawyer had a female colleague who was very vocal about their desire for work-life balance and would say “my kids come first, don’t expect me to drop everything.” Although there was support for this attitude on the surface, the participant explained that it did not align with the firm’s expectation that its lawyers would not just meet the billable target but exceed it. That colleague only lasted another six months at the firm. The participant wanted to be supportive, but every time the colleague sent an email mentioning work-life balance or that her kids came first, “you knew it was hurting her [career].”

Another participant was mentored by a senior female lawyer whose advise was to never mention family obligations at work or to clients. This participant disagreed, and thought that this type of thinking was outdated:

Why would we want to lie to clients about our lives? Why would we tell them we have another more important client instead of being honest that we have a doctor’s appointment or family responsibility instead?

Other forms of subtle penalty include being passed over while on leave for opportunities that would have led to more lucrative files, therefore affecting compensation. Participants witnessed others at their organization who were junior to them advance beyond them while on leave.

Participants also cited double standards being applied to women who have children and men who have children. One lawyer observed that, while they received the second highest salary increase and bonus one year, the top increase went to a male lawyer with the justification that his partner just had a baby and he had a young family to support. When this individual started their own family, they did not receive the same consideration. Another participant was in a meeting where a male lawyer left early to go to his child's baseball game. He was applauded for that. The participant thought that a woman in the same situation would be seen as "shirking her responsibilities."

Some participants observed that it is harder for more senior lawyers to take a leave in private practice because they have their own book of business and their own practice, which does not lend itself to someone else stepping in. Women in solo practice face different challenges with maternity leaves and pay inequity as they may not have access to employment insurance payments and have no one to "babysit" their files. One participant described putting ten years into building a solo practice, knowing that their "practice will be in shambles" after a maternity leave. The participant was nervous that, upon returning, clients would find them less available and might leave, leading to lower billings and less compensation.

Not all participants had negative experience with leave in private practice. There were good news stories as well. One participant spoke about having three children while an associate in private practice and did not feel that the multiple leaves affected their career at all. They felt very supported by their firm. After returning, colleagues reached out to help this participant get work and they made partner in their scheduled year. The participant described the firm as an incredibly positive and supportive environment.

## Solutions

Several participants noted the importance of encouraging and "normalizing" parental leave for all lawyers, regardless of gender, to remove the gendered perception that women lawyers are "unpredictable" due to anticipated leaves. It was agreed that more male lawyers are taking parental leave, but still for a significantly shorter time than leave taken by women. Men are also told not to call it "parental leave" because of the stigma attached, instead taking their "vacation time." Some said that firms provided lip service to parental leave taken by men, but it was disapproved of. However, one Quebec participant noted that parental leave is usually shared so both parents can bond with the baby.

Other forms of leave should also be encouraged and normalized, such as leave for education or travelling. Workplaces should be reminded of the positive long-term effects leaves can have on employee/employer relationships and the benefits to workplace culture.

To avoid the penalization that some lawyers feel when they take a leave, firms should have a clear protocol in place for files being returned, so lawyers have a robust practice to come back to. Further, workplaces should ensure lawyers feel engaged and part of the team before they go on leave to help with the transition on their return.

Participants noted that allies who were "not women and BIPOC folks" have a role in speaking up and asking for change. For example, one lawyer shared that a woman at their firm was terminated on her return from maternity leave. The participant called out the firm and resigned in protest. Another example involved a lawyer who would look after files for women on maternity leave and ensure they were returned so the women did not lose their practices. He also helped to reintegrate women into practice on their return.

Participants identified a need to shift law firm mentality around maternity and parental leave. It appears that firms see leaves only as a financial cost, not as long-term investments in their lawyers: "it's a billable

hours environment and that means there are less billable hours.” Participants saw this perspective as short-sighted; instead, firms should understand their responsibility to encourage lawyers to have healthy support systems and families, and to achieve personal goals along with professional goals. Firms need to be reminded that retaining top talent is good for business, that a supportive approach to leaves can lead to higher retention, and that leaves are short term costs that result in long term gains. To be effective, this culture shift needs to take place equally with clients, with client expectations adjusted accordingly.

Experiences of progress in this area were also shared. When one lawyer had children, they felt they could only take three months leave with their first and none with their second; however, their impression was that the pressure to take short leaves is no longer present. Now, the norm is one year. This progress should be recognized and encouraged.

## **Denial of Opportunities and Unfair Allocation Practices**

Several participants noted that lack of opportunities and mentorship for female lawyers and discrimination in allocation of files plays a large role in pay inequity.

