

**Beyond a Reasonable Doubt:
Lawyers State Their Case on Job Flexibility**

*The Catalyst series on flexibility
in Canadian law firms*



ABOUT CATALYST

Catalyst is the leading research and advisory organization working with businesses and the professions to build inclusive environments and expand opportunities for women at work. As an independent, nonprofit membership organization, Catalyst conducts research on all aspects of women's career advancement and provides strategic and web-based consulting services globally. With the support and confidence of member corporations and firms, Catalyst remains connected to business and its changing needs. In addition, Catalyst honors exemplary business initiatives that promote women's leadership with the annual Catalyst Award. With offices in New York, San Jose, Switzerland, and Toronto, Catalyst is consistently ranked No. 1 among U.S. nonprofits focused on women's issues by The American Institute of Philanthropy.

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Lawyers State Their Case on Job Flexibility
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ABOUT THE FLEXIBILITY IN CANADIAN LAW FIRMS SERIES

These days organizations are relentlessly bombarded with buzz words such as “flexibility” and “work-life balance.” But what do these words really mean? Why should you and your colleagues bother learning more about them?

In 2003, Catalyst conducted a nationwide survey of 1,439 lawyers (638 women and 801 men) working in law firms across Canada. The data from this survey form the basis of this article, which is the third and final report in our series entitled “Flexibility in Canadian Law Firms.” (See also *Beyond a Reasonable Doubt: Building the Business Case for Flexibility*, 2005 and *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance*, 2005).

The goal of the Catalyst survey was to learn more about job flexibility and work-life balance as they affect Canadian lawyers. We wanted answers to two key questions: What does flexibility mean to lawyers today? More importantly, what risks are assumed by law firms which fail to appreciate and address the work-life satisfaction of their lawyers?

In our research, Catalyst has attempted to clarify the situation.

- We have identified key components of the law firm environment that influence lawyers’ decisions – for example, why they choose to work at particular law firms and why they decide to remain at a particular firm or go elsewhere.
- We have also attempted to quantify the business and social costs incurred when lawyers leave law firms due to dissatisfaction with their work-life balance.

But we weren’t satisfied to simply stop there. We wanted to use the experiences of Canadian lawyers to identify how law firm leadership can best evaluate and/or retool the flexibility climate in their own firms.

WHY ARE THE FINDINGS FROM THIS SURVEY IMPORTANT?

The Law Society of Upper Canada has described the “lawyer culture” as one that has been fashioned exclusive of women. The assumption has been that “a lawyer would not have family responsibilities requiring significant time commitments” and that “women were expected to take responsibility for all of the domestic labour arising out of family responsibilities. The hidden corollary to these assumptions was that women would not be lawyers.”¹

¹ Law Society of Upper Canada *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* (May 2005).

These assumptions no longer apply in the real world. Women are certainly part of the law firm environment in the 21st century. Indeed, over half of law school graduates in Canada today are women. But while the demographic landscape of law firms has changed dramatically over time, the law firm environment is still largely based upon the old assumptions—that a lawyer’s main commitment should be to his or her firm.

Men are starting to struggle against this to a certain degree. There is evidence that younger men in particular are more active in childrearing and home-related duties than their fathers and grandfathers ever were. They share a desire to gain more flexibility in their work schedules in order to meet these non-work-related demands.

But even so, the hard data in this Catalyst report and the two which preceded it suggest that men and women lawyers do not face equal pressures in their quest for greater work-life balance. For example:

- More women than men report difficulty managing the demands of work and personal/family life.
- More men than women are satisfied with their levels of day-to-day job flexibility.
- More men than women perceive that their firms provide effective leadership and role models around work-life balance.

Catalyst undertook the latest survey because we sensed there is tremendous interest in the topic of job flexibility within the legal profession. Even though flexible work arrangements are currently offered by many firms, debate continues about their viability, and there seems to be genuine difficulty making them work in practice.

This research is important because it provides a “real world” look at how well—or poorly—many Canadian firms are doing in this regard. Besides generating hard data on lawyers’ current perceptions of job flexibility options, the Catalyst survey has also yielded important qualitative findings in the form of personal statements and candid reflections from lawyers themselves.

We believe these findings provide much-needed baseline information which law firms can use according to their specific needs and interests. For example, firms which have not yet approached the topic of flexible work arrangements (FWAs) may find the survey data useful as a “jumping off” point for discussions. We believe that other firms which currently offer FWAs but would like to broaden or better adapt such arrangements to the needs of lawyers will also find the information useful.



EXECUTIVE SUMMARY

In the first two reports of Catalyst's *Flexibility in Canadian Law Firms* series, we provided insight into lawyers' perceptions and experiences of work-life balance in Canadian law firms.

Nearly two-thirds of all lawyers report difficulty managing the demands of work and personal/family life.² Despite the self-reported importance of work-life balance, more than half of partners and two-thirds of associates said they "often" or "very often" put work before personal/family life.² Many lawyers faced with the choice about where to work say that a top priority is finding a firm where the environment respects and supports family and personal commitments.^{2,3}

Although both men and women lawyers experience work-vs.-life tension, this issue is more likely to affect women, especially women associates.^{2,3} One out of three men lawyers has a spouse or partner who does not work outside the home (versus one out of 13 women lawyers). Some women feel that they are placed at a disadvantage in their firms compared to their men colleagues who have spouses at home.

This third and final report of the Catalyst series focuses on Canadian lawyers' experiences and perceptions of flexible work arrangements (FWAs) in law firms. To obtain data, Catalyst surveyed 1,439 lawyers (638 women and 801 men) employed in law firms across Canada. The survey explored lawyers' experiences, perceptions and attitudes regarding FWAs. (Supplemental qualitative data were collected during interviews and focus groups and appear in the form of direct quotations.)

For the purpose of the survey, a Flexible Work Arrangement was defined as: "explicit conditions of employment involving adjustments of hours, scope and/or place of work for a sustained period of time (mutually agreed upon) between associates and the firm and between partners and the firm or the firm's management committee."

The survey focused on full-time FWAs (i.e. flextime, compressed work week, and telecommuting or flexible workplace), as well as part-time FWAs (i.e. job-sharing, reduced work schedule/part-time).

