

REACHING FOR PARTNERSHIP: AN INTERSECTIONAL STUDY OF OCCUPATIONAL CLOSURE AMONG WOMEN ATTORNEYS IN SOUTH AFRICA

by

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Declaration

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Abstract

This research contributes to an understanding of the ways in which women attorneys experience social closure in the South African legal profession. The relevance for further research and debate is illustrated through the observed discrepancy between women's representation during legal education and training, and their representation in the profession itself, especially at the partnership level. This study interrogates and uncovers *how* and *why* women continue to be marginalised, despite the removal of formal barriers and the enactment of legislation and policies to spearhead transformation, both in the country and profession. Through this, the thesis situates South Africa within the broader global debates on the sociology of professions which lacks a Southern African perspective. The investigation is approached from a mixed-method research design and a comprehensive and complex sociological framing, underpinned by feminist, Bourdieusan and organisational culture theoretical constructs. This provides a novel, but also an appropriate approach to the study, given the literature trends and the particular social, cultural and historical context of South Africa. The thesis presents the informal, invisible and hidden ways that produce and reproduce social closure in a specific context. These are often presented in nuanced, complex, contradictory, and ambiguous ways, which intersect with gender, race and class positions. The key elements I use to analyse social closure include intersectionality, voice, field (space), habitus, culture, and capital. I argue that all of these converge and are central to women's experiences and material realities.

Keywords: Women attorneys, feminisation, transformation, gender, race, class, culture, capital, field, social closure, intersectionality, voice.

Opsomming

Hierdie navorsing dra by tot begrip van die maniere waarop vroueprokureurs sosiale sluiting in die Suid-Afrikaanse regsberoep ervaar. Die spesifieke relevansie vir verdere navorsing en debat word geïllustreer deur die verskil wat waargeneem is tussen mans en vroueverteenwoordiging tydens regsopvoeding en opleiding, en hul verteenwoordiging in die beroep self, veral op vennootskapsvlak. Hierdie studie ondervra en ontbloot die *hoe* en *waarom* vroue steeds gemarginaliseer word ten spyte van die verwydering van formele hindernisse en die daarstelling van wetgewing en beleide om transformasie in beide die land en beroep te bewerkstellig. Hierdeur poog die ondersoek om Suid-Afrika binne die breër wêreldwye debatte oor die sosiologie van beroepe wat 'n Suid-Afrikaanse perspektief ontbreek te stel. Die tesis word benader uit 'n gemengdemetode-navorsingsontwerp en 'n omvattende en komplekse sosiologiese raamwerk wat deur feministiese, Bourdieusan en organisatoriese kultuurteoretiese konstruksie ondersteun word. Dit bied 'n nuwe, maar ook 'n toepaslike benadering tot die studie, gegewe die literatuur-tendense en die spesifieke sosiale, kulturele en historiese konteks van Suid-Afrika. In hierdie verhandeling bied ek die informele, onsigbare en verskuilde maniere aan wat sosiale sluiting veroorsaak en versterk. Hierdie situasies manifesteer dikwels in genuanseerde, komplekse, teenstrydige en dubbelsinnige maniere wat strek oor geslag, ras en klasposisies. Die belangrikste elemente wat ek gebruik om sosiale sluiting te analiseer, sluit in interseksionaliteit, stem, veld (ruimte), habitus, kultuur en kapitaal. My argument is dat al hierdie elemente saamsmelt en sentraal is tot vroue se ervarings en materiële realiteite.

Sleutelwoorde: Vroueprokureurs, feminisering, transformasie, geslag, ras, klas, kultuur, kapitaal, veld, sosiale sluiting, interseksionaliteit, stem.

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List of Abbreviations

BEE	Black Economic Empowerment
CA	Candidate Attorney
CALS	Centre for Applied Legal Studies
CASE	Community Agency for Social Enquiry
DOJ	Department of Justice
EEA	Employment Equity Act
ESD	Explanatory Sequential Design
GCB	General Council of the Bar
HRC	Human Rights Commission
HSRC	Human Sciences Research Council
HR	Human Resources
IT	Information Technology
LEAD	Legal Education and Development
LPA	Legal Practitioners Act
LSSA	Law Society of South Africa
LGBTI	Lesbian Gay Bisexual, Transgender, and Intersex
LLM	Master of Laws
LLB	Bachelor of Laws
MBA	Master of Business Administration
NIHSS	National Institute for the Humanities and Social Sciences
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act

PhD	Doctor of Philosophy
RA	Risk Assessment
RSA	Republic of South Africa
STATS SA	Statistics South Africa
SA	South Africa
SAHUDA	South African Humanities and Deans Association
SALFN	South African Legal Fellows Network
UK	United Kingdom
USA	United States of America
US	United States
UKZN	University of Kwa-Zulu Natal
UCT	University of Cape Town
WLB	Work-life balance
WITS	University of the Witwatersrand
WFH	Work from home

Chapter 1: The feminisation project of the legal profession

1.1 Introduction

This thesis is underpinned by the argument that regardless of the feminisation of the South African legal profession, women's representation at the practising and partnership level of the profession remains marginal. This study interrogates and uncovers the factors that continue to marginalise women in the profession, from a feminist-Bourdieuian and organisational culture perspective. In this chapter I introduce the background and motivation for the study, existing empirical work on the legal profession in South Africa, research objectives and questions. Finally, I provide an outline of the thesis.

1.2 Background and motivation

Traditionally a bastion of male privilege, the legal profession is an “institution historically developed and dominated by men and was based and interpreted from the male standpoint” ([Morgan, 2013, pp. 790-791](#)). Women were effectively absent in the profession ([Acker, 1992, 2009](#); [Broadbridge & Kerfoot, 2010](#); [Broadbridge & Simpson, 2011](#); [Kumra & Vinnicombe, 2008](#)). The legal profession, like many other professions, have embarked on a feminisation project ([Bolton & Muzio, 2008](#)). In the sociology of professions literature, two definitions of feminisation are provided. The first focuses on numeric feminisation and refers to the increase in the number of women in a particular profession ([Abercrombie et al., 1994](#)). The second reflects a fundamental transformation of a profession, where women not only increase their numbers to become the majority, but the profession also undergoes a change in ‘sex-typing’ and comes to be seen as ‘women’s work’ ([Jary & Jary, 1995](#)). Adams ([2005](#)) contend that while

male-dominated professions such as law are experiencing the first aspect of feminisation, there is less evidence that the second dimension is occurring. If it is that women's presence is transforming male-dominated professions, then there is insufficient evidence to support this argument.

The factors contributing towards the feminisation of the profession can be attributed to a number of factors, including: the growth of large law firms and the subsequent demand for legal services ([Bruck & Canter, 2008](#); [Campbell & Charlesworth, 2012](#); [Dinovitzer et al., 2009](#); [Galanter & Henderson, 2008](#); [Noonan et al., 2008](#)). This demand amplified competition amongst attorneys, resulting in firms employing women in order to retain a competitive advantage ([Bruck & Canter, 2008](#); [Noonan et al., 2008](#)). More generally, women's access to education and qualifications have also increased ([Crompton & Sanderson, 1990](#)) their "desire for economic independence" ([Rubery et al., 2003, p. 103](#)), availability and access to contraception and abortion services, making it possible for women to plan their families, thereby allowing them to enter the labour market ([Kumra & Vinnicombe, 2008](#); [Spurr, 1990](#)). This changed the traditional gendered division of labour, allowing for an increase in the number of professional women ([Kumra & Vinnicombe, 2008](#); [Spurr, 1990](#)). It also facilitated shifts in the gendered household division of labour from the husband as the career-oriented breadwinner of the family, with a supportive wife as the 'homemaker', to dual career families and breadwinners ([Billing, 2011](#)).

The feminisation of the profession has certainly made an impact on the profession, with the number of women entering the profession increasing exponentially, and largely outnumbering the number of men enrolling and graduating with law degrees ([Durrani & Singh, 2011](#); [Tremblay, 2013](#)). Such trends have been observed in Canada, the United Kingdom (UK),

United States of America (USA), Australia, and many other parts of the world. It is predicted that numeric feminisation of the profession will continue to increase over the next few years as women constitute more than half of those entering university and graduating with law degrees, as well as those entering the profession.

The feminisation of the South African legal profession has followed similar trends¹. Over the last two decades the number of women enrolling and graduating from university with law degrees, has consistently increased, and remained higher than the number of men. Women also constitute a higher proportion of admitted attorneys² ([Meyer, 2018](#)). Despite the high admission rate of women as attorneys, they only constitute 40% of practising attorneys in private practice. It has also been found that women are significantly underrepresented at the partnership level ([Meyer, 2018](#)). The feminisation of the legal profession in South Africa and elsewhere, indicate that the profession is being feminised at the entry level stages of the profession. Despite the rapid feminisation of the profession, women are significantly underrepresented at the partnership level ([Hull & Nelson, 2000](#); [Morgan, 2013](#); [Noonan et al., 2008](#); [Walsh, 2012](#)). The profession in South Africa has not been welcoming to women in senior positions effectively ([Meyer, 2018](#); [Morgan, 2013](#)). According to Hull and Nelson ([2000](#)) the odds of women accomplishing partnership status is less than one-third of men. Women also have a higher probability of exiting legal practice before reaching partnership status ([Durrani & Singh, 2011](#)). Others are also confirming that the number of women reaching partnership status is declining. This indicates a declining opportunity for women to progress in the profession. Women's entry and success in the legal profession is beleaguered by challenges,

¹ In South Africa there are two branches of legal practitioners – advocates and attorneys. This split mirrors that of solicitor and barrister in the Commonwealth countries, with attorneys fulfilling the role of solicitor and advocates that of barrister. While both attorneys and advocates may appear in the High Court in South Africa, attorneys directly engage with clients whereas advocates are briefed by attorneys on special litigation matters.

² This study only focuses on the attorney's branch of the profession.

or what many refer to as the ‘glass ceiling’. These challenges are indeed characteristic of male-dominated professions becoming feminised ([Adams, 2005](#); [Reskin et al., 1990](#)). Thus, the paucity of women practising as partners, cannot be attributed to an insufficient pipeline of women, or a lack of qualifications.

1.3 Existing literature on the legal profession in South Africa

The literature on women in the legal profession and the study of professions internationally, is well-documented. South Africa has, however, been missing from the existing academic historical comparative work on the legal profession and the sociology of professions. There appears to be little co-ordinated or sustained empirical research into the contemporary dynamics and future trends and prospects of the legal profession. Given the country’s racialised history, it is understandable much thought went into transformation debates focusing on the changing racial profile of the profession, as opposed to gender or an intersectional approach focusing on gender, race and class, with which this study will engage.

Lisa Pruitt’s ([2001](#)) study, *No black names on the letterhead: Efficient discrimination and the South African legal profession*, draws on the US market for legal services and its accompanying analytical literature. Pruitt provides a comprehensive investigation into the question of black representation in the commercial law segment of the attorneys’ profession. The author found that the reasons for exclusion as seen by blacks, included very low law firm salaries, lack of opportunities within the corporate firms, better paying professional opportunities in non-law firms, cultural alienation, and professional isolation. Whites identified intellectual inferiority, deficits of human capital, interest, loyalty, and perseverance as explanations for exclusion. Ultimately, Pruitt ([2001](#)) located the relative underrepresentation of blacks in elite commercial law firms in the interplay of institutional and individual racism, a racism that was shielded from

the market and its potential corrective force by a lack of transparency. Drawing on a more limited number of interviews than Pruitt (2001), Williams and Lewis (2008) on behalf of the Community Agency for Social Enquiry (CASE) in collaboration with the Mandela Institute of the Wits Law School and the Black Lawyers Association and other groups conducted a study: *Perceptions of the progression of black commercial lawyers*. The aim was to identify the prevailing perceptions among black commercial law professionals. The study concluded that black commercial attorneys perceive improved access to commercial law firms as a result of transformation legislation, such as Black Economic Empowerment (BEE) and affirmative action. There was, however, a perception that larger firms recruited black candidate attorneys to advance their procurement profile, but often neglected to transfer skills, or train the candidates adequately.

Following Pruitt (2001) and Williams and Lewis' (2008) earlier qualitative studies into the career profile/trajectory of black attorneys, the research agenda on the profession in South Africa between 2009 and 2014 focused on more quantitative research into the profession. The work of Shane Godfrey (2009), the Law Society of South Africa (LSSA) (2008) and Jonathan Klaaren (2015) are notable. Godfrey (2009) examined the legal services market based on concerns regarding scarce and critical skills in the South African labour market. With funding and support from the Department of Labour, Godfrey's (2009) quantitative investigation of the legal profession uses data from the Legal Education and Development (LEAD) section of the Law Society of South Africa (LSSA) and from the General Council of the Bar of South Africa (GCB). Godfrey's (2009) data extended to 2006. The research showed that there is not an absolute scarcity of law professionals, but that African attorneys and advocates are relatively scarce. There is a similar, but less severe relative scarcity of African law professionals in the public sector. With respect to representation, attention was largely paid to race, with less

attention paid to gender. In 2008, the LSSA commissioned a *National survey of the attorneys profession* which found that the total number of professionals employed in attorneys' practices was 20 743 (36.7% of total employment). More than half (54.1%) of the professionals were equity partners, and most professionals (72.7%) were white. At the most senior levels – namely equity partners, salaried partners, senior associates, and consultants – more than 75% of the attorneys were white. Women constituted 40.4% of the attorneys in private practice ([Law Society of South Africa, 2008](#)). In 2013, Jonathan Klaaren, in collaboration with the Wits Law School, the Vance Centre of the New York City Bar, and the South African Legal Fellows Network (SALFN) surveyed the demographics of 12 law firms which employed 20 or more legal professionals. The 12 firms employed, in total, 1815 legal professionals. The chief finding of the survey was that the upper echelons of corporate law firms are still dominated by white men, with nearly half (48%) the women employed in these firms at the candidate attorney level. Correspondingly, the survey found that fewer black males are employed in senior positions compared to white males. The findings were published as *Current demographics in large corporate law firms in South Africa* ([2015](#)).

In 2013, a shift towards more qualitative research reignited research interest into the legal profession. This shift delivered publications by Verusha Morgan ([2013](#)), the Centre for Applied Legal Studies (CALS) ([2014](#)), Rudo Chitapi ([2015](#)), Tabeth Masengu ([2016](#)) and Candice Pillay ([2017](#)). Morgan's ([2013](#)) Master of Business Administration (MBA) study, *Perceptions of career advancement for women in law*, investigated whether there were similarities and differences in the perceptions of male and female legal professionals on the career advancement for women in law, and the underlying reasons for these perceptions. The results indicated that the criterion of meritocracy used to assess the career advancement of legal professionals was a subjective and gendered process which perpetuated gender inequality and discrimination,

regardless of the firm's culture. The criterion was perceived as fair and gender-neutral by all respondents who supported the criteria. Denial of gender discrimination, however, continued to exist. The work-life conflict challenges experienced by women were rationalised as part of an individual's choice. Women were found not to fit the concept of the ideal worker, as motherhood and gender role stereotypes rendered them unable to comply with the long hours of the work culture and the male norm. Greater disparities were found to exist in large law firms, with higher numbers of male partners being promoted. More women were found to become partners in small and medium sized firms. The CALS (2014), in partnership with the Foundation for Human Rights, conducted a study on *Transformation of the legal profession*. The project was designed to yield preliminary findings to broaden the scope of the debate around transformation in the profession, especially regarding senior positions in the profession and the intersection between race and gender. The researchers conducted fifteen individual interviews, five group discussions and an electronic survey with a sample size of sixty-two. The research was based in Gauteng and focused on men and women in legal academia, practising attorneys and advocates as well as those who had left the profession to identify some of the impediments to advancement in the profession. Some of the key findings included the unequal briefing patterns and work allocation, lack of mentoring and sponsorship, race and gender biases and discrimination, window-dressing, networking and sexual harassment. The authors noted that these findings warranted further investigation and that failure to do so would result in the transformation debate being a constant and unchanging phenomenon in South Africa's future.

Chitapi's (2015) study, *Women in the legal profession in South Africa: Traversing the tensions from the bar to the bench*, employed a phenomenological approach to investigate the social and structural aspects of the organisation which impacted on women advocates. The author

employed a mixed-method design, specifically focusing on women who were ‘eligible’ or approaching ‘eligibility’ for judicial selection. The study was particularly interested in women who had had ten years of legal practice experience. Ten qualitative interviews were conducted with advocates at the Cape Bar and fifty women from the Johannesburg Bar participated in the quantitative survey. Together, the findings indicated that women experienced a lack of network and mentoring opportunities, gender bias and stereotypes, sexual harassment and balancing family and work. Chitapi (2015) acknowledges that the study is not a comprehensive and an exhaustive examination of the issues, but begins to shed light on some of the issues in the advocate’s profession.

Masengu’s (2016) study, *It’s a man’s world: Barriers to gender transformation in the South African judiciary. Perspectives from women advocates and attorneys*, analysed two specific challenges faced by women advocates and attorneys identified through legal sector meetings. These are the (1) unequal distribution of work and (2) discriminatory perceptions of women’s abilities. The author argues that the two factors are directly related to the inadequate representation of women on the judicial bench. Masengu (2016) accepts that there are deeper social, economic and political impediments, and thus her study, does not purport to be a full analysis, but merely an analysis of two critical aspects. She further recognises that women’s experiences are not homogenous and that her analysis does not proffer to be all-encompassing. Pillay’s (2017) study, *Sponsorship: An enabler to advancing women in law firms*, investigated how sponsorship had acted as an enabler to senior female attorneys who had achieved partnership. It also sought to ascertain whether a model could be created to implement sponsorship as a structured firm-managed programme. The research investigated what characteristics defined a sponsored relationship, the influence of management support for sponsorship, the unique qualities of a sponsor and the qualities required of a person receiving

the sponsorship which would determine whether the relationship would be successful. An inductive qualitative study of partners in law firms was undertaken. The interviewees represented female partners in law firms who had advanced through a sponsored relationship or partners who had sponsored female attorneys to partnership. The feedback was analysed using a combination of narrative, content, and comparative analysis. The research concluded that there are seven characteristics to a sponsored relationship: skills development, a relationship of trust, networking, developing competence, work allocation, promotion and developing an independent practice. The research findings provided a framework and a toolkit to develop a firm-managed sponsorship programme.

These studies certainly offer constructive insights into the contemporary legal scholarship in South Africa. The research published by CALS ([2014](#)), Chitapi ([2015](#)) and Masengu ([2016](#)) acknowledge that their work is not exhaustive, and further empirical research into women's experiences is needed. Despite shifts towards building the profession's scholarship in South Africa, further research on women in law as a marginalised group in South Africa, needs to be conducted, in order to locate it within the broader global studies on professions.

1.4 Why study women in the South African legal profession?

What remains to be written is the story of women lawyers in underdeveloped and developing context. ([Schultz & Shaw, 2003, p. xxv](#))³

The profession's literature is very prominent in the North (Europe, USA, UK, Australia and New Zealand); however, Africa, Asia, the Middle East and Latin America have been relatively

³ I acknowledge the datedness of the quotation, but it continues to be relevant today.

overlooked in the sociology of professions and the legal profession's literature ([Michelson, 2013](#)). Yee ([2001](#)) points out that a non-Western perspective of professions is needed, since professions are linked to the society in which it exists – to its political, economic, and social structures and cultural norms. Faulconbridge and Muzio ([2012](#)) called for a transnational approach and perspective on professions, and Kuhlmann ([2013](#)) argued that the literature should be extended to the global south, in order for a more complete discourse on various professions to emerge. This study seeks to contribute towards this lacuna by offering a unique contextual understanding of the legal profession from the South which considers the intersectional dynamics of gender, race and class which had been overlooked in the international literature⁴.

Given the proximity of professions to social and economic advancement, studying professions provides a good indication of women's advancement. While professional careers provide opportunities for mobility, it is also true that highly educated women with the same qualifications and experience, do less well than men in the same professions. Studying professional occupations is therefore a strategic context for equal opportunity and diversity ([Muzio & Tomlinson, 2012](#)). Given the country's aspirational goals of transformation and equality, it is therefore important to investigate whether the profiles of professions are changing. This is especially true for the legal profession, which is the custodian of justice, transformation, and equality - especially for disadvantaged groups such as women and blacks.

The fact that the legal profession “continue[s] to produce gendered outcomes which can be constraining or disadvantageous for women means that we must investigate these institutions and organisations from a feminist perspective” ([Goetz, 1997, p. 1](#)). I believe that the issues

⁴ Although some UK scholars have started to focus on intersectional perspectives.

confronting women in the profession are dynamic, complex, and multifaceted, requiring a comprehensive and holistic approach. This research is thus inspired by feminist theoretical constructs. I also draw on Bourdeuisan and organisational culture theoretical constructs. Such an approach allows me to examine the underlying and often invisible causes, taken-for-granted practices, beliefs, and attitudes that maintain and reproduce advantages and disadvantages within the profession. It permits an exploration of the nuances, subjective practices and discourses confronting South African women.

1.5 Research question and objectives

The question to be asked is not whether women are included in the profession. We know they are, but the question is rather the extent to which they are excluded. How is exclusion manifesting in the profession? There are several lines of enquiry to investigate the issue of women in the South African legal profession. Because women are the subject of South Africa's transformation debate, this study considers the materiality of their everyday lives, as they encounter and experience being an attorney in the male-dominated profession. The study is thus underpinned by two key questions:

1. *To what extent has the profession been feminised?*

- This question assesses the numeric trends with respect to gender and race across the professional hierarchy.

2. *What are the factors that impede the career prospects of women?*

- This question makes explicit the gendered organisational, social and cultural factors that impact the experiences of women, which thereby facilitates and reproduces the white male-dominant middle-class profession.

1.6 Outline of the thesis

In Chapter Two, a review of the literature will situate the issue of women in the global legal profession within a broader range of legal and social issues such as stereotypes, networks, and sexual harassment. These issues as mentioned before, indicate that the challenges women experience is complex and multifaceted. For this reason, an investigation into women's issues in South Africa requires a comprehensive and holistic theoretical and analytical framing. Towards this end, the study is underpinned by feminist, Bourdieusan and organisational culture theories. This chapter also inserts the feminisation of the South African legal profession into the broader transformation and gender equality debate in the country.

Chapter three reiterates the research question and introduces the research design, underpinned by a mixed-method approach, incorporating both quantitative and qualitative data collection and analytical methods. The ethical considerations of the study are also discussed. In Chapter four, the quantitative research question is addressed: *To what extent has the profession been feminised?* This chapter comprehensively discusses the gender and race trends across the profession.

Chapters five, six and seven engage with the second research question: *What are the factors that impede the career prospects of women?* These chapters engage with the materiality of the women's everyday lives. It makes explicit the gendered organisational, social and cultural factors which impacted the experiences of women, thereby facilitating the white male-dominant middle-class profession.

In Chapter five, I discuss the culture of contemporary corporate legal practice in South Africa. It specifically draws attention to the hyper-competitive professional culture, which focuses on

the long hour's culture, the billable hour, open-ended availability and bodily presence. Together these paint a picture of a hyper-competitive business culture. In addition, this chapter denotes that the notion of time is a consistent theme in this chapter and should be considered a form of capital.

In Chapter six, motherhood presented itself as a major impediment to women's careers. This chapter presents an analysis of the experiences of motherhood and its implication for the women's careers. Two key themes are highlighted: the social and cultural construction of motherhood, and, secondly, the impact of motherhood on women's legal careers. This chapter illustrates how women attorneys traverse two different and incompatible fields in their daily lives – the private/familial field of the feminine and the masculinised legal field.

Chapter seven discusses two key themes emanating from the qualitative interviews. Firstly, how the concept of social capital extends itself into [or operates] in the legal profession. And, secondly, how women attorneys acquire and reproduce cultural capital. Together, the themes paint a picture of the significance of social and cultural capital in the profession as a key enabler of inequality, marginalisation, and exclusion of women. In Chapter eight, I “enfold the reader into the microcosm” of the profession, to illuminate my experiences in the profession, similar to the way in which attorneys are “sucked and cocooned within it” ([Wacquant, 2005, p. 464](#)). In this chapter I thus reflect on my own experiences in the field and how this shaped my research. Chapter nine concludes the study by summarising the main findings and argument of the study. The theoretical, methodological, and policy implications of the study are considered. Finally, the chapter recommends future avenues for research on this topic.

1.7 Chapter summary

In this chapter, I presented the background and motivation for this study. I illuminated why it is necessary to investigate women in the South African legal profession. This thesis can be read in numerous ways. It can firstly be read as a case study on women in the South African legal profession, or as women inserting themselves into a historically male-dominated profession. It can also be read as an exposition of how dominant cultures become naturalised, universalised, and embedded in professions. It can also be read as a feminist-Bourdeusian intervention in the legal profession and more broadly, the sociology of professions literature. Lastly, it reads as a study on the intricacies inherent in gender and racial transformation in both the profession and nationally in the country at large. It thus illuminates the nuances and paradoxes hidden in transformation and structural change. I believe that this study reflects all of these and in no doubt is a valuable and compelling empirical investigation.

Chapter 2: Literature review and theorisation

2.1 Introduction

In chapter one I contextualised the study under the legal profession's feminisation project and noted that women continue to be marginalised in the hierarchy of the profession. This illustrates that a comprehensive approach will be necessary to investigate the experiences of women to ascertain how and why they continue to experience closure, despite efforts to feminise and transform the profession. To understand and reflect on the experiences of women in the South African legal profession accurately, it is important to evaluate the literature that considers a variety of interrelated concepts and theory.

In this chapter, I first provide a brief review of the international literature on the legal profession through a gendered lens, to get a sense of the issues affecting women. I then proceed to contextualise the feminisation project of the legal profession in South Africa within the broader transformation and gender equality discourse in this country. Finally, I provide a comprehensive and robust sociological frame drawing on feminist, Bourdieusan and organisational culture theoretical constructs.

2.2 Women in the legal profession: The issues

Considering the discussion in chapter one, the feminisation of the legal profession is an established phenomenon. It is also undisputed that beneath the optimism of the feminisation project, comparative experiences “reveal the obstinate persistence of patterns of gendered exclusion, segmentation and stratification” ([Bolton & Muzio, 2008, p. 298](#)). There are some

subtle and profound issues which continue to prove challenging to women in their pursuit of a legal career ([Patton, 2004](#)) as well as other professions. These are briefly discussed below.

2.2.1 Workplace structures

The legal profession prides itself on objective, meritocratic and gender-neutral performance criteria which determine career advancement. This criterion generally includes hours billed⁵, long hours culture, rainmaking⁶, instant responsiveness and total availability aimed at satisfying client demands. Such criteria performances are rewarded with exorbitant salaries, profits and promotions ([Campbell & Charlesworth, 2012](#); [Kay & Gorman, 2008](#); [Kay & Hagan, 1998](#); [Kumra & Vinnicombe, 2008](#)). Given this criterion and the lucrative rewards, the legal profession has become an increasingly competitive environment, where those who are not able to ‘perform’ accordingly, are unfortunately not rewarded. Many are of the opinion that technological change has been a mixed blessing to the profession. On the one hand technology makes it possible to work from home or remotely, on the other hand, it makes it harder not to work from home.

Client expectations of instant responsiveness and total availability coupled with lawyers’ expectations of spiralling salaries, have pushed working hours to new and often excessive limit...Lawyers [thus] remain perpetually on call – B-tethered to the workplace through cell phones e-mails, faxes and beepers. ([Rhode, 2001, p. 17](#)).

⁵ Billable hours are the hourly rate charged to clients for the time and services rendered by the attorney.

⁶ In the corporate world, a “rainmaker” is an individual who generates large amounts of money through securing client contacts and new business for the organisation. They usually outperform their colleagues and are highly valued and considered to be critical assets to the status, prestige, financial position, and future of the organisation.

While the number of hours in a day remains unchanged, what has not remained unchanged are the demands placed upon attorneys. Twelve-hour days and weekend work have become the order of the day. Unforeseeable and incalculable deadlines, meetings, travel and unequal workload are the norm. The problem is compounded by the fact that the long hours culture has become a proxy for commitment, reliability and ambition ([Campbell & Charlesworth, 2012](#); [Kodz et al., 2003](#); [Kumra & Vinnicombe, 2008](#); [Rhode, 2001](#); [Sommerlad, 2002](#)).

2.2.1.1 Work-life balance and flexible work schedules

It is commonly reported (although debatable) that contemporary professionals work harder and work longer hours, compared to the previous three generations ([Patton, 2004](#)). While attorneys realise the benefits of such a work ethic – increased rewards, salaries, and expertise, they also realise the detrimental effects on their personal lives, mental and physical health, overall dissatisfaction, and the struggle to achieve a work-life balance (WLB). WLB has thus entered debates in this realm by providing part-time options, flexible work schedules and other innovative ways of working and reporting, such as digital work, as a means of curtailing the detrimental effects of demanding work schedules. Others have also noted that the growing number of women in the profession has also given rise to WLB and flexible work policies ([Eyck, 2003](#)). Flexible work policies are a way of retaining women who may be overwhelmed by the demands of the pressure-cooker environment and difficulties in balancing their personal lives with their work lives. It is increasingly argued that all workers, men and women, desire WLB and require time to attend to their personal lives. However, it is well-documented that the so-called gender-neutral criteria and competitive workplace culture has had a profound impact on women, especially those with disproportionate family commitments ([Sommerlad et al., 2010](#)). They are therefore more likely to consider flexible work options as a means of achieving WLB. Flexible work has increased substantially over the last few years. [It allows

workers some control over when and where they work. It is particularly appealing to the younger generations who are increasingly desiring WLB and flexibility ([Chung & Van der Lippe, 2018](#)). Research has found that men are less likely to request flexibility, with women more likely to take time off to attend to domestic and childcare responsibilities ([Lyonette, 2015](#); [Patton, 2004](#)). Two-thirds of attorney's experience work-family conflict and only one-fifth of attorneys are content with their work-life time. In addition, unmarried women, or those who do not have substantial family commitments, are often burdened with having to take on additional work, as they have no compelling reason to refuse. They therefore find it difficult to pursue romantic relationships, as they do not have the time owing to their disproportionate workload ([Rhode, 2001](#)). In this vein, firms need to consider WLB and flexibility not as women's issue, but as a family or people's issue. Many law firms 'support' flexible work schedules, however, the reality is very different, with very few taking up such opportunities, as it continues to be met with resistance.

The vast majority of women acknowledge that flexible schedules have a price to pay – reduced hours and availability threatens career advancement opportunity and reduced pay and status ([Lyonette, 2015](#)). Many women experience a 'double bind' if they choose work, they are labelled as uncommitted mothers, and if they choose family or flexibility they are labelled as uncommitted attorneys. Such assumptions ultimately influence their performance evaluations, promotional prospects, work referrals, mentoring relations and networking opportunities ([Noonan et al., 2008](#); [Sommerlad et al., 2010](#); [Tomlinson et al., 2013](#)). Flexible work is not only under-valued in the workplace, but can reinforce gender division of labour at home and in the workplace ([Lyonette, 2015](#)). Moreover, there is no substantial evidence that flexible work schedules necessarily signal reduced professional commitment, or that 'full-time' attorneys are more committed or accessible than those on flexible schedules. There is also no

compelling evidence that flexible schedules have implications for client relations ([Rhode, 2001](#)). These challenges and perceptions are nevertheless exacerbated by the increasingly male-dominant competitive culture of legal practice, which is often labelled as objective or gender-neutral.

2.2.2 Forms of Capital

It would be remiss to extrapolate women's challenges in the profession without considering the prominence of social capital, an essential resource facilitating the high status and elitist culture the profession prides itself on. The ascription of profession to legal scholars, has implications on determining whether people are included or excluded from the profession. The sociology of professions notes that a key feature of professional projects is the making and preservation of knowledge and power. The relation between knowledge and power is eloquently captured by Boon et al, who states that "the power and legitimacy of professions is acquired in part from their status as organisations defined by their control of knowledge" ([2005, p. 474](#)). An individual who acquires the knowledge required by the profession, is thus distinguished with a qualification as a signifier of knowledge, by possessing the necessary academic capital through legal qualification and knowledge ([Chitapi, 2015](#)). The shift from an emphasis on social status to academic capital has been a key enabler facilitating the entry of women into the profession. By obtaining the necessary legal qualifications, women displayed their knowledge and competence. This made it increasingly difficult to oppose their presence in the profession. However, the possession of academic capital has proven not to be sufficient and there are other forms of capital, most notably social and cultural capital, which continue to be relevant in determining who is included and excluded. Schultz and Shaw ([2003](#)) are of the opinion that women's social and cultural capital is valued less than that of men. Hence, while women have academic capital, which has allowed them the opportunity to enter the profession,

they still face challenges, because they may not have the desired social and cultural capital demanded by the profession. Owing to their previous exclusion from the profession, as well as the dominance of white men, women do not access such epistemological knowledge ([Schultz & Shaw, 2003](#)).