It was observed that higher paying work (described as “big ticket” and “money-making” files) were disproportionately allocated to male associates. This may be related to the perception discussed above, that male lawyers are more “predictable” than female lawyers, especially female lawyers of child-bearing age. One participant would hear the phrase, “I want someone with a broad shoulder on this file,” implying the file should go to a man. Others noted instances where clients or senior partners asked for a white man to be assigned to the file. Those with the biggest books, biggest practices and biggest teams were men, with few opportunities flowing down to women and no one mentoring women up the ranks. One participant said that “women from disadvantaged communities do not get the same opportunities as their male counterparts and those opportunities are worth money. We need transparency around how opportunities are allocated as well.”

Participants noted that women are left out of business development activities, undermining their ability to form relationships with clients and restricting their opportunities to work on important files. Examples were cited of senior male partners inviting junior male partners or associates to go for coffee, play sports or attend other social events, (with female lawyers specifically excluded) leading to a camaraderie and ultimately to working together. One lawyer noted that firms can take proactive measures on social invitations, to ensure equity in allocation of opportunities, but on an individual level, “you can’t really tell someone who to take for coffee.” One individual stated:

As a queer person, I also feel the ‘othering’ of the ‘bro’ mentality within certain parts of the legal profession...I recognize it is a gendered issue but it’s also an issue for people of colour, for people who are non-gendered, gender variant, or people of different sexualities, and I think it is a multi-faceted issue.

Female lawyers may also face challenges around business development activities that male lawyers seldom face. One example given was going out for drinks with a client after a court appearance. Some female participants wondered if it was “inappropriate.” Another participant invited a client to a sporting event for business development purposes and the client thought it was a date. Yet another had a client pat their arm and say they were cute. This person did not think their firm could do anything to help, “but, as women, we have to develop our own internal tool belts on how to navigate these situations.”

## **Solutions**

To succeed, participants thought that solutions to inequity in allocation of files must be driven from the top down. Senior lawyers and decision-makers must be committed to equity in allocation of work opportunities.

Diversity is needed on work allocation decision-making committees. As one participant observed, if all the big decisions are made by the people under whom the inequities have continued, there will not be any meaningful change. Firms need diversity in the decision-making rooms, not just diversity in the associates they hire.

Participants voiced the need for acknowledgement of systemic and institutional bias, and understanding, training and commitment to counteract the impact of these biases. Leaders of organizations, law firms and in-house departments must educate themselves. Some focus group participants proposed that regulators mandate training for lawyers and legal workplaces on unconscious bias and mentorship, and set specific goals.

Clients are clearly drivers of change in firms and can be drivers of change in achieving equity in the allocation of files. One in-house counsel participant explained that they seek out diverse individuals to work with at external firms and they give this feedback to the firms. They also try to be realistic and not expect lawyers to respond on weekends or evenings.

However, another participant noted that clients may say they want diversity, but they still make “unreasonable” demands. For example, if a law firm does not respond in 24 hours, this participant felt the client might fire the firm and go elsewhere. This expectation, and a lawyer’s perceived availability, could affect which lawyer is assigned to client files.

### **Women Lawyers’ Contributions Undervalued**

Another explanation that emerged for the gender pay gap was the absence of systems to value non-billable work, which tends to fall disproportionately on women.

Several focus groups discussed the “discretionary” process for determining compensation in many practice-settings. Even where lock-step salary policies are in place, intangible or “soft” factors determine bonus eligibility. For example, participants cited gendered language in compensation conversations, where male lawyers were described as having more “go and get it” attitudes on files, which was considered valuable to the firm. Female lawyers were not described in this manner.

Participants also expressed that they are expected to bear the brunt of non-billable work but are not compensated accordingly. Some thought that this “pink work” was not recognized. The inequity in the allocation and recognition of non-billable work arises from an expectation about gender roles that further perpetuates pay inequities. Participants described being “pushed” onto committees, required to conduct client seminars, complete party planning, or forced to take on other “caregiving” or “mother of the office” roles. As one participant observed, “[t]he expectation is if you are a woman, you do what people ask you to do and do not complain.” Another participant was asked to do printing for the senior lawyers and cover reception when administrative staff were ill. They knew that assisting with the administrative work would negatively affect their billable hours, but worried that refusing would make it look like they were not a team player and possibly undermine their eligibility for a salary increase.