² Catalyst, *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance* (2005).

³ Catalyst, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (2005).

AMONG THE KEY FINDINGS

Who uses flexible work arrangements (FWAs)?

- Approximately one in four Canadian lawyers (employed in law firms) reported ever having used an FWA. About six times as many women lawyers reported using some kind of part-time FWA compared to their male counterparts.
- Telecommuting and flextime were the most common types of FWAs used by lawyers. However, roughly one in three lawyers who used an FWA said they had chosen to work fewer hours for reduced compensation.
- More lawyers said they had opted for full-time rather than part-time FWAs.

What are lawyers' perceptions of flexible work arrangements (FWAs)?

- Even though many lawyers report using an FWA, most still perceive them to be career-limiting. Just one in five (22 per cent) *didn't* believe that a lawyer who took advantage of flexible arrangements would automatically be sent to "the B team."
- A majority of lawyers, both users and non-users, *didn't* believe that a lawyer who went on either full- or part-time FWAs could ever become partner.
- More than half of the women lawyers said they believed their FWA participation limited their professional development and made them appear less committed to their firms (versus 21 per cent of men who used FWAs).⁴

Do law firms support flexible work arrangements (FWAs)?

- Half of lawyers felt their firms did not adequately provide FWAs.
- Nearly three-quarters of associates said partners must be encouraged to accept that lawyers with different working styles can be effective and successful.

Lawyers who took part in the survey and focus groups were asked to share some ideas about what must happen for the current situation to change. Their answers fell into three main categories:

- 1. Make the business case for flexibility.** A large majority of those surveyed said that before law firms begin to see flexible work arrangements as worthwhile and important, they need bottom-line evidence supporting their feasibility and viability.
- 2. Change attitudes about gender, parenthood and job flexibility.** Most lawyers surveyed said that a broader perspective on gender roles—i.e. that job flexibility is important to both women and men, regardless of parental status—is vital if flexible work arrangements are to be successfully implemented at their firms. Many women lawyers said FWAs will not be widely implemented until more women are hired into or promoted to partnership positions where they can play a greater role in decision-making.
- 3. Work to change and expand the definition of what makes a "successful" lawyer.** That means law firms, and lawyers themselves, must realize and accept that lawyers with different working styles can be just as effective as those who follow more traditional work patterns.

⁴ We emphasize that these findings are based only on the perceptions of lawyers. This study was not designed to capture long-term, objective data about what actually happened to lawyers who used flexible work arrangements. This might be a fruitful direction for further research.

To share these results with the Canadian legal community and other interested stakeholders, Catalyst will make an electronic version of the full report and this Executive Summary available for reading and downloading on the Catalyst web site (www.catalyst.org). Findings will be also be disseminated and discussed at upcoming conferences and other events. Catalyst will be developing a supplemental online resource addressing the question: "What steps can law firms take towards providing optimal job flexibility?" *

*For more information about this or any aspect of the *Flexibility in Canadian Law Firms* series, please e-mail us at skunkel@catalyst.org or call Sonya Kunkel at 416-815-7600, ext. 625.



WHAT WE ALREADY KNOW ABOUT LAWYERS AND JOB FLEXIBILITY

In the first two reports of Catalyst's *Flexibility in Canadian Law Firms* series, we provided insight into lawyers' perceptions and experiences of work-life balance in Canadian law firms. Here are some recent findings about job flexibility among Canadian law firms and lawyers:

- Nearly two-thirds of all lawyers report difficulty managing the demands of work and personal/family life.⁵
- Despite the self-reported importance of work-life balance, more than half of partners and two-thirds of associates surveyed by Catalyst said they “often” or “very often” put work before personal/family life.⁵
- Many lawyers faced with the choice about where to work say that a top priority is finding a firm where the environment respects and supports family and personal commitments.^{5,6}
- Although both men and women lawyers experience work-vs.-life tension, this issue is more likely to affect women. This is especially true for women associates, who are significantly more likely than their male counterparts to report that advancement in their firm depends upon putting career before personal/family life.⁵
- One out of three men lawyers has a spouse or partner who does not work outside the home (versus one out of 13 women lawyers). Some women feel that they are placed at a disadvantage in their firms when compared with their men colleagues who have spouses at home.
- Indeed, there is a clear gender gap in perceptions regarding work-life balance: male partners (who hold most senior positions in Canadian law firms) perceive that their firms provide effective leadership and visible role models around work-life balance. But other lawyers—especially women associates—just don't agree.⁵
- Poor role modeling by law firm leaders is directly responsible—in large part—for work-life dissatisfaction among associates and partners who work under them. The degree to which young lawyers feel their firm's leadership helps them better manage their work and personal/family responsibilities seems to influence how long they intend to stay with their firms.^{5,6}
- The average cost to a law firm when an associate leaves—potentially because of work-life tension—is \$315,000. This includes both investment costs (i.e. upfront and annual investment in the recruitment, training and development of an associate) and separation costs.⁶

⁵ Catalyst, *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance* (2005).

⁶ Catalyst, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (2005).

CHAPTER 1: ABOUT THE CATALYST SURVEY

BACKGROUND

In 2001, Catalyst released a report entitled *Women in Law: Making the Case*. The report, which was based on a survey of 1,439 American lawyers, revealed a number of important facts and intriguing trends:

- At that time, in the U.S., relatively few women held leadership positions in the legal profession.
- A large proportion of men and women lawyers reported difficulty balancing the demands of work with the demands of their personal lives.
- The careers of women law graduates were significantly affected by work-life issues, both in terms of advancement and career paths.

Following the release of this report, Catalyst engaged in a series of discussions with stakeholders in the Canadian legal community. During these discussions, it became clear that Canadian law firms wanted a greater understanding of job flexibility and work-life balance. As employers, they recognized a conflict between lawyers' demands for greater flexibility and the reality of an increasingly competitive marketplace for legal services (e.g., rising billable hours demands, extended partnership tracks, increasing client demands for "24/7" access to their counsel).