2.2.2.1 Social relations: ‘Old-boys’ network, mentoring

Social relations within a firm are an important factor in determining the quality and quantity of the work that attorneys secure. It can provide access to decision-making processes, such as compensation and promotions, etc. Politically astute attorneys tend to pursue long-term relationships which will allow them to maximise on all possible opportunities. The old-boys network has proven to be a powerful resource in which men are able to capitalise, yield power and wield influence in the organisation, allowing them to advance in the profession, and thereby maintaining the profession’s male-dominant status ([McDonald, 2011](#); [Rand & Bierema, 2009](#)). Oakley states that “in old boy networks, the members of the old boy network transfer the competition and power advantages realised in the formal structure onto friendship patterns and alliances within the informal system⁷” ([2000, p. 328](#)). Access to such networks are dependent on adopting “particular modes and codes of behaviour favoured by dominant groups [such as men] – even if this may be discriminatory” ([Chitapi, 2015, p. 20](#)).

Mentorship is regarded as an important and necessary mechanism to provide experiential training and opportunities for junior attorneys, allowing them to progress in their career, but also to build and facilitate social relations. Good mentors provide their mentees with opportunities to engage and affiliate with clients and contacts and even ‘inherit’ clients. This

⁷ These alliances or relationships are not only formed in the workplace, but at university and as early as high school. This is especially the case for elite boy’s only schools, allowing for the preservation of elite social status.

is particularly true in the case of older mentors. Successful and quality social relations are critical to the economic success of attorney's careers and that of their firms. It is undeniable that women do not have sufficient access to the same mentoring relations as men have as a result of the old-boys network system. Explanations for the lack of mentoring include:

- Women's constrained time as a result of balancing work and family, can make it difficult to commit to mentoring juniors. Women with family commitments find it difficult to provide mentoring to junior staff, as their time is too constrained. They may not be providing juniors with access to social events facilitating client-generation and creating relationships, because they themselves may not be attending such events ([Dinovitzer et al., 2009](#); [Galanter & Henderson, 2008](#); [Walsh, 2012](#)).
- The pressure of the billable hour discourages attorneys, particularly women from mentoring, as they may 'lose' valuable time for an unproductive activity or an activity which cannot be financially quantified ([Burtch Jr, 2004](#); [Fortney, 2000](#)).
- Others are reluctant to mentor, as they have adopted the stereotypical 'queen bee'⁸ syndrome, noting that they had had to navigate their career without assistance and therefore they feel other women can do the same ([Ellemers et al., 2004](#); [Johnson & Mathur-Helm, 2011](#)).
- Attorneys frequently support those who share similar values, backgrounds, and experiences. This has been a defining feature which strengthens the old-boys' network ([Rhode, 2001](#); [Sommerlad et al., 2010](#)). On the other hand, the limited number of women, and especially black women in senior positions, has proven to impact negatively on the ability of junior attorneys to benefit from mentoring ([Blass et al., 2007](#); [Pratt, 2012](#); [Sommerlad et al., 2010](#)).

⁸ Refers to women in positions of authority in male-dominated professions who are more critical of other women in subordinate positions.

- There are also senior women who are aware of the plight of women in the profession, but they tend to be apprehensive about becoming ‘involved’ in finding solutions to ‘women’s problems’, because they may experience bias or be viewed in a negative light ([Sommerlad et al., 2010](#); [Washington, 2010](#)).

Mentoring opportunities significantly influence referral patterns in the profession and a lack of mentoring results in women not receiving high visibility work, clients, and legal marketing skills, all of which are essential in improving their career advancement prospects, such as rainmaking, client acquisition and billable hours. Women who are not adequately supported are less likely to experience career advancement and are more likely to leave the profession. The “inability to reach senior positions then reduces the pool of women mentors and perpetuates the assumptions that perpetuate the problem” ([Rhode, 2001, p. 6](#)). The lack of mentorship is particularly challenging for black women, where less than one-third of them experience fulfilling mentoring relations. In addition, less than one percent of women remain in the firms where they started their careers ([Rhode, 2001](#)). Women attorneys are therefore not accessing and benefiting from informal networks which have been proven to bolster their professional careers.

2.2.3 Sexual Harassment

Sexual harassment exemplifies and promotes employment practices which disadvantages women at work and intimately degrade and objectify women... [It] undercuts women’s potential for social equality. ([Naylor & O’Sullivan, 2006, pp. 5-6](#))

There is no universal definition of sexual harassment; however, legal and sociological approaches can agree that it includes unwanted or unwelcome behaviour, with the aim of

effecting intimidation, hostility, humiliation, degradation or an offended feeling in the victim ([McDonald, 2012](#)). The discourse of sexual harassment is largely heteronormative; however lesbian, gay, bisexual, transgender, and intersex groups (LGBTI) members also experience sexual harassment in the same way as heterosexual people do, and sometimes in additional ways. Sexual harassment can take many forms, the most common being sexually suggestive comments, physical contact, and sexual propositions. There is no doubt that sexual harassment is rampant in all work organisations and the legal profession is no exception. It has proven to be a major impediment to women's careers ([Holland & Cortina, 2016](#); [McLaughlin et al., 2017](#)). This is especially the case in male-dominant organisations, such as the legal profession, where social networks are paramount ([Kay & Gorman, 2008](#); [Pender, 2019](#); [Thornton, 1996](#)).

Catherine MacKinnon, in her ground-breaking book, *Sexual harassment of working women*, states that central to the concept of sexual harassment is power. She argues that sexual harassment is “the unwanted imposition of sexual requirements in the context of a relationship of unequal power” ([MacKinnon, 1979, p. 2](#)). Naylor and O’Sullivan ([2006](#)) argue that it is important to contextualise sexual harassment in the workplace with regard to the power dynamics, financial dependency and job security. There are factors that amplify the possibility of sexual harassment in the workplace, such as male-dominant leadership, hierarchical power-structures, where juniors rely on seniors for career advancement, and when the concentration of power is exclusive to one individual ([Gertner, 2018](#))⁹. The hypercompetitive culture and structure of the profession¹⁰ also exacerbate the likeliness of sexual harassment ([Pender, 2019](#); [Thornton, 2016a](#)).

⁹ See also ([Omari & Paull, 2013](#); [Saunders & Easteal, 2013](#); [Schneider et al., 2011](#))

¹⁰ Discussed in Section 2.3.

Sexual harassment in the legal profession is rife, and while both men and women experience it, women and junior staff experience it disproportionately. It occurs most commonly in the workplace or office, but also at social events, conferences, and business trips. The effects of sexual harassment are profound: for the victims it impacts professionally (lack of career opportunities, unwanted transfers, reduced job-satisfaction, commitment, productivity, absenteeism and deteriorating relations with colleagues as well as withdrawal from the workplace), financial and psychological effects (anxiety, depression) ([McDonald, 2012](#); [McLaughlin et al., 2017](#)). Many women do not report sexual harassment, owing to the status of the perpetrator and the fear of repercussions. The problem of sexual harassment is often heightened by the need to prove its existence, or the cost involved in identifying it. A large proportion of women fear complaining, as they will be labelled as humourless, overly sensitive or subjected to informal blacklisting ([Pender, 2019](#)).

2.2.4 Gender, Stereotypes, and Bias

Women's opportunities are often limited by unconscious stereotypes and biases. Stereotypes remain one of the most obvious strategies to exclude and marginalise certain groups. It is based on presumptions of "socially defined characteristics with identifiable groups" ([Rhode, 2001, p. 15](#)). Gender stereotypes are social and cultural constructs of masculinity and femininity, based on biological, sexual, and social functions, which distorts the perceptions and interpretations of them ([Cook et al., 2010](#); [Gorman, 2005](#); [Heilman, 2012](#)). There are essentially three categories in which stereotypes serve to work against women. Each of these are discussed below.

2.2.4.1 Women as carers and nurturers

Negative stereotypes, which serve to mitigate against women, include women being suited to motherhood, as opposed to professional work. The stereotypical traits associated with women are often incompatible with professional success. Stereotypical feminine characteristics such as being soft, gentle, carer or nurturer is incompatible with the perceived masculine professional traits of corporate life, such as competitiveness, assertiveness and having leadership abilities ([Billing, 2011](#)). Such perceptions cluster women in specialisms which are considered to be of a lower status or that of a more sex-typed feminine. For example, women being more suited to family or divorce law and men being suited to corporate or criminal law. Similarly, it is often cited that women's biological, or life-cycle choices contribute towards predictions regarding the work women undertake. Such predictions place women in areas in which they are presumed to be 'good' at, or that which can accommodate their lifestyles. This is particularly the case for women with children ([Bolton & Muzio, 2008](#); [Gorman, 2005](#); [Heilman, 2012](#); [Sommerlad et al., 2010](#)).

2.2.4.2 Gender, commitment and loyalty

Research finds that women with children often receive less challenging or prestigious work. This is largely influenced by assumptions that working mothers have less time to devote to their career, as their mothering and domestic role takes precedence. They are more likely to request flexible work-schedules, or take time out for maternity leave ([Hodges & Budig, 2010](#); [Munsch, 2016](#)). Women's commitment is often questioned prior to having children, especially for associates in their late twenties or early thirties, who may be in the running for partnership. Such assumptions are based on women's 'biological clock'¹¹ coinciding with the peak of their legal career. Parenthood affects women attorneys more negatively, who receives the

¹¹ Decrease in female fertility with advancing maternal age.

motherhood penalty¹², whereas men receive a fatherhood bonus¹³, as they are seen to be the providers of the family and therefore more committed to their career ([McGlynn, 2003](#); [Miller, 2014](#); [Patton, 2004](#); [Sommerlad et al., 2010](#)). While there have been shifts in the gender division of labour, men are still regarded as the breadwinners and providers of the family ([Knight & Brinton, 2017](#); [Miani & Hoorens, 2014](#)) and women as careers and nurturers taking on caregiving and domestic responsibilities ([Bianchi et al., 2012](#); [Dotti Sani & Treas, 2016](#); [Hochschild & Machung, 2012](#)). These gendered divisions of labour and normative views of men and women's role in society influences how flexible work is viewed by employers, colleagues and friends and family ([Chung & Van der Lippe, 2018](#)). The assumption about working mothers is often based on the times they had to leave early owing to family commitments, but they are not remembered for the times they worked later or attended to unforeseen matters. In this vein, "people are more likely to notice and recall information that confirms prior assumptions than information that contradicts them" ([Patton, 2004, p. 15](#)).

2.2.4.3 Gender, competence and capabilities

Other stereotypes focus on women's competence and their ability to lead and manage. There are still attorneys and clients, especially older men, who question and devalue the legal competency and capabilities of women ([Acker, 2009](#); [Sommerlad & Sanderson, 2019](#)). The performance of women tends to be subjected to closer inspection and demands. Between half and three-quarter of women believed they were held to higher standards or had to work harder in comparison to their men colleagues. It is noted that black women's competency is especially questioned and regarded to be lower, in comparison to men (white and black), as well as their white women colleagues ([Rhode, 2001](#)). Their capabilities are especially interrogated in

¹² Decrease in mother's salaries in an existing unequal labour market, compared to childless women and men (with or without children).

¹³ Increase in salaries of fathers in an already privileged labour market, relative to childless men and women.

complex financial transactions or major litigation cases. By the same token, employers also know when to use black women and capitalise on stereotypes. Black women are often labelled as receiving preferential treatment or being affirmative action employees. While all women experience challenges in the profession, black women must weather this particular experience and ‘double-bind’. These disadvantages are often overlooked or understated by those who do not experience it. It is then not surprising that black women have the least satisfaction rates in the profession. Those women who do succeed in reaching senior positions, generally like to believe that the system is fair, objective, and meritocratic. The easiest explanation for those who are not able to succeed is to blame it on their lack of commitment or competence. The strength of these stereotypes is compounded by the subjective nature of the performance requirements ([Rhode, 2001](#); [Sommerlad et al., 2010](#); [Toms-Anthony, 2018](#)).

The international literature discussed thus far, has exposed the legal profession as a highly gendered and segmented organisation, where women experience a myriad of complex and multifaceted issues. It is therefore imperative that studies investigating women’s experiences be underpinned by a holistic theoretical framing. Before delving into the theoretical framing of the study, it is important firstly to contextualise the feminisation project of the profession in South Africa within the broader transformation and gender equality discourse in the country.

2.3 Towards transformation and gender equality

The presence of women in the South African legal profession has come a long way since the decree in the landmark case of Incorporated Law Society vs Wookey in 1912. Although unsuccessful, Wookey challenged the Cape Law Society’s refusal to register her articles, despite a law firm being willing to employ her. Since then, there has been significant progress in the process of including women into the profession. Women have been allowed to join the

profession since March 1923, following the passing of the *Women's Legal Practitioners Act (Act 7 of 1923)* ([Republic of South Africa, 1923](#)). Notwithstanding such progress, the legal profession continues to be stratified by gender and race, with women being particularly underrepresented. The central concept underpinning the transformation agenda in South Africa is the concept of equality. In this section I examine the legal and policy imperatives pertaining to transformation and gender equality in the legal profession, but also more broadly in the country.

2.3.1 Conceptualising the transformation discourse in South Africa

The central premise of transformation in South Africa is the value and legal right to equality. In the context of transformation of the legal profession and gender equality it is essential to distinguish between formal and substantive equality.

2.3.1.1 Formal equality

The most universal and least contentious form of equality is that of formal equality. It requires that all persons experiencing the same circumstances receive the same treatment and should not be treated differently on the basis of subjective characteristics, such as gender and race ([Smith, 2014](#)). This notion of equality assumes that if everyone is treated equally, then there will be no discrimination. This notion of equality is symmetrical and requires discrimination to have a comparator. Simply put, it requires us to compare men and women before the law. Smith ([2014](#)) argues that the comparator in proving discrimination largely focuses on the 'dominant form': white male, able-bodied and heterosexual. This individualised conception fails to consider how other facets of group-based marginalisation are obscured. Finley states that formal equality "marginalises, disempowers, and renders invisible those such as women,

who have seemed most unlikely to ever melt into the white male model of homogeneity” ([1986, p. 1153](#)).

2.3.1.2 Substantive equality

Substantive equality acknowledges that not all groups are on the same playing field. It recognises that there are indirect forms of discrimination and emphasises the importance of social and cultural context. Substantive equality “is concerned with eliminating barriers which exclude certain groups from participation in the workplace or celebrating their different cultures and practices” ([Smith, 2014, p. 610](#)). It necessitates an asymmetrical approach that recognises difference and diversity, enabling the creation of equal opportunity and eliminating barriers. The notion of substantive equality is manifested through legal instruments.

The idea of creating substantive equality within the legal profession is based on the understanding that inequality stems from long established political, social and economic differences between men and women within the profession. These inequalities are entrenched in social values and behaviours, the institutions of society, the economic system and power relations. ([Lasseko-Phooko, 2019, p. 3](#))

Efforts to transform the legal profession cannot rely on merely comparing the number of men and women present in the profession as an indicator of transformation, as this form of analysis fails to recognise diversity and difference created by deeply embedded social, historical, cultural, political and economic structures. In this vein, legal and policy commitment towards transformation and gender equality in the legal profession necessitates an examination of substantive equality. These commitments are detailed below.

2.3.2 Legal and policy framework facilitating gender equality¹⁴

The *Constitution of the Republic of South Africa (Act 108 of 1996)*¹⁵ is the supreme law of the country and all other legislation is required to uphold the tenets of the Constitution. Chapter two of the Constitution discusses the Bill of Rights, which comprehensively outlines the rights afforded to all citizens; it specifically prohibits discrimination on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth. Section (9) (2) defines equality as:

The full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. ([Republic of South Africa, 1996, pp. 5-6](#))

Section (9) (4) furthermore calls for the enactment of national legislation, preventing inequality and unfair discrimination ([Republic of South Africa, 1996](#)). The nature of equality as envisaged in the Constitution, is that of substantive equality as opposed to formal equality. There are various legal and policy measures to effect equality in South Africa, as envisioned by the Constitution – both in women’s private and public lives. The *Promotion of Equality and Prevention of Unfair Discrimination Act (Act 4 of 2000)*¹⁶. PEPUDA gives effect to Section 9 (2) of the Constitution and acknowledges the inequalities and discrimination deeply embedded in the social fabric of South Africa. PEPUDA aims to prevent and prohibit unfair discrimination and promote equality ([Republic of South Africa, 2000](#)). The intentions of the *Employment*

¹⁴ South Africa is signatory to several international and regional conventions facilitating gender equality and transformation. This study however only focuses on the national imperatives of transformation and gender equality.

¹⁵ Hereafter referred to as the Constitution.

¹⁶ Hereafter referred to as PEPUDA.

*Equity Act (Act 55 of 1998)*¹⁷ is to achieve equity in the workplace¹⁸ by promoting equal opportunity and eliminating unfair discrimination through affirmative strategies to correct unequal employment practices experienced by designated groups (such as women, blacks and the disabled) ([Republic of South Africa, 1998](#)). The practicality of the EEA is to strive towards demographic representivity. In the pursuit of equality, Tapanya ([2017](#)) differentiates between broad representivity and demographic representivity. The former reflects the presence of the race and gender groups represented in the country's demographic profile. Simply put, whether all gender and race groups are reflected. In contrast, the latter is concerned whether the presence of gender and race in institutions reflect national population statistics. The EEA thus gives effect to the legislative framework for women's advancement in employment. All other gender relationships and interactions in society, not bound by the provisions in the EEA, are regulated under PEPUDA.

The *National Policy Framework for Women's Empowerment and Gender Equality of 2002* is a generic policy document outlining South Africa's vision for gender equality. It envisages that the process of gender equality should be at the centre of the transformation process across all sectors in South Africa. The document has a clear vision and structure to guide the process of transformation in achieving gender equality. It defines gender equality as:

A situation where women and men have equal conditions for realising their full human rights and potential; are able to contribute equally to national political, economic, social, and cultural development; and benefit equally from the results.

Gender equality entails that the underlying causes of discrimination are

¹⁷ Hereafter referred to as EEA.

¹⁸ The EEA applies to all workplaces, except the National Defence Force, National Intelligence Agency and South African Secret Services.

systematically identified and removed in order to give women and men equal opportunities. The concept of gender equality, as used in this policy framework, takes into account women's existing subordinate positions within social relations and aims at the restructuring of society so as to eradicate male domination. Therefore, equality is understood to include both formal equality and substantive equality; not merely simple equality to men. ([Republic of South Africa, 2002, p. xviii](#))

The *Women's Empowerment and Gender Equality Bill*¹⁹ of 2014 focuses on gender equality and the empowerment of women. The intended goal of the Gender Bill is to:

To establish a legislative framework for the empowerment of women; to align all aspects of laws and implementation of laws relating to women empowerment, and the appointment and representation of women in decision-making positions and structures; and to provide for matters connected therewith. ([Republic of South Africa, 2014b, p. 2](#))

The Gender Bill aimed to introduce a quota system emphasising that all public and private institutions must develop measures to achieve a *minimum* 50% representation and meaningful participation of women in decision-making positions. Concerns with the 50% representation target were raised. Dube ([2016](#)) was of the opinion that this target was paradoxical as anything above 50% would indeed recreate inequality. Such aspirations in the Gender Bill are reflective of formal equality and not substantive equality.

¹⁹ Hereafter referred to as the Gender Bill.

2.3.3 A transformation agenda for gender equality in the legal profession

South Africa has a robust legal and policy framework addressing gender equality and transformation. Understanding this framework and the policy documents that emerge from it is paramount in understanding the transformation vision of the legal profession. Following the political reforms in the early 1990s, transformation of the profession became a prominent topic of debate. The inequalities plaguing the profession were recognised and acknowledged by the Department of Justice ([Godfrey & Midgley, 2008](#)). The department's Planning Unit published a strategic plan (*Justice Vision 2000*) for transformation in the justice sector. The vision as set out in the document, is to “transform the justice system so that it reflects the basic constitutional ideals as well as goals of the government policies on reconstruction and development” ([Department of Justice, 1995, p. 7](#)). One of the key aims of the plan is “to make the profession representative of all the people who live in South Africa” ([Department of Justice, 1995, p. 108](#)).

The document states that:

The legal profession does not reflect the diverse nature of the South African society. Disadvantaged groups, especially black people, are not well-represented in the legal profession. Few black graduates are able to enter the profession. To a lesser extent, the same is true of white female graduates. ([Department of Justice, 1995, p. 108](#))

Following *Justice Vision 2000*, the transformation process was slow and not much occurred on the issues of diversity and transformation. A follow-up discussion document, highlighting the same issues raised in *Justice Vision 2000* was developed by the Planning Unit in 1999. On the issue of representation, the document re-emphasised that the legal profession was not representative of the South African populace. While law graduates were becoming diverse, disadvantaged graduates continued to struggle to establish themselves in the profession. This

was a critical challenge to the transformation process and needed to be addressed if the profession wanted to represent the diversity of South African society in all spheres ([Department of Justice, 1999](#)). Many of the transformation efforts discussed in the two documents mentioned above, centred on the development of the Legal Services Charter²⁰. Two previous drafts of the Charter had been published ([Department of Justice, 2006, 2007a](#)), with the most recent one being the Third Draft Legal Services Charter ([Department of Justice, 2007b](#)). Section 2.5 of the Charter is concerned with access to the legal profession and acknowledges:

The shortage of legal practitioners in South Africa as a result of historical barriers to entry into the profession and declares that transformation of the profession must reflect and represent the racial and gender composition of South African society so as to ensure a body of well-trained and competent professional providers of legal services, and to enable appointments to be made to the judiciary which reflect the demographics of South Africa. ([Department of Justice, 2007b, p. 11](#))

The Charter adopts an optimistic tone with regard to overall transformation but indicates that many of the envisaged goals are dependent on the *Legal Practice Act (Act 28 of 2014)*²¹. The purpose of the LPA is to provide a legislative framework for the transformation of the profession underpinned by the Constitution. It also seeks to broaden access to justice and to put in place measures that provide equal opportunities for all aspirant legal practitioners, in order to have a legal profession that broadly reflects the demographics of the country ([Republic of South Africa, 2014a](#)). Lasseko-Phokoo (2019) is of the opinion that the LPA does not have explicit processes focused at establishing gender equality in the profession. The legal

²⁰ Hereafter referred to as the Charter.

²¹ Hereafter referred to as the LPA.

profession has ostensibly resorted to formal equality, as opposed to substantive equality, to accomplish gender transformation.

The above discussion provided a sense of the issues confronting women in the pursuit of a legal career. It has also focused on the legal and policy framework relevant to the profession in South Africa. Despite the removal of formal barriers and the enactment of legal and policy frameworks to spearhead the transformation process, we know that women continue to experience inequality and marginalisation in the profession, internationally and in South Africa. As noted, before, investigating the factors underpinning the continued exclusion and marginalisation of women, requires a comprehensive sociological framing. Professions, or professional occupations, have been studied through many empirical and theoretical lenses. In the sections to follow, I conceptualise my approach, using feminist, Bourdieusan and organisational culture theoretical constructs.

2.4 Theorising women in the legal profession

2.4.1 Feminism

[Feminism is] an argument against political and social systems, ideological practices, and cultural discourses that subordinate women. ([Wiegman, 1999, p. 108](#))

Feminist epistemology has been the main platform to theorise gender issues. It would therefore be remiss of me to not start the discussion with some of the main feminist concepts relevant to this study. The imperatives of feminist movements have always been an attempt to redress social, economic, and political disproportionateness confronting women. It focuses on examining, understanding, and explicating the materiality of women's lives.

Feminist scholarship strives to unveil how these experiences are constructed, understood, and articulated. Feminist literature presents a wave model to describe the history of the various strands of the movement. First wave feminism emerged in the mid – 19th and early 20th century and was concerned with women’s struggle to attain fundamental political rights such as the right to vote. Second wave feminism peaked in the 1960s and 1970s and focused on the women’s liberation movement. During this period women pushed beyond political rights and called for equal legal and social rights ([Laughlin et al., 2010](#); [Reger, 2015](#)). It was also during this period that the feminisation of the legal profession emerged.

First and second wave feminism had a major contribution to the advancement of advocacy and the discourses in promoting gender equality. The most influential contribution has been that of third wave feminism, which first appeared in the 1990s and early 2000s. Third wave feminism is believed to be an expansion of the second wave, but more reflexive, situated, self-conscious and cognisant of homogenising women. It thus recognises differences amongst women (race, class, ethnicity, religion, nationality, context, culture, etc.), and recognises how women’s gender identity intersects with other identities such as race and how this can have a profound impact on the experiences and lived realities of women ([Dicker & Piepmeier, 2016](#); [Laughlin et al., 2010](#); [Mahoney, 2016](#); [Reger, 2015](#)). This is particularly relevant to this study as much of the international literature tends to study women in the profession without due consideration of intersectionality.

It is not my intention to provide a definitive discussion of feminist epistemology, rather, I am poised to focus on the key theoretical concepts I deem pertinent to this study. I thus employ Howell, Carter and Schied’s ([2002](#)) conceptualisation of feminist epistemology, which focuses

on individual experience and socially constructed knowledge, shifting positionalities, voice, agency and power relations. This conceptualisation was also adopted by Wildschut (2011) in her feminist-organisational study exploring the attrition of women doctors in the South African medical profession. My intention is to see how the materiality and lived context of South African women attorneys can be ‘brought into dialogue’ with some of the key feminist constructs identified by Howell et al (2002).

2.4.1.1 Individual experience and socially constructed knowledge: Feminist standpoint

The institutionalised practices of excluding women from the ideological work of society are the reason we have a history constructed largely from the perspective of men, and largely about men. (Smith, 1987b, p. 35)

Feminist standpoint epistemology was developed in the 1970s and 1980s by a group of women scholars in various disciplines, including Dorothy Smith and Patricia Hill Collins in sociology, Sandra Harding in philosophy of science, Nancy Hartsock and Alison Jaggar in political philosophy, Donna Haraway and Hilary Rose in natural science, and Alison Wylie in philosophy. Dorothy Smith (2005) made a unique contribution to standpoint epistemology in her development of institutional ethnography – an approach for examining institutions from the position of marginalised groups²² such as women, which I find particularly useful for this study. Standpoint epistemology is critical social theory, borne out of the lived experiences and context of women. Smith’s (2005) standpoint is both a theory of knowledge-building and a method for doing research. It requires us to place women at the centre of the research process

²² Smith’s original application of institutional ethnography focuses on the standpoint of women; however, she recognises that there are other marginalised groups in society based on ethnicity, race, sexual orientation, and class. It is in this vein that she transformed her ‘sociology for women’ to a ‘sociology for people’ (Smith, 2005).

and to begin with the lives of women and how they experience it, in order to achieve an accurate and authentic understanding of what life is like being woman. What do we understand about women's concrete experience? Women's concrete experiences consist of what we as women do in our daily lives. Hence, knowledge for Smith ([2005](#)), starts from the materiality of the everyday world – the activities, interactions, responsibilities, constraints, resources that women confront in every day and every night. By focusing on women's unique concrete experiences as a 'point of entry' for research and scholarship, we are not only able to illuminate the knowledge women have cultivated, but it allows for an examination of society through the eyes of women. Drawing on these ideas, I designed my study as a project to value women's knowledge and experiences.

It was during her graduate school years that Smith reflected on her life and how she was experiencing 'two subjectivities' – the home and university, and these two worlds could not be blended. She noted how the discipline of sociology was lacking a focus on standpoint, which could reveal the peculiarity of women's lives – reproduction, children and the home ([Smith, 1987b](#)). She observed that for women there is separation between their world as they experience it, compared to their having to adapt to the views of dominant groups. This, she argues, creates oppression and marginalisation, whereby they become alienated from their true selves ([Smith, 1987b](#)).

2.4.1.1.1 Bifurcated consciousness

In her influential essay, *A sociology for women*, Smith introduces us to a 'line of fault':

A point of rupture in our experiences as women within the social forms of consciousness – the culture or ideology of our society – in relation to the world

known otherwise, the world directly felt, sensed, responded to, prior to its social expression. (1987b, p. 49)

Smith (1987b) noted that most women experienced two subjectivities or a bifurcated consciousness. Bifurcation is a separation or division into two parts, referring to the two modes of being a woman. It directs us to how women's lives are organised around their private/public and productive/reproductive spheres. The legal profession is a male-dominated institution where women must fight to push past their perceived gender roles as wives, mothers, carers and homemakers, thus, moving from the local realm of the home to the 'extra local' realm of society (Mann, 2008). Women, therefore, split their consciousness in two in order to establish themselves as knowledgeable and competent beings within society and the legal profession (Bowell, 2018). It is within the state of bifurcated consciousness that the experiences of women can be located in their proper context. DeVault (2006) notes that women who experience two subjectivities move from one framework to the other without consciousness; however, when attention is directed to its actual formation, then the disjuncture can be seen as a line of fault, which opens the organisation of social life to analytic scrutiny, similar to the way an earthquake opens the earth's crust. I find the analogy of 'two subjectivities' and 'bifurcated consciousness' particularly useful in understanding and explaining how women navigate their personal and professional lives. It also relates to Pierre Bourdieu's concept of fields, which I discuss in Chapter six. This details how the women in this study experience two distinct and conflicting subjectivities/fields. I also find it appropriate to employ this concept to my personal experiences in navigating this research, which I reflect on in chapter eight.

2.4.1.2 Intersectionality (Shifting positionalities)

Gender cannot be torn from its social contexts without risking distortions, including privileging gender over other components of social relations and

identities and denying their importance in creating inequality and domination.

(Acker, 1999, p. 191)

Intersectionality is a widespread and celebrated concept in feminist discourse. Its aim is to illuminate dynamics that are often overlooked in sociological analysis. The concept was first coined by legal theorist Kimberle Williams Crenshaw in the late 1980s in her exploration of how women of colour experienced distinct patterns of discrimination in society ([Crenshaw, 1989](#)). Patricia Hill Collins ([1998](#)) extends Smith's ([1987b](#)) standpoint by illuminating the particular epistemological standpoint of black women. She not only introduces the empirical dimension of race, but emphasises the interlocking nature of the wide variety of identities, for example, race, class, gender, nationality, language, sexual orientation, which make up women's standpoint ([Collins, 1998](#)). Black feminist scholar, bell hooks²³ commented that intersectionality "challenged the notion that gender was the primary factor determining a woman's fate" ([hooks, 2014](#)). Skeggs (1996) note that "woman is not a homogeneous, singular identity, but is instead lived and intimately experienced as a form of subjectivity inhabited through other categories" (cited in [Arun \(2017, p. 19\)](#)). Gender is therefore not simply 'woman' or 'man', but always intersecting with other identities, for example black woman, or white middle class woman. These overlapping and intersecting identities illuminate the distinct experiences of women and how they are embedded in power relations. "Voices of racially subordinate women are forcing the feminist mainstream to modify their initial disparagement and to engage with new theories about difference" ([Hendricks & Lewis, 1994, p. 62](#)). Although the main focus is exposing gender inequality inherent in the institutional structures and organisational culture of the legal profession, as experienced by women as a group, it is thus important to be aware of, and sensitive to, the differences between women. I thus concede that

²³ Gloria Jean Watkins chose the pseudonym 'bell hooks' in tribute to her mother and great-grandmother. She decided not to capitalise her new name to place focus on her work and ideas, rather than her name or personality.

women are not a homogenous group and have other identities and differences, which intersect to shape their standpoints in distinct ways. Where applicable, the intersectional experiences of gender, race, class, and age, to name a few, will feature prominently in this study. Hence, individual identities intersect in ways that not only impact how they experience social institutions and the legal profession. Considering the intersection of gender and race, it is well-documented that black women are both black and women, but because they are *black women*, they endure specific forms of discrimination that black men, or white women, might not. This is a salient feature of South African society. In this vein, feminism in South Africa has to be sensitive and inclusive to the diversities found in our complex society ([Steyn, 1998](#)). Any sociological study on women in South Africa would be remiss if it did not consider intersectional experiences. I thus find it essential to conceptualise gender, race, and class within the context of this study.