Focus group participants observed that, in compensation conversations, firms put a dollar value on business development that male lawyers “were conducting on the golf course” but not on the committee work that some women were compelled to do. One participant noted, “I don’t mind giving back, but it wasn’t taken into consideration when the partner considered my value at the firm.” When another participant suggested a male colleague take on some non-billable tasks, they were told “he’s too busy...he’s got too much on his plate.” Male lawyers do not see a negative impact on their compensation for failing to make this “team contribution.”

Others noted that their efforts outside of the office also went unrecognized. One participant told their firm that they were on three different boards, but those networking and marketing efforts were not considered



when setting compensation. This participant had to point out that they were bringing in business through their contacts and that they “needed to work something out.”

In addition, there can be a disproportionate burden on women lawyers who belong to other equality-seeking groups. As one participant put it:

I say this as a gay woman that there are additional initiatives that I’m involved with, because I feel personally committed to advancing queer women in the profession. That sort of extra work is not compensated but you can’t do everything and then on top of that, bill every hour that you’re required to bill to make, and to effectively achieve the same level of pay.

## Solutions

Possible solutions for properly valuing and compensating work were discussed in the focus groups. Participants suggested that law firms look more closely at the nature of the work and standardize the work to improve pay equity. Law firms should create metrics that measure and value committee involvement and non-billable committee work should be credited towards billable hour targets. Firms could also implement policies that ensure compensation for administrative tasks. One participant suggested:

We should stop using subjective factors for bonuses. This is just a way for (white men) partners’ unconscious bias to financially harm women and minority associates.

Several participants suggested unconscious bias training would help lawyers think critically about their assumptions and how those assumptions might be connected to the gender wage gap and inequalities in general.

Some participants proposed that organizations like the CBA or law societies develop models and standards for how firms can or should value legal work, or a guide to help associates in their conversations with law firms about compensation (including sample questions and requests, such as more recognition of non-billable work). A guide might also be made available to firm leaders who want to change inequitable compensation structures, but don’t know where to start. Such resources would be empowering.

Others thought it was too hard to have different systems for quantifying the value of work because it would be complicated. One person in the non-profit field paid their lawyers on a scale based on year of call and recognized the inequities with this system as well. When they see someone who is junior to someone else doing the same work, they would like “to pay the same for equal work.” But they do not necessarily have the budget flexibility to do that. Plus, how many hours it takes a lawyer to do something is not necessarily the measure of what someone is willing to pay.

Also, participants looked to individuals who need to speak up about these issues. Not just for junior lawyers, but for others who do not have the same financial privileges to speak up, those who are vulnerable to begin with. It is unfair to put the burden back on them to fight to have their work valued. It goes back to allyship and mentorship, and advocating for those who are not in a position to fight for equality.

## VI. Recommendations

Roundtable participants and survey respondents suggested a variety of ways to enhance pay transparency and achieve pay equity. Based on these suggestions, the WLF makes several recommendations, organized by the entity that would be responsible for implementation.

The recommendations are targeted to lawyers, in accordance with the scope of this project and the membership of the CBA. However, many recommendations can be adapted to apply more broadly to everyone working in the legal profession, not just lawyers (and perhaps also to other professions).

## A. Government

Roundtable participants suggested ways that federal, provincial and territorial governments could legislate in this area:

1. Enact legislation mandating public disclosure on gender representation and pay at all levels (including partnership) for legal employers (including law firms).
2. Enact legislation banning questions about salary history during recruitment.
3. Enact regulations banning the use in employment contracts of non-disclosure provisions relating to compensation and rendering the provisions unenforceable. Consequences should attach for breaching or circumventing these regulations.

It was beyond the scope of this project to conduct a jurisdictional scan of legislation in Canada and elsewhere on pay equity and pay transparency.<sup>25</sup>

## B. Law Societies

Regulators of the legal profession have the most authority to impose change on legal workplaces. Law societies regulate the profession in the public interest. Gender equity, including gender equity in the legal profession, is in the public interest.

4. Collect salary data and create a public online database that outlines compensation disaggregated by area of practice, year of call, type and size of workplace, location and demographic information
5. Require legal workplaces to report annually on ranges of lawyer compensation at all levels and to identify discrepancies based on gender, with appropriate confidentiality measures in place.
6. Conduct annual pay equity audits in various practice settings (private practice, in-house, non-profit, government, etc.) and publish the results.
7. Implement mandatory training for all lawyers to address implicit bias, including bias in compensation and advancement decisions, and provide concrete strategies to interrupt biases.