Sponsored by ten leading Canadian law firms, Catalyst's series on *Flexibility in Canadian Law Firms* investigates lawyers' work-life balance experiences and perceptions in Canadian law firms today. Based on survey data from more than 1,400 lawyers across the country, the series includes three reports:

- The first report, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility*, demonstrated that firms that fail to address work-life balance issues potentially risk higher associate turnover rates, accompanied by a significant financial burden.
- The second report, *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance*, revealed that nearly two-thirds of all lawyers in law firms reported difficulty managing the demands of work and personal/family life. The report demonstrated that there are tangible steps law firms can take at an organizational level to address lawyers' difficulties managing work and personal/family responsibilities.
- In this third and final report, *Beyond a Reasonable Doubt: Lawyers State Their Case on Job Flexibility*, we provide a detailed picture of the current situation in Canadian law firms and hear what lawyers themselves have to say about the challenges of creating greater work-life balance within the legal profession.

DATA AND SAMPLE

To obtain data for our current report, Catalyst surveyed 1,439 lawyers (638 women and 801 men) employed in law firms across Canada (see Appendix: Methodology and Respondent Profiles). The survey explored lawyers' experiences managing their work and personal responsibilities, their perceptions of the law firm environment, and also their attitudes, perceptions and experiences regarding flexible work arrangements. To give readers more context for interpreting the findings, we have supplemented survey data with qualitative data obtained from interviews and focus groups.

MEASURES OF FLEXIBLE WORK ARRANGEMENTS

Lawyers who took part in the Catalyst survey were given the following definition of flexible work arrangements (FWAs):

Flexible work arrangement refers to “explicit conditions of employment involving adjustments of hours, scope and/or place of work for a sustained period of time. (These conditions are) mutually agreed upon between associates and the firm and between partners and the firm or the firm’s management committee. They do not include occasional or ad hoc arrangements (e.g. flextime for one week only).”

The Catalyst survey focused on two basic categories of flexible work arrangements:

Full-time FWAs In this situation, lawyers do not work fewer hours but may choose to rearrange their hours in one or more of the following ways:

1. **Flextime:** While the number of hours worked and billing requirements remain constant, the individual decides when he/she comes into the office and when work is actually done.
2. **Compressed work week:** Individuals work their expected hours in a smaller block of longer days in a week, or in a smaller block of longer weeks in a month. For example, to make up a 40-hour work week, an individual could choose to work four ten-hour days rather than five eight-hour days.⁷
3. **Telecommuting/flexible place of work:** Individuals may work some or all of their 40 hours off-site, often at home.

Part-time FWAs In this situation, lawyers work fewer hours than they would under a full-time flexible work arrangement. Some common models for this are:

1. **Job-sharing:** At least two or more lawyers share all the responsibilities of one full-time lawyer. Each person works less than a full-time schedule.
2. **Reduced work schedule/part-time:** Lawyers work fewer hours or fewer days than is typical, in exchange for reduced compensation.

⁷ We realize that “full-time” for the average lawyer working in a law firm does not equal 40 hours per week. This example has been presented for illustrative purposes only.

The distinction between full-time and part-time FWAs is noteworthy. Throughout the remainder of this report, this distinction will be associated with varying perceptions of FWA use, which in their turn impact men and women lawyers in very different ways.



CHAPTER 2: RESULTS OF OUR SURVEY ON FLEXIBLE WORK ARRANGEMENTS IN CANADIAN LAW FIRMS

WHO USES FLEXIBLE WORK ARRANGEMENTS?

- Of the 1,439 lawyers in the study sample, 24 per cent (351) said they had used a flexible work arrangement at some point in their professional careers.
- Lawyers with a live-in spouse/partner were nearly two times more likely to have used an FWA than those without such a partner (27 per cent versus 15 per cent).⁸
- Lawyers with children participated in FWAs at more than double the rate of lawyers who did not have children (34 per cent versus 15 per cent).

We noted some interesting differences related to lawyers' gender and employment level:

- Of the 638 women in the study, 28 per cent (181) reported participating in a flexible work arrangement. Twenty-one per cent of the 801 men (170) said they had used an FWA at some point in their careers.
- Partners were more likely to use FWAs than associates. Of 569 partners surveyed, 31 per cent said they had participated in an FWA, compared to 20 per cent of the 846 associates in the sample.
- Women partners (38 per cent) were most likely to have used an FWA, followed by men partners (27 per cent), women associates (23 per cent), and men associates (16 per cent).

Table 1: Self-reported use of flexible work arrangements (FWA), by gender and level⁹

	Men Associates	Women Associates	Men Partners	Women Partners
Those who have used an FWA	16% (64)	24% (103)	26% (99)	39% (73)
Those who have not used an FWA	84% (339)	77% (335)	74% (277)	61% (115)

WHY DO LAWYERS CHOOSE FLEXIBLE WORK ARRANGEMENTS?

While nearly two-thirds of all lawyers surveyed reported finding it hard to manage the demands of work and personal life,¹⁰ women lawyers said they believed their careers were more greatly impacted by non-work demands than the careers of their male colleagues. For example, among FWA users who cited "childcare responsibilities" as their main reason for choosing a flexible arrangement, 60 per cent (89) were women compared to 30 per cent (38) who were men.

⁸ Throughout this report, we compare different categories within a variable (e.g. men and women within gender, and partners and associates within level). All of these comparisons are statistically significant at either $p < .01$ or $p < .05$. When we find that a relationship is statistically significant, we know that the relationship is not random, i.e. it is meaningful. For example, when this study reveals a statistically significant difference (at $p < .01$) between men and women on some variable, the difference is positive and significant at the 99 per cent level. This means that there is less than one chance in 100 that this difference would not be observed should we repeatedly test this connection. When $p < .05$, there is less than five chances in 100 (or only a 5 per cent chance) that this difference would not be observed with repeated testing.

⁹ Due to rounding, percentages do not add up to 100 per cent. Eleven people did not report.

¹⁰ Catalyst, *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance* (2005).

“Women have more responsibilities in the area of child rearing (and) family responsibilities, so I think it’s much harder for a woman with a family to work the long hours and to be a senior associate and a partner here than it is for a man.”

—Man, Associate

“Men now feel more responsible for child care than they used to, but still less so than, on average, women do if they happen to have children and so forth. It’s a problem women feel more acutely than men, but it’s a problem men feel as well.”