Gender: A socially constructed concept that refers to the characteristics of women, men, girls, and boys. Gender interacts, but is different from sex, where sex refers to the biological and physiological traits of males, females, and intersex persons – focusing on hormones, chromosomes, and reproductive organs. As a social construct, gender includes the norms, values, roles, and behaviours associated with being a woman, man, girl or boy and the relation between each other.

Race: The usage of racial categorisation in this study does not suggest my support for these categories, but rather it is used to illustrate how the South African government classifies people. Like gender, race is socially constructed and refers to groups of people who have distinct, but similar physical characteristics, namely skin complexion, hair texture and body shape. Racial categorisation is the hallmark of South African history, politics, economy, and society. The concept became prominent during colonisation and the Apartheid era²⁴. The Apartheid

²⁴ This history is well documented.

government enacted various pieces of legislation to classify racial groupings. Racial categorisation formed the basis of control and domination during the Apartheid era. The *Population Registration Act (Act 30 of 1950)* divided the population into four main race groups: whites²⁵, natives (blacks)²⁶, Indians²⁷ and coloureds (mixed-race)²⁸ ([Republic of South Africa, 1950](#)). While democratic South Africa has abolished legal racism, the usage of racial categorisation for statistical purposes remains an important proxy for inequality, development, and empowerment, owing to the long-lasting material impact of racial categorisation. The current racial categories used by the South African government include African, coloured, Indian/Asian and white ([Statistics South Africa, 2017](#)).

Within the context of this study, I find it necessary to elaborate on the notion of black. The term black is an elastic concept and a powerful signifier in many contexts ([Naidu, 2010](#)). Rassool ([1997](#)), notes that the concept is a powerful hegemonic construct, which influences how we view ‘non-white’ or ‘non-Western’ other. “Black is conceived of as an amorphous racially and culturally homogenous outgroup” ([Rassool, 1997, p. 85](#)). The author rightfully notes the experiences of black people is a complex tapestry of historical and socio-political experiences and realities, arguing that black people, including black women are not an impenetrable group. The collective blacks²⁹ refer to all non-white race groups³⁰. The construction of racial categories continues to prejudice certain groups of people. It is for this

²⁵ Refers to those people of European descent.

²⁶ Denotes those people who are considered original descendants and inhabitants of South Africa. It is also used to refer to expatriate black people from other African countries.

²⁷ Those people who are descendant from India or South East Asia.

²⁸ Multiracial group with European, African and/or Asian ancestry.

²⁹ “Those who are by law or tradition politically, economically and socially discriminated against as a group in the South African society” ([Biko & Stubbs, 1987, p. 48](#)).

³⁰ African, coloured, Indian/Asian.

reason that it is of utmost importance to consider the intersection of gender and race, as it is sure to render contrasting results and experiences.

Class: Closely related to race and South Africa's apartheid history, is class structure. There is, however, no straightforward definition of class. In its simplest form it refers to social practices informed by legal and social constructs, which categorise people based on their relationship with the economic system, such as employment status, access and accumulation of wealth and financial assets and level of education ([Moolman, 2013](#)). Together these allow social groups to be categorised into lower, working, middle, upper-middle, and upper/elite class. Attorneys, by virtue of their professional and educational status, would at the minimum be classified into the middle class.

2.4.1.3 Voice

[There is an] urgent need to bring in women's voices and women's experiences in telling the South African story, especially if our purpose is to transform this society.

([Nkomo, 2013, p. 133](#))

The concept of voice is a central theme in feminist scholarship. Contemporary feminist scholarship and research endeavour to give voice to the lives of women who had previously been silenced and ignored ([Brooks, 2007](#)). Studies of feminist and critical pedagogy have begun to give greater attention to the diversity of women's voices and to the subtle ways in which, despite best intentions, women's voices remain unheard. The aim of Smith's ([1974, 1987a, 2005](#)) sociology is to create a platform where women and other marginalised groups' voices will be appreciated. Giving voice to women's experiences allows us to reveal unknown knowledge contained in women's experiences. Feminist standpoint displays a strong commitment towards achieving this goal. Nkomo ([2013](#)) argues that it is through reading the

work of women that the voices and experiences of women are unearthed. In this study I therefore conceive of voice in three ways: firstly, the concept of voice allows me the opportunity, as a black woman, to add my voice and knowledge to sociological scholarship, especially in the professions discourse, which has long been the preserve of the dominant hegemonic white and Westernised sociology canons. On this note, McFadden et al, in *Reflections on Gender Issues in Africa* is of the opinion that:

When women write from a positionality that is built through solidarity and inclusiveness, they conjure up new intellectual products: Treasures which, if acknowledged and accepted become an important part of the stock of intellectual and cultural products in their respective societies, regions and continents.... Women articulate new voices and sounds; choruses which speak eloquently to the need for writing to become a democratic space in ways which cut across race, gender, class and age. (McFadden et al., 1999, p. 1)

Secondly, given that this research is underpinned by feminist thinking, it is important to introduce the concept of voice into the research methodology and allow the women to express their voice freely. By allowing women attorneys' voices to be heard through interviews will not only serve the purposes of this investigation but will also provide insight into how women are conceptualising, reconceptualising, and challenging their position in the legal profession. It is through this study that women's voices in the South African legal profession will be excavated and uncovered. Thirdly, Thoko Matshe (2013) distinguishes between women's representation and women's presence in the South African parliament and other decision-making positions. Matshe (2013) argues that presence does not translate to representation. The concept of representation denotes act for/speak on behalf of, speak for, be spokesperson for. It

provides a useful conceptualisation of voice in the legal profession, to evaluate whether the statistical representation of women provides women with ‘voice’.

2.4.1.4 Agency

Related to the concept of voice is agency. Women, children, black people and those mentally challenged were traditionally considered to lack agency and voice ([Davies, 1991](#)). In feminist research, agency is critical in understanding the marginalised experiences of women ([McNay, 2013](#)), overcoming and challenging gender disparities, empowering women and facilitating gender equality ([Donald et al., 2017](#); [Fernandez et al., 2015](#)). While the concept continues to be challenged in feminist and sociological scholarship ([Burke, 2012](#)), it is not my intention here to enter such debates, but rather that I am poised to focus on conceptualising the term for the purposes of this investigation. Agency is often used interchangeably with related concepts of choice, decision-making, empowerment, freedom, rationality and autonomy ([Davies, 1991](#); [Thorpe et al., 2016](#)). The number of scholars who have engaged with the concept is endless, however the work of Amartya Sen and Naila Kabeer continues to be the most cited and respected³¹.

More than thirty years ago Amartya Sen described agency as “what a person is free to do and achieve in pursuit of whatever goals or values he or she regards as important” ([Sen, 1985, p. 203](#)). Those individuals who exercise agency are intent on actions that are in harmony with their values ([Alkire, 2008](#)). It has the propensity to either individually or collectively challenge barriers, resist, confront and question oppressive conditions ([Hanmer & Klugman, 2016](#)). Drawing on Sen ([1985](#)), Naila Kabeer defines agency through choice and states that: “agency

³¹ The work of these authors has also been advanced by Ibrahim & Alkire: “agency is the ability to act on behalf of what you value and have reason to value” ([2007, p. 386](#)) and Klugman et al, who states that “agency is the capacity to make decisions about one’s own life and act on them to achieve a desired outcome” ([2014, p. xv](#)).

operationalises the concept of choice. It refers to the capacity to define one's goals and act on them. It goes beyond the observable behaviour to encompass the meaning, motivations, skills and purpose that people bring to their action, "their sense of agency." (2008, p. 20). She further notes that when women exercise their agency through challenging, questioning or changing conservative norms, practices and institutions which marginalises them, it can lead to their empowerment (Kabeer, 2008). While measuring agency is not a straightforward task and remains debatable, what is important is that context influences and shapes agency, furthermore, a women's position, social and cultural norms and rules influences what is possible and desirable (Hanmer & Klugman, 2016). It is important to recognise that agency can and does vary across time, space and organic changes in personal goals (Campbell & Mannell, 2016; Donald et al., 2017).

2.4.1.5 Power and Closure

It is imperative that a study focusing on gender, considers the subject of power with respect to "its nature, location, operation, distribution and circulation" (Banerjee, 1995, p. 32). Central to this study is how power is exerted by groups. It is usually manifested through inequality, elitism, marginalisation, and social exclusion. In the profession's literature this is referred to as closure (Collins, 1979; Larson, 1977; Murphy, 1988; Weber, 1978). This literature outlines how professions such as law, medicine and accounting, to name but a few, "seek to maximise rewards by restricting access to resources and opportunities to a limited circle of eligibles" (Parkin, 1974, p. 3). Similarly, Koch defines closure as a process where social groups, such as professions, exercise exclusions, which serve to monopolise "societal chances, privileges and resources" (2003, p. 5). It is thus the exclusion of the intellectually ineligible, as well as the 'outsider' or 'other', usually defined in reference to the cultural norms of the unencumbered white middle-class male profession (Acker, 2006). Professional project closure regimes are

submerged in a neo-Weberian tradition, focusing on formal or external mechanisms to control entry into the profession, with a focus on knowledge and market privilege, for example, the possession of specific credentials, such as degree certificates, licensure, and professional registration. It is, however, suggested that formal mechanisms are but, bare skeletons “that are given content and detailed only in the exigencies of everyday professional practice” ([Chua & Clegg, 1990, p. 136](#)). Similarly, Smyth et al, reflecting on women’s professional work in Canada explains that:

Since the late nineteenth century in the industrialised West, members of professional bodies have worried far less about recruitment and far more about creating boundaries to keep the ‘right people’ in and the persons and groups whom they saw as unworthy and undesirable out. ([1999, p. 5](#))

On this note, scholars are increasingly arguing that there has been a weakening of the formal mechanisms and thus a shift from external closure regimes, which sanction entry into the profession, to internal mechanisms, which regulate progression through the professional hierarchy ([Bolton & Muzio, 2008](#); [Muzio & Ackroyd, 2005](#)). Formal mechanisms have thus been transformed by the toughening of internal and informal mechanisms which are largely invisible. In considering the legal profession, Cook et al, argue that it is the informal “mechanisms that reproduce the cultural norms of white middle-class professionalism in the 21st century” ([2012, p. 1747](#)).

Considering the discussion in Chapter one and the transformation efforts discussed in Section 2.3, I agree with my international colleagues that formal closure mechanisms can no longer be seen as an obstacle to women’s entry and advancement in the South African legal profession, but rather it is the informal and often invisible mechanisms which continue to marginalise and

exclude women. These informal mechanisms can be located in the work of Pierre Bourdieu. This study considers the value and potential for analysing closure in the South African legal profession through Bourdieu's concepts of field, habitus, and capital. His work can explain how an elite white middle-class and male dominant culture exists in the profession, how it is enacted, maintained, and reproduced. Hence, it can show how marginalised groups such as women and blacks continue to be on the periphery of the South African legal profession.

2.4.2 A Bourdieusan approach to closure

Before discussing Bourdieu's theoretical constructs, I find it necessary to illustrate how other scholars have appropriated Bourdieu's work in their analysis of the legal profession as well as the value of his work for contemporary feminist and gender studies.

2.4.2.1 Bourdieu and the legal profession

I am not the first to suggest that Bourdieu's work can be used to understand and explain inequality, exclusion, and marginalisation in the legal profession. In their examination of recruitment and selection processes in London's elite city law firms, Cook et al ([2012](#)) deployed Bourdieu's concepts of field, doxa, cultural capital and habitus to illustrate the facilitation, reproduction and maintenance of elites and elite cultures in City law firms. Focusing on professional identity formation in the legal and accounting professions, Haynes ([2012](#)) draws on Bourdieu's concept of embodied cultural capital to illustrate how physical capital is highly gendered and influences processes of subordination, control and socialisation. Sommerlad et al ([2010](#)), employed Bourdieu's concepts of cultural capital and field to determine why women and ethnic minority groups in the UK have lower levels of progression in the profession. Kay and Hagan ([1998](#)) document how different forms of social capital

(networking, rainmaking) are essential in facilitating promotion to partnership in the legal profession, thus highlighting the relation between economic and social capital.

2.4.2.2 Bourdieu and gender

It is well-noted that Bourdieu did not have much to say about women or gender, as much of his work focused on issues pertinent to social class ([Moi, 1991](#)). The following extract is often cited to manifest his ambivalence about gender:

Sexual properties are as inseparable from class properties as the yellowness of a lemon is from its acidity: a class is defined in an essential respect by the place and value it gives to the two sexes and to their socially constituted dispositions. This is why there are so many ways of realising femininity as there are classes and class fractions, and the division of labour between the sexes takes quite different forms, both in practices and in representations, in the different social classes. ([Bourdieu, 1984, pp. 107-108](#))

However, this is not to suggest that his work has no relevance for contemporary feminist studies ([Adkins & Skeggs, 2004](#)). Despite the criticism directed at Bourdieu for his lack of attention to gender and specifically his androcentric bias ([Huppertz, 2012](#); [Laberge, 1995](#); [McCall, 1992](#); [Silva, 2005](#)), his theoretical constructs are increasingly being applied to contemporary feminist studies to illuminate socio-cultural issues ([Adkins & Skeggs, 2004](#)). This section illustrates the value of Bourdieu's thinking for contemporary feminist studies. Since the 1990's, a number of scholars have incorporated his concepts of capital, habitus and field into feminist and gender studies. Toril Moi noted that one of the merits of Bourdieu's theory is that "it permits the grasp of the immense variability of gender as a social factor" ([Moi, 1991, p. 1035](#)). She emphasises the value of materialist approaches in gender and feminist studies. Leslie McCall professed that Bourdieu's work provides "a powerfully elaborate conceptual framework for understanding

the role of gender in the social relations of modern capitalist society,” and his “epistemological and methodological approach to social science research parallels and enhances feminist positions on this important subject” ([McCall, 1992, p. 837](#)). Feminist scholar Suzanne Laberge in her work on gendered experiences in sport advanced that “the adaptation of Bourdieu’s model is a potentially enriching approach” ([Laberge, 1995, p. 132](#)). Diane Reay’s work focused on the issue of ‘classlessness’. She employed Bourdieu’s concepts of habitus and field to examine the complex emotional and psychological actions supporting everyday social class practices in Britain ([Reay, 1997](#)). In another study, she extended his concept of capital and establishes the concept of ‘emotional capital’ in her description of the deep emotional commitment mothers have with regard to their children’s education ([Reay, 2004](#)). Lois McNay’s work explores disembodiment and dis-embeddedness. She notes that Bourdieu’s concept of habitus “yields a more dynamic theory of embodiment central to a feminist understanding of gender identity”, whilst his concept of field offers a more distinguished analysis of the “social context in which the reflexive transformation of gender identity unfolds” ([McNay, 1999, p. 95](#)). Subsequent to McNay (1999), Julie McLeod advocates a “feminist rethinking of the relationship between gender change, habitus and social field” ([McLeod, 2005, p. 11](#)). The most referenced work in this context is that of Lisa Adkins and Beverley Skeggs (2004). In the introductory chapter of their book *Feminism after Bourdieu*, Skeggs marks that, “Bourdieu has been particularly useful for enabling feminists to put the issue of class back onto the feminist agenda” ([2004, p. 20](#)).

Another seminal contribution to the feminist-Bourdieuian literature is Beate Kraus’s study *Gender, Sociological Theory and Bourdieu’s Sociology of Practice*, noting the importance of habitus. Through this, she establishes that Bourdieu’s “theoretical understanding of gender as a powerful principle of social differentiation opens up new analytical perspectives for feminist

sociological theory” ([Krais, 2006, p. 119](#)). Kate Huppatz ([2009](#)) incorporates gender distinction into Bourdieu’s concepts of capital and habitus, distinguishing between ‘female’ and ‘feminine’ capital to understand gender and class-based work. Adopting a feminist-Bourdeuisan approach in *Development and Gender Capital in India*, Shoba Arun ([2017](#)) provides a fascinating narrative, unpacking the relation between development policy and the role of women. This role of women is constructed through the notion of gender capital.

These authors have made convincing attempts to introduce a Bourdieusan framework to feminist and gender studies. The authors have eloquently shown how Bourdieu’s theoretical tools have indeed been advanced, and his work can be refined and adapted to understand contemporary circumstances. In this vein, Jo-Anne Dillabough recommends “a more creative and empirical engagement with the recent work of Bourdieu, affirming that his oeuvre is able to resist incomprehensibility. It stands as a highly focused, realistic and generative attempt” ([Dillabough, 2004, p. 489](#)). Likewise, Clare Chambers notes that feminist scholars are beginning to engage with the work of Bourdieu and his writings can indeed be useful to feminists ([Chambers, 2005](#)). Discussions on field, capital and habitus allow us to understand how and why inequality, marginalisation and closure unfolds in various social spaces. It allows us to uncover how and why certain spaces like the legal profession become the preserve of a particular social group. It is through these concepts that we can see how the experiences and contribution of women in the legal profession (and other professions) has been trivialised, how social spaces have been structured, organised, legitimised, and privileged on the basis of gender, race and class. Furthermore, incorporating a Bourdieusan framework into feminist studies allows us to reclaim the importance of social class, thus strengthening the intersectional nature of feminist studies. Bourdieu’s typology of capitals illuminates the complexity and myriad of power relations present in contemporary gender, race, and class structures. Adkins

and Skeggs ([2004](#)) notes that by drawing on Bourdieu, feminists are able to reinstate materiality to feminism and thus facilitating an understanding of how inequalities are produced and maintained.

I believe that Bourdieu's concepts of field, capital and habitus can offer an explanation as to how and why the legal profession in South Africa continues to be an elite white male-dominated middle-class profession, which continues to exclude and marginalise women and blacks, despite increasing efforts to feminise and transform the profession. In the following section I detail Bourdieu's key concepts of field, habitus, and capital.

2.4.3 Bourdieu's field, capital, and habitus

Bourdieu's contribution to sociology is best known for his concern with power dynamics in society, particularly the elusive way in which power is transmitted and the social order preserved across generations. His work accentuates how social classes, particularly the ruling and intellectual classes (middle-class), reserve their social privileges across generations. His best-known book is *Distinction: A Social Critique of the Judgment of Taste* ([1984](#)), where he argues that judgments of taste are related to social position, or more precisely, are themselves acts of social positioning. It is through his concepts of fields, capital, and habitus that social groups like professions are able to distinguish and position themselves in society. He uses these concepts to understand social practices, and to uncover how power and inequality is manifested in social spaces. Each of these concepts is discussed below.

2.4.3.1 Field

Bourdieu's concept of field identifies the particular social space in which an elite culture operates. The field is demarcated by a stable pattern of interactions between actors with a set

of practices, rules, and schemes of domination, submission, and legitimation. Insiders to a field recognise the common culture that results from these practices, rules, and schemes. Jenkins (2002) notes, a field operates as a structured system of social positions, relating either to individuals or to institutions, with power relations between actors creating positions of subordination, domination, or equivalence, depending on what fits with the field's rules, schemes, and assumptions (Cook et al., 2012). The field is a social microcosm where there is a symbolic struggle for the monopoly of power resources such as capital. Hence, the field expresses the "social domain in which actors and their respective spheres of power compete for meaning and legitimacy" (Arun, 2017, p. 16). The field thus refers to any social setting such as households, schools or workplaces which are spaces organised around particular kinds or combinations of capital. It is thus in the field where habitus emerges. Swartz notes that:

Fields denote arenas of production, circulation, and appropriation and exchange of goods, services, knowledge, or status, and the competitive positions held by actors in their struggle to accumulate, exchange, and monopolise different kinds of capitals. Fields may be thought of as structured spaces that organise around specific types of capitals or combinations of capital. (2013, p. 57)

The concept of field is closely entwined with the concepts of capital and habitus. For Bourdieu, these concepts cannot be considered in isolation of each other (Bourdieu & Wacquant, 1992). The position an agent occupies in the field is an outcome of the rules of the field, the agent's capital accumulation and habitus pertinent to that field (Bourdieu, 1984). For example, capital can only exist and function relative to a field. Different fields prioritise different capitals and habituses. He metaphorically associates the field to a game - where there are rules and strategies on how to play (Bourdieu & Wacquant, 1992). The structure of the field is determined by the positions of the players and by the overall volume and form of the capital they possess. The

field can only exist if ‘players’ who know ‘how to play’ are involved and willing to play. Struggles occur in the game, not only within the rules of the game, but also with defining the rules. Simply put, the struggle ensues over the unequal distribution of valued capitals, therefore they vie for meaning and legitimacy. Bourdieu notes:

The social world can be represented as a space (with several dimensions) constructed on the basis of principles of differentiation or distribution constituted by the set of properties active within the social universe in question, i.e., capable of conferring strength, power within that universe, on their holder. Agents and groups of agents are thus defined by their relative positions within that space. ([1985, p. 724](#))

An agent’s position in the field produces distinct methods of thinking, doing and being. The relations between positions in the field are particularly significant in analysing the field. A key feature of the field is that it has the privilege of enjoying a significant level of autonomy, particularly “the capacity it has gained, in the course of its development, to insulate itself from external influences and to uphold its own criteria of evaluation over and against those of neighbouring or intruding fields (scientific originality versus commercial profit or political rectitude, for instance)” ([Wacquant, 2007, p. 269](#)).

Given the above conceptualisation, I consider the legal profession as a field enjoying a significant degree of autonomy with its own capital requirements and habituses. I therefore consider it appropriate to conceptualise ‘profession’ within the context of this study. The term profession is distinctively different from occupation. There is a plethora of literature in the sociology of professions conceptualising the terms profession, professional, professionalisation and occupation. It is, however, not my intention in this study to enter a discussion and debate

regarding these conceptualisations. In the context of the medical profession, Cruess et al, (2004) explored these facets and provided a comprehensive definition, which can be applied to all professions such as law, accounting, architecture, etc. The authors note that the definition needs to be comprehensive, but unambiguous. The following definition of profession is provided:

An occupation whose core element is work based upon the mastery of a complex body of knowledge and skills. It is a vocation in which knowledge of some department of science or learning or the practice of an art founded upon it is used in the service of others. Its members are governed by codes of ethics and profess a commitment to competence, integrity and morality, altruism, and the promotion of the public good within their domain. These commitments form the basis of a social contract between a profession and society, which in return grants the profession a monopoly over the use of its knowledge base, the right to considerable autonomy in practice and the privilege of self-regulation. (Cruess et al., 2004, p. 75)

I find it appropriate to employ this definition of profession throughout this study as it notes the importance of expert qualifications, extensive vocational training, ethics, autonomy and self-regulation, amongst other attributes, thus effectively demarcating the social field of the legal profession. Watts (2019) also employed this definition in her study on the medical profession in the UK. In South Africa, the legal field is governed by the LPA (Act 28 of 2014) (Republic of South Africa, 2014a) and the individual law society, in which an attorney registers for professional membership³². Together, this details the formal rules governing the field, such as education and training, ethics, professional registration, etc. I am of the opinion that it is not the formal rules of the field

³² See discussion in Section 3.3.1.

that are a barrier to women's success in the profession, but rather it is the indirect, informal, and often unwritten rules which structure the cultural practices of the legal field. This becomes naturalised and embedded into the field and thus remains resistant to transformation. Bourdieu's concepts of capital and habitus shed light on this.

2.4.3.2 Capital

According to Bourdieu ([1986](#)) every individual has a portfolio of capital and the nature or extent of capital and the degree to which it is legitimised in the field determines his or her position relative to others within a particular field. Capital presents itself in three ways: (1) Economic capital relates to Marxist understanding of capital and refers to the possession of economic resources (money, property) acquired through elements of production such as work or inheritance. (2) Social capital relates to interpersonal relations such as contact or social networks which an individual calls upon for a specific goal. (3) Cultural capital on the other hand is the "value associated with culturally authorised tastes, consumption patterns, attributes, skills and awards" ([Webb et al., 2001, p. px](#)). Cultural capital is further categorised into three forms: (1) the embodied state, (2) the objectified state and (3) the institutionalised state ([Bourdieu, 1986](#)). Cultural capital in the embodied state refers to the "long-lasting dispositions of the mind and body" ([Bourdieu, 1986, p. 47](#)). Simply put, it reflects how knowledge and culture is communicated through an individual's mind hexis – skills, style of conversation, type of extracurricular activities and posture ([Huang, 2019](#)). Cultural capital in the objectified state refers to material possessions such as books, paintings, and ceramics. An individual possesses objectified capital by possessing the requisite material possessions. The institutionalised state of capital recognises academic credentials such as degree certificates or professional licensure ([Bourdieu, 1986](#); [Huang, 2019](#)). Institutionalised capital is seen as a proxy measure for the possession of the embodied and objectified capital essential to a specific field. It is also

essential for acquiring other forms of capital – social and economic capital, believed to frame an individual’s professional identity, dispositions and behaviour ([McPhail et al., 2010](#)). It is undisputed that all attorneys enter the legal field with institutionalised capital – that is an academic degree and professional registration. However, the mere possession of this capital for women and other marginalised groups is not enough to secure a social advantage in the field ([Arun, 2017](#)). To do this, it has to be “effectively activated” ([Lareau, 1989, p. 179](#)), with other dominant forms of capital and habituses within the field.

2.4.3.2.1 Relation between the forms of capital

The relation between economic, social and cultural capital is “transformational, but non-replaceable” ([Huang, 2019, p. 45](#)). For example, an individual who possesses social capital through knowing influential people, can use this to acquire or transfer social capital to economic capital, but the relation between the two is not always stable and straightforward. An individual who possesses cultural capital through attending prestigious schooling may use this to build her economic capital, by gaining access to prestigious employment positions. She can then use this to build her social capital through access to social networks, influential contacts, and friendships. This illustrates the transformational nature of capital. This is graphically displayed in Figure 2-1.

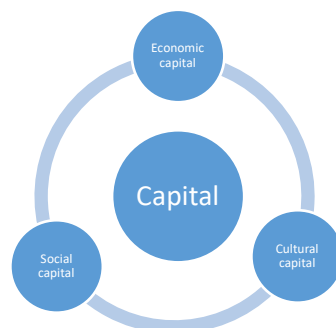


Figure 2-1: Relation between the forms of capital

2.4.3.3 Habitus

You do it, you do it, and you do it; then you become it. ([MacKinnon, 1989, p. 123](#))

Bourdieu's concept of habitus is socially constructed and relates to knowledge resources. He uses the concept to illuminate the way social norms develop and embed themselves in individuals. The habitus unconsciously develops in the social sphere or field in which an individual lives and acts. As they become comfortable with their surroundings, so their learned habituses become reinforced and constant ([Bourdieu & Wacquant, 1992](#)). Webb et al, defines habitus as:

A concept that expresses, on the one hand, the way in which individuals become themselves – develop attitudes and dispositions — and, on the other hand, the ways in which those individuals engage in practices. ([2001, pp. xii-xiii](#))

Habitus is a result of two processes: capital inheritance and capital acquisition. Capital inheritance is a result of certain capitals being inherited or passed down the family. Capital acquisition arises where existing capitals are enhanced through social, economic and cultural practices and experiences ([Cook et al., 2012](#)). Individuals are thus predisposed to behave in a certain way in certain fields, because they have habitually and unconsciously learnt. It is reflected in people's actions, behaviours, how they speak, what and how they think and the values they ascribe too. Habitus is thus invisible and unconsciously thought of but marked through embodiment or an individual's bodily hexis and socio-cultural behaviour. The habitus "is usually very ingrained and is capable of maintaining itself over a long period of time" ([Huang, 2019, p. 48](#)). Similarly, Moi states that it is an "internalised set of tacit rules governing strategies and practices in the field" ([1991, p. 271](#)). Webb et al further states that as people "move through and across different fields, they tend to incorporate into their habitus the values and imperatives of those fields. And this is most clearly demonstrated in the relationship

between field and habitus functions to produce...bodies and bodily dispositions” (2001, p. 37). An individual’s actions and behaviours will satisfy the expectations of the field if the habitus and field in which she finds herself are aligned and compatible. However, it is also possible that individuals may experience a disjuncture between their habitus and field. When individuals pass through different fields their norms may collide and encounter a disjuncture (Chambers, 2005). Bourdieu is, however, of the opinion that this is relatively uncommon, as the habitus and field are well-aligned since people tend to remain in the field they resonate with (Bourdieu, 1986). McNay (1999) indicates that in terms of gender, one way in which women may experience a disjuncture, is when they enter the workforce. The idea is that the gendered habitus would change when women enter spheres that were previously closed to them, such as male-dominated professions. This resonates with Smith’s (1987b) notion of two subjectivities and bifurcated consciousness. It is my postulation that the relation between field and habitus and the disjuncture thesis could shed light on closure mechanisms for women in the legal field in South Africa.

As mentioned before, I am of the view that the legal profession is a social field with its own rules, both formal and informal, which are embedded into the field. There is, however, a distinct culture shaping the informal, unwritten, and invisible rules of the field, which are stacked against women and blacks. It is this culture that can shed light on the persistence of inequality, marginalisation and closure experienced by women that needs to be uncovered and entangled in the South African legal profession. Adkins and Skeggs (2004) notes that feminist and contemporary social theory scholars (Bourdieu in this case), are increasingly incorporating various forms of cultural theory into their work.

The sociology of professions is a multidisciplinary field encompassing theory in sociology, organisations, and political science, amongst others. Wildschut “view[s] a profession (with its associated values, traditions, etc.) as the broader umbrella under which we have an organisation of processes, tasks, institutions, roles, etc” ([2011, p. 35](#)). The profession can thus be seen as providing and prescribing the ideological description of what it is to be a “professional acting professional at any given time, but within that, the specific day-to-day tasks and processes are organised in a specific way” ([Wildschut, 2011, p. 35](#)). Hence, while a profession may impose gender neutral processes and institutional structures, it is in the everyday organising processes and performances that gender inequality is experienced and unmasked. I thus find it imperative to reflect on literature which details the organisational culture and structure that women encounter and return to each day – a factor which studies often omit ([Wildschut, 2011](#)). Sommerlad, et al ([2010](#)) argues that Edgar Schein’s work on organisational culture exemplifies Bourdieu’s theory. Including organisational theories in this study allows for an understanding as to why organisations such as the legal profession are gendered spaces where a male-dominant culture persists. It allows us to uncover how social and cultural practices, both formal and informal, produce inequities, whilst claiming to be objective and gender neutral ([Ely & Meyerson, 2000](#)).

2.5 Organisational culture

There are several scholars who write on organisational culture - Charles Handy, Geert Hofstede, Terence Deal and Allan Kennedy and Fons Trompenaars; however, the most respected work is that of Edgar Schein. Schein ([1985](#)) argued that organisational culture is one of the most difficult elements to change. He defines an organisational culture as:

A pattern of shared basic assumptions that was learned by a group as it solved its problems of external adaptation and internal integration, that has worked well

enough to be considered valid and, therefore, to be taught to new members as the correct way to perceive, think and feel. ([Schein, 2004, p. 13](#))

His model illustrates three cognitive levels through which organisational culture is enacted, maintained, and reproduced.

Artefacts are the tangible features of an organisational culture. It is visible, seen and heard. It can include formal documents such as policies. It can include clothing, mannerisms, language, rituals, and design of buildings.

Espoused values reflect the invisible and unspoken rules influencing member's behaviours. They are deeply entrenched and unconsciously ingrained. Values reinforce artefacts and are subjected to social validation and contestation.

Assumptions constitute beliefs concerning human nature and how the world functions with regard to gender roles, as an example. These are based on implicit unconscious assumptions, which are deeply embedded, making it difficult to identify, oppose or change. They thus become the implicit, unwritten rules for getting along in the organisation, 'the ropes' that a newcomer must learn in order to fit in or, to adopt the characteristics of the field, or its habitus ([Sommerlad et al., 2010](#)).

Schein's ([1985](#)) theory signals the complexity and various aspects that are essential in unmasking cultural change. Therefore, changing superficial aspects such as laws and policies (artefacts) will be irrelevant if values and assumptions are not explored, contested and changed ([Sommerlad et al., 2010](#)). I find this particularly valuable in considering the legal and policy discourse in South Africa.

Scholes and Johnson (2002) enhances Schein's (1985) model, by introducing the 'cultural web model' to describe the various elements of the organisational culture:

- 1) *Paradigm*: What does the organisation do? What is its mission, purpose, and value?
- 2) *Organisational structures*: This relates to the organisational hierarchy and reporting lines flowing in the organisation.
- 3) *Symbols*: Speaks to the organisation branding, logos and designs, executive spaces (parking, washrooms).
- 4) *Rituals and routines*: Management meetings, board reports.
- 5) *Stories*: Anecdotes about the organisation, people, events, which reveal what is appreciated and valued in the organisation.
- 6) *Control systems*: These are the systems which are put in place to monitor the affairs of the organisation.
- 7) *Power structures*: Here consider what is the basis for power? Who makes decisions? How is power distributed/who are the bearers of power?