## C. Canadian Bar Association

The CBA can use its structure and resources to educate lawyers on pay equity issues and to advocate for systemic change.

8. Create resources, including CPD programs and toolkits, to help lawyers advocate for pay equity in their workplace, research legal salary data and hiring trends, negotiate their compensation and navigate compensation and performance reviews.
9. Develop resources for workplaces (including companies, non-profit and small and medium firms) to review compensation structures through a diversity and inclusion lens.
10. Develop sample policies for legal workplaces, particularly law firms, on how to reward and recognize “non-billable” work.

## D. Legal Workplaces

Legal workplaces are on the frontline of pay equity issues. Improving policies in the legal workplace is the most efficient route to improve pay equity in the legal profession.

11. Evaluate compensation models through a diversity, equity and inclusion lens. This may include implicit bias training.

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<sup>25</sup> See Appendix C for Canadian pay equity legislation.

12. Establish compensation policies that list salary range and bonus criteria or equivalents (where applicable), outline the compensation process, identify decision-makers in that process, and list all factors that impact compensation decisions.
13. Critically consider any confidentiality policies applicable to compensation from an equity perspective.
14. Seek opportunities to increase transparency around compensation. For example, partnership boards might consider an “open” compensation model in the partnership (i.e., transparency regarding partner compensation).
15. Do not penalize, directly or indirectly, employees who choose to disclose their compensation.
16. Regarding leaves:
  - a) encourage parents to take parental leave regardless of gender and/or family circumstances;
  - b) encourage and normalize other forms of leave (e.g., leaves for going back to school, caregiving, travelling) for all lawyers; and
  - c) create mechanisms (e.g., committees, human resources, policies) to review and oversee lawyers’ leaves including, but not limited to:
    - i) workplace engagement before and during leave;
    - ii) distribution of the lawyer’s files during leave; and
    - iii) return of the lawyer’s files, and distribution of additional work, on return from leave.
17. Implement formal lawyer development programs to respond to the realities of inequalities in legal workplaces, for example by giving (a) opportunities for lawyers at risk of experiencing pay inequity (e.g., women, minorities), and (b) targeted support at key moments in lawyers’ professional trajectories (e.g., on return from parental leave, when transitioning practice areas or specializations).
18. Reward contributions that promote institutional sustainability and growth, not just individual rainmaking (e.g., talent development, committee participation, pro bono engagements, public speaking, bar association leadership).
19. Encourage individuals and allies in legal workplaces who are not from equality seeking groups to speak up and ask for more inclusive policies.

## VII. Acknowledgements

The WLF would like to acknowledge the generous support of the CBA Law for the Future Fund.

This research initiative and report could not have been completed without the support of the WLF Section Executive, in particular the Pay Equity Committee: Sabrina A. Bandali (Chair), Carly Romanow, Jennifer Taylor, Catherine Ewasiuk, Angela Ogang, Patricia Gamliel, Aarohi Kumar and Manar Srajeldin. Marina Ceclan, Liaison Officer for the WLF, was instrumental in supporting the Committee's work, and in planning and executing the Roundtable event. Also, a huge thank you to the notetakers and facilitators who assisted with the Roundtable focus groups.

The WLF would also like to thank Erin C. Cowling for co-authoring the Report and her work in supporting the WLF.

Last, but not least, the WLF is grateful for the Roundtable focus group participants and survey respondents who gave generously of their time to share their stories and opinions to help enact change in the legal profession.

## VIII. Appendix A: Survey Questions

*This is an anonymous survey geared towards gathering individual and more sensitive data that participants may not be comfortable disclosing during the focus groups. Should take 5 – 10 minutes to complete.*

1. Before today, would you have said there is an issue with gender pay equity in the legal profession? (Y/N)
  - a. IF NO (*this q only appears if participant selects no*):
    - i. Has today's discussion changed your mind? (Y/N)  
Please comment. (*short answer*)
2. How long have you been practicing law? (*select one*)
  - a. 0-5 years
  - b. 5-10 years
  - c. 10-15 years
  - d. 15-20 years
  - e. 20-25 years
  - f. 25 years +
3. Do you feel your pay equity has improved since you began practicing law?  
(*multiple choice: improved, gotten worse, stayed the same, I have not experienced pay inequity, I do not know*)
4. Do you feel gender pay equity has improved in general since you began practicing law? (*scale 1 "not at all" – 5 "it has completely improved and there is no longer a gendered pay gap"*)
5. Do you think any of the following identity markers also have an impact on compensation? (*check all that apply*)
  - a. Ethnicity
  - b. Racialization
  - c. My first language is not English or French
  - d. Foreign training
  - e. Sexual orientation
  - f. Other (please specify)
6. Is there another aspect of your identity (other than your gender identity, e.g. race, ethnicity, place of origin, ancestry, religion, sexual orientation, gender expression, physical disability, mental disability, marital status, family status and/or other), that you believe has affected your compensation? (*check all that apply with "other" being a short answer*)
7. Which category most accurately describes your practice setting? (*select one*)
  - a. Private practice (*multiple choice select one*)
    - i. Small (1-15 lawyers)
    - ii. Mid-size (15-100 lawyers)
    - iii. Large (100+ lawyers)