—Man, Partner

Notwithstanding the fact that more women than men pursue flexible work arrangements for family considerations, this remains the most cited reason by both men and women opting for an FWA. When childcare responsibilities are put aside, men and women lawyers gave similar reasons for choosing flexible work arrangements:

- Twelve per cent of women (44) and 14 per cent of men (49) said they chose to participate in an FWA to pursue personal interests.
- Ten per cent of men (36) and 12 per cent of women (41) said they used an FWA as a means of gaining more control over their work schedules.

WHY DO SOME LAWYERS REFRAIN FROM USING EXISTING FLEXIBLE WORK ARRANGEMENTS?

The majority of lawyers who had never used an FWA (69 per cent) expressed that they would, in fact, like to use one. An even larger majority of those who had already used an FWA (86 per cent) stated they would like to use another. When lawyers who expressed a desire to use an FWA were asked what prevented them from doing so at their firms, the most common reasons they cited were:

- *“I am concerned that I will be perceived as less committed to my firm.”* (65 per cent agreed)
- *“I worry that I won’t be seen as a fully contributing member of the firm.”* (63 per cent agreed)
- *“I believe that FWA participation will limit my opportunities for career advancement.”* (60 per cent agreed)
- *“I believe that taking part in a flexible work arrangement will jeopardize my opportunities for professional growth.”* (56 per cent agreed).¹¹

It is important to emphasize that these findings—and those which follow—are based only on the perceptions of lawyers responding to the Catalyst survey. The survey was not designed to capture objective data about what actually happened to lawyers who used flexible work arrangements – i.e. whether they were less likely to become associates or partners, whether their workloads changed significantly. This might be a fruitful direction for further research.

¹¹ Examples of professional growth opportunities may include participation in an important client pitch or working on an important client file. These opportunities will vary according to the lawyer’s seniority and expertise.

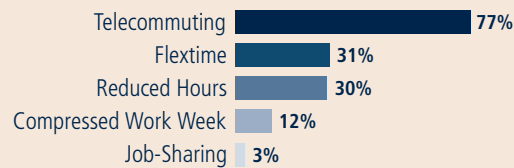


WHAT KINDS OF FLEXIBLE WORK ARRANGEMENTS ARE LAWYERS USING?

FWAs that give users greater control over their work schedules and over where they work—i.e. telecommuting and flextime—were the most popular among lawyers. However, a substantial proportion of lawyers (roughly one-third of FWA users) also reported using arrangements which allowed them to work fewer hours for reduced compensation.

More lawyers said they had opted for full-time rather than part-time FWAs. Of all the lawyers surveyed, 17 percent said they had used full-time flexible work arrangements; 3 percent said they had used part-time FWAs, and 5 per cent used both.

Figure 1: FWA Usage by Type: Findings for the 351 lawyers who said they had used an FWA



*Values do not add up to 100 percent as several lawyers (132) reported using more than one FWA.

Figure 1 shows that in our survey:

- The most common type of FWA used by lawyers was **telecommuting**. Of the 351 lawyers who said they had used FWAs at some point in their careers, 77 per cent (271) had used telecommuting.
- The second most common type of FWA was **flextime**. This was chosen by 31 per cent (109) of FWA users.
- The third most common type of FWA was **reduced hours**, chosen by 30 per cent (106) of FWA users.
- The least common types of FWA were: a **compressed work week** (chosen by just 12 per cent of FWA users or 41 lawyers) and **job sharing** (chosen by just three per cent of FWA users or 12 lawyers).
- Women used part-time FWAs at a rate of approximately six times that of men.

JUST HOW VIABLE IS JOB FLEXIBILITY IN LAW FIRM CULTURE?

“I wouldn’t say we’re second class citizens, but we’re not very important persons in the firm. We have no power in the firm.”

—Man, Associate, FWA User

“The way partnership is defined, or the way eligibility for partnership is defined, it includes things like having a sustainable practice, the ability to bring in business. Given how it’s defined, people on the alternative arrangement are not going to meet the definition.”

—Man, Associate

Most FWA users and non-users said they believed that taking part in flexible work arrangements—either full-time (58 per cent) or part-time (73 per cent)—would have a career-limiting effect. Forty-two per cent perceived that users would be relegated to the “B team”—that is, removed from the fast track to partnership, diverted from the best assignments and clients, and shunted into niche areas of practice. Just one in five (22 per cent) of all the lawyers surveyed were more optimistic, saying they didn’t believe that a lawyer who took advantage of flexible arrangements would automatically be sent to the “B team.”

Flexibility and partnership prospects: A large number of lawyers (49 per cent of FWA users and 61 per cent of non-users) said they didn’t believe that a lawyer who went on a full-time flexible work arrangement could ever become partner. Their feelings about the partnership prospects of lawyers who participated in a part-time FWA were even more dismal: 60 per cent of FWA users and 70 per cent of non-users said they thought someone who chose a part-time FWA could never become partner.

Flexibility and client service: Lawyers questioned whether colleagues who were using FWAs could fully and consistently satisfy client needs. Significantly more non-users perceived a negative impact; half of these non-users said they felt clients prefer to work with lawyers who are available without restrictions. But perspectives differed on this subject: when FWA users were asked about the impact of flexible work arrangements on their clients, most said they perceived no negative feedback from their clients.

Nine out of ten FWA users believed that to use an FWA successfully, they needed to remain accessible to their clients. This would include accommodating client emergencies, as well as peak work periods and difficulties in scheduling.

“You have to be flexible. I have to know that if I can’t finish up something today, I may need to sit down at my computer at 10 o’clock tonight. And I think I have to realize that despite the fact that it’s part-time, I have to be full-time responsible.”

—Woman, Partner, FWA User



In other words, these FWA users appreciated that flexibility on their part was a necessary component of successful FWA use. Significantly, lawyers who supervise FWA users noted the importance of such attitudes. Of all these supervising lawyers, 94 per cent felt that it was important that associates using FWAs be willing to accommodate client and work demands.

Flexibility and quality of assigned work: Some lawyers said that the work allocated to FWA users is often less interesting or challenging than the work allocated to others.

“People try to give me a lot of non-time sensitive work so that I can work on it at my own pace. It’s stuff that needs to get done, but it’s often the stuff that nobody else really wants to do because it’s not terribly interesting.”