Both, Schein (1985) and Scholes and Johnson's (2002) models, provide a valuable framework to understand and examine organisational culture, practices, beliefs and assumptions. Acker (1992) and Goetz (1997) contend that organisations are inherent gender-structured spaces. Related to this, is a consideration for the fact that organisational culture can influence and contribute towards gendered outcomes in the legal profession. In this vein, Rao et al (1999) suggest four elements influencing gendered organisational spaces:

- 1) *Valuing heroic individualism*: Organisations appreciate the worker who works day and night to achieve the end goal.

- 2) *Split between work and family*: “The ideal worker excludes and marginalises women who cannot, almost by definition, achieve the qualities of a real worker, because to do so is to become like a man”.
- 3) *Exclusionary power*: Reflects various ways in which power serves to exclude:
 - *Positional power*: Acquired through authority, seniority, or title.
 - *Agenda-setting power*: Where women’s issues do not form part of the agenda, because it is insignificant to men.
 - *Hidden power*: Unspoken rules are normalised, legitimated, and unquestioned.
 - *Power of dialogue*: Through dialogue it is possible to identify how power is built, or hampers equity.
 - *Power of conflict*: These include confrontational strategies which bind external pressures and legislation which, in turn, facilitates organisational transformation.
- 4) *Monoculture of instrumentality*: The organisational culture excludes people, processes and perspectives which do not relate to the narrowly defined organisational goals.

The theories discussed above have informed the use of a comprehensive sociological frame to investigate the persistent inequality and marginalisation of women in the legal profession. The advantage of incorporating feminist, Bourdieusan and organisational culture theory are numerous. Feminist epistemology has been the main platform for sociologist and political scientist theorising about gender inequality. Feminism allows for a consideration for the myriad of issues pertinent to gender inequality such as race, class, family, reproduction, body, work, identity, power, and human rights, to name a few. Incorporating a Bourdieusan interpretation illuminates the socio-cultural issues and allows us to see what is valued and appreciated in particular spaces. It demonstrates how power and privilege are enacted, maintained, and reproduced. Bourdieusan theory illustrates how contemporary issues such as inequality and

marginalisation manifest itself in invisible and hidden ways. Approaching the analysis from an organisational culture perspective, allow us to deconstruct the gendered nature and outcome. It permits an examination of the hierarchical structures and that reinforces unequal relations. It illuminates how “norms, values, beliefs and ways of behaving can generate insights into how workplace practices within professions become discriminatory” ([Mills, 2002, p. 287](#)).

2.6 Chapter summary

This chapter, together with Chapter one, demonstrated that the legal profession can no longer be seen as a space exclusive to the male body. The entrance of women into the legal profession has, however, been fraught with controversy, where women experience a range of issues. Through a review of the literature and theoretical concepts, a number of questions are raised: How do women construct their identity in the legal profession? Does the inclusion of women in the South African legal profession signal transformation? What organisational, social, and cultural processes are valued or challenged in the profession? What experiences do women encounter each day? These are no doubt complex questions and there are no easy answers. It is however important to explore and engage with these questions because they can explain the persistent gender inequality and marginalisation in the profession. The theoretical constructs discussed provide important elements to understand and explicate women’s experiences. In the following chapter I introduce the research methodology employed in uncovering women attorneys’ lived reality through the legal profession.

Chapter 3: How to approach the study of women attorneys?

3.1 Introduction

There are several lines of enquiry to investigate women attorneys in South Africa. Because women are the subject of South Africa's transformation project, this study considers the materiality of their everyday lives as they encounter and experience being an attorney in a historically white male-dominated middle-class profession. The study is thus underpinned by two key questions:

1. *To what extent has the profession been feminised?*

- This question assesses the numeric trends with respect to gender and race across the professional hierarchy.

2. *What are the factors that impede the career prospects of women?*

- This question makes explicit the gendered organisational, social, and cultural factors that impact the experiences of women, and thereby facilitating the white male-dominant profession.

The potential of this study is numerous. This study is, however, not proposing to be an absolute description of the issues confronting women, but according to my knowledge it is the most comprehensive study incorporating both quantitative and qualitative methods in a single study.

The study furthermore begins to catalogue some of the issues confronting women attorneys. In doing so, it opens a dialogue to not only unpack the issues, but to also to fill the academic gap on the paucity of the legal professions' scholarship in South Africa.

3.2 A mixed-method research design

Mixed-methods research is the type of research in which the researcher or team of researchers combines elements of quantitative and qualitative research approaches (e.g., use of qualitative and quantitative viewpoints, data collection, analysis, inference techniques) for the broad purposes of breadth and depth of understanding and corroboration. (Johnson et al., 2007, p. 123)

I adopted a mixed-methods research (MMR) approach, as it has the potential to provide a detailed, comprehensive, and holistic investigation by expanding and strengthening the study through different data collection and analytical techniques. It also offers a validation approach, by integrating both quantitative and qualitative approaches, thus producing insights which might not have been possible otherwise ([Bryman, 2007](#)). This was especially useful in the context of this research, as I aimed to provide a comprehensive and holistic investigation into the experiences of women attorneys. In all studies, the use of a research method should contribute to answering the research question.

3.2.1 Explanatory-sequential design

There are many ways to use mixed-methods research and no strict formula exists on how to combine quantitative and qualitative methods. I found Creswell's ([2014](#)), explanatory sequential design (ESD) particularly appropriate to use in this study. The design is the simplest and most straightforward of all the mixed method designs. It consists of two phases, where the quantitative data is collected first, followed by the qualitative data. This design is easily

executable as it requires the research to be conducted in two separate stages. It also makes it easier to analyse and present the findings separately, making it easier for the reader to understand ([Chui, 2007](#)).

By using this design, I recognise that the quantitative research can only provide me with gendered and racial trends in the profession and is thus not able to explicate the material realities of women, to illuminate and understand the factors that impede the career prospects of women. I therefore use the qualitative research to further explore the depth and complexity of the quantitative results. The qualitative data thus allow me to delve deeper into the quantitative data, allowing voice to be added to the findings by giving women the opportunity to reveal their stories. This is often referred to this as putting meat on the bones of dry quantitative findings ([Greene et al., 1989](#)).

3.3 Quantitative phase

To address Question 1, *To what extent has the profession been feminised*, the data collection and analysis techniques employed in the study are detailed below.

3.3.1 Data collection

In this study I use two sets of data. The first dataset uses the Legal Education and Development³³ (LEAD) database. This database provides comprehensive statistics on gender and race trends in the legal profession³⁴. I specifically use the data on legal education and training, admissions, and practice. This data is used to present a trend analysis of the race and

³³ LEAD is an associate member of the Law Society of South Africa and provides legal and professional training to legal scholars and professionals in South Africa.

³⁴ Including the advocates profession and judiciary.

gender composition of the profession between 2010 and 2017³⁵. This data is, however, not able to reflect the intersection of race and gender. The LEAD database does not provide records on partnership statistics. On advice from LEAD, I obtained partnership data from the four individual law societies representing attorneys in South Africa³⁶, namely the Law Society of the Northern Provinces, Cape Law Society, Free State Law Society and Kwa Zulu-Natal Law Society³⁷. This data does not reflect a trend analysis and is only available for a single year (2017). This data can reflect the intersection of race and gender at the partnership level. It also presents statistics on the candidate attorney and associate levels in the professional hierarchy.

3.3.2 Data analysis

The data is analysed using the career trajectory of attorneys as stipulated in the LPA (Act 28 of 2014)³⁸ ([Republic of South Africa, 2014a](#)). The career trajectory is graphically displayed in Figure 3-1.

³⁵ 2017 reflects the most recent available data for the profession. The data was revisited in March 2021 to determine if there was any update on the data, but this has not changed.

³⁶ The data is not presented per individual law society but combined to give a national overview.

³⁷ The data does not include the KwaZulu-Natal Law Society, as no response was received for the request to data.

³⁸ The Legal Practice Act (Act 28 of 2014) ([Republic of South Africa, 2014a](#)) notes that, four requirements have to be fulfilled to practise as an attorney in South Africa: (1) a four-year Bachelor of Laws (LLB) degree; (2) vocational training through articles of clerkship, which consists of at least two years of articles at a private law firm, or state attorney, or community service; compulsory practical training of either five weeks during or after articles, or a six-months, full-time course at the School for Legal Practice; and (3) passing the attorneys admission examination set by the Law Society of South Africa, where the candidate intends to register and practice, for example Cape Law Society. This examination is practical and can only be written after completion of at least six months of the two-year articles, or at least a six-month course at the School for Legal Practice. Once admitted, (4) attorneys usually practise at mid-level in the profession (as associates or senior associates) for five to seven years before being considered for promotion to the partnership level, which is the ultimate goal in the career of an attorney.



Figure 3-1: Career trajectory of an attorney

This data is analysed and presented using real numbers. Where required, percentages are used to reflect growth trends. Data for the admissions and practising levels also use forecasting analysis to make statistical predictions. Given the transformation project in South Africa and the legal profession as a whole, it is particularly important to assess the extent to which broad and demographic representivity occurs in the profession ([Tapanya, 2017](#)). This analysis uses the level of skewness test to establish whether a particular gender or race group is over or under-represented in proportion to the South African population. It uses the 2017 data in the profession and calculates it by the proportion of each race and gender group in relation to its size in the general South African population, where 1.0 is a perfect-equal representation and anything above 1 is over-represented and below 1 is under-represented. The 2017 gender population statistics for South Africa are: men (49%) and women (51%). The racial population statistics for 2017 are: African (80.8%), coloured (8.7%), Indian/Asian (2.6%) and white (7.9%) ([Statistics South Africa, 2017](#)).

3.4 Qualitative phase

The qualitative phase of my research offers “an integrative, trans-disciplinary approach to knowledge which grounds theory contextually in the concrete reality of women’s everyday lives” (Stacey, 1988 cited in [Oakley \(1998, p. 713\)](#)). This permits the opportunity to foreground the value of the women’s everyday concrete experiences, their ways of being and doing things ([Aptheker, 1989](#)). In the qualitative phase of the study, I draw on feminist concepts of individual experience, voice, and intersectionality. In order to achieve an authentic, accurate and subjective perspective, this study appreciates the materiality of the women’s lives and individual experiences. The study allows the women to give their voices an opportunity to be

heard and for their stories to be told in their own voices. While women are at the core of this investigation, I recognise that women are not a homogenous group and there are other categorical differences such as race and class which I incorporate into the study. This is a departure from much of the hegemonic Westernised studies which studies non-Western women as singular monolithic subjects ([Mohanty et al., 1991](#)). By recognising women's multiple and intersecting identities allows for "multiple and hybrid forms of selfhoods" ([Hughes, 2012, p. xi](#)).

3.4.1 Interviews and diary schedule

"The use of semi-structured interviews has become the principle means by which feminists have sought to achieve the active involvement of their respondents in the construction of data about their lives" ([Reinharz & Davidman, 1992, p. 18](#)). I conducted twenty-seven semi-structured interviews³⁹ with women attorneys across the professional hierarchy. Twelve interviews were conducted in Cape Town and fifteen in Johannesburg. The interviews were conducted at three corporate law firms⁴⁰ in Cape Town and Johannesburg, with two of the firms ranking amongst South Africa's 'big five' law firms. The third firm is an international law firm with offices in South Africa. The views of the women expressed in this study are that of their own experiences throughout their legal career and not necessarily a reflection of the firm they are employed in. I therefore do not make comparisons between firms. The firms were merely a platform to gain access to participants. All three firms boast prestigious accolades such as featuring on the global rankings of law firms. *Smith and Partners* has a staff complement of 600+ staff with 250+ attorneys. *Adams and Sullivan* have a staff composition of 800+ staff with 450+ attorneys and *Malusi Attorneys* 450+ staff with 120+ attorneys. The interviews were

³⁹ See Appendix A.

⁴⁰ Pseudonyms are assigned to protect the identity of the law firms and the women participating in the research.

conducted between November 2016 and January 2018. The interviews were conducted in English, which allowed me to transcribe the interviews as presented by the women. The women were employed at candidate attorney (5), associate⁴¹ (12) and partner⁴² (9) levels. The racial profile the women identified with is African (7), coloured (3), Indian (3) and white (14). See Table 3-1.

Table 3-1: Sampling

	Race				Age			Designation		
	African	Coloured	Indian/ Asian	White	18-29	30-45	46-65	Candidate Attorney	Associate	Partner
Smith and Partners	0	1	0	2	0	1	2	0	1	2
Adams and Sullivan Attorneys	3	1	1	9	6	8	0	3	6	5
Malusi Attorneys	4	1	2	3	6	3	1	2	5	3
Total	7	3	3	14	12	12	3	5	12	10
	27				27			27		

I find it necessary to outline the credentials of the women who participated in the qualitative interviews, with reference to their qualifications and years of practice in their current positions. All the women have a Bachelor of Laws (LLB)⁴³ degree, with five of the women possessing additional qualifications - four holding a Master of Law (LLM)⁴⁴ degree and one an MBA degree.

⁴¹ Includes the category associate and senior associate.

⁴² Includes the category partner and equity partner.

⁴³ LLB is an abbreviation of the Latin 'Legum Baccalaureus' which translates to a Law degree.

⁴⁴ LLM is the abbreviation for the Master of Law degree.

Interview setting

The interviews were conducted at firm offices, which allowed the women to feel comfortable in their usual environment. One interview was conducted telephonically, as the participant was unable to meet face-to-face owing to the unpredictable nature of her work demands. I did not adopt an expert position and was transparent with the interviewees, which allowed the women to speak about their experiences freely. The interviews were relatively unstructured and began with the same broad ‘ice-breaker’ question: ‘*Can you tell me about yourself?*’ This allowed subsequent questions to be guided by the conversation between myself and the interviewee. By using semi-structured interviews, I was able to follow particularly interesting avenues of conversation which emerged from the interviews. The women were treated as experts and could make the most of the opportunity to tell their stories. During the interviews, I also asked the women to complete a diary schedule⁴⁵ as a reflection of how they spent their time on a typical weekday. Incorporating this into the research methodology proved very useful as it assisted in being a reflective tool for the women, as it allowed them to reflect on their time and activities. It therefore shows how research can serve as a way for participants to look at their experience in a different light. This adds to the rising body of literature using diary activities as a method of inquiry ([Plowman, 2006, 2010](#); [Symon, 2004](#)).

Life-history

The ‘ice-breaker’ question essentially directed the conversation to the women’s life histories. Life histories are stories about someone’s life. It provides “rich documentation of personal experience, ideology and subjectivity” ([Connell, 2005, p. 89](#)). Life histories helped me to understand the background of the women I interviewed. They particularly reflected on their education, parents and sibling’s education and occupations, their family structure and

⁴⁵ See Appendix B.

circumstances, and socio-economic background. This enabled me to understand why they chose to become attorneys, what their life experiences and circumstances were like, and what meanings they attached to their public and private lives.

Observations and focus groups

It must be noted that the original proposal envisaged conducting participant observation and focus group interviews. This was not favoured by all the women. The demanding nature of the profession and the unpredictability, long hours and confidentiality agreements with clients were cited as reasons that would make participant observations difficult. The women also indicated that they were uncomfortable with focus group interviews, as they would not be able to ‘trust’ everyone as they might say the ‘wrong’ thing which may find its way into the ears of the ‘powers that be’. The demanding nature of their work would also have made it impossible for everyone to reach an agreement on a date and time if they were to participate in a focus group. It is for these reasons that observations and focus group interviews were not conducted. Instead, I document my own observations and experiences during my fieldwork (see Chapter 8). One of the key lessons I learnt throughout this project was that attorneys are extremely busy people and time is a precious commodity within their line of work. Any future investigations of this nature should consider time constraints.

Recordings

The interviews were recorded using a digital voice recorder. One woman did not want her interview recorded and I respected her wishes. I therefore asked her to speak slowly and clearly so that I was able to write extensive notes verbatim. Following this, I asked her to read through my notes to determine whether I had accurately captured our conversation. By digitally recording the interviews I was able to engage in the conversation with each woman, as opposed

to writing notes which disrupted the flow of the interview. Recording the interviews also provided an accurate representation of what the women said. The recordings also made it possible for me to listen to the recordings recurrently in order to transcribe the interviews.

Transcriptions

I transcribed all interviews verbatim. This was done to provide an accurate representation of each woman's voice and experiences. Transcribing the interviews allowed me to immerse myself in the entirety of the data and become intimately familiar with its content and context. The transcripts were electronically uploaded onto Atlas.ti, which is a data management and analysis package that supports qualitative and mixed-method research. It allows one to electronically upload, store and individually code and analyse the data transcripts.

3.4.2 Interview analysis

Thematic analysis was used to analyse the interview transcripts. It is the foundational method of qualitative research, used to identify analyse and report patterns or themes within a dataset ([Braun & Clarke, 2006](#)). It follows a rigorous process of data familiarisation, data coding, theme development and revision. It goes beyond counting phrases or words in a text but focuses on identifying implicit and explicit meaning in the data. Its biggest advantage is its flexibility and accessibility. I used a six-step framework developed by Braun and Clarke ([2006](#)) for conducting thematic analysis (see Table 3-2).

Table 3-2: Six-step framework for conducting thematic analysis

Step 1	Becoming familiar with the data	This step involved conducting the interviews myself, transcribing, reading and rereading through the transcripts to familiarise myself with the data.
Step 2	Generating initial codes	<p>Coding is “the process by which raw data is gradually converted into usable data through the identification of themes, concepts, or ideas that have some connection with each other” (Austin & Sutton, 2014, p. 439).</p> <p>I used open coding as the aim was to ground analytical observations in the data rather than prior theory and literature. Open coding opens up the data to every potential and all the possibilities contained within it. It gave me the opportunity to immerse myself in the data as well as keep my distance. I assigned colour co-ordinated coding labels.</p> <p>(see Table 3-3 for an example of quotations and initial coding)</p>

Step 3	Searching for themes	At this stage I identified clusters of codes with similar meanings and assigned interpretive meaning or themes.
Step 4	Reviewing themes	Here the initial codes and themes were reviewed to ascertain whether there was any overlapping or duplication of codes and themes. At this stage some themes were refined and merged. If there was any duplication or overlapping, I reviewed and refined the themes instead of discarding it. At this stage I was confident and satisfied that data saturation had been reached and a logical explanatory story could be told.
Step 5	Defining themes	This stage was the essence of data analysis and the story being told. Themes and sub-themes were extracted to understand the relationship between them. Similarities, nuances, and differences were illuminated (see Figure 3-2 for an example of theme construction).
Step 6	Writing	The writing and presentation of the findings is done in a way that gives voice to the women's stories in a systematic, concise, and coherent way, convincing the reader of the merits and validity of the findings by providing evidence.

Table 3-3: Example of quotations and initial coding

Quotation	Initial codes
<p>“I don't think women have a say in this profession. This is a White male profession. Like I said before, women are not taken seriously in the profession. As a Black female you do really have to work four times harder to get to a point where you're taken seriously, where someone's willing to hear what you have to say” (Zinzi⁴⁶)</p>	<ul style="list-style-type: none"> • Male dominated • Race • Women proving themselves • Women have to work harder
<p>“It's a very old boys club, that firm. A very old boys club. It's very hard to get ahead as a woman. They get together and they play golf together all the time. They go to rugby together. They don't invite the women to those” (Michelle⁴⁷).</p>	<ul style="list-style-type: none"> • ‘Old-boys’ networks • Male dominated • Networking

⁴⁶ Zinzi, black, candidate attorney, single, Malusi Attorneys, 20 September 2017.

⁴⁷ Michelle, white, partner, married, Malusi Attorneys, 20 September 2017.

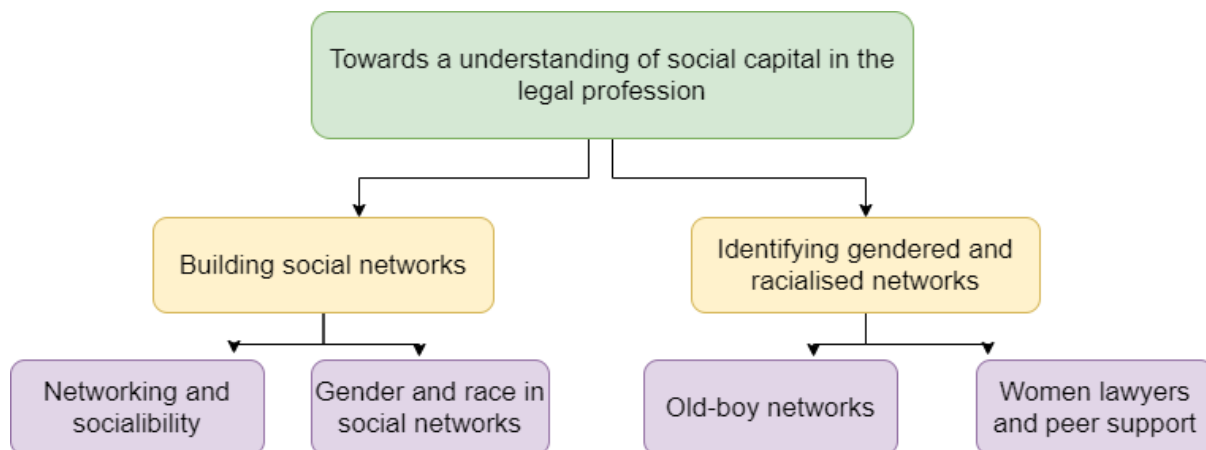


Figure 3-2: Theme construction

3.4.3. Diary schedule analysis

The diary schedule requested the women to indicate the number of hours they spent on various activities. The total number of hours spent on particular activities was analysed by calculating the average number of hours the women spent on each activity.

3.5 A note on ethics

Ethical clearance was obtained from the Stellenbosch University Ethics Committee before proceeding with the study. The research process and methods were presented and detailed in the ethics application form and approved by the committee. The quantitative statistics was publicly available on the LEAD website. Additional statistics was requested and obtained from the four individual law societies. For the qualitative interviews, permission was first requested from the firms to gauge whether they would be amenable to allow their staff to participate in the research, to which they agreed.

3.5.1 Informed consent

Informed consent was an important way of ensuring that the women were well-informed about the study that they were being invited to participate in. More importantly, a signed consent

safeguards me from potential accusations later should the women claim that they were not informed. As mentioned above, permission was requested from firm management to gauge whether they would be interested in participating in the research. A formal appointment was scheduled with management to explain the nature and scope of the research. Following this, the management representative discussed the research with the firm's Executive Committee⁴⁸ who consented to the research. At each of the firms, a liaison person was allocated to provide the necessary assistance and support during the interview process, such as selecting appropriate candidates, scheduling interviews, and organising the logistics. The liaison person e-mailed women attorneys in the firm informing them about the study, asking them to indicate their interest. The liaison person compiled the list of potential interview candidates and their contact details. The information sheet and consent form⁴⁹ was then e-mailed to them to familiarise themselves and raise any questions before scheduling a date and time for the interview. Once they consented to the interview a date and time was arranged. Each woman was given the opportunity to choose a venue convenient to her, with all selecting their firms' offices as interview sites⁵⁰. On the day of the interview, I provided participants with a hard copy of the information and consent sheet. The information sheet provided an overview of the study as well as the rights and responsibilities of both myself as the researcher and the participants. They were assured of anonymity and pseudonyms would be used if necessary. They were guaranteed confidentiality and they had the right to withdraw at any point during the interview. They were informed that they would not be compensated for their loss of billable hours. The participants were requested to consent to both the interview and the audio recording. They were

⁴⁸ Hereafter referred to as EXCO

⁴⁹ See Appendix C.

⁵⁰ I had no reason to believe that conducting the interviews on-site would inhibit participants responses as they were given the choice to conduct the interview in a space that would make them feel comfortable to speak freely. In addition, the women were assured of anonymity and the interviews took place behind closed doors in a room away from other people.

also given an opportunity to ask any questions or gain any clarity before consenting to the interview.

3.6 Chapter summary

In this chapter I detailed the research methodology employed in this study. Through this study I endeavour to capture the authenticity of the women's lives in the legal profession sociologically. I believe given the holistic theoretical underpinning and methodological framing of this study; I will do justice to this investigation.

Chapter 4: A quantitative analysis towards transformation⁵¹

4.1 Introduction

The central focus of this chapter is to address the first research question: *To what extent has the profession been feminised?* It specifically assesses the numeric trends with respect to gender and race in the profession. The chapter does this by assessing changes in the growth for each phase of an attorney's career over a seven-year period (2010 – 2017), using the career trajectory of the profession (Figure 4-1) as stipulated by the LPA ([Republic of South Africa, 2014a](#)). A linear prediction for practicing attorneys is also forecast to determine when gender equality could statistically be anticipated. The level of representation regarding the demographic makeup of the South African population using a level of skewness test is also presented. Finally, the last part of this chapter exclusively focuses on the partnership level. This analysis focuses on race and gender representation across the professional hierarchy for 2017. Together, the statistics show how entry into the profession is dominated by Africans and women. However, the senior levels and apex of the profession is dominated by whites and white men. The possible reasoning behind these findings thus warrants further investigation, which is explored in subsequent chapters.

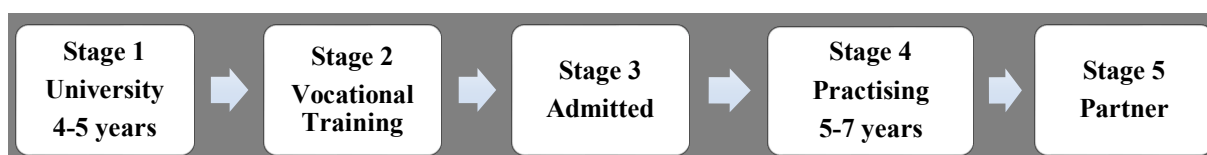


Figure 4-1: Career trajectory of lawyers

⁵¹ The gender analysis in this chapter has been peer reviewed and previously published: Meyer, ([2018](#)).

4.2 Stage 1: University training of lawyers

Three possibilities exist at South African universities to register towards a law degree. The first is the four-year undergraduate LLB degree, second, is the Bachelor of Arts (BA)⁵² (Law) and third, the Bachelor of Commerce (BCom)⁵³ (Law) degree. Students registering for a BA (Law) or BCom (Law) degree take a certain number of law subjects in their second and third year at university. They can then register for an LLB, join the programme in the third year and thereafter complete a two-year LLB and graduate with a BA (LLB) or BCom (LLB). On the third route, students register for a general undergraduate degree with no law subjects and after graduating with an undergraduate degree, they can then register for a three-year LLB and join in the second year of the LLB programme. The most popular route is, however, the de facto four-year LLB degree.

4.2.1 The popularity of the LLB degree

Figure 4-2 shows that the majority of first year registrations in 2010 and 2017 were for the LLB degree. It is also apparent that Africans are registering for the LLB degree, with a declining number of whites across all degrees. It is also notable that the number of Africans and whites registering for either of these degrees is far higher than the number of coloured and Asian/Indian students. It is not clear why these trends are occurring. The explanations are numerous. Are these groups less likely to apply to university for these programmes? Are they not meeting the entrance requirements to enter these programmes? Are they more likely to apply and enrol in other programmes?

⁵² BA (Law) is the abbreviation for the Bachelor of Arts degree majoring in law.

⁵³ BCom (Law) is the abbreviation for the Bachelor of Commerce degree majoring in law.

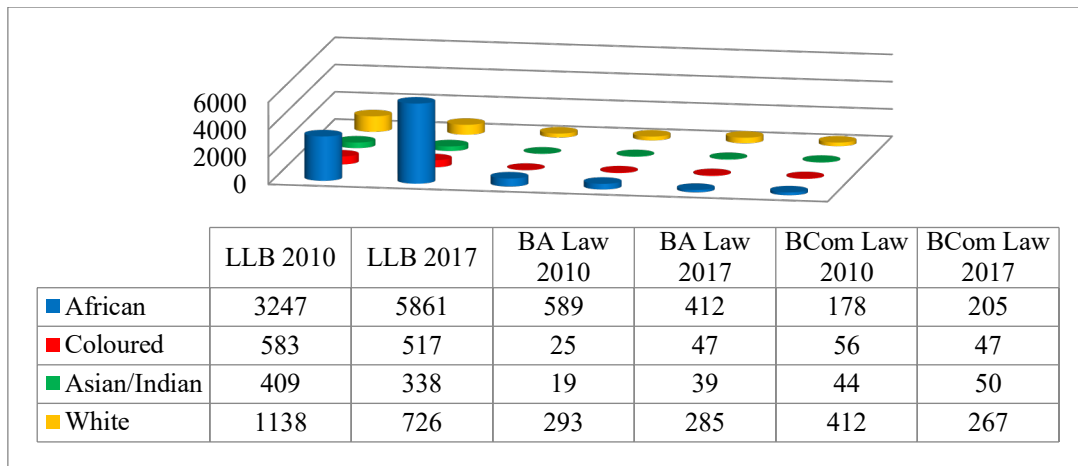


Figure 4-2: First year registration by degree type and race

Source: Law Society of South Africa⁵⁴ ([2010](#), [2017](#))

LLB registrations for Africans grew by 80 % from 3247 in 2010 to 5861 in 2017. This is an indication of the growing popularity of the LLB degree, as well as the growing entry of Africans into legal education. In addition, all race groups, apart from Africans, have declined registrations for the LLB programme.

Figure 4-3 illustrates the increases in the LLB programme for both men and women, with women outnumbering men.

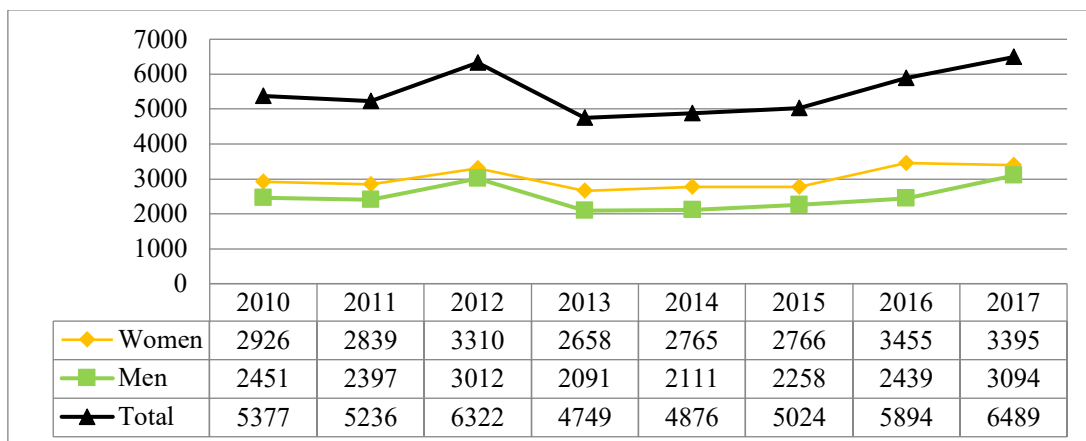


Figure 4-3: First year LLB registration by gender

Source: LSSA ([2010](#), [2017](#))

⁵⁴ Hereafter the abbreviation LSSA will be used.

These statistics are not the end of the story. While the majority of students registering for the LLB are Africans and women, it is important to assess whether the same holds for graduation trends (Figure 4-4).

4.2.2 The rise of black graduates

Graduation trends in Figure 4-4 show that most students graduating with an LLB degree are African, followed by whites. Similar to the trends observed for registrations (Figure 4-2), the numbers for coloured and Asian/Indian graduates are relatively small in comparison to those of African and white graduates.