- b. In-house counsel
  - c. Government
  - d. Non-profit (NGO, legal clinic, civil society organization)
  - e. Other (please specify)
8. What is your role in your organization? (*select one*)
- a. Employee
  - b. Owner
  - c. Other (i.e. non-equity partner, advising counsel.) (*short answer Please specify*)
9. Do you have input into your organization's compensation decisions (Y/N)
10. IF YES (*question 10 (a) only appears if participant answers yes to question 9*):
- i. I am a member of the committee which determines compensation.
  - ii. I am actively involved in discussions regarding my compensation.
  - iii. I provide a self-evaluation which determines my compensation.
  - iv. Other (*please specify*)
11. What range does your yearly compensation fall into (excluding bonuses)? (*select one*)
- a. < \$50,000
  - b. \$50,001 - \$100,000
  - c. \$100,001 - \$150,000
  - d. \$150,001 - \$200,000
  - e. \$200,001 - \$250,000
  - f. \$250,001 - \$300,000
  - g. \$300,001 - \$350,000
  - h. \$350,001 +
12. Are bonuses part of your compensation structure? (Y/N)
13. IF YES (*questions 13 (a) and (b) only appear if the participant answers yes to question 12*):
- a. What range did last year's yearly bonus fall into (*select one*)
    - i. < \$1,000
    - ii. \$1,000 - \$5,000
    - iii. \$5,000 - \$10,000
    - iv. \$10,000 - \$15,000
    - v. \$20,000 - \$30,000
    - vi. \$40,000 +
    - vii. Other (i.e. time off, non-financial compensation, please specify) (*short answer*).
  - b. Which most accurately describes the bonus structure of your firm? (*check all that apply*)
    - i. Solely monetary factors (billable hours, fees, cross-selling, client origination receipts etc.).

- ii. Solely subjective factors (participation in firm activities/committees, mentoring junior lawyers and students, quality of work etc.).
  - iii. An equal combination of monetary and subjective factors.
  - iv. Both, but monetary factors are weighed more heavily.
  - v. Both, but subjective factors are weighed more heavily.
  - vi. Fixed scale based on seniority.
  - vii. Other (please specify)
14. How comfortable are you discussing your compensation with others? (*scale 1 "very uncomfortable, I do not talk about it" – 5 "very comfortable, I would tell anyone"*)
15. Do you feel that your compensation and the compensation structure used by your organization is fair? (Y/N)
16. Do your employment contract or firm policies prohibit you from discussing your compensation with others? (Y/N)
17. IF YES (*question 17 only appears if the participant answers yes to question 16*):
- a. Do you speak about your compensation with others anyway? (Y/N)
18. Are you aware of others' compensation within your organization? (Y/N)
19. IF YES (*question 19 only appears if the participants answers yes to question 18*):
- a. What others' salaries are you aware of? (*select all that apply*)
    - i. Students
    - ii. Lawyers more junior than you
    - iii. Peers
    - iv. Managers and lawyers more senior than you
20. How does your organization determine your compensation? (*select all that apply*)
- i. Solely monetary factors (billable hours, fees, cross-selling, client origination receipts etc.)
  - ii. Solely subjective factors (participation in firm activities/committees, mentoring, quality of work etc.).
  - iii. An equal combination of monetary and subjective factors
  - iv. Both, but monetary factors are weighed more heavily.
  - v. Both, but subjective factors are weighed more heavily.
  - vi. Fixed scale based on seniority.
  - vii. I negotiate my compensation.
  - viii. I don't know.
  - ix. Other (please specify)
21. Is your organization transparent about how compensation is determined for junior lawyers? (*scale: 1 "utterly opaque, I only know what I make" to 5 "utterly transparent, all junior lawyers' compensation information is known or available to me"*)
- a. Please comment. (*short answer*)