—Woman, Associate, FWA User

“The most challenging work is often times very time sensitive... . Being on an alternative work arrangement almost always precludes you from that work. Sometimes you can be a background player in it if it’s a long term project, but you’ll never be able to be a front line player.”

—Man, Partner

Not surprisingly, about 60 per cent of all lawyers surveyed believed that FWAs work best for lawyers who have a “specific, niche area of expertise.” Although the majority of all lawyers believed this, significantly more lawyers who worked in time-sensitive, high-transaction practice areas (e.g. M&A, Securities, Corporate Banking, etc.) felt this way. These lawyers were also significantly more likely to agree that FWAs were “only viable in low-transaction areas of law” that were “not time sensitive” than were all other lawyers.

“There’s nobody that I’m aware of that’s doing general corporate work that is working on transactions that’s in an alternative work arrangement. The only way that could work is if you make yourself available on evenings and weekends.”

—Man, Associate

Flexibility and income: Another prominent concern expressed by some lawyers was that reduced hours arrangements exist on paper only. They felt that, in the real world, the lawyer who signs up for reduced hours to gain greater flexibility ends up working full-time anyway but for reduced compensation.

“It was sort of like, ‘Okay, I don’t come in on Mondays.’ But then work until midnight every other day and... it wasn’t less work. It was just as much work crammed into fewer days. And the arrangement was formalized with ink and never implemented with any sense of practicality.”

—Woman, Partner, FWA User



DO LAWYERS' EXPERIENCES WITH FLEXIBLE WORK ARRANGEMENTS VARY ACCORDING TO GENDER?

In *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance* Catalyst reported that both men and women lawyers experienced difficulties in achieving work-life balance. However, the challenge of managing work and personal/family responsibilities was disproportionately felt by women lawyers, especially women associates.

Not only do the latest survey data support previous findings, but they suggest that, compared to their male colleagues, women lawyers have more negative feelings about taking part in flexible work arrangements.

- Over half of the women who used FWAs (53 per cent) said that FWA participation limited their professional development and made them appear less committed to their firms. Just one in five men (21 per cent) who used FWAs felt the same way.
- Women were much more likely than men to report feeling that their FWA participation resulted in fewer career opportunities (44 per cent of women versus 16 per cent of men who used an FWA).

"The concern that the section head articulated to me [was], 'You've done extremely well here so far, and I'm concerned that there will be a perception that you're not a serious lawyer, and that your path, which is ascending, will stop.' "

—Woman, Associate

However, men who had chosen flexible work arrangements described their own experiences quite differently, saying they felt their use of FWAs had helped rather than hindered their careers:

- Sixty-three per cent of men said their participation in an FWA had no negative effects on their opportunities for career advancement (just 31 per cent of women felt the same way).
- In fact, twice as many men as women reported that FWAs enabled them to be more successful at their firm (43 per cent of men versus 23 per cent of women).
- Men were also more likely than women to say that others saw them as more—not less—productive because of their FWA participation (31 per cent of men versus 11 per cent of women).



How can we explain these strikingly different perceptions? Men’s feelings that FWA participation helped rather than hurt them professionally may relate to their choice of FWA—that is, they were less likely than women to choose part-time flexible work arrangements.

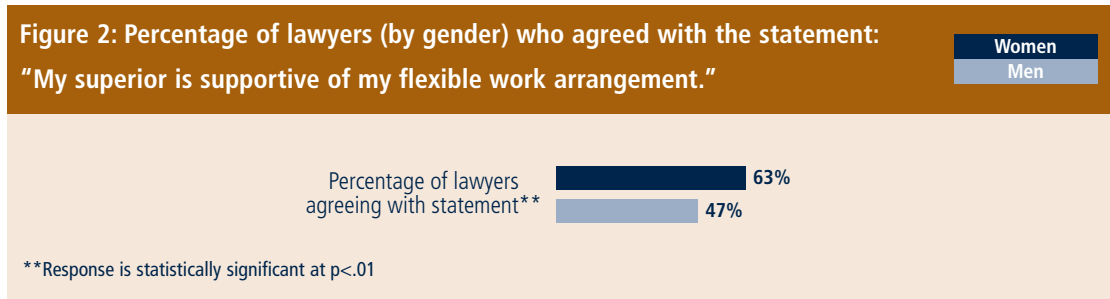
But while men cited more positive experiences with FWAs, significantly more women than men said they had received support from their supervisors about choosing a more flexible work arrangement.

- Nearly two-thirds (63 per cent) of women FWA users said their supervisors were supportive, compared to less than half (47 per cent) of men.

Given men’s more positive experiences with FWAs generally, this finding requires some further consideration. This difference may be the result of broader societal gender norms. Because women are still seen as more responsible for childcare and family obligations, others are more likely to accept—even expect—their demands for greater flexibility at work.

“I think it’s easier for me to say ‘I’ve got to get home at 6 p.m. because I have to feed my kids’ or something. So I think it’s tougher for a man who would want to carve out work-life balance.”

—Woman, Associate



But such societal norms may also serve to put women lawyers in a “double bind.” If they seek more flexible work arrangements to fulfill personal responsibilities, they may be seen as not fulfilling their professional role. If they make the same personal/family sacrifices that men do, they risk being stigmatized for not fulfilling their societal gender role of primary caretaker. Men lawyers may not face this problem.

“There are fewer expectations on men in life. Men can devote more of their lives to their work, because they don’t have the childcare responsibilities or household responsibilities. And for the most part in law, it’s still expected that to succeed, that’s what you will do.”

—Woman, Associate

CHAPTER 3: HOW TO MAKE FLEXIBILITY “WORK” IN CANADIAN LAW FIRMS – AND WHY THIS MATTERS

LAWYERS TALK ABOUT WHAT NEEDS TO BE DONE

Half of all lawyers (50 per cent) said they felt their firms were doing “poorly” or “very poorly” in their provision of FWAs. When asked what needs to happen for this to change, lawyers suggested that several key steps must be taken for the current situation to improve:

1. We Must Make the Business Case for Flexibility

A large majority of lawyers who responded to the Catalyst survey thought there were solid business reasons for providing effective flexible work arrangements:

- “It would help our firm recruit and retain more women.” (90 per cent agreed)
- “It would reduce the amount of burnout among lawyers.” (84 per cent agreed)
- “It would help our firm recruit and retain more associates.” (82 and 87 per cent agreed respectively)¹²

But objective data are needed to make a strong business case for flexibility in the legal profession. Indeed, 79 per cent lawyers surveyed said that before law firms begin to view flexible work arrangements as worthwhile and important, they need bottom-line evidence supporting their feasibility and viability.