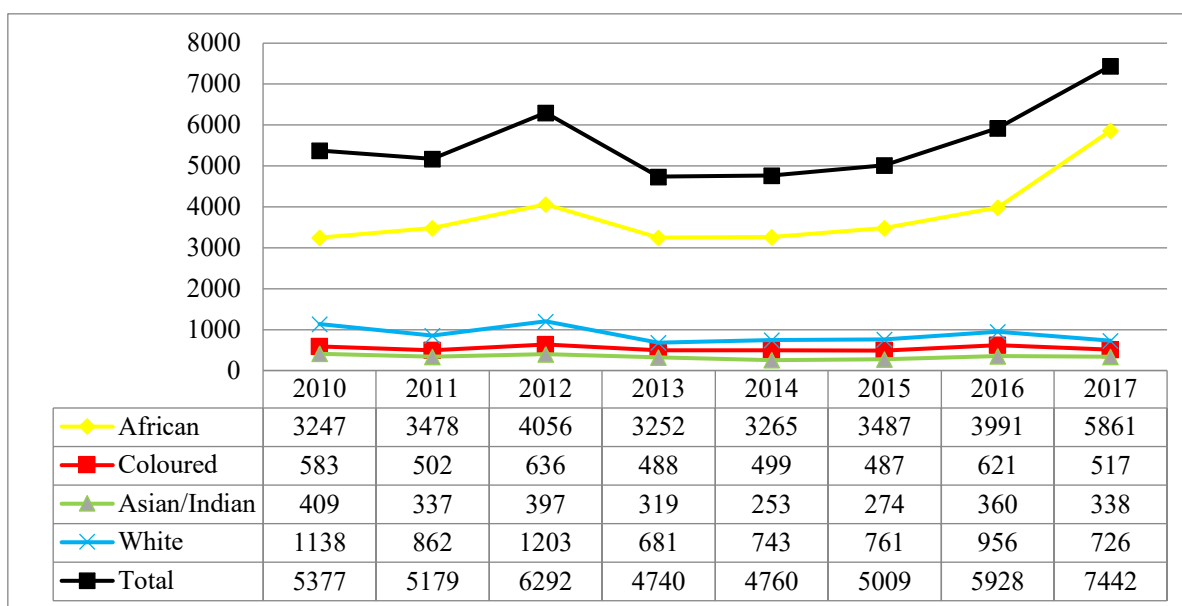


Figure 4-4: LLB graduates by race

Source: LSSA ([2010](#), [2011](#), [2012](#), [2013](#), [2014](#), [2015](#), [2016](#), [2017](#))

The statistics paint a positive picture for both genders as both men and women are increasingly graduating with LLB degrees and women are consistently outperforming men (Figure 4-5).

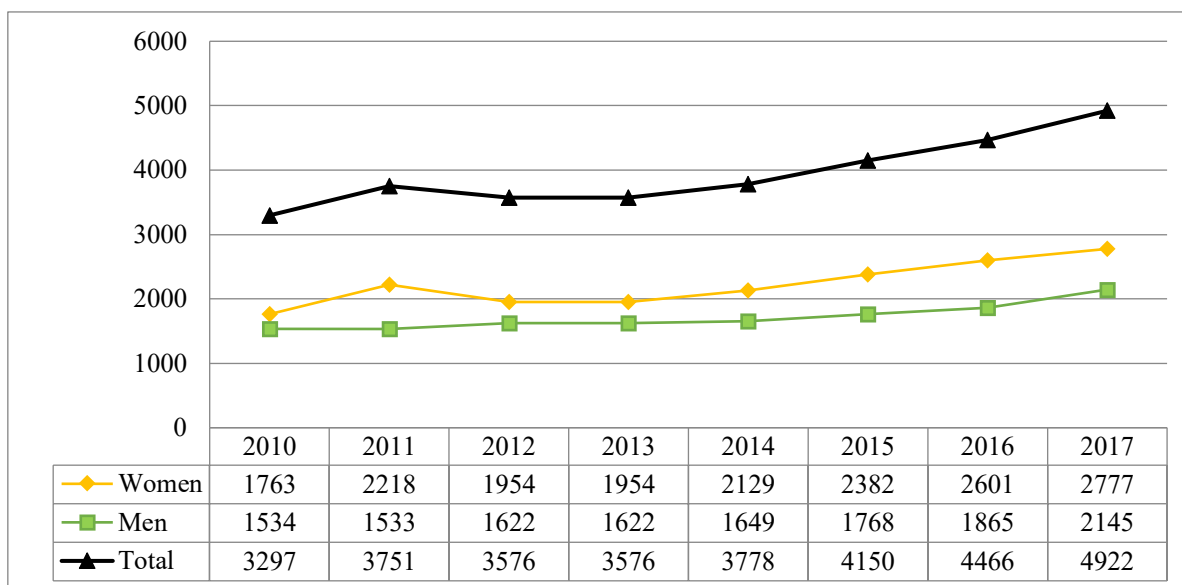


Figure 4-5: LLB graduation by gender

Source: LSSA ([2010](#), [2011](#), [2012](#), [2013](#), [2014](#), [2015](#), [2016](#), [2017](#))

Thus far, Figure 4-2 to Figure 4-5 show that the entry point of the profession is dominated by the African population group and women as a collective. These trends will be compared later at the more senior levels of the profession, specifically at the practising and partnership level, as this is a critical stage in an attorney's career. There are many career options for law graduates and the vast majority start their legal careers in private practice by following the attorney route. This, however, requires graduates to first complete comprehensive vocational training.

4.3 Stage 2: Vocational training

To practice as an attorney, graduates are required to complete comprehensive vocational training. This training is done through (1) compulsory articles of clerkship and (2) a course at the School for Legal Practice before being admitted to practice as an attorney.

4.3.1 Articles of clerkship

Figure 4-6 shows that there was a significant increase in the number of Africans from 665 in 2010 to 1477 in 2017. This is a growth of 122 % over the period at an average of 12% per annum. This is followed by a 31% increase in the number of Asian/Indian, with smaller increases for coloureds (16%) and whites (1.7 %). In 2011 all race groups except Asian/Indian experienced a decline. The same trend for all groups occurred in 2016. In 2017, the coloured population was also the only group to decline in numbers. It is not clear why these trends occurred (Figure 4-6).

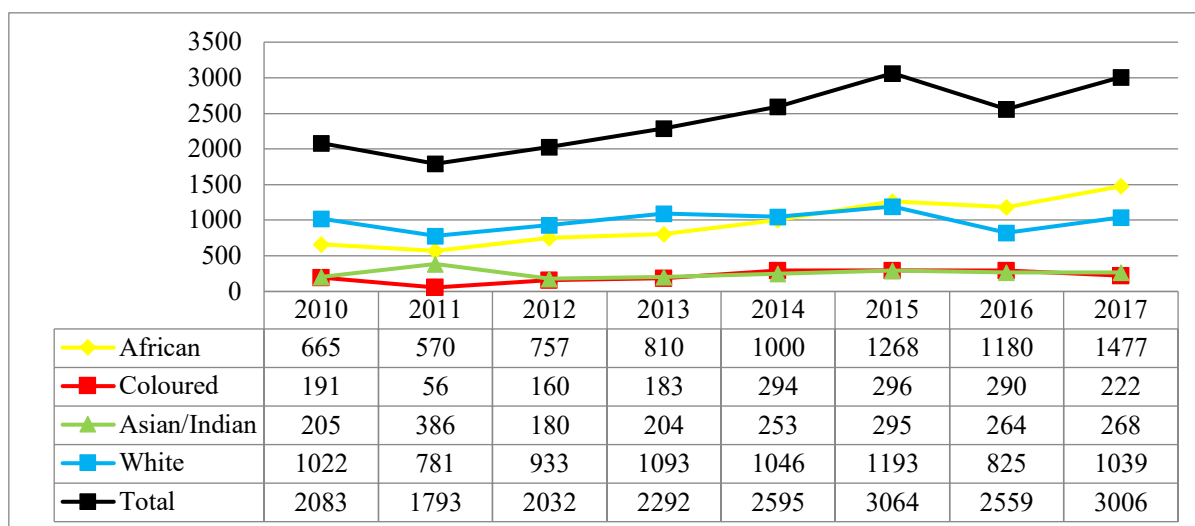


Figure 4-6: Articles of clerkship by race

Source: LSSA ([2010](#), [2011](#), [2012](#), [2013](#), [2014](#), [2015](#), [2016](#), [2017](#))

The number of both men and women registered for articles increased, by a 42% growth over the period for women, or an average of 5% per annum. Men, however, had a slightly higher rate of increase at 47% with an annual average of 5.7%. The overall trend is one of positive change for both genders, as illustrated in Figure 4-7.

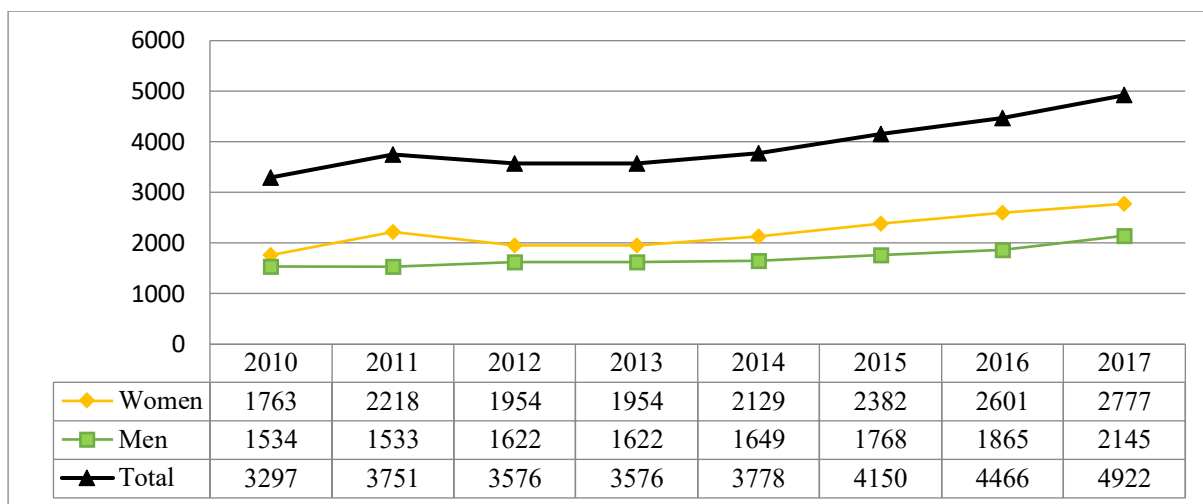


Figure 4-7: Articles of clerkship by gender

Source: LSSA ([2010](#), [2011](#), [2012](#), [2013](#), [2014](#), [2015](#), [2016](#), [2017](#))

4.3.2 School for Legal Practice

There was an increase in the number of coloured and African students attending the School for Legal Practice, with the coloured population having experienced the largest growth of 88% over the period (Figure 4-8).

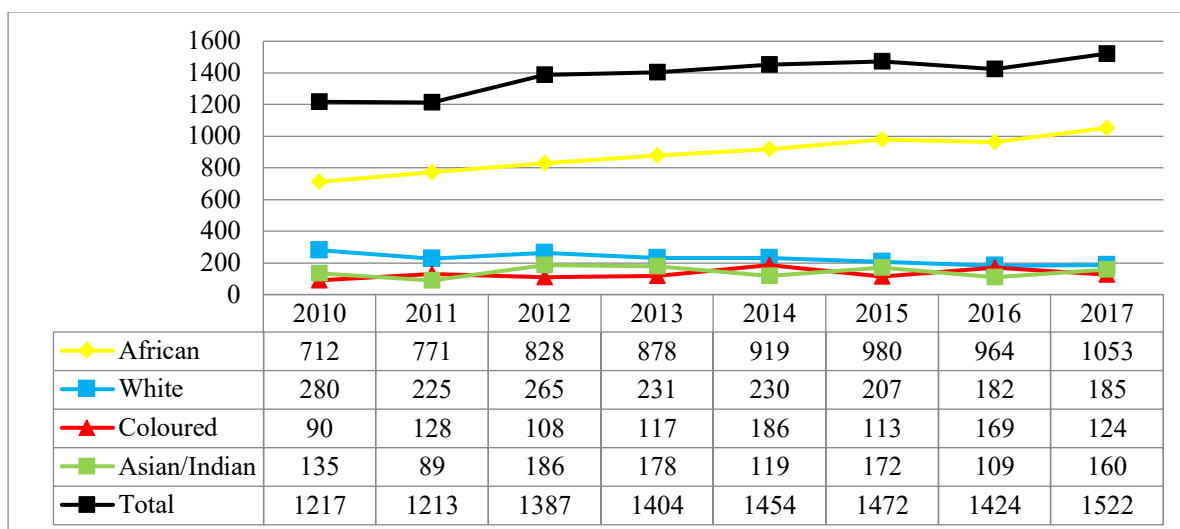


Figure 4-8: Attendance at school for legal practice by race

Source: LSSA ([2010](#), [2011](#), [2012](#), [2013](#), [2014](#), [2015](#), [2016](#), [2017](#))

The white and Asian/Indian population experienced a decline of -35% and -19% respectively over the same period. A possible explanation could be that white and Asian/Indian graduates are likely to enter articles immediately after graduation. Coloured and African graduates are therefore more likely to enrol at the School for Legal Practice, as they may have a lesser chance of obtaining entry into articles, which is in itself a very competitive process, especially to enter the more prestigious law firms. Other explanations could also be that they may pursue postgraduate studies, changing their career paths, or taking a gap year.

The number of women who attended the School for Legal Practice was consistently higher than the number of men (Figure 4-9). Women increased their numbers by 38% over the period, from 620 in 2010 to 857 in 2017, while the number of men declined by 0.09%.

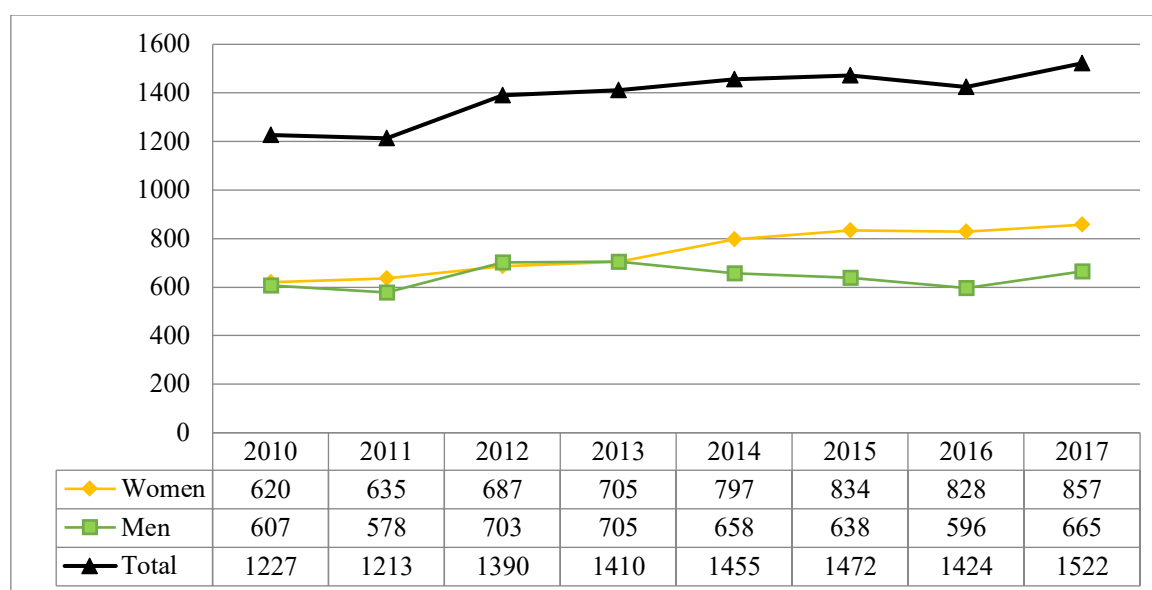


Figure 4-9: Attendance at school for legal practice by gender

Source: LSSA ([2010](#), [2011](#), [2012](#), [2013](#), [2014](#), [2015](#), [2016](#), [2017](#))

The increased attendance of women and coloured students at the School for Legal Practice is purportedly owing to an increase in the number of LLB graduates, which exceeds the number of positions for articles for legal practice available. Graduates who are not able to get articles

immediately after graduation, enrol at the School for Legal Practice to gain practical experience, hoping to make themselves more favourable candidates to firms and to reduce their period of articles by a few months (Godfrey & Midgley, 2008). Upon completion at the School for Legal Practice they may apply to do articles the following year. Following successful completion of vocational training, graduates qualify to be admitted as attorneys by the High Court. It is important to note that not all admitted attorneys will necessarily be practising, although the vast majority do.

4.4 Stage 3: Admission to the profession

The number of admitted attorneys increased for all race groups. The trends in Figure 4-10 support previous trends, where Africans were not only increasing their numbers at university and vocational training but have more than doubled admissions from 524 in 2010 to 1066 in 2017. This is a growth of 104%. The Asian/Indian population however had the highest growth at 110%.

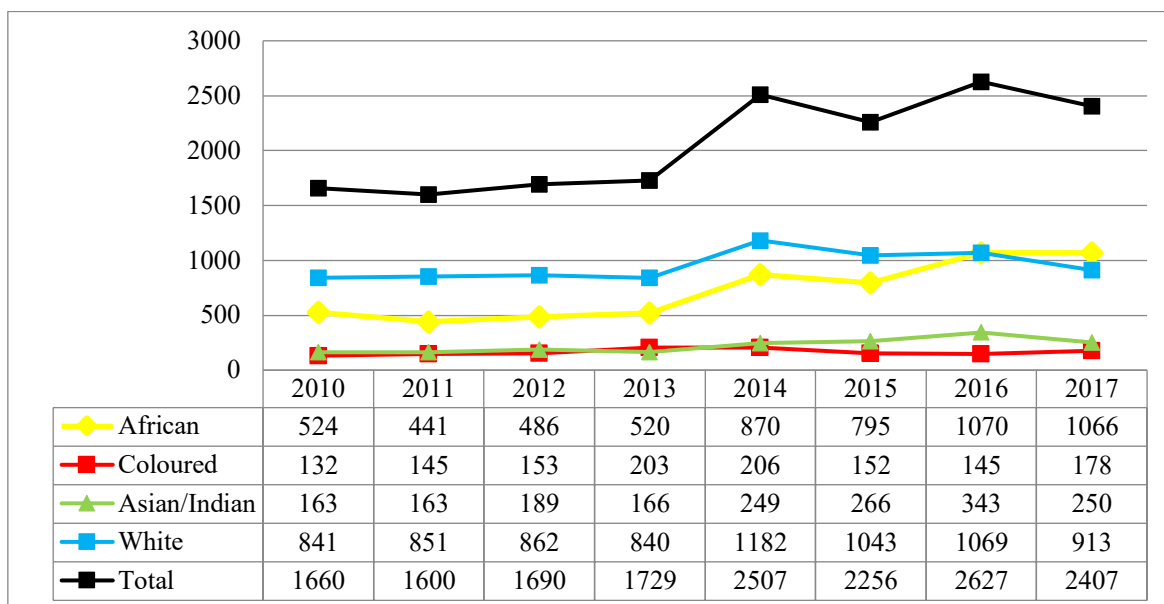


Figure 4-10: Admitted attorneys by race

Source: LSSA ([2010](#), [2011](#), [2012](#), [2013](#), [2014](#), [2015](#), [2016](#), [2017](#))

The number of women admitted into the profession grew and was consistently higher than the number of men (Figure 4-11).

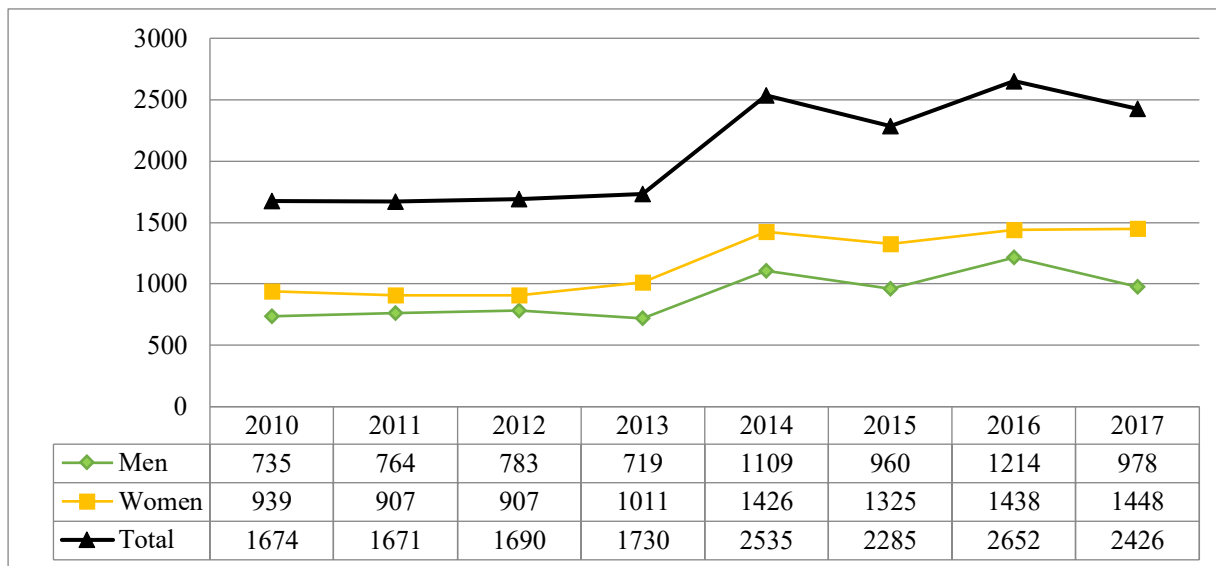


Figure 4-11: Admitted attorneys by gender

Source: LSSA ([2010](#), [2011](#), [2012](#), [2013](#), [2014](#), [2015](#), [2016](#), [2017](#))

Overall, the trends above provided a positive picture for gender and racial transformation in the early stages of attorneys’ careers. Up until this point the data showed that the requirements for becoming an attorney are quite stringent (see Figure 4-1), but the numbers for women and blacks are steadily increasing. The following section shows that while women and blacks may be accelerating representivity in the early stages of their career, however, the picture at the mid-point in their career becomes a little less promising.

4.5 Stage 4: Practising attorneys

Figure 4-12 contradicts previous trends (Figure 4-2, Figure 4-4, Figure 4-6, Figure 4-8 and Figure 4-10) on race where Africans outnumbered whites. Most practising attorneys were white. It is not clear why 2011 and 2016 saw a significant decline in the number of coloureds. While all race groups increased their numbers over the period, it was, however, the

Asian/Indian population who had the highest growth at 180%, followed by Africans (90%) and coloureds (50%), with whites having the least growth at 22%. Despite having the least growth over the period, whites significantly outnumbered all race groups as far as being employed goes.

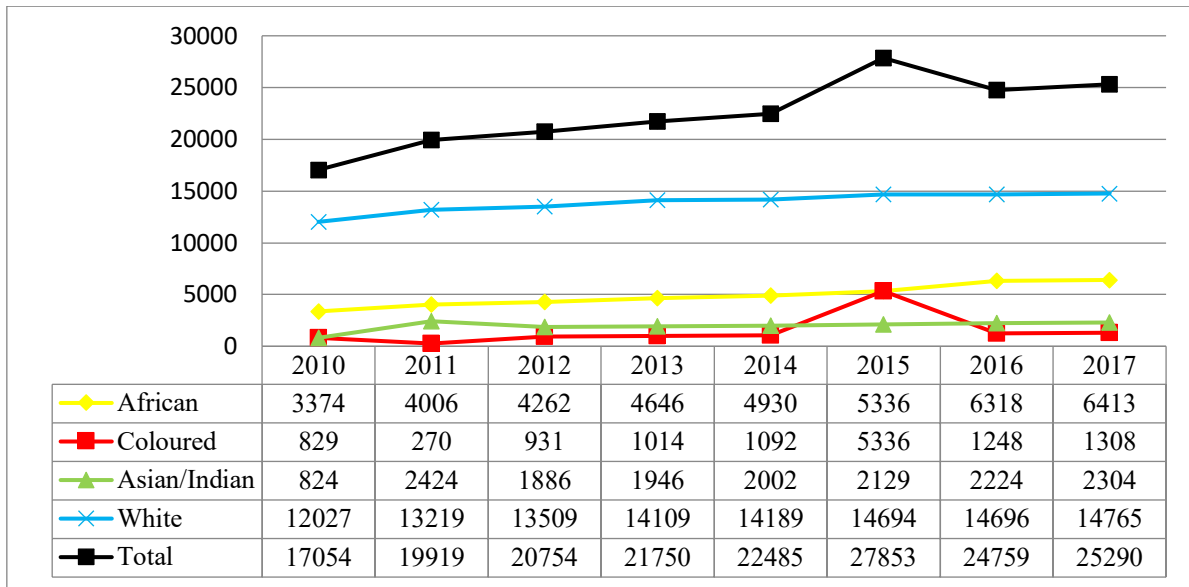


Figure 4-12: Practising attorneys by race

Source: LSSA ([2010](#), [2011](#), [2012](#), [2013](#), [2014](#), [2015](#), [2016](#), [2017](#))

Considering the data in the 2012 – 2017 period, a linear prediction was forecasted and showed that over the next thirty years⁵⁵, the racial profile of the profession will be far from equal. The projections show that all race groups will increase their numbers, but white people will continue to dominate the profession. The statistical relation between Africans and whites will slightly contract, though the statistical relation between whites and all other groups will expand. The statistical relation between African, coloured, and Asian/Indian groups will expand (Figure 4-13), thus increasing inequality.

⁵⁵ Calculated from 2017.

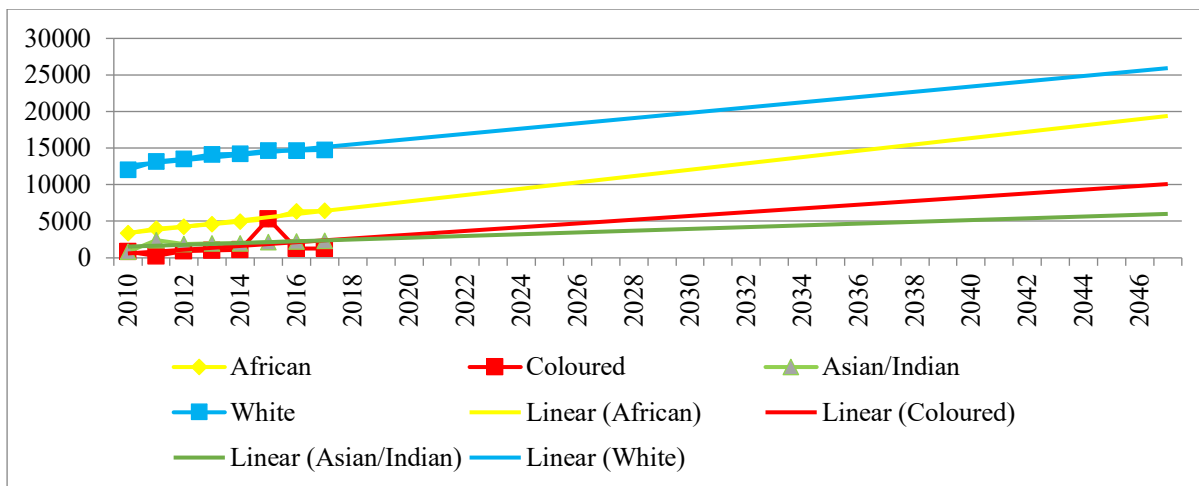


Figure 4-13: Linear prediction of attorneys by race

Source: Author calculations based on LSSA 2012 – 2017 data

The gender composition of practising attorneys showed that the number of women consistently increased, with a growth rate of 52% over the period. The data also showed that not only did the number of men consistently increase, but they also significantly outnumbered the number of women (Figure 4-15). Despite the higher enrolment (Figure 4-3), graduation (Figure 4-5) and admission rates (Figure 4-11) for women, they only constituted 39% (9818) of practising attorneys in 2017 (Figure 4-14), which means that 61% of practising attorneys were men.

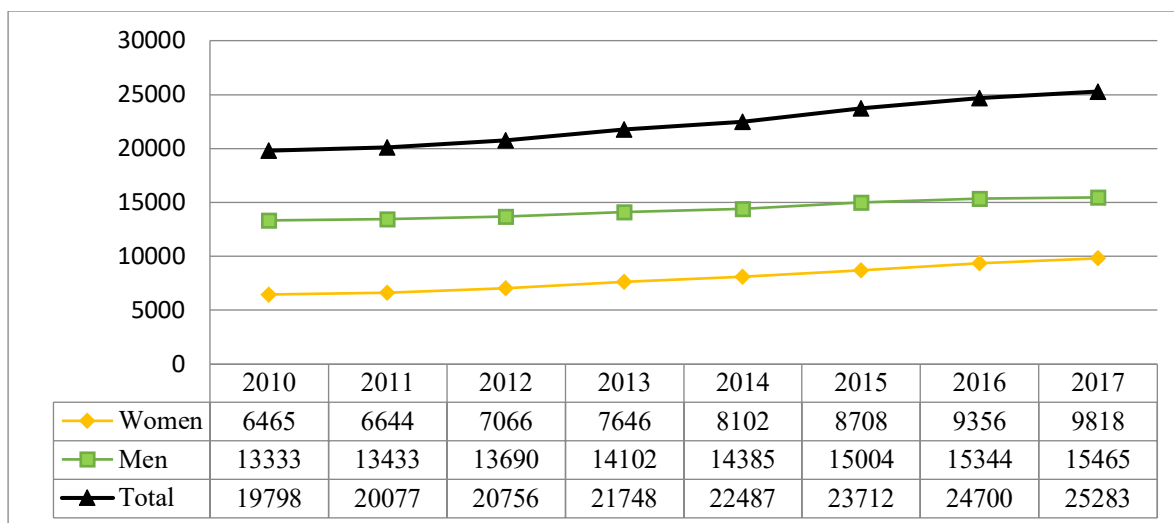


Figure 4-14: Practising attorneys by gender

Source: LSSA ([2010](#), [2011](#), [2012](#), [2013](#), [2014](#), [2015](#), [2016](#), [2017](#))

Given the data in the period between 2012-2017 in Figure 4-14, a linear prediction showed that it would take an additional thirty-five years before men and women practising as attorneys are statistically equal (the year 2052), (see Figure 4-15).

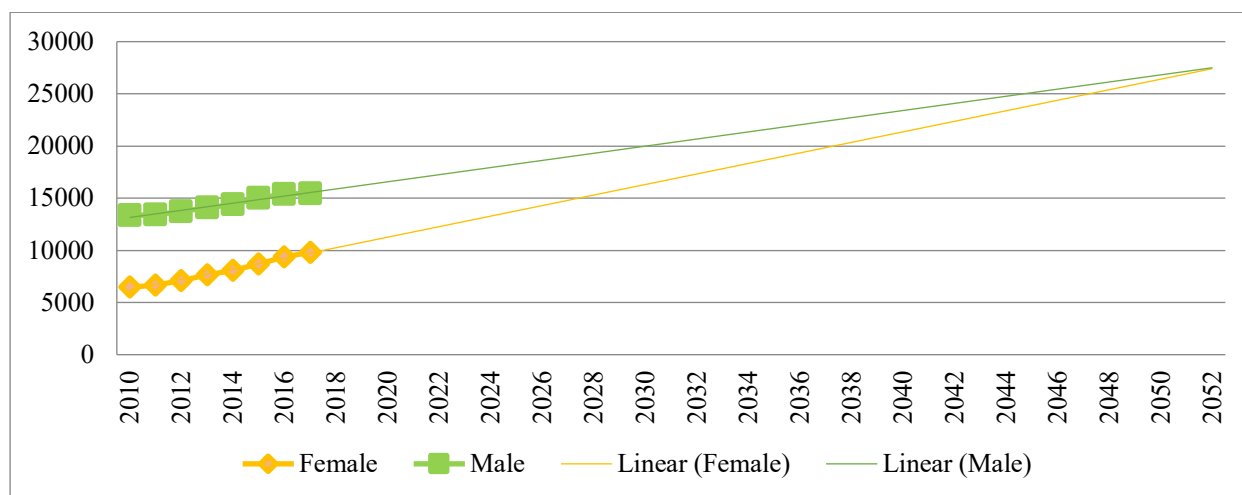


Figure 4-15: Linear prediction of practising attorney by gender

Source: Author calculations based on LSSA 2012 – 2017 data

Despite the nuances, the analysis in the preceding sections painted a positive picture for previously disadvantaged groups, especially Africans and women. This level of analysis however is not the end of the story. An important question to ask is, to what extent do these statistics match up against the South African population? Does it reflect broad or demographic representivity?