22. Is your organization transparent about how compensation is determined for senior lawyers? (scale: 1 “utterly opaque, I only know what I make” to 5 “utterly transparent, all senior lawyers’ compensation information is known or available to me”)
- a. Please comment. (short answer)
23. Have you ever disputed or raised issues related to your compensation? (Y/N)
24. IF NO (question 24 only appears if participant answers no to question 23):
- a. Why not? (Short answer)
25. IF YES (questions 25 (a) – (d) only appear if participant answers yes to question 23):
- a. What happened? (select all that apply)
    - i. Spoke to an immediate supervisor.
    - ii. Had a discussion during a performance review.
    - iii. Used a formal compensation review/appeal process.
    - iv. Other (please specify)
  - b. Was your issue resolved? (Y/N)
  - c. How did you feel about the process you used? (scale: 1 “very satisfied” – 5 “terrible”)
  - d. How did you feel about the outcome (scale: 1 “very satisfied” – 5 “terrible”)
26. Do you have any further comments about your compensation or the compensation structure used by your organization? (short answer)
27. Would you support mandatory compensation reporting by legal workplaces either to the Law Society or Government? (Y/N)
28. IF NO (question 28 only appears if participant answers no to question 27):
- a. Why not? (select all that apply)
    - i. It is not the job of the Law Society or Government.
    - ii. Personal privacy concerns.
    - iii. It wouldn’t do anything to improve gender pay equity.
    - iv. It would cause issues within the workplace.
    - v. It would cause some people to be paid too much.
    - vi. I would not want clients to know.
    - vii. Other (please specify)
29. IF YES (question 29 only appears if participant answers yes to question 27):
- a. Why? (select all that apply)
    - i. It would assist in promoting gender pay equity.
    - ii. It would create transparency and trust within the workplace.
    - iii. It would assist members of the profession to negotiate.
    - iv. Other (please specify)

Thank you for taking the time to participate in the survey!



## IX. Appendix B: Focus Group Questions

1. **(10 minutes) Canada's data gap:** Start by discussing the apparent lack of compensation transparency in Canada and participants perception of the same:
  - a. Do people feel that conversations about pay are sensitive and if so why?
    - *Have you ever had a conversation with someone about pay? How did it go?*
    - *Has someone ever asked you about your compensation? How did that make you feel?*
  - b. What are the barriers to people being frank or legal workplaces being transparent?
2. **(20 minutes) Perceptions of the gender pay gap:** Assuming that Canada follows the same trends as the US and UK, we also have gender pay inequity in the legal profession.
  - a. Is this true from your experience?
    - Have you observed gender pay inequality in the legal profession in Canada?
    - Have you suspected it?
    - Have you experienced the opposite?
  - b. Does a lack of transparency matter?
    - Would workplaces with transparency around compensation be more equal?
    - Have you ever tried to get transparency about compensation? Did you get it?
  - c. What are other driving forces? What is sustaining or perpetuating pay inequity in our profession?
3. **(10 minutes) Opinion:** should there be/what is the relationship between parental leave and compensation?
  - What has been your personal experience with parental leave?
  - What have you witnessed with colleagues' parental leave?
  - In your opinion should the fact that someone takes parental leave have an impact on their compensation?
4. **(20 minutes) Solutions:** How can lawyers and legal workplaces improve?
  - a. What do firms or legal workplaces need to do to improve pay equity?
  - b. What can individuals do to address pay inequity?
  - c. What role does the regulator (e.g. law societies) have to play?
  - d. At what level do you feel changes should be made (individual, firm/organization, regulator)? Whose job is it to address pay inequity?
  - e. At what level will changes have the most impact?

## **X. Appendix C: Pay Equity Legislation in Canada**

### **Federal**

[Pay Equity Act S.C. 2018, c. 27, s. 416](#)

[Pay Equity Regulations SOR/2021-161](#)

### **Manitoba**

[Pay Equity Act, CCSM c P13](#)

### **New Brunswick**

[Pay Equity Act, SNB 2009, c. P-5.05](#)

### **Nova Scotia**

[Pay Equity Act, RSNS 1989, c 337](#)

### **Ontario**

[Pay Equity Act, RSO 1990, c P.7](#)

### **Prince Edward Island**

[Pay Equity Act, RSPEI 1988, c P-2](#)

### **Quebec**

[Pay Equity Act, CQLR c E-12.001](#)