Law firms also need information and guidance about how FWAs can be designed to work most effectively in the law firm environment.

“[There’s a need to] have some sort of training for senior partners to make them understand that the workplace has changed, and that the old model doesn’t always work... [and] to make them see they’re going to lose valuable people if they do not accommodate these people...”

—Woman, Associate

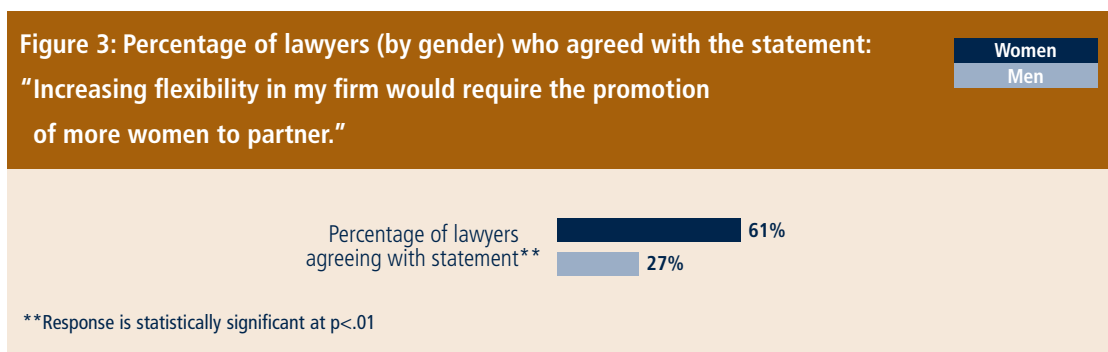
¹²Data from our previous reports suggest most associates feel work-life balance is more important to them than advancement opportunities and compensation. The data also show that failure to properly address lawyers’ dissatisfaction with work-life balance can cost Canadian law firms millions of dollars each year in lost investment due to frequent associate turnover. (See *Beyond a Reasonable Doubt: Building the Business Case for Flexibility*).

2. We Must Change Attitudes About Gender, Parenthood and Job Flexibility

Law firm leadership and lawyers themselves must understand that having the option for flexible work arrangements is valuable to everyone, not just to women lawyers and lawyers with children. Lawyers responding to the latest survey also said that attitudes about gender in legal practice must also change:

- The majority of lawyers (66 per cent) said that a broader perspective on gender roles was vital if flexible work arrangements were to be successfully implemented at their firms. This included the idea that job flexibility is important to both men and women. While the majority of lawyers overall felt this way, associates were significantly more likely to say this than partners; more than seven out of ten associates (73 per cent) agreed with this statement.
- Women lawyers were more likely than men to cite the importance of changing these gender-related perceptions (78 per cent of women versus 57 per cent of men).
- Most lawyers said that job flexibility was important regardless of parental status. Eight out of ten women lawyers (80 per cent) and 56 per cent of men agreed with this statement, as did 75 per cent of associates and 53 per cent of partners.
- Six out of ten women lawyers (61 per cent) and 27 per cent of men lawyers said that for flexible work arrangements to be more widely implemented, more women must be hired into or promoted to partnership positions where they can play a greater role in decision-making.
- Fifty-seven percent of lawyers said they felt law firm leaders should be willing to consider the possible benefits of changing the current economic model—income based on billable hours—which currently governs most law firms.

Encouraging more women to take on leadership roles will likely require a paradigm shift in perception and attitude. Firms will have to change their views about how individuals move upward through the firm hierarchy. This may include acknowledging that working full-time is not a prerequisite for successful and inspiring leadership.



3. We Must Expand the Definition of a “Successful” Lawyer

Many lawyers have fixed attitudes about what it takes to be a successful lawyer—especially if they themselves “came up” in firms with a standard working style (i.e. lawyers worked long hours and were always available). But those who took part in the latest Catalyst survey said lawyers with different working styles can be just as effective as those who follow more traditional work patterns. If law firms accepted this notion, they would be more likely to introduce and actively encourage the use of flexible work arrangements.

- The majority of lawyers (67 per cent) said partners must be encouraged to accept that lawyers with different working styles can be effective and successful. While a majority of lawyers overall felt this way, associates were significantly more likely to agree with this than were partners; nearly three-quarters (71 per cent) of all associates agreed with this statement.
- Additionally, 59 per cent of lawyers (68 per cent of women, 51 per cent of men) noted that successful implementation of FWAs would require partners themselves to adopt and model flexible work styles.

“I think if the more senior people in the law firm would try to manage the expectations a bit better, it would be easier for those of us who are actually doing the work.”

—Woman, Associate



CHAPTER 4: CONCLUSIONS AND NEXT STEPS

In this third report in our series—*Flexibility in Canadian Law Firms*—we have captured some of the current realities of life among lawyers working in Canadian law firms. Using a specially designed survey combined with in-depth interviews and focus groups, we obtained both quantitative and qualitative data on the subject of job flexibility in Canadian law firms. We believe our findings will be of interest to the legal community and to many others who are interested in the important issue of work-life balance.

What have we learned so far?

- Nearly two-thirds of all lawyers reported that they have trouble managing the demands of work and personal/family life.¹³
- Despite the self-reported importance of work-life balance, more than half of partners and two-thirds of associates said they “often” or “very often” put work before personal/family life.¹³
- Many lawyers faced with the choice about where to work said that a top priority is finding a firm where the environment respects and supports family and personal commitments.^{13,14}
- Although both men and women lawyers reported experiencing work-vs.-life tension, this issue is more likely to affect women. This is especially true for women associates, who are significantly more likely than their male counterparts to report that advancement in their firm depends upon putting career before personal/family life.¹⁴

This series has demonstrated that most associates feel work-life balance is more important to them than advancement opportunities and compensation. There is also evidence that failure to properly address lawyers’ dissatisfaction with work-life balance is costing Canadian law firms millions of dollars each year in lost investment due to frequent associate turnover.¹⁴

In an effort to reduce turnover and increase job satisfaction, many Canadian law firms offer a variety of flexible work arrangement (FWA) options to help lawyers manage shifting personal and professional demands within a particularly demanding industry. Such arrangements include telecommuting, flex-time, job-sharing, and working reduced hours for reduced pay.