4.6 Demographic representivity in the early years.

4.6.1 Race

Transformation of the profession must reflect and represent “the racial and gender composition of South African society” ([Department of Justice, 2007a, p. 11](#)), therefore a deeper level of analysis requires an assessment, which measures the race and gender statistics in the profession

against their share of the national population (demographic representivity). This type of analysis reflects the level of skewedness or whether a particular race or gender is over or under-represented in comparison to their share of the general population. It takes the most recent statistics (2017) and calculates it by the proportion of each race and gender group in relation to its size in the general South African population, where 1.0 is a perfect-equal representation and anything above 1 is over-represented or below 1 is under-represented. The 2017 population statistics for South Africa are: Africans (80.8%), Asian/Indian (2.5%), coloured (8.8%) and white (8%). The gender population is men (49%) and women (51%).

Despite Africans experiencing substantial growth rates in the profession (recall Figure 4-2, Figure 4-4, Figure 4-6, Figure 4-8, Figure 4-10 and Figure 4-12); they were however significantly under-represented in comparison to their share of the general population (Figure 4-16, Figure 4-17, Figure 4-18 and Figure 4-19). The white and Asian/Indian population were over-represented in the profession, compared to their share of the South African population (Figure 4-16, Figure 4-17, Figure 4-18 and Figure 4-19). The number of coloureds graduating with the LLB degree was however close to being representative.

1.0 = LLB graduates in proportion to SA population size

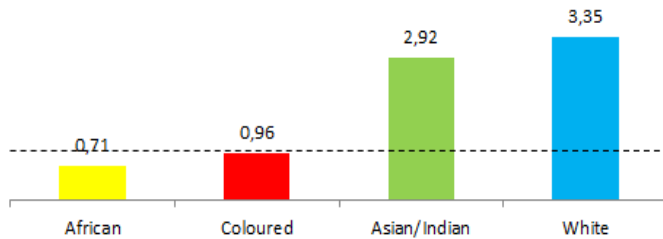


Figure 4-16: LLB graduates in proportion to SA population size (2017)

Source: Author calculations based on Stats SA populations statistics

1.0 = Registration for articles in proportion to SA population size

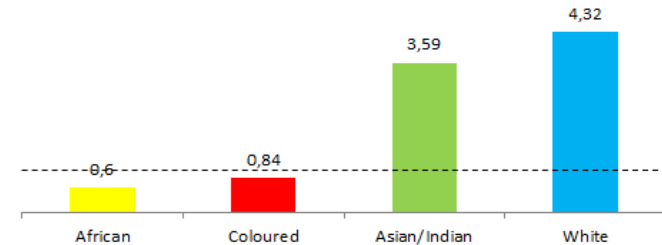


Figure 4-17: Articles registration in proportion to SA population size (2017)

Source: Author calculations based on Stats SA populations statistics

1.0 = Attendance at School for Legal Practice in proportion to SA population size

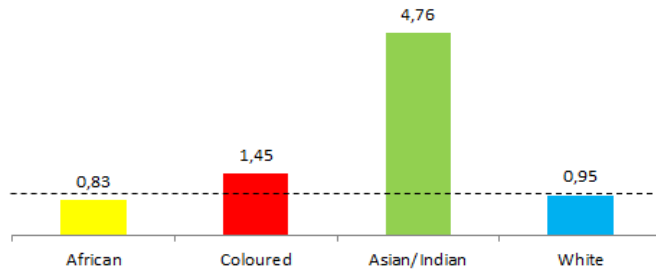


Figure 4-18: Attendance at school for legal practice in proportion to SA population size (2017)

Source: Author calculations based on Stats SA populations statistics

1.0 = Admitted attorneys in proportion to SA population size

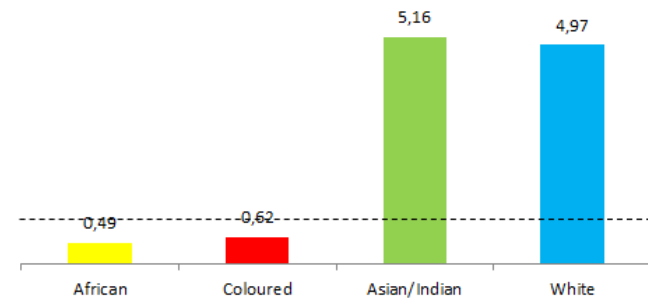


Figure 4-19: Admitted attorneys in proportion to SA population size (2017)

Source: Author calculations based on Stats SA populations statistics

The white population were particularly over-represented at all phases except for attendance at the School for Legal Practice where they were slightly under-represented (Figure 4-18). A possible explanation for this could be owing to their being more than four times over-represented for the articles of clerkship positions (Figure 4-17) and more likely to access opportunities for articles directly after graduation therefore do not need to attend the School for Legal Practice. Figure 4-16 shows that whites were three times more likely to graduate with an LLB degree and four times more likely to obtain entry into articles of clerkship (Figure 4-17). Similar trends hold for the Asian/Indian population who despite their smaller share of the population, were over-represented at all levels in the profession (Figure 4-16, Figure 4-17, Figure 4-18 and Figure 4-19). The picture for the coloured population appears bleak (Figure 4-16, Figure 4-17 and Figure 4-19), except for attendance at the School for Legal Practice, where they are slightly over-represented at 1.45 (Figure 4-18). As mentioned before, this over-representation was possibly owing to their being less likely to get articles of clerkship. As a result, attending the School for Legal Practice was the next best alternative.

4.6.2 Gender

The analysis thus far painted a positive picture for women in the early stages of their career. It is therefore not surprising to note that women were in fact over-represented during legal education and training (Figure 4-20, Figure 4-21, Figure 4-22 and Figure 4-23). Similarly, men were over-represented during vocational training (Figure 4-21 and Figure 4-22), and under-represented at graduation (Figure 4-20) and admissions (Figure 4-23).

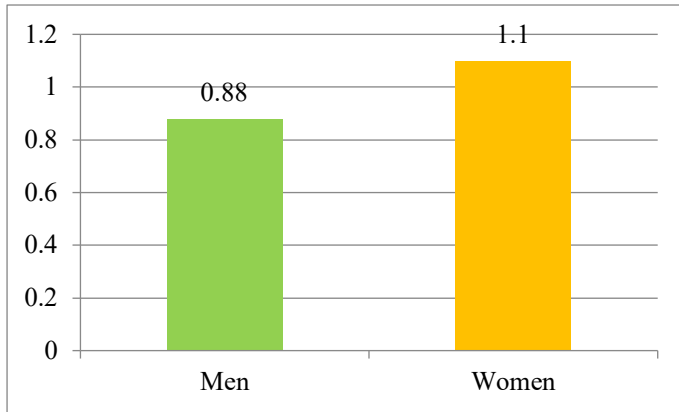


Figure 4-20: LLB graduates by gender in relation to SA population size (2017)

Source: Author calculations based on Stats SA populations statistics

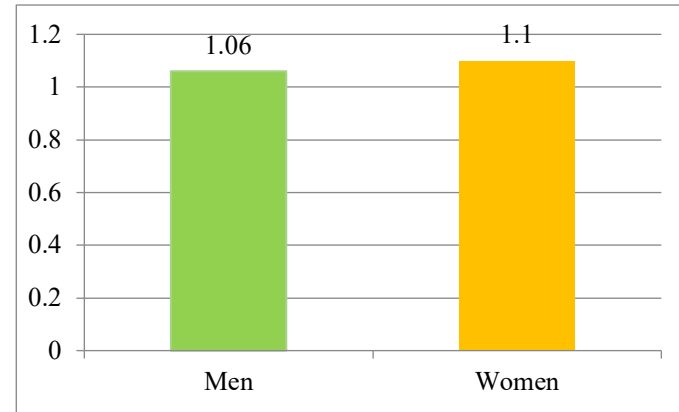


Figure 4-21: Articles registration by gender in relation to SA population size (2017)

Source: Author calculations based on Stats SA populations statistics

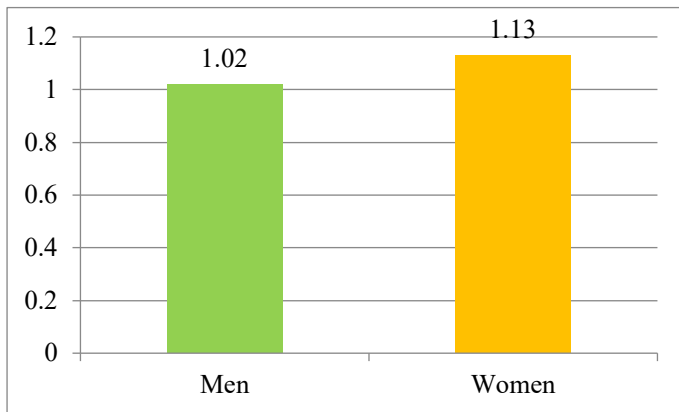


Figure 4-22: Attendance at School for Legal Practice by gender in proportion to SA population (2017)

Source: Author calculations based on Stats SA populations statistics

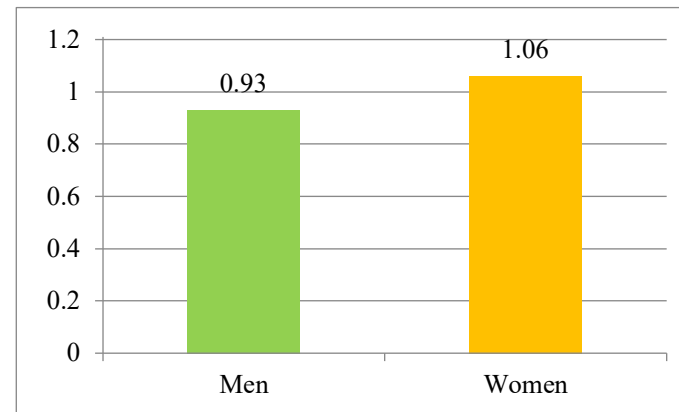


Figure 4-23: Admitted attorneys by gender in relation to SA population size (2017)

Source: Author calculations based on Stats SA populations statistics

4.6.3 Demographic representation during legal practice

The analysis thus far has painted a relatively positive picture for women and blacks, particularly the African population. However, Figure 4-24 and Figure 4-25 respectively illustrate some striking observations. Figure 4-24 shows that whites were more than seven times over-represented at the practising attorney level, with the Asian/Indian population over-represented by nearly four times their share of the population. Practising attorneys in the African and coloured population groups were grossly under-represented in the profession. This is indicative that despite the growth in the numbers of Africans entering the profession, the profession favours and is more open to South Africa's white population.

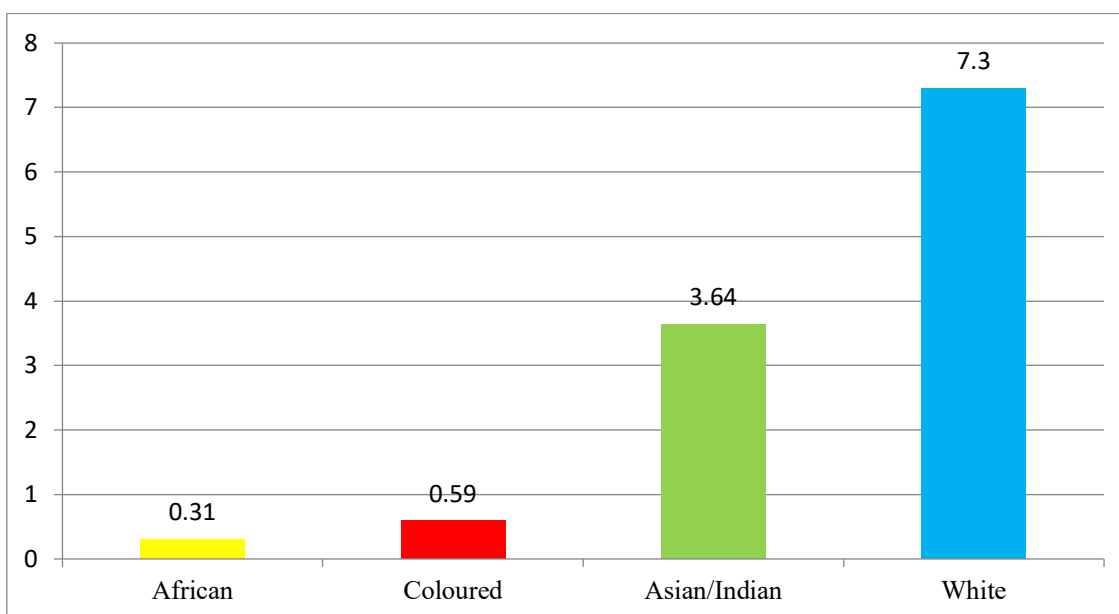


Figure 4-24: Practising attorneys by race in relation to SA population (2017)

Source: Author calculations based on Stats SA ([2017](#)) population statistics.

Despite earlier trends painting a positive picture for women, Figure 4-25 show that it is at the practising level that women are negligibly under-represented in comparison to their share of

the general population. In addition to this, Figure 4-15 illustrated that it will take another three decades before men and women could be considered statistically equal.

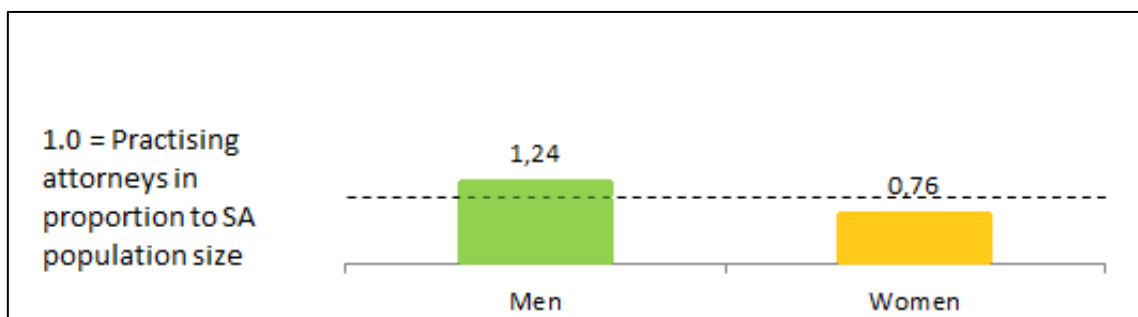


Figure 4-25: Practising attorneys by gender in proportion to SA population size (2017)

Source: Author calculations based on Stats SA ([2017](#)) populations statistics.

This data confirms that the entry level of the professions is favourable to women, but at mid-level, or practising as an attorney favours men and in particular white men. Section 4.6 has shown that while the majority of the South African population is African, they are unfortunately not on par with their share of the population. The Asian/Indian and white population has the smallest demographic representation in the country but are significantly over-represented in the profession. This is illustrative that the racial and gender composition of practising attorneys in South Africa does not match their share of the country's demographics. On this note, it is quite clear that the legal profession has been successful in attaining broad representivity but has been unsuccessful in achieving demographic representivity.

4.7 Stage 5: Promotion to partnership

The highlight in an attorney's career is achieving partnership status, which is a symbol of success, elitism and prestige, signifying the attorney as part of the professional elite ([Beckman & Phillips, 2005](#); [Kay & Hagan, 1998](#); [Kumra & Vinnicombe, 2008](#); [Nelson, 1988](#)). An associate's promotion to partnership is therefore a reward symbolic of hard work, commitment,

loyalty, and dedication. This affords him or her lifetime tenure, autonomy, and decision-making power ([Kay & Gorman, 2008](#); [Wallace & Kay, 2008](#); [Walsh, 2012](#)).

There are not many hierarchical levels in law firms and partners generally manage themselves and the associates who work with them. The hierarchy of the profession resembles a pyramid structure ([Morgan, 2013](#)) and consists of candidate attorney (CA) at the bottom of the structure, followed by junior associate, senior associate, salaried partner and equity partner at the apex⁵⁶ ([Campbell & Charlesworth, 2012](#)). Internationally, the partnership level is particularly closed and the candidate attorney (CA) level open ([Bruck & Canter, 2008](#); [Kumra & Vinnicombe, 2008](#); [Wallace & Kay, 2008](#)). In South Africa, the partnership level appears to be quite open with partners dominating the professional hierarchy, associates in the middle and CA's at the bottom (Figure 4-26).

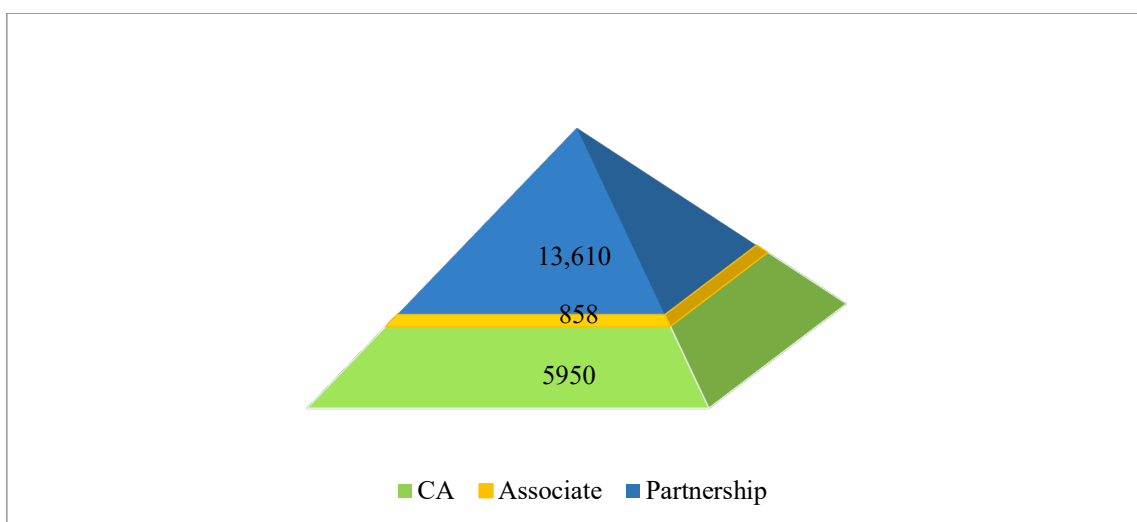


Figure 4-26: Professional hierarchy

Source: Author calculations based on individual law societies, 2017.

⁵⁶ In this study, the ranks of junior associate and senior associate are combined and refer to Associate, while salaried-partner and equity-partner are combined and referred to as Partner.

4.7.1 The creamy layer at the top

Across the professional hierarchy, the coloured population is under-represented (Figure 4-27). This reaffirms previous findings that the prospects for the coloured population appear bleak⁵⁷. At the CA and associate level, Africans have the highest representation; however, at the partnership level, the number of whites quadrupled, compared to all other race groups. This again reaffirms that the profession is dominated and over-represented by whites, with blacks confined to entry-level positions.

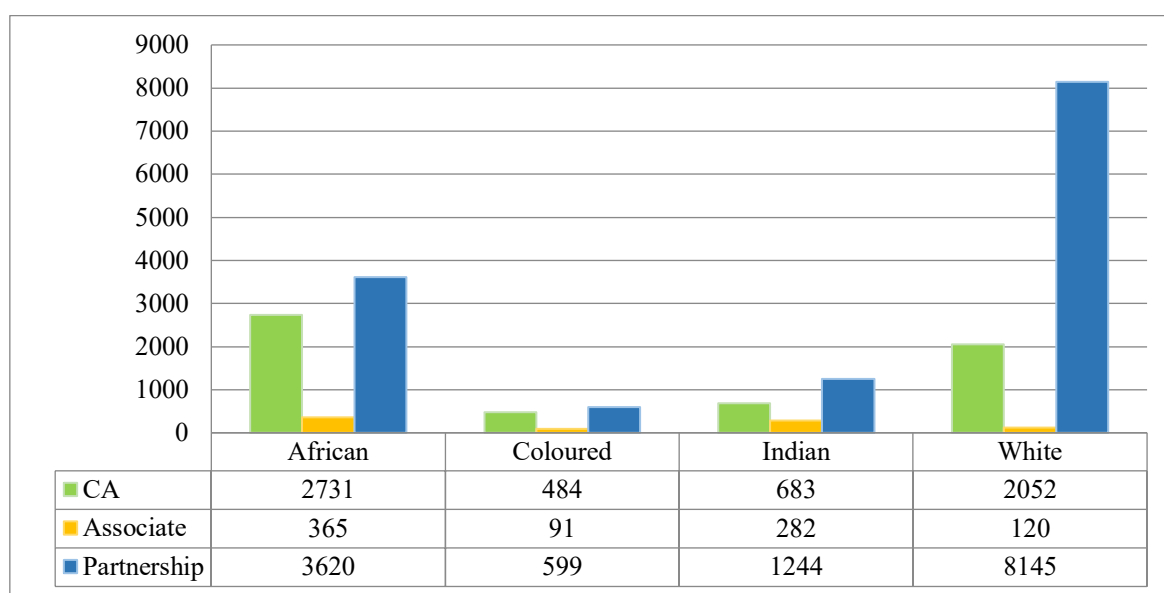


Figure 4-27: Professional hierarchy by race (2017)

Source: Author calculations based on individual law societies, 2017

Not only do whites outnumber all other race groups, but they are also significantly over-represented at the partnership level by nearly eight times more than their proportion of the population (Figure 4-28). This analysis is even more startling, given that Africans comprise 80% of the population, but are considerably under-represented and largely non-existent at 0.18 at the partnership level (Figure 4-28). These statistics allows one to infer an analogy that for

⁵⁷ See discussion in Section 4.6.

each African partner, there are at least seven white partners in South African law firms. This reaffirms extant literature that the South African legal profession continues to be white-male-dominated.

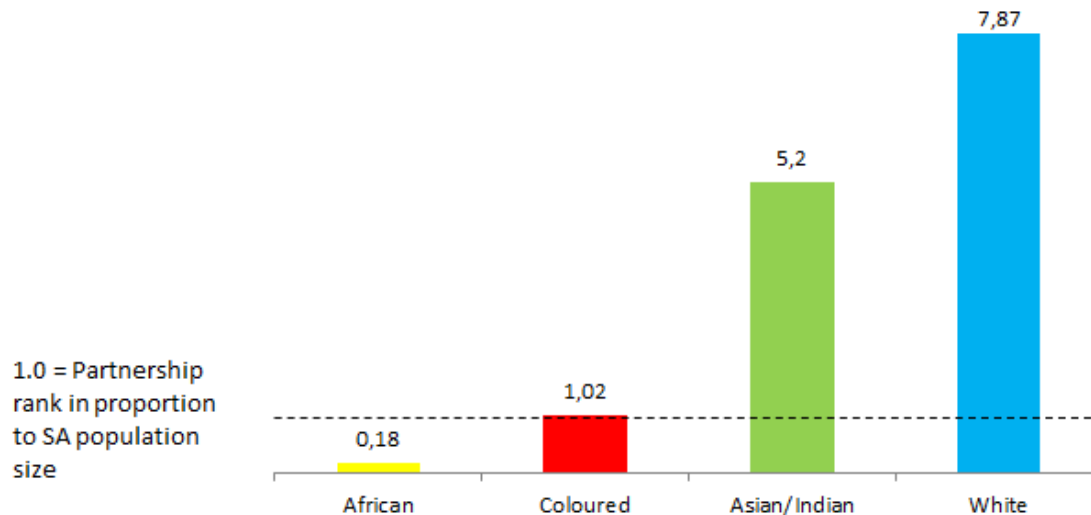


Figure 4-28: Partnership rank in proportion to SA population size: race

Source: Source: Author calculations based on Stats SA populations statistics

4.7.2 The ultimate paradox: Gender imbalance in the numbers

Women account for 57% of new entrants into the profession, which is reflective of the number of admitted attorneys. From 2010 to 2017 there has been a steady increase in the number of women attorneys from 6 465 to 9 818 ([Law Society of South Africa, 2010, 2017](#)). Although the number of women in the profession is increasing, the profession remains skewed at the most senior level, with male partners (72%) being more than double the number of women partners (28%). Despite employment equity policies to transform the labour market, the demographics indicate that the situation remains skewed. Confirming extant literature, Figure 4-29 paints a bleak picture for women aspiring to be partners.

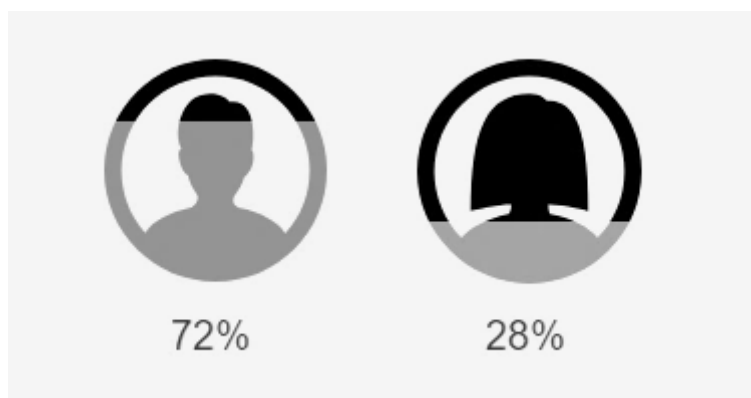


Figure 4-29: Partnership rank by gender

Source: Author calculations based on individual law societies, 2017.

Not only are women outnumbered, but they are also significantly under-represented with only half the women population in South Africa being represented at the partnership level and men being over-represented (Figure 4-30). It can be inferred that for every women partner there are at least two men partners.

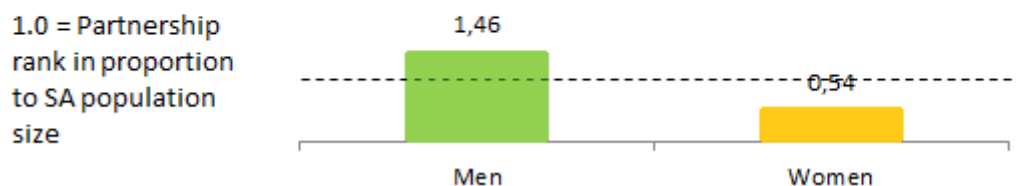


Figure 4-30: Partnership rank in proportion to SA population size: gender

Source: Author calculations based on Stats SA populations statistics.

While women of all race groups have less partnership representation than their male colleagues, Figure 4-31 shows that African and coloured women have a lower representation in comparison to their white women colleagues.

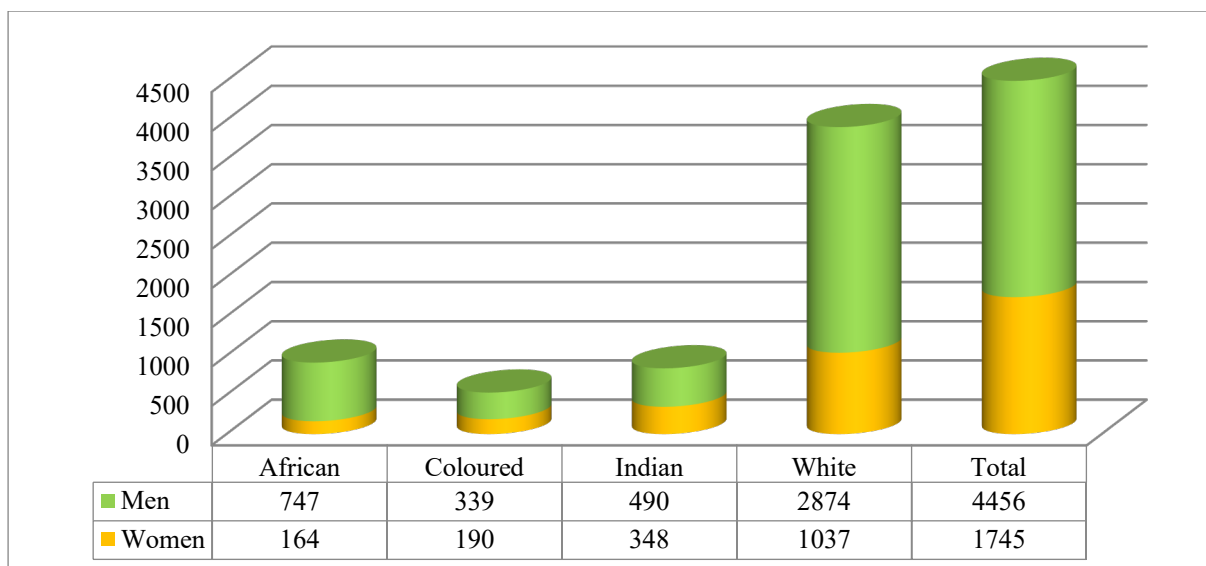


Figure 4-31: Partnership rank by race and gender (2017)

Source: Author calculations based on individual law societies, 2017

4.8 Chapter summary

The aim of this chapter was to evaluate *to what extent the profession has been feminised*. The data presented in this chapter consistently shows that there are more women and blacks at the entry point in the profession, but their numbers diminish notably at the point where they practise and become partners. Women are not advancing to the partnership level despite the rapid increase in graduation and admission rates, the growing market for legal services and the benefits of attaining partnership status ([Hull & Nelson, 2000](#); [Kay & Gorman, 2008](#); [Kumra & Vinnicombe, 2008](#); [Noonan et al., 2008](#); [Walsh, 2012](#)). Research shows that women find it more difficult to reach senior positions, despite having the same level of education, years of experience and quality of performance ([Burke & Nelson, 2002](#); [Pratt, 2012](#); [Siboni et al., 2016](#); [Tharenou, 1999](#)). It is estimated that women have less than a one-third chance of attaining partnership status ([Hull & Nelson, 2000](#)), with men being twice as likely to become partners ([Rhode, 2001](#)). This finding has indeed been confirmed in the case of South Africa, indicating that a glass ceiling is preventing women from moving up in the career hierarchy ([Kay & Hagan,](#)

[1998](#); [Masengu, 2016](#); [Ramotsho, 2018](#); [Rhode, 2017](#); [Sandberg, 2013](#); [Wald, 2009](#)). It is assumed that women law graduates will hold powerful positions in the profession since legal education and entrance into the profession are available to all, but advancing to the partnership level remains a major stumbling block for many women ([Gorman, 2006](#); [Seron, 2013](#)). The unequal position of women and blacks in the hierarchy of legal firms can no longer be blamed on an insufficient number of women and blacks entering the profession. It is important to explore the causes that prevent successful women graduates and attorneys from reaching the pinnacle of their legal career.

Despite the many laws, policies and conventions promoting gender redress and transformation, and the increased number of women graduating from university, women are still experiencing challenges in reaching the peak of their legal careers. This chapter illustrates at a quantitative level the gendered and racial landscape of the South African attorney's profession. The increase in the number of women candidate attorneys (those doing articles of clerkship) is perhaps not very surprising, as it correlates with university enrolment and completion trends. International trends have shown the disparity to be largely at the partnership level. This chapter has shown the disparity to be not only at the partnership level, but also at the practising level. This finding is an indication that South Africa is regressing, because women are being excluded from progressing in their careers much earlier. The paucity of women and black attorneys in positions of authority is indicative that meaningful change has not occurred in the profession. Women have fought for legislative reform and are without doubt experiencing the law in ways that had previously been unthinkable. Not only do they want to grow and develop in their careers, but they also want to see change. They see themselves acquiring skills that they can use to excel and grow in their careers and make a contribution to society. We are witnessing an era where more women are entering (and will be entering) the profession and where the

focus of research needs to shift from exploring opening doors and eradicating barriers to entering doors to buildings that have glass ceilings ([Mathodlana, 2017](#)). The legal profession in South Africa is an interesting case, as it is quite attractive to the youth (especially women) and will continue to be so.

The profession has come a long way, but the situation in the profession is largely one that does not allow women to have a voice to institute change. While there are women at the top of the profession, the positions they occupy are relatively low in number and “just enough to stop anyone crying foul” ([Lamond, 2017, p. 16](#)). Legislative change has without doubt given women a minimal voice to speak out, but has done very little to transform the work and social environment women find themselves in. Having a voice to affect any form of change in the profession requires women to be represented in senior and decision-making positions, with the support of their colleagues. Sadly, the largely white male-dominant profession remains unperturbed by the plight of women. However, it is important to note that while the numbers of women in senior positions are low, it is their individual stories that will continue to give hope to the next generation of attorneys.

This chapter has provided a comprehensive account of the feminisation of the profession. It has confirmed that women attorneys in South Africa possess the necessary institutionalised capital, but this has proven to be insufficient in attaining equality and transformation of the profession. This suggests that there are bigger and more systemic issues involved in keeping women on the margins of the profession. Quantitative analysis, such as the present one, is important in revealing the current and future situation from a statistical point of view, but statistics cannot explain why such trends are occurring. Therefore, quantitative studies should empirically guide qualitative work to explore the challenges that women are experiencing. Why

are they experiencing challenges and how are they experiencing these challenges? It is equally important to understand that South African women are not a homogenous group, and research should consider various social constructs and intersections that confront women, for example, race, gender, class, ethnicity, religion, and marital status. Women attorneys in South Africa are ready for their voices to be heard and their stories to be told. These are conversations that must happen, not only to ensure transformation in the profession, but also in the broader legal fraternity and South African society. Failure to engage with such conversations will negate any effort to transform the profession further. It is on this note that the preceding chapters engage with the second research question of this study: *What are the factors that impede the career prospects of women?* This question makes explicit the gendered organisational, social, and cultural factors that impact the experiences of women, and thereby facilitating the white male-dominant profession. The analysis and findings regarding this question are presented in Chapter five, six and seven.