However, our research suggests that these FWAs are not working well and that many lawyers continue to hold negative perceptions of flexible work arrangements. For example, they expressed concern that taking part in an FWA would negatively affect their income and/or jeopardize their ability to properly service clients, as well as their prospects for partnership.

Not surprisingly, about 60 per cent of all lawyers surveyed believed that FWAs work best for lawyers who have a “specific, niche area of expertise.” Although the majority of lawyers believed this,

¹³ Catalyst, *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance* (2005).

¹⁴ Catalyst, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (2005).

significantly more lawyers who worked in time-sensitive, high-transaction practice areas (e.g. M&A, Securities, Corporate Banking, etc.) felt this way. These lawyers were also significantly more likely to agree that FWAs were “only viable in *low*-transaction areas of law” that were “*not* time sensitive” than were all other lawyers.

It is important to emphasize that these findings are based only on the perceptions of lawyers responding to the Catalyst survey. This study was not designed to capture long-term, objective data about what actually happened to lawyers who used flexible work arrangements—i.e. whether they were less likely to become partners, whether their workloads changed significantly. This might be a fruitful direction for further research, and we encourage law firms to take a proactive role in this regard.

We asked lawyers themselves for some ideas about what must happen for the current situation to change. Their answers fell into three main categories:

- First, it’s time to make the business case for flexibility. A large majority of those surveyed said that before law firms begin to see flexible work arrangements as worthwhile and important, they need bottom-line evidence supporting their feasibility and viability.
- Next, it’s vital to change attitudes about gender, parenthood, and job flexibility. Most lawyers surveyed said that a broader perspective on gender roles—i.e. that job flexibility is important to both women and men, regardless of parental status—is vital if flexible work arrangements were to be successfully implemented at their firms. Many women lawyers added that FWAs will not be widely implemented until more women are hired into or promoted to partnership positions where they can play a greater role in decision-making.
- And finally, law firms and lawyers themselves must work to change and expand the definition of what makes a “successful” lawyer. That means realizing and accepting that lawyers with different working styles can be just as effective as those who follow more traditional work patterns.

NEXT STEPS

- An electronic version of the full report *Beyond a Reasonable Doubt: Lawyers State Their Case on Job Flexibility* and the Executive Summary are available on the Catalyst website (www.catalyst.org).
- The study findings will be disseminated and discussed at upcoming conferences and other events over the next year.
- Catalyst will be developing a supplemental online source of information addressing the question “What steps can law firms take towards providing optimal job flexibility?” This source will include recommendations, along with law firm stories and practices. Please check our website on a regular basis for these additions.
- If you or your organization would like to talk to us directly about the study or about the *Flexibility in Canadian Law Firms* series, please e-mail us at skunkel@catalyst.org or call Sonya Kunkel at 416-815-7600, ext. 625.



GLOSSARY OF TERMS

Associate lawyer: Refers to lawyers who are not partners and who are not of counsel or outside counsel to the firm (Senior Associates, Associates). Associates are junior, non-partner lawyers who are regularly employed by the firm. They do not have the managerial responsibility and/or shared liability of a partner, nor the seniority of lawyers of counsel.

Compressed work week: This is considered to be a full-time flexible work arrangement. Individuals work their expected hours in a smaller block of longer days in a week, or in a smaller block of longer weeks in a month; for example, in a 40-hour work week, working four ten-hour days rather than five eight-hour days.

Flexible Work Arrangement (FWA): Explicit conditions of employment involving adjustment of hours, scope and/or place of work for a sustained period of time. These conditions are mutually agreed upon between associates and the firm and between partners and the firm or the firm's management committee. They do not include occasional or ad hoc arrangements (e.g. flextime for one week only).

Flexible place of work: This is considered to be a full-time flexible work arrangement; individuals may work some or all of their time off-site, often at home (*see also Telecommuting*).

Flextime: This is considered to be a full-time flexible work arrangement. While the number of hours worked and billing requirements do not change, the individual decides when he/she comes into the office and when work is actually done.

Full-time FWA: In this situation, lawyers do not work fewer hours, but may choose to rearrange their hours in some way.

Job-sharing: This is considered to be a part-time flexible work arrangement. At least two or more individuals share all the responsibilities of one full-time individual. Each individual works less than a full-time schedule.

Lawyers of Counsel: This term is used to describe a lawyer who is not an associate or partner in the firm, and who does not fit the category of outside counsel, but who provides expertise to a firm. Promotion to "of counsel" can be a way to hire senior attorneys without making them partner, or to promote associates who will not become partner or who may become a partner at a later time. Lawyers of Counsel have a close, regular, personal relationship with the firm, and are more senior than associates, but they do not have the shared liability and/or managerial responsibility of a partner.

Non-transaction areas of law: This includes the following categories: civil/human rights, criminal, sports/entertainment, environmental/land use, family, general litigation, health/eldercare, intellectual property, labour/employment, municipal, poverty, taxation, torts and insurance, and trusts and estates (see also **Transaction areas of law**).

Part-time FWA: In this situation, lawyers work fewer hours than they would under a full-time flexible work arrangement.

Partner: These are senior lawyers who have managerial responsibility and shared liability in the firm.

Reduced work schedule/part-time: This is considered to be a part-time flexible work arrangement. Individuals work fewer hours or fewer days than is typical in exchange for reduced compensation.

Telecommuting: This is considered to be a full-time flexible work arrangement. Individuals may work some or all of their time off-site, often at home (see also **Flexible place of work**).

Transaction-oriented areas of law: These include the following categories: antitrust, bankruptcy/restructuring, corporate banking, corporate general, corporate/M&A, corporate/securities, and real estate (see also **Non-transaction areas of law**).



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Finally, Catalyst thanks the following firms for sponsoring this study:

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APPENDIX: Methodology and Respondent Profiles

Core data for this report came from an exploratory survey sent by Catalyst Canada to 11,344 lawyers across Canada in the fall of 2003. The survey was administered via the Internet and included items designed to assess respondents' experiences in their firms.

- The overall response rate (accounting for undeliverable surveys and responses from non-lawyers) was 13.4 per cent.
- A total of 638 women and 801 men completed the survey.
- Eighty-one per cent (1,169) of the respondents were currently working in law firms with more than 150 lawyers and 64 per cent were located in central Canada.¹⁵
- Associates comprised 59 per cent of the respondents.¹⁶
- The respondents worked in a wide range of areas within the legal profession. However, most said they were currently working in "non-transaction oriented areas."^{17,18}
- Sixty-five per cent of survey respondents worked at law firms which sponsored the survey.
- Most respondents said they were living with a spouse or partner at the time of the survey. About half of the respondents said they had children.

¹⁵ Eastern Canada includes the Atlantic Provinces and Quebec; Central Canada includes lawyers from Ontario; Western Canada includes the Prairie Provinces, Northwest Territories, and B.C.

¹⁶ Twenty-four respondents holding "of Counsel" positions were removed from the sample prior to analysis because of the small proportion represented in this sample.

¹⁷ Two experts were asked to read through the list of areas participants had been provided and to group them according to transaction-oriented versus non-transaction-oriented areas of law. Transaction-oriented areas of law include antitrust, bankruptcy/restructuring, corporate banking, corporate general, corporate/M&A, corporate/securities, and real estate. Non-transaction areas include civil/human rights, criminal, sports/entertainment, environmental/land use, family, general litigation, health/eldercare, intellectual property, labour/employment, municipal, poverty, taxation, torts and insurance, and trusts and estates. Participants who indicated "other" or "not applicable" were not included in this grouping (N=131).

¹⁸ As with all surveys that utilize self-report methodologies as primary means of understanding behaviours and attitudes, there is the potential that data may be influenced by features of the research instrument, including question wording, format, and context. Another possible limitation is the influence of various respondent biases, including but not limited to, considerations of social desirability and self-presentation, the Hawthorne effect, inattentive responding, and cognitive/memory limits.

Table 2: Respondent Personal Demographics¹⁹

Level	Men	Women
Associates	51% (N=406)	69% (N=440)
Partners	47% (N=379)	30% (N=190)
Age		
Under 25	0.1% (N=1)	1% (N=5)
25-34	42% (N=330)	58% (N=365)
35-44	27% (N=214)	30% (N=187)
45-54	21% (N=167)	10% (N=62)
55 and over	9% (N=73)	2% (N=11)
Spouse/Partner		
No	19% (N=148)	27% (N=168)
Yes	81% (N=631)	73% (N=459)
Children		
No	44% (N=338)	59% (N=367)
Yes	57% (N=440)	41% (N=257)
Firm Size		
150 and under	16% (N=122)	23% (N=142)
151-300	19% (N=145)	23% (N=143)
301 and over	66% (N=518)	55% (N=345)
Location		
Eastern Canada	16% (N=126)	15% (N=94)
Central Canada	66% (N=516)	63% (N=396)
Western Canada	18% (N=143)	22% (N=140)
Area		
Transaction	31% (N=221)	26% (N=149)
Non-transaction	69% (N=493)	74% (N=424)

¹⁹ Due to rounding, percentages may not add up to 100 per cent.



Table 3: Respondent Practice Areas

Area of Law	Men	Women
Antitrust	2%	1%
Bankruptcy/Restructuring	6%	4%
Civil Rights/Human Rights	3%	3%
Corporate Banking	18%	14%
Corporate General	0.1%	0.2%
Corporate/M&A	0.2%	0.3%
Corporate/Securities	0.5%	0.2%
Criminal Law	1%	1%
Entertainment/Sports	0.2%	1%
Environmental/Land Use	17%	18%
Family Law	1%	1%
General Litigation	5%	8%
Healthcare/Eldercare	1%	1%
Intellectual Property	7%	8%
Labour/Employment	0.2%	0.2%
Municipal Law	5%	4%
Poverty Law	6%	5%
Real Estate	2%	4%
Taxation	1%	2%
Torts and Insurance	10%	10%
Trusts and Estates	7%	6%
Other	8%	8%
Not Applicable	1%	1%

Practice Area

As shown in Table 3, the lawyers in this survey were engaged in a wide variety of specialties across the legal profession. The most frequently represented areas for both men and women were corporate banking, environmental law, and torts and insurance.

Flexible Work Arrangement User Sample (N=351)²⁰

Table 4: FWA Usage		
Level	Men	Women
Associates	16% (N=64)	23% (N=103)
Partners	26% (N=99)	38% (N=73)
Age		
Under 25	0% (N=0)	0% (N=0)
25-34	30% (N=51)	32% (N=58)
35-44	27% (N=45)	50% (N=91)
45-54	29% (N=50)	14% (N=26)
55 and over	14% (N=24)	3% (N=6)
Spouse/Partner		
No	14% (N=24)	14% (N=25)
Yes	86% (N=146)	86% (N=156)
Children		
No	32% (N=54)	25% (N=51)
Yes	68% (N=115)	72% (N=129)
Firm Size		
150 and under	19% (N=33)	20% (N=37)
151-300	14% (N=23)	22% (N=40)
301 and over	67% (N=114)	58% (N=104)
Location		
Eastern Canada	21% (N=35)	14% (N=25)
Central Canada	60% (N=102)	61% (N=110)
Western Canada	9% (N=33)	25% (N=46)
Area		
Transaction	31% (N=46)	23% (N=35)
Non-transaction	69% (N=103)	77% (N=120)

Interviews and Focus Groups

In addition to the collected survey data, Catalyst conducted 13 in-depth interviews and four focus groups involving associates and partners. The purpose of these interviews and focus groups was to explore general perceptions of work-life balance and flexible work arrangements. In total, 44 partners and associates participated in these activities.

²⁰ Lawyers of counsel were the smallest group in our population (N=24). Their response rate was not high enough to incorporate them into analyses comparing across level, and they were thus excluded from these. However, their responses are present in all other analyses.

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