Chapter 5: Time is money: The hyper-competitive culture of corporate legal practice

5.1 Introduction

This chapter discusses the hyper-competitive culture of contemporary corporate legal practice in South Africa. It specifically draws attention to the business model of the profession, underpinned by powerful clients, the billable hour, long hours, total availability, and physical presence. Together, these illustrate how the body is a vehicle for demonstrating conformity or non-conformity to the hyper-competitive masculinised professional culture, which operates under a seemingly gender-neutral discourse. In addition, it illustrates how time is a critical resource in maintaining and reproducing the professional culture. Towards this end, I propose the need to consider time as a form of capital.

5.2 Clients: “they do think that they buy you”⁵⁸

The women consistently noted that clients are regarded as the livelihood of the profession and often referred to them as the “bread and butter of the profession” (Miche⁵⁹). Most clients whom the attorneys and their firms are servicing are powerful corporate firms across a range of industries in South Africa and internationally. The women reflected on the shift in accountability in the profession. They felt that they were no longer accountable only to their firm, but also to their clients. Tania⁶⁰ pointed out that “you’re not only accountable to your

⁵⁸Ayesha, coloured, associate, single, Malusi Attorneys, 21 September 2017.

⁵⁹ Miche, white, in-house counsel, married, Adams & Sullivan Attorneys, 2 March 2018.

⁶⁰ Tania, white, associate, married, Adams & Sullivan Attorneys, 29 November 2016.

employer [firm]; you're accountable to your clients". In addition, the women highlighted the pressure clients place on them to be available⁶¹ and providing them with an efficient service.

They put a lot of pressure on us for deliverables. What I think is weird is that you look at any other profession; they don't have their clients calling them after hours, whereas with us...clients expect you to be available. So, I could get a call from a client at 07:00 on a Sunday morning or 22:00 on a Sunday night, it makes no difference, that's when they want to talk...And I think clients feel like they can dictate based on the fact that they pay such high fees. (Ayesha⁶²)

They were unanimous on the profession's dependence on clients and the respect and status clients receive from attorneys:

I think they [clients] play a major role in the sense that... we live off our clients. We cannot function if we don't have clients. So many times, the client is held in higher regard than the actual lawyer who's doing the working. (Akhona⁶³)

The greater the law firm's dependence on the client, the higher the client's demands. Clients have different influences on law firms based on their financial or political importance to the firm. Bourgeault et al ([2011](#)) therefore argue that when the client is a corporation, it holds excessive power over the law firm. The competitive nature of legal practice means that attorneys continuously have to ensure that client expectations are met so that it provides them with a consistent income. This succinctly captures the subservience of the practitioner to the client ([Sommerlad, 2002](#)). In this vein, Tammy⁶⁴ pointed out that:

⁶¹ This is further discussed in Section 5.4.

⁶² Ayesha, coloured, associate, single, Malusi Attorneys, 21 September 2017.

⁶³ Akhona, black, associate, single, Adams & Sullivan Attorneys, 27 February 2018.

⁶⁴ Tammy, white, associate, single, Adams & Sullivan Attorneys, 24 November 2016.

You're there to service them [clients] and if you don't give them a quality of service within an efficient time period; they will find somebody that will... We get our work from clients and at our firm we'll have bigger clients and those are clients you need because you can't every day get different clients. If you have a big client, they will call you for everything and you will have constant work. (Tammy64)

This is indicative of an attorney's commitment and loyalty to their client. Like their corporate clients, law firms are driven by capital accumulation. Competition is their *raison d'être* as they compete for clients ([Thornton, 2016a](#)). Clients are aware that competition in the profession is fierce and of the dependence attorneys and firms have on them. This dependency is centred on the revenue-generation model of the profession which focuses on billable hours⁶⁵ and the importance of generating surplus revenue or profits. The role of the clients and the importance of the billable hours are central to the practice of corporate law and cannot exist or be understood without each other. Should client expectations not be met, they will not hesitate to approach another firm. The presence of the client within the social relations of the legal profession has meant that the traditional management-worker dyad has to be adjusted to include the client ([Korczynski, 2013](#)). It is no longer a linear relationship between attorney and law firm, but a triangular relation between attorney, client, and law firm⁶⁶. I graphically illustrate this relation in Figure 5-1, illustrating the central role clients have in the profession by placing it at the pinnacle of the triangle with attorney and law firm on either side.

⁶⁵ Further discussed in Section 5.3.

⁶⁶ This triangular relation is not necessarily new, but the increasingly powerful role of the client has intensified the level of accountability of the attorney towards the client.

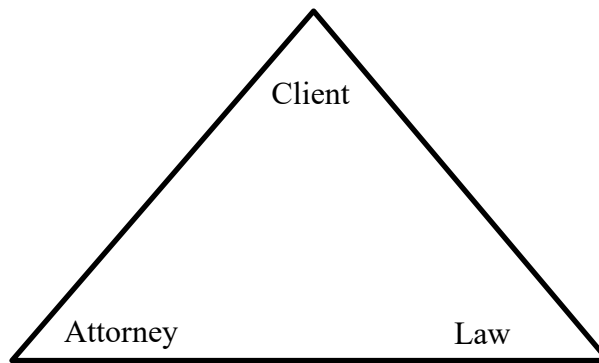


Figure 5-1: Relation between client, attorney, and law firm.

5.3 The billable hour: “Because law firms are all about bill, bill, bill”⁶⁷

The women highlighted that the powerful triangular relationship between client, law firms and attorneys (see Figure 5-1), is encapsulated through the billable hour. The billable hour is a defining feature of the profession which renders the work of attorneys calculable. As mentioned before, it is essentially the revenue-generation model of the profession, where attorneys charge their time to clients at a set rate per hour for their services. The rate charged is based on the rank or position of the attorney as well as the practice specialisation. Hence,

The more junior you are, the lower your rate is. The more senior you are, the more you charge out per hour and because of that structure the kind of cheaper people would need to do more of the work so it's more profitable. (Cheryl⁶⁸)

Associates are required to bill approximately 1600 hours, salaried partners 1500 hours and equity partners 1400 hours per annum. In terms of monetary value, 1600 billable hours for a first-year associate would equate to generating R150 000⁶⁹ per month for the firm. Second year

⁶⁷ Lindy, white, associate, single, Adams & Sullivan Attorneys, 24 November 2016.

⁶⁸ Cheryl, coloured, associate, married, Smith & Partners, 18 November 2016.

⁶⁹ US \$9783.75 conversion calculated on 22 November 2020.

associates would need to generate about R240 000⁷⁰ per month and senior associates between R250 000⁷¹ and R280 000⁷² per month. Partners have fewer hours than associates, because they are required to generate work through client interactions and networking⁷³. The billable hour places significant pressure on all attorneys, but particularly on associates, as competition is actively encouraged as they vie for promotion towards partnership ([Thornton, 2016a](#)). The ultimate goal in an attorney's career is to achieve partnership status, which is indicative of success, hard work and dedication ([Beckman & Phillips, 2005](#); [Kay & Hagan, 1998](#); [Kumra & Vinnicombe, 2008](#)). The women mentioned that on paper (or formally) there is a large criterion to be achieved to be considered for promotion, but the ultimate factor is the billable hour. How much have you billed? Have you exceeded your hours? Have you generated revenue? Have you brought in clients? At the end of the day, are you an asset to the company?

The culture of the profession is just one of, I think, excellence, of writing high fees, it's very competitive. You want to do better than everybody else. You want to exceed your budget. And lawyers, you give them a target to do, they will always exceed that target. And the profession rewards that kind of behaviour...So I think the profession, as a whole, is competitive and it recognises fees. I mean, everybody says, "Oh, no, we look at good behaviour and we look at leadership potential and all of that," and it simply is fees. You can be a complete ass and if you exceed your budget every year you'll be promoted. (Samantha⁷⁴)

Candidate attorneys are not measured on the billable hour, as they are in the training phase of their career but are required to be available at the beck and call of senior staff to prove

⁷⁰ US \$15653.99 conversion calculated on 22 November 2020.

⁷¹ US\$16306.24 conversion calculated on 22 November 2020.

⁷² US\$18262.99 conversion calculated on 22 November 2020.

⁷³ Further discussed in Section 7.2.1.

⁷⁴ Samantha, Indian, partner, divorced, Malusi Attorneys, 20 September 2017.

themselves⁷⁵. They are acutely aware of the importance of the billable hour and spending as much time at the office and making themselves available by investing time into their career so that they can potentially be retained as an associate. Zinzi⁷⁶ reflected on the tremendously long hours attorneys spent in the office. In a single day she spent fifteen hours at the office:

The nature of being a lawyer...is that you sell time and obviously you need to sell as much time as possible. We spend a lot of time in the office from 08:00 [in the morning] till... yesterday I left here at half past 11 at night...Because we're billed by the hour, so the more time we spend, the more work we get done, the better your fees look at the end of the month and the better you look in general as a lawyer... "Have you been able to bill a certain amount of time, fees?" I think there's a threshold that's set. "Have you been able to bring in your own clients?" "Have you been able to manage your own files?" I'm not sure exactly what the criteria is, I mean I'm still a CA, still a bit far off from here, but I know the biggest one is fees which is time related. (Zinzi76)

In the diary schedule activity, I found that on average the women were spending no less than twelve hours per day on work-related matters, this excluded networking. They spent on average six hours sleeping, with the rest of their time juggling other commitments. It was interesting to see expressions of shock and disbelief while they completed the diary schedule. Although they knew they were spending long hours at the office, physically to put it on paper astounded them. One woman covered her face with her hands in disbelief.

⁷⁵ See discussion in Section 5.4.

⁷⁶ Zinzi, black, candidate attorney, single, Malusi Attorneys, 20 September 2017.

For many women, the challenge is not necessarily to bill, but rather to bill eight hours in an eight hour⁷⁷ working day, given all other non-billable activities such as administration, pro-bono work, training, interviews, lunch, coffee breaks, and networking. This non-billable time significantly affects the ability to achieve eight billable hours in a day. Non-billable time invariably leads to longer hours, as attorneys have to bill their eight hours while fulfilling their non-billable obligations ([Omari & Paull, 2013](#)). It results in them compensating for ‘lost’ billable time by spending additional time at the office or working from home:

In this profession you, by default, work long hours. With targets in place, it's almost impossible to just stick [to] your eight-hour day and meet budget unless you're billing for those eight hours. I mean during the day you get caught up with so many other administrative issues that you don't bill for...you can bill 8 hours a day but are you able to bill 8 hours a day in the 8-hour workday? That's the difficulty because you come across a lot of issues that are not billable. (Ruth⁷⁸)

The long hours culture of the profession has thus been institutionalised by the unscrupulous billable hour ([Campbell & Charlesworth, 2012](#); [Charlesworth & Campbell, 2010](#)). The billable hour together with fulfilling client demands is a powerful indicator of an attorney's productivity and performance ([Azmat & Ferrer, 2017](#); [Harper, 2013](#); [Ostrow & Beard, 2010](#)). Attorneys therefore fulfil client demands by being available and being physically present in the office or showing their presence to their colleagues. This is increasingly considered the new soft skills in the profession ([Ostrow & Beard, 2010](#)).

⁷⁷ Standard number of hours in a workday in South Africa according to the Basic Conditions of Employment Act (Act 75 of 1997) ([Republic of South Africa, 1997](#)).

⁷⁸ Ruth, black, partner, married, Adams & Sullivan Attorneys, 5 December 2016.

5.4 The all-encompassing career: open-ended availability

It is widely argued that since the 1980's we have gradually moved towards a '24-hour society' ([Presser, 2005](#)). Accounts from the women indicate that the profession is an all-encompassing environment, requiring attorneys to be available '24/7' to both clients and directors. The notion of being available ranges from being accessible for phone calls, responding to e-mails and WhatsApp messages timeously, or being present to attend an instruction or meeting, regardless of time of day or personal commitments. Simply put, attorneys must acknowledge and respond to any request or communication from a client or colleague. The women noted that technology has changed and improved the way law is practiced. For example, there is less printing and paper-based work and more computer-based work, using software programmes. However, technological devices such as smartphones and laptops have intensified the need to be available:

Things are going a lot more digital, so it takes away a little bit of the admin actually because you're not printing and filing...but I think people expect you to be available 24/7 because you've got your phones on you; you've got your laptops on... It's becoming very pressurising now for immediate responses and immediate reactions.
(Tania⁷⁹)

Being 'connected' has meant that clients are expecting immediate responses and reactions to their requests regardless of the time of day. This results in attorneys not being able to 'shut down' from work as it imposes on their personal time. The women all felt that with the advent of technology, they are confronted with a double-edged sword – on the one hand technology is making work easier, but at the same time it blurs the boundary between work and personal time. This is echoed in the following comments:

⁷⁹ Tania, white, associate, married, Adams & Sullivan Attorneys, 29 November 2016.

Things are more accessible now so it's easier for you to work but then it's also easier for you to work from home or on holiday you know, checking your emails while you're driving which you shouldn't be. (Tania⁷⁹)

The fact that your clients have constant access to you is sometimes not so wonderful. Especially when you're trying to be with the family or when you're trying to get away on holiday and to just relax... and your phone keeps on going. And then you've got to make a conscious decision as whether you're going to respond or you're going to ignore.... But the idea is that you are taught when you're starting at a big law firm, or starting at every law firm, that you've got to be at somebody's beck and call constantly. (Nicci⁸⁰).

Rhode emphasised that “client expectations of instant responsiveness and total availability coupled with attorneys expectations of spiralling salaries, have pushed working hours to new and often excessive limits...Lawyer's [thus] remain perpetually on call tethered to the workplace through cell phones emails, faxes and beepers” ([2001, p. 17](#)). Attorneys are thus under severe pressure to avail themselves to their clients so that they may secure and retain their clients in order to bill and ensure profit maximisation and promotions. In addition, increased competition has given rise to the vulnerability of partnership sustainability and client relations, leaving attorneys with limited choice, but to avail themselves to their clients at all times ([Sommerlad, 2002](#)). This creates a high-pressure and competitive environment inspiring new mechanism for professionalism ([Bagust, 2013](#); [Dinovitzer et al., 2014](#)). All attorneys are susceptible to the culture reigning in the profession; however, the women stated that junior and mid-level attorneys at the candidate attorney and associate levels are particularly susceptible to this as they climb the corporate ladder. Not being available displays a lack of commitment

⁸⁰ Nicci, Indian, partner, married, Adams & Sullivan Attorneys, 27 February 2018.

and loyalty and results in attorneys missing out on valuable opportunities and potentially being side-tracked from the partnership track. Guillaume and Pochic's (2007) research found a direct relationship between availability and promotion.

Within a law firm you have to be willing and eager to take on work... you have to be available because when you are a junior ... you get given a budget and you get given somebody, a director who's feeding you work and if you aren't available to that person or you are only available during the hours of eight o'clock and twelve o'clock or whatever the case may be, then you miss out on the opportunity to meet that target that you have, that monetary target. The industry isn't one that you can structure yourself in such a way that you know your client will send an instruction between eight and twelve... it comes sometimes late at night... So, because we are a client based and service provider-based industry; we have to be available to meet our client's needs. (Natasha⁸¹)

Natasha⁸¹ provides a powerful rendition of the competitive nature of the profession, which is influenced by the uncertainty and complexity of work, which is dependent on selling time to clients by being available to them. She articulately captures the importance of time in the profession and the notion of availability to clients. She points out how attorneys frequently schedule their personal lives around the profession. This results in an overstepping of the boundary between work and personal time. This is often expressed as "time poverty" and the "modern malaise" with "longer working hours and fewer boundaries between work and free time" (Fear et al., 2010, p. 5). In her book *The Time Bind: When Work Becomes Home and Home Becomes Work*, Arlie Hochschild (1997) draws our attention to the blurring distinction between work and home.

⁸¹ Natasha, coloured, partner, married, Adams & Sullivan Attorneys, 24 November 2016.

The 24-hour workday and constant availability originates from the competitive nature of the industry and technology, which provides the means for rapid response. Technology allows people to stay connected across borders, time zones, and locations. Previously only a select few occupations, such as medicine and the military, were required to be available. Today more occupations are expecting employees to be available. Coser ([1974](#)) refers to these as ‘greedy institutions’⁸² demanding this level of commitment from employees. Employers design workplaces into attractive environments with cafeterias, and refreshments so that they may work late into the evenings. At home, people are wired to the workplace through their phones and laptops, expected to respond to e-mails, texts, and WhatsApp messages in their cars and homes. Attorneys are meant to feel that they have autonomy in their careers, when in fact they are highly supervised through the billable hour, clients, and themselves, as they measure their own performance in relation to their colleagues. Thornton ([2016a](#)) reaffirms this and argues that the erosion of professional autonomy, which was once enjoyed by attorneys, has been eroded by technology and the billable hour, which is designed to increase competition and productivity.

5.4.1 Availability and gender

The gendered connotations with availability were highlighted with married women and/or those who have children particularly being stereotyped as uncommitted. This is purportedly owing to women often requesting flexible work arrangements, such as negotiating their hours, or leaving the office to attend to family and domestic commitments. Men are considered to be more available and dependable than women. The women felt that, as mothers, they could not give the level of commitment and availability required from the profession, as they had other

⁸² Institutions who demand total commitment and loyalty from staff who voluntarily devote their time as they are greatly rewarded for such behavior ([De Campo, 2013](#)).

responsibilities as well⁸³. Thornton and Bagust (2007) argue that flexibility takes on a gendered hue, because life tends to be associated with the stereotypical feminised roles of caring and nurturing the family, and men being providers and breadwinners. Being labelled as uncommitted therefore provides a justifiable reason for being side-lined and tacitly removed from work opportunities and the partnership track. This is captured by Tania⁸⁴:

I think both your clients and your supervising director require a degree of commitment that as a mother you can't possibly give them. They want your availability...or them to be your focus...So they don't care if you are getting up at four o'clock in the morning to do the job; if you're not there at four o'clock in the afternoon to take their call, you're not available. (Tania⁸⁴)

While mothers are stereotyped as uncommitted and unavailable, the expectation for childless women to be available is raised. There is an expectation that they should and would always be available, as they are considered not to have any responsibilities. There is an implicit notion that they do not have personal commitments beyond work and therefore their personal time is overlooked. In this vein, Thornton (2016b) states that the expectation of the profession is thus 'work-work'. Sommerlad (2002) notes how the professions demands open-ended availability and that the long hours' culture is a benchmark which everyone must adhere to. It reflects a societal expectation for the working day, making it a benchmark across the profession.

⁸³ See Chapter six for a detailed analysis and discussion on motherhood in the legal profession

⁸⁴ Tania, white, associate, married, Adams & Sullivan Attorneys, 29 November 2016.

5.5 Bodily presence: “Bums on seats [and] warm body at the desk”⁸⁵

In addition to being available, there is a conservative ideology in the profession which expects attorneys to be physically present at their office desk between the hours of 7:00 and 19:00. The women indicated that it is largely older, senior attorneys who adopt the absurd view that bodily presence is indicative of a hardworking and productive attorney. It is especially valued if they can show their presence early in the morning and late in the evening. It is often expected that candidate attorneys and associates be present at their office desk before their director arrives and leave the office after their director has left. Natasha⁸⁶ commented:

Their⁸⁷ day generally starts earlier than the directors. There’s almost an expectation to be in earlier than your director [and] to leave later... In my team my associates definitely do get in earlier than me. (Natasha⁸⁶)

What I found interesting was that Natasha was a relatively young partner (37 years old) and appeared very flexible and approachable in her management style. She emphasised that she did not control her team’s working hours, but rather that there was an expectation that they should be present before her and leave after her. An expectation she did not seek to challenge or change. Consequently, bodily absence displays a lack of productivity, commitment, and loyalty.

If you come to work at 10 o'clock in the morning and you leave at 4 o'clock in the afternoon, the perception is that you are not working. And also, another perception is that if you're not at the office then you're not working as well.... The culture is

⁸⁵ Lindy, white, associate, single, Adams & Sullivan Attorneys, 24 November 2016.

⁸⁶ Natasha, coloured, partner, married, Adams & Sullivan Attorneys, 24 November 2016.

⁸⁷ Referring to CA’s and associates.

that for you to be seen as if you are pulling your weight and you're working hard, you have to be here and at a specific time. You have to stay here until a specific time. As junior, you cannot generally leave before your director, because then it seems as if he or she's doing all the work and you aren't. (Akhona⁸⁸)

Some women displayed feelings of guilt if they needed to leave the office before their director, despite them being in the office much earlier. This often results in them working extra hard or making up for the time they were not present to prove themselves:

It's frowned upon...like I feel bad if I leave before my principal and it's not supposed to be like that because I get here before she does. I work two hours before she actually comes to the office, so why do I feel bad about leaving before she'd leave. (Jennifer⁸⁹)

5.5.1 Remote working and work flexibility

The women indicated that technology might have contributed towards the increasing work pressures and demands of 24/7 availability, but it also made it possible to practice remotely and make use of flexible work arrangements. In this way, the need for bodily presence is minimised. The women acknowledged the importance of bodily presence for certain matters, for example, high-level confidential meetings. They did, however, feel that they were able to schedule their diary around such matters and felt that bodily presence was in no way reflective of productivity:

⁸⁸ Akhona, black, associate, single, Adams & Sullivan Attorneys, 27 February 2018.

⁸⁹ Jennifer, white, candidate attorney, single, Adams & Sullivan Attorneys, 28 November 2016.

I think that we're all on email, we're all on our cell phones, we're all in that world, so linked to the internet, etc. And why do we have to stick to this model of being in an office... they expect a warm body at the desk, which is completely, it's just delusional to think that just because I'm sitting at my desk means that I'm working. I mean, I can sit at my desk for a day and be on Instagram all day and I'm not doing anything. (Miche⁹⁰)

Some women occasionally worked from home on an ad-hoc basis, which allowed them to achieve their billable hours and attend to their personal commitments. In this way, they fulfilled all their obligations without feeling guilty that either work or their personal commitments had been compromised. Tammy⁹¹ commented on how women were able to achieve their billable hours while working remotely and fulfilling their domestic and personal responsibilities:

So, I think one of the things will be if you allow people flexi-hours ...I mean you can be at home and your baby can be sleeping and you can be drafting an agreement. You can put in your laundry and all those things while you are drafting an agreement; you don't have to be at the office the whole day... I mean you can take your laptop anywhere and you can do your work.... I mean you can even take your laptop and have your kids play hockey games or practice hockey after school and you can sit there and draft an agreement. (Tammy⁹¹)

Working in the office often meant that there were interruptions and distractions, for example, small talk. Reflecting on remote working, the women felt that in contrast to the negative assumptions associated with flexible work affecting productivity, they in fact experienced

⁹⁰ Miche, white, in-house counsel, married, Adams & Sullivan Attorneys, 2 March 2018.

⁹¹ Tammy, white, associate, single, Adams & Sullivan Attorneys, 24 November 2016.

higher levels of productivity. Nadia⁹² commented on her productivity while working from home:

We needed to be at home... and [I] was far more productive working at home. I started work at 7 o'clock in the morning, I finished by 2 o'clock. I'd done all my billable hours that I'd needed to do for that day. Why can't I do that every other day? (Nadia⁹²)

The arguments in favour of flexible work for women usually relates to them adapting and balancing work and family demands ([Singley & Hynes, 2005](#)), remaining in intensive human-capital-intensive work ([Fuller & Hirsh, 2019](#)) and maintaining their usual work hours following childbirth ([Chung & Van der Horst, 2018](#)). Such arguments are however not without debate. There is contention as to whether this strikes a work-life balance, or whether it simply reflects synchronous work at the expense of women's personal time, as they might not be able to immerse themselves fully in their personal activities, as they remain 'online', and often double their time and work harder. Chung and Van der Lippe ([2018](#)) contend that this relates to gift exchange, whereby workers see the need to reciprocate for the gift of flexibility, which ultimately results in the intensification of work, and blurring the boundary between work and home.

By virtue of their rank and status, it was easier for partners to work remotely, or use flexible hours, since they had greater autonomy, as they had already proven themselves. Junior attorneys who are still climbing the corporate ladder are therefore expected to be available and present and account for all absences from the office. While partners expect attorneys to be available at their desks, clients expect them to be available at any place, any time. Flexible

⁹² Nadia, white, associate, married, Malusi Attorneys, 20 September 2017.

working arrangements are rarely institutionalised and are usually done on an ad-hoc or individual basis and seen as a favour. Those attorneys who desire remote working or flexible arrangements are considered to be disrupting the workplace and their commitment and productivity are questioned ([Epstein et al., 1999](#)). The quandary with flexibility is invisibility and lack of bodily presence which compounds existing stereotypes associated with women. Thornton and Bagust notes that “the only time you’re adding value is if you’re at your desk in the office” ([2007, pp. 790-791](#)) . It is usually senior employees who have ‘earned’ trust and respect who could usually work remotely more often and for longer periods without being questioned.

Flexible work has been one of the key strategies that has assisted professionals in achieving WLB, improving the gender profile in firms, and a way forward for women in the profession ([Thornton & Bagust, 2007](#)). Realising this balance, however, remains a challenge. Flexible work, while seemingly gender-neutral, is, however, coloured by the long association with domestic and caring work being feminised. Consequently, it stereotypes women, especially mothers as uncommitted and incompetent ([Bornstein, 2013](#)). In this vein, Thornton states that “men are always available, so women look like the troublesome ones” ([2016b, p. 25](#)). The archetypal attorney is created in the image of someone who will pursue an unbroken career path and work exceptionally long hours. This is stereotypically presumed to be a heterosexual man with an economically inactive wife, who takes on the caring and nurturing responsibilities of family and household. This permits him to focus exclusively on his career, as he is the provider and breadwinner of the family ([Acker, 1990](#); [Tomlinson et al., 2013](#)). Since a culture of long hours has been normalised in the profession, to work flexibly is stigmatised as a ‘time deviant’ ([Bacik et al., 2003](#); [Stone & Hernandez, 2013](#)). Moreover, it appears that all women are affected by the equation of commitment, because there remains an assumption that she will

choose her family at some stage in her career, irrespective of whether she remains as committed as a male colleague. Such assumptions automatically contribute towards deficiencies in women's capital and stifle the career path for those who do not conform ([Sommerlad, 2002](#)).

5.6 Chapter summary

This chapter highlights three issues: The first is the hyper-competitive culture of the profession which is inherently masculine. Secondly, it shows how this hyper-competitive culture is enacted through the physical body. Finally, the hyper-competitive culture requires a significant time investment.

Attorneys are habituated into the interpretive scenario of the long hours culture, billable hours, client availability and bodily presence, which are indicative of the unspoken rules. It has created a highly competitive environment, which is enacted through the physical body. McGinley ([2016](#)) argues that profession is thus built on a hyper-competitive business culture. The professional culture rests on a theoretically gender-neutral and objective culture, when in fact it is highly-gendered masculine ([Levin, 2001](#)). The notion of constant availability to clients and an emphasis on physical presence confirms a masculinised culture, as women who cannot fulfil these criteria are side-lined. The “bums on seats [and] warm body at the desk”⁹³ expectation is embedded into the professional habitus and culture, making it very difficult to change or challenge. Thornton and Bagust ([2007](#)) argue that physical presence is therefore a defining feature of professional identity formation, which is also largely embodied in the masculine form. Similarly, this captures Rao et al's ([1999](#)) notion of valuing heroic

⁹³ Lindy, white, associate, single, Adams & Sullivan Attorneys, 24 November 2016.

individualism, where organisations appreciate the worker who works day and night to achieve the end goal, and that worker is a man. Through the emphasis on availability and bodily presence, the body becomes a means of demonstrating “conformity or non-conformity, to gendered social norms” ([Haynes, 2012, p. 3](#)). This effectively demonstrates how time pressures activate gender stereotypes.

The hyper-competitive culture of the profession requires a significant time investment. The underlying tone of this chapter alludes to time as a critical resource in traversing the profession and conforming to the professional culture. The chapter underscores how time interacts with discourses around professional culture and gender. On this note, Epstein ([1999](#)) notes that race, class and gender influences the degree to which people have control and autonomy over their time, or whether their time is controlled by others. Time usage is implicitly embedded in the performance criteria and culture of the profession, as well as a source of self-evaluation to measure personal development and success. The billable hour, availability and bodily presence are regarded as proxies for performance and commitment. A lack of time investment signals non-conformity to the professional culture. The old proverb ‘time is money’ is clearly illustrated through the hyper-competitive culture which is dependent upon time investment. The more time invested into a legal career result in profit maximisation, bonuses and promotions, networking, referrals, and contacts, greatly influencing economic and social capital accumulation. It is for this reason that I argue that time be examined as a form of capital. Those attorneys (men and women) who possess time capital are indeed able to have a highly successful legal career.

The chapter eloquently captures Bourdieu’s ([1986](#)) concepts of capital, field and habitus and Schein’s ([1985](#)) organisational culture. It captures the interaction between the hyper-

competitive field of legal practice and the habitus of the profession. It highlights how the implicit, invisible, and unspoken rules become internalised and unconsciously embeds itself into the profession through the actions, behaviours, and values of individuals. These become the knowledge tools which the women rely on to ‘fit’ into the field. The women therefore learn ‘the rules of the game’ in a very indirect and difficult way. The long hour’s culture, constant availability and bodily presence is never explicitly communicated, but newcomers into the profession observe it through their colleagues’ behaviours, actions, or the way they speak. Because it powerfully embeds itself and maintains itself over extended periods of time, it becomes very difficult to change or challenge. On this note, Schein ([1985](#)) confirms that organisational culture is one of the hardest elements to change, because it is part of the professional habitus and has embedded itself. This habitus thus becomes reinforced and remains constant ([Bourdieu & Wacquant, 1992](#)).

The following chapter draws on this chapter and illustrates how motherhood is a major impediment to women’s careers. It demonstrates how women attorneys move between two distinct and conflicting fields each with their own habituses.

Chapter 6: First a mother then a lawyer

6.1 Introduction

Motherhood presented itself as a major obstacle to women's careers. This chapter presents an analysis of the experiences of motherhood and its impact on the women's careers. Two key themes are highlighted: the social and cultural construction of motherhood and gender identity in the home space and, secondly, the impact of motherhood on their legal careers. It demonstrates how women attorneys move between two distinct and conflicting fields, each with its own rules, logic, and schemas every day.

6.2 Theme 1: Social and cultural construction of motherhood

This section discusses how the women constructed their notion of motherhood and how it influenced their mothering decisions and experiences.

6.2.1 Desire to be a mother

Ten of the women who participated in this study had one or more children. Those who did not have children displayed a strong desire to have children in the future. This includes one woman who is in a same-sex marriage⁹⁴. She stated that she and her partner were considering adoption in the future. The desire of motherhood for the women was predestined; this was aptly stated by Yolanda⁹⁵.

⁹⁴ Twenty-six of the women identified as heterosexual or were in a heterosexual relationship. The other woman identified as lesbian and was in a same-sex marriage.

⁹⁵ Yolanda, white, candidate attorney, married, Adams & Sullivan Attorneys, 24 November 2016.

We do plan to have children; I'm planning for it now already... So, I mean it's kind of a no compromise you know I mean it's kind of a given. (Yolanda⁹⁵)

Some women emphatically stated that they would not have children in the future. This did not mean that the desire was not there, but rather owing to reproductive health issues. Others felt they could not reconcile the demanding nature of their career with motherhood as they have observed the challenges confronting their colleagues. The women who did pursue motherhood or want to pursue it in the future were swayed by decisions around marriage, their age and career prospects⁹⁶.

Relation to marriage: The women strongly associated children to being married. They felt that once married, the next common sense or natural phase in their lives was to have children:

I want to start a family and I'll want to settle down and get married. (Akhona⁹⁷)

I do have the ideals of getting married and getting children one day. (Jennifer⁹⁸)

Relation to age: In conveying their aspiration for children some women cited age as a critical factor to consider. They made a very strong association between their 'biological clock' and the peak of their career as they vie for partnership.

So, I think women still battle with the decision, and that's why you don't see a lot of them at partnership level. Because as soon as you hit senior associate, you're already in your late twenties to early thirties, you're probably already married at

⁹⁶ Similar findings were observed by Roberts (2008) in her investigation of how working mothers in South Africa constructed their motherhood identity.

⁹⁷ Akhona, black, associate, single, Adams & Sullivan Attorneys, 27 February 2018.

⁹⁸ Jennifer, white, candidate attorney, single, Adams & Sullivan Attorneys, 28 November 2016.

that point and you're ready to start a family. Because you don't want to [be] old by the time you have your first child. (Kate⁹⁹)

Relation to career: The desire for motherhood had strong implications for their career progression. Most women had, or intended to have children once they felt established in their career and an 'asset' to the firm:

Mostly women in our profession have children once they're really quite established as lawyers and that's when a lawyer is very profitable in a firm. While they're climbing the ladder, they're not that profitable. (Mandy¹⁰⁰)

Others were concerned by what their colleagues and especially partners/managers would say or think:

I think for the associates or somebody more junior than me, it would be more of a, "what are they¹⁰¹ [going to] think? (Natasha¹⁰²)

The women's concern with their colleagues and partners opinions and thoughts was based on negative stereotypes regarding mothers as being less committed to their careers as a result of childrearing. They were aware that such stereotypes and biases were unfounded but were nonetheless concerned about their career implications.

The decision to pursue motherhood, or to forego it, involved careful consideration and planning around age, marriage, and their careers. It was therefore not a matter of whether or not to have children, but rather when to have children. This thinking resonated with most of the women in

⁹⁹ Kate, Indian, associate, married, Malusi Attorneys, 21 September 2017.

¹⁰⁰ Mandy, White, Partner, Divorced, Smith & Partners, 18 November 2016.

¹⁰¹ "They" was referred to as colleagues and particularly the partners.

¹⁰² Natasha, coloured, partner, married, Adams & Sullivan Attorneys, 24 November 2016.

the study, both heterosexual and homosexual women. There is a strong societal and cultural expectation of women to embrace motherhood once married. Meyers (2001) argues that social and cultural influences do not present women with alternatives on whether to become mothers or not. This is because the act of giving birth and motherhood is seen as part of a woman's identity. The women meanwhile embraced the social and cultural expectations placed upon them regarding motherhood:

It's a societal thing that the woman has to have to child. (Mandy¹⁰³)

I think that we all know that by nature a woman has a role to fulfil as a mother.

(Miche¹⁰⁴)

Reflecting on social and cultural expectations, Thandi¹⁰⁵ highlights the importance of family in the Xhosa culture and the expectation to start a family once married. Prior to entering the profession, she was not aware that she had the option to delay family planning and focus on her career. She said,

What I'm realising now is that we honestly never even knew we had an option to not have a family. Firstly, our black people, we are centred on family. But that option to actually choose, "I actually don't want children," is something that I'm seeing now. I never knew that you could have such an option. But, saying that, I knew that I could wait. So, I knew that children and family is something you have, but you could wait. You can always wait for a better time, a convenient time. Necessarily waiting for your career to be at its peak, I don't know if that was something, I was aware of. (Thandi¹⁰⁵)

¹⁰³ Mandy, white, partner, divorced, Smith & Partners, 18 November 2016.

¹⁰⁴ Miche, white, in-house counsel, married, Adams & Sullivan Attorneys, 2 March 2018.

¹⁰⁵ Thandi, black, associate, married, Malusi Attorneys, 20 September 2017.

6.2.2 “Because we know we’ve got two roles to fulfil...we need to bring in money, but we need to be mothers”¹⁰⁶

6.2.2.1 Responsibility for care and nurturing

The women who were mothers indicated that despite having partners who share in the childrearing and domestic responsibilities, they still felt that the responsibility for their children resided with them. They reflected on the physical and emotional aspects of their motherhood responsibilities. The physical responsibilities consisted of preparing and cooking meals, feeding, bathing, taking, and fetching children at school or to and from extra-curricular activities or making arrangements for them, playing with them, assisting with their homework, and cleaning the house. The women refer to their physical presence in the lives of their children as follows:

Here’s school holidays; you’ve got to make arrangements then for that. There’s the afterschool sports... I mean their little lives get quite complicated. (Sarah¹⁰⁷)

Females are the ones that take care of the home. It’s not by choice. As a female you’re the one that bears the child and has to breastfeed the child. It’s not by choice. (Zinzi¹⁰⁸)

I always, therefore, almost without exception, leave early and am there to do homework and dinner and put the children to bed and then I continue working. So, I’ve always prioritised that time with the children. (Mandy¹⁰⁹)

¹⁰⁶ Miche, white, in-house counsel, married, Adams & Sullivan Attorneys, 2 March 2018.

¹⁰⁷ Sarah, white, partner, married, Smith & Partners, 18 November 2016.

¹⁰⁸ Zinzi, black, candidate attorney, single, Malusi Attorneys, 20 September 2017.

¹⁰⁹ Mandy, Indian, associate, married, Smith & Partners, 18 November 2016.

Emotionally, they are always concerned about the wellbeing of their children, being present in their children's lives and being the best mothers.

I worry about them every second of the day. (Miche¹¹⁰).

And it's hard to work because the minute you have a child your nurturing instincts take over. Even when I'm here late at night, my mind is on whether my son is sleeping, whether he's eaten, whether he's safe, did he get home okay from school.

(Samantha¹¹¹)

It was clear that the women accepted full responsibility for the care and nurturing of their children from the time they give birth. This was ingrained by social and cultural views on motherhood and caring responsibilities ([Glenn et al., 2016](#)). The women made reference to their own family structures growing up as children and the primary caregiving role their mothers, grandmothers and other women carers took. Their understanding of motherhood reflected the standards and expectations prevalent in their households and familial structures, which they were habituated into and unconsciously assumed ([Roberts, 2008](#)). Kruger notes that:

All women who mother... have been exposed to powerful ideologies of motherhood that impact on their experiences of motherhood, mothering, and mothers. It is in the context of these motherhood ideologies that women become mothers. ([2006, p. 182](#))

Nancy Chodorow ([1978](#)) argues that an orientation towards care and nurturing becomes a part of a woman's personality because the process of identity formation in girls takes place through continuous attachment and identification with the mother or female carer. Similarly, Korzec

¹¹⁰ Miche, white, in-house counsel, married, Adams & Sullivan Attorneys, 2 March 2018.

¹¹¹ Samantha, Indian, partner, divorced, Malusi Attorneys, 20 September 2017.

notes that because women are primarily the carers of children, it has a “profound impact on those children as adults and, through them, upon gender relations in the office and the academy” (1997, p. 118). The societal and cultural beliefs that mothers are the primary caregivers of the household are echoed in the extracts below:

I think that we all know that by nature a woman has a role to fulfil as a mother...My mother was a working mother. My mother always prioritised us. (Miche¹¹²)

I have a main person in my life, and I have chosen to spend more time with my family. (Tania¹¹³).

I think women do tend to sort of take a more active role in families. (Claire¹¹⁴)

I would be a mother and my life would always be on the farm. (Anna¹¹⁵)

The women ascribed to the social and cultural view that care and nurturing of the family is women’s work. In subscribing to these stereotypical gendered roles, the women were active agents in constructing and perpetuating the role of a mother as carer and nurturer. Despite contemporary shifts in gendered responsibilities, women continue to be defined by motherhood, which influences how they identify themselves. This furthermore perpetuates the gendered division of labour. Through the narrations it is clear that the women not only want to be mothers, but they also want to be good mothers in terms of the dominant social and cultural views. In trying to fulfil societal and cultural expectations, the women were overcome with guilt, emotional and physical exhaustion.

¹¹² Miche, white, in-house counsel, married, Adams & Sullivan Attorneys, 2 March 2018.

¹¹³ Tania, white, associate, married, Adams & Sullivan attorneys, 29 November 2016.

¹¹⁴ Claire, white, Associate, Married, Adams & Sullivan Attorneys, 27 November 2016.

¹¹⁵ Anna, white, associate, co-habiting, Adams & Sullivan Attorneys, 27 November 2016.

6.2.2.2 Feelings of guilt

The mothers indicated that they always felt guilty and torn between their careers and caring for their children, they felt that either of the two was always being neglected or given less time:

As a mother you always feel guilty. When you're at work you feel guilty that you're not at home and when you're at home you feel guilty that you're not getting your work done. (Michelle¹¹⁶)

And then obviously when you're a mother, there's the other side of you that kicks in and then you feel torn because I think the thought of leaving your little one at home every day and not being there in the house.... You beat yourself up about, because then you're a bad mother because you're not there for them. (Nicci¹¹⁷)

The women displayed high levels of anxiety because they were not fulfilling their motherhood identity by working. In the context of the US, Collins ([2021](#)) also found that working mothers felt guilty that they were not living up to the standards of the 'good mother'. O'Reilly ([2014](#)) suggests that if mothers do not fulfil their motherly role 'correctly' they will be judged and made to feel guilty or marginalised by society. In this vein, Miche¹¹⁸ pronounced, "*other women who are not working mothers, they judge us. They think we have sacrificed our children for our careers*". This expressively captures how women are continuously subjected to societal judgement and backlash. This judgement is aptly captured by Tammy¹¹⁹ and Mandy¹²⁰ who were both judgmental of fellow colleagues for the decisions they had made:

¹¹⁶ Michelle, white, partner, married, Malusi Attorneys, 20 September 2017.

¹¹⁷ Nicci, Indian, partner, married, Adams & Sullivan Attorneys, 27 November 2016.

¹¹⁸ Miche, white, in-house counsel, married, Adams & Sullivan Attorneys, 2 March 2018.

¹¹⁹ Tammy, white, associate, single, Adams & Sullivan Attorneys, 24 November 2016.

¹²⁰ Mandy, white, partner, divorced, Smith & Partners, 18 November 2016.

I have one director; she went on maternity leave and when she came back, she was working until nine at the office and I was just thinking, 'that poor baby of yours is at home'. (Tammy119)

I think...very few people would be willing to make the sacrifices that our managing partner has made in her personal life. I wouldn't dream of doing what she does. I want to be at home with my kids every day you know. (Mandy120)

The women often felt guilty that they had limited time to spend with their children. They felt that it was their responsibility to be there for their children and to fulfil all their roles. They endured feelings of guilt that they had to work and leave the children in the care of their partner or other caregivers:

I do wish I could spend more time with my son. (Samantha¹²¹)

I'd literally see my son right before he goes to crèche and right before he goes to bed. So that's the impact it has had. [I] hardly ever cook, ever. (Thandi¹²²)

Some women were confronted with fear during their maternity leave. They were overwhelmed at the prospect of leaving their baby behind in the care of another person, as they believe that they are the only caregiver the child should know. The pervasiveness of the fear has caused many women to consider resigning from practice. This is succinctly captured by Lisa¹²³:

And I actually tried to resign during my maternity leave because I thought, "I don't know how I'm going to do it." And I just didn't want the pressure of having to go back when I wasn't ready. I didn't know who was going to look after my baby... I

¹²¹ Samantha, Indian, partner, divorced, Malusi Attorneys, 20 September 2017.

¹²² Thandi, black, associate, married, Malusi Attorneys, 20 September 2017.

¹²³ Lisa, white, partner, married, Malusi Attorneys, 21 September 2017.

was at that point where I felt like... I know people who had nannies, but I didn't think that I could have my nanny look after my baby. At that time, it was just overwhelming. I thought I was the only person who could look after my child.

(Lisa¹²³)

Such fears stem from the fact that women have internalised social and cultural norms that only mothers can and should be responsible for the care and nurturing of their children. This is furthermore exacerbated by the hyper-competitive culture of the legal field, which makes no concessions for women and mothers.

Childless women were acutely aware of the expectations placed upon mothers and commented that they were not ready for the commitment of having children as their demanding careers meant that they could not commit to the time children require. Zinzi¹²⁴ expressed her apprehension:

I can't have a baby because my baby would die of loneliness. ...My baby will not know her mother because I'm always in the office; I wouldn't be able to raise a child. (Zinzi¹²⁴)

On the other hand, childless women mentioned that they “*have less guilt not having children*” (Ruth¹²⁵) as their career takes up a lot of their time. For others not having children results in feelings of failure as a woman and in other life commitments:

¹²⁴ Zinzi, black, candidate attorney, single, Malusi Attorneys, 20 September 2017.

¹²⁵ Ruth, black, partner, married, Adams & Sullivan Attorneys, 5 December 2016.

It's great you're succeeding at this [career], but you're failing at life and you're failing in every other area. (Yolanda¹²⁶)

Relying on support service

All the women indicated that they relied on the assistance of au-pairs, nannies, and domestic workers to assist with childcare and household chores. They felt that it was impossible to work in the profession without some form of assistance. This, however, alleviated their demands to a minimal extent as they still felt it was their duty to take care of their children and the home. This is indicative that societal expectations of mothers are well established and deeply ingrained as they continued to experience the demands of motherhood and did not want to relinquish any of their motherhood functions ([Naidoo & Jano, 2002](#)). Sudarkasa notes that “even though parents may delegate some of the responsibility for looking after their children, they never really see themselves as delegating or even sharing their authority over those children” ([2004, pp. 6-7](#)).

Feelings of guilt stem from the notions that care, and nurturing is the preserve of women ([Miller & Tina, 2005](#); [Nicolson, 1993](#); [O'Reilly, 2014](#); [Pillay, 2009](#); [Porter, 2006](#)). Pillay ([2009](#)) and Porter ([2006](#)) states that mothers will only be able to overcome their feelings of guilt once they are able to let go of the ownership of care and nurturing. In addition, the women displayed feelings of guilt for neglecting their partners as they expended their already limited time on their mothering role and on their career, which resulted in them not being able to give sufficient time to their partner or relationships. This is reflected below:

¹²⁶ Yolanda, white, candidate attorney, Married, Adams & Sullivan Attorneys, 24 November 2016.

I think it's quite hard to be married to a partner who you actually want to spend time with and to have kids who you actually want to spend time. (Sarah¹²⁷)

Because marriage is work and looking after your relationship takes time, it's about dedicating time to your partner...I mean do you know what my biggest issue at night is? I need to put my phone [away] because I can constantly check my emails and work is addictive because you're constantly available. (Cheryl¹²⁸)

Roberts state that feelings of guilt reflect the “deeper underlying traditional gendered perceptions that the participants hold about the role of women in society” (2008, p. 64). The social and cultural perception of women as mothers, wives, and caregivers, exacerbates the obligation towards family - at the expense of their personal wellbeing. Women therefore tend to make sacrifices and trade-offs for the greater good of the family (Milkie & Peltola, 1999). Segura notes the plethora of literature on ambivalence and guilt working mothers experience when they undertake paid work outside of the home. This ambivalence and guilt are attributed to the discomfort mothers have “deviating from a socially-constructed ‘idealised mother’, who stays home to care for her family” (Segura, 1994, p. 261).

6.2.2.3 Physical, emotional, and mental exhaustion

The women did not hesitate to emphasise the physical, emotional, and mental exhaustion of motherhood. This was compounded by the highly competitive and demanding profession they worked in. After a long day of work, they had to go home and fulfil their motherly obligations. This is captured in the following sentiments:

¹²⁷ Sarah, white, partner, married, Smith & Partners, 18 November 2016.

¹²⁸ Cheryl, coloured, associate, married, Smith & Partners, 18 November 2016.

I really was so frustrated, and I didn't enjoy being a full-time mom, and I don't think I was a very good mother because I was feeling frustrated. I'm better when I'm doing what I find to be stimulating work. (Michelle¹²⁹)

But you still keep on trying and keep on giving... I was saying now to someone, I'm so exhausted by the end of the week. You put on a brave face at work then you get home, and then you've got to be the mother. You've got to be playing on the floor. You've got to be sitting there. You've got to be... And your children say, "how was your day?" and you're like, "work was the best". It's the best to be a working mom. (Miche¹³⁰)

So, you will have moments; and I've seen it, where they're completely and utterly broken. They spent twelve hours at work; they've rushed home to try and spend two hours with their children. They're not satisfying their employer, they're not satisfying their husband, they're not satisfying their children because they're still trying to be the fee earner they were before they got married and before they had children. (Tania¹³¹)

I suffered from post-partum depression. So, with my first baby I came to work, and it was a very hard process. No one knows what you're going through. I did see someone eventually, but I didn't realise I was suffering from post-partum [depression]...I try to not show that I'm distressed, putting on a brave face. Because no one actually cares about your weaknesses or your stresses or everything else. (Miche¹³²)

¹²⁹ Michelle, White, Partner, Married, Malusi Attorneys, 20 September 2017.

¹³⁰ Miche, White, In-house Counsel, Married, Adams & Sullivan Attorneys, 2 March 2018.

¹³¹ Tania, white, associate, married, Adams & Sullivan Attorneys, 29 November 2016.

¹³² Miche, white, in-house counsel, married, Adams & Sullivan Attorneys, 2 March 2018.

Much of this discussion resonates with Arlie Hochschild's ([1979](#); [1983](#)) concepts of emotional labour¹³³ and emotional work¹³⁴. In terms of emotional labour, it illustrates how some women often suppress their emotions and feelings to portray themselves in a particular manner so as to not attract attention to them, because they would be labelled as weak in the corporate space. These are characteristics which do not resonate with the cutthroat world of corporate law. It is this emotional labour that often contributes towards anxiety and depression in many women. This furthermore illustrates how emotional labour is subject to control of management and colleagues.

In addition, the women were actively engaging in emotional work in the home where they actively take on caring and nurturing responsibilities of their children and the home. It clearly reflects that women are indeed the primary invisible labourers. This is often exercised alongside their paid work where they also contend with emotional labour, clearly highlighting the 'double burden' women engage in ([Hartley, 2018](#); [Hochschild & Machung, 2012](#); [Hochschild, 1983](#); [Watson, 2019](#)).

The women were very passionate about their work and indicated that it was important that they work for financial reasons, as well as their own economic independence. However, the demanding and competitive nature of the profession interfered with their role as mothers. These women often worked two shifts or a 'double day' ([Roberts, 2008](#)), coming home to attend to their children and domestic responsibilities after their paid work. Considering this, Miche¹³⁵

¹³³ Emotional labour occurs when employees introduce or suppress emotions in order to portray themselves in a certain light that, in turn, produces a wanted state of mind in another. This process is often shaped by institutions or other social structures.

¹³⁴ Emotional work (also called emotion management) refers to displaying certain emotions for personal purposes, such as within the private sphere of one's home or interactions with family and friends. It is often associated with the everyday tasks and experiences of being a woman.

¹³⁵ Miche, white, in-house counsel, married, Adams & Sullivan Attorneys, 2 March 2018.

states “we know we’ve got two roles to fulfil...we need to bring in money. But we need to be mothers.” The women were unanimous in the fact that they did not spend sufficient time with their children, to the extent that they wanted to and the desire to do so, but their long working hours did not allow them to do so.

There was also some ambivalence, as all the women were passionate about their work and enjoyed what they did, but were intensely aware of the ‘double shift’ confronting them:

I plan to stay in my job. I don't plan to be one of those moms who take a year off. I'm not going to do that...I'll take my maternity leave and my only option is for the baby to go to crèche or whatever it is and I'm going to have to carry on working. Not because I'm not going to love my child, but I really want to work, and I really enjoy what I do here. (Nadia¹³⁶)

I've met with a lot of women, and they all ask me that question, "How do you do it?" "What do you do?" And some of them are saying, "I really want to carry on being a lawyer. (Michelle¹³⁷)

Practicing law was essential to the women, yet above else motherhood remained their priority. The literature highlights that despite being in paid work, women first see themselves as mothers and wives ([Aluko, 2003](#); [Marks & Houston, 2002](#); [Milkie & Peltola, 1999](#); [Vincent et al., 2004](#)). The women clearly illustrated how they struggled with a demanding career and fulfilling the motherly expectations placed upon them.

¹³⁶ Nadia, white, associate, married, Malusi Attorneys, 20 September 2017.

¹³⁷ Michelle, white, partner, married, Malusi Attorneys, 20 September 2017.

6.2.3 “It takes a village to raise a child”¹³⁸

Up unto this point the women constructed their notion of motherhood from a Westernised intensive mothering perspective, which was generally codified from middle-class and patriarchal nuclear family ideals. This intensive mothering construct was generally at odds with the hyper-competitive culture of the profession, which was gendered male. However, this does very little to recognise the lived experiences and realities of alternate motherhood ideologies which manifests in different racial and ethnic communities, which cannot be ignored when examining the construction of motherhood ([Miller & Tina, 2005](#)). Roberts ([2008](#)) is of the opinion that mothering beliefs are influenced by race, gender, cultural and socio-economic status. Glenn et al ([2016](#)) suggests that motherhood be viewed as a historical and cultural relationship, occurring in specific social context. This is suggestive that there will be times where mothering practices will be at odds with the prevailing discourses on mothering. In South Africa and Africa more broadly, social and cultural practices conceptualise motherhood within the confines of the extended family and communal practices ([Arnfred, 2003](#)). Sudarkasa ([2004](#)) thereby highlights the importance of extended families in terms of a mothers’ role. She points out that:

[O]nly societies with extended family structures, and supporting ideologies and values, could have produced the proverb that ‘it takes a village to raise a child’.

([Sudarkasa, 2004, p. 6](#))

She highlights that in (African) extended families, childrearing is never left exclusively to the biological parents. Extended family members and women in particular (grandmothers, aunts, sisters, etc.) are considered important resources for each other in childrearing ([Sudarkasa, 2004](#)). In African culture, motherhood is thus a collective responsibility, especially for working

¹³⁸ African proverb

mothers ([Ampofo, 2004](#); [Magwaza, 2003](#)). Glenn et al ([2016](#)) also notes how shared mothering has long been part of African-American culture, where child-rearing is not the sole preserve of mothers, but shared with other family or community members. Mothers usually move between their private and public lives, because economic provision of the family is an expectation of mothering. Similarly, Christopher ([2012](#)) and Dow ([2011](#)) observe that historically women of colour have assumed paid work with motherhood to support their families. Following this, Thandi¹³⁹ and Samantha¹⁴⁰ illuminated the importance of the extended family in supporting their roles as mothers and attorneys. Below is a short account of how they navigate their roles as mothers and lawyers.

6.2.3.1 I sent my son to my mother

Thandi¹³⁹ is a second-year candidate attorney and young Xhosa mother who lives in Johannesburg¹⁴¹. Her husband works in Mpumalanga and returns home fortnightly. To assist her in fulfilling her motherhood and household responsibilities, she had the assistance of a live-in nanny. Owing to work pressure and demands, Thandi¹³⁹ felt that she was unable to provide her young child with the attention and time he needed when she was at home and instead felt he was being deprived of motherly care, as she always found herself working after hours. This was further complicated by her husband not being home, which meant that her son was not receiving the necessary attention and interaction from both parents. This ultimately led her to make the decision to send her son to her mother, who lives in another province¹⁴². She therefore sent her son to her mother for two years while she completed her candidateship and commenced her position as an associate. In this way she was able to devote her time to her career, while her

¹³⁹ Thandi, black, candidate attorney, married, Malusi Attorneys, 20 September 2017.

¹⁴⁰ Samantha, Indian, partner, divorced, Malusi Attorneys, 20 September 2017.

¹⁴¹ She is originally from the Eastern Cape (a rural province in South Africa) and relocated to Johannesburg, like many people from rural areas do for job opportunities.

¹⁴² This is similar to discourses around transnational mothering. See Hochschild ([2018](#))

son was able to receive the care and attention he needed, and she was able to provide for her son and extended family financially.

6.2.3.2 My sister, my homemaker

Samantha¹⁴⁰ is an Indian, divorced mother with a teenage son, who lives in Johannesburg. She is a highly successful partner and is studying towards her MBA degree. She acknowledges the demanding nature of the profession and the challenge it poses for many mothers. She notes that she can devote her time to her career and studies, because her unemployed sister lives with her. While she financially provides for her sister, her sister subsequently acts as her homemaker and takes care of her son in her absence. Having this support allows her the peace of mind that her son and home is taken care of by a trusted relative. This gives her the opportunity to invest her time into her career and studies, so that she can financially provide for her family.

The act of a mother sending her toddler child to live with his grandmother in another province for two years, is unthinkable for many. Financially providing for an adult sister also goes against conventional white middle-class norms. Acts such as these are likely to label a mother as absconding from her responsibilities or being self-centred for choosing her career or her own needs above that of her child. It especially goes against the white middle-class ideals of intensive mothering. However, this is the reality for many black mothers, and single parent mothers. While mothers such as Thandi¹³⁹ and Samantha¹⁴⁰ may not physically be present in their children's lives to the extent to which they might want to be, or to the degree which dominant ideologies expect, they too, like intensive mothers, continue to be emotionally vested in their children and experience feelings of fear, guilt and longing. They feel guilty that they are not fulfilling their role as a mother, or their career is taking precedence. There is the fear that the child may become more attached to the 'other' mother/s. There is the longing and desire

of wanting to see or spend time with the child, but the family needs to live, bills need to be paid and somebody needs to provide financially.

The experiences of Thandi¹³⁹ and Samantha¹⁴⁰ not only highlight the sacrifices black working mothers have to make, but also the importance of context, which shapes their decision. Both women hail from other provinces and had to relocate to Johannesburg¹⁴³. Thandi¹³⁹ does not have close relatives in Johannesburg whom she can rely on. Her child was in crèche, and she had a live-in nanny, but still, as a mother, she knew her child needed and deserved more. In addition, because of the realities of black tax¹⁴⁴ in South Africa and African households, she financially contributed to her extended family's household. Similarly, Samantha¹⁴⁰ also financially supports her unemployed sister. While it may seem that these women do not share full responsibility for their children, they are, however, illustrating how they too are extending motherhood to their family members by providing for them. This is particularly reflective of black culture in South Africa, where many people are from disadvantaged socio-economic backgrounds and rely on those family members who are mostly first-generation professionals to provide for them financially. Not only does this illustrate the value and the dependence of extended family for childcare for working mothers, but also how mothering is a collective responsibility, not always a biological, but also historical, social, and cultural act of reciprocity. Collins (2016) is of the opinion that there is a lack of acknowledgement given to the diversity in mothering and how white middle-class ideologies of mothering are universalised and projected on all mothers, therefore many mothers struggle to let go of their intensive mothering ideologies. Presser (2005) comments that parents who work non-standard hours or work schedules like attorneys, are more likely to rely on relatives to assist with childcare.

¹⁴³ Locally known as the City of Gold and where many people in South Africa migrate for career opportunities.

¹⁴⁴ The financial contributions black professionals are expected to give to their less fortunate immediate and extended family.

6.3 Theme 2: Impact of children on career: “I know my career is being stunted”¹⁴⁵

This theme discusses the impact motherhood has on women’s legal careers. In their quest to fulfil their roles as mothers and attorneys, many women experience shifts in their career. The transition back to work following maternity leave, is a challenge for many women ([Carlson et al., 2011](#)). The women all agreed that in one way or another, their careers were stunted.

6.3.1 Drop in ability to run fees

Most women who had children, experienced a decline in their performance as they were not able to bill the hours, network and be available to the extent they were before they had had children. This was especially the case in the formative years of motherhood, when children are highly dependent on mothers. The women noted that they were not able to perform, as they often negotiated flexible or reduced work hours so that they could attend to their children and domestic responsibilities. The consequence of this is that they were remunerated less, but ended up working longer hours, as they felt the need to prove their capabilities to their men and childless women colleagues:

After I had my first daughter I did go onto reduced hours, but I soon decided that that wasn’t working because...there are timelines and deadlines in our profession are just what they are. They’re hectic so it just didn’t make sense to be paid less, but still be doing the same work. ... In my experience there is a drop-off in my ability to run fees when I had the children and especially for the first about five years ... I couldn’t do everything at the same level anymore...I would imagine it

¹⁴⁵ Tania, white, associate, married, Adams & Sullivan Attorneys, 29 November 2016.

would be a lot easier to function more optimally in this environment if I didn't have children. (Mandy¹⁴⁶)

They're paying me half day for a full day job. (Michelle¹⁴⁷)

Moreover, this is indicative not only of women having to work harder for the same salary, but also the intensification of work, where those individuals who seek flexible work arrangements are increasingly working synchronously. This is supported by Chung and van der Horst (2018). Similarly, other qualitative studies have shown that when women work from home they are expected to work synchronously by doing domestic and paid work (Hilbrecht et al., 2013; Shaw et al., 2003). Other women commented that if they did not have children, their earning potential would be much higher, and they would have no need to opt for flexible or reduced hours:

But if I didn't have a family, I'd be much higher, I'd be earning probably double what I'm earning. And I'd be working full-time, full hours. I'd probably be much further in my career. Just to put in perspective, when I met my husband¹⁴⁸ eight years ago, I was earning more than him, and his salary has jumped to way more than mine in that same amount of time. (Miche¹⁴⁹)

I've had to take remuneration cuts along the way to be able to work reduced hours because that's [family] what's important to me. (Lisa¹⁵⁰)

The narrations above confirm the literature that once women have children, their earning potential reduces, or what many refer to as the 'gender pay gap' (Grund, 2015; Jee et al., 2019; Noonan et al., 2008; Tharenou, 2013). There are many factors which contribute towards the

¹⁴⁶ Mandy, white, partner, divorced, Smith & Partners, 18 November 2016.

¹⁴⁷ Michelle, white, partner, married, Malusi Attorneys, 20 September 2017.

¹⁴⁸ Also, an attorney.

¹⁴⁹ Miche, white, in-house counsel, Married, Adams & Sullivan Attorneys, 2 March 2018.

¹⁵⁰ Lisa, white, partner, married, Malusi Attorneys, 21 September 2017.

‘gender pay gap’, but the most common explanation is the ‘motherhood penalty’, which refers to the way women’s earnings are negatively affected by motherhood ([Andersen, 2018](#); [Kahn et al., 2014](#)). This is owing to social and cultural expectations constructing women’s identity to the home and childcare responsibilities, while competing with male-gendered work cultures, which makes no concession for women. These expectations often force women to prioritise their families over their high-paying careers. Women are more likely to go for positions or jobs where they can get work flexibility or work reduced hours. They are also more likely to put their own careers on the backseat so that they can be on-call at home whereas men are more likely to be on-call at the office.

Rebuild practice: Paying back the maternity leave tax

Building a client base and legal practice takes many years and loyal clients usually follow their attorneys as they move through their career or change firms. Yet, many women find that after four months of maternity leave¹⁵¹, they had to rebuild their legal practice, as their clients were captured by their colleagues, or the clients themselves have approached other firms or attorneys:

I mean even if you, say maternity leave; it’s four months that you are not here; it’s four months that you might lose contact with clients, lose touch with fellow partners and your practice can take a dive. (Anna¹⁵²)

While I was on maternity leave, I had to hand over my practice that I had built up to other people. And the difficulty is when you come back from maternity leave, after being away for a number of months, is to try and rebuild your practice. So, I

¹⁵¹ Firms provided the women with four months paid maternity leave. They have the option of extending it to six months by an additional two months unpaid.

¹⁵² Anna, white, associate, co-habiting, Adams & Sullivan Attorneys, 27 November 2016.

think that's a difficulty, is that your clients have now moved on to other people.

(Lisa¹⁵³)

This authenticates the competitive culture of the profession. Consequently, the women had to rebuild their practices and start networking again to build their client base. They, however, found this challenging, because they could not commit to the long hours culture, or after-hour networking to 'market' themselves as they did before they became mothers. This proved to be an exceptionally stressful and daunting challenge for women.

6.3.2 Less cutting-edge work

Those women who returned from maternity leave and requested flexible work arrangements were often assigned to less cutting-edge work, which did not involve the 'big' clients or 'good' work:

I also think that if I had a kid I wouldn't be operating at the same level. I wouldn't be given the same type of work...I'd get the smaller easier tasks and not really grapple with the good work. (Ayesha¹⁵⁴)

Others requested to be shifted into in-house functions or positions, which is more routine-based work and does not involve much client interaction. These are usually positioned in human resources (HR) or risk assessment (RA), areas which do not require the pressure of billing and profit generation. These positions are thus considered to be more 'sex typed feminine' or seen as 'women's work':

¹⁵³ Lisa, white, partner, married, Malusi Attorneys, 21 September 2017.

¹⁵⁴ Ayesha, coloured, associate, single, Malusi Attorneys, 21 September 2017.

And as soon as you have that first child it's like, 'Alright, I need to start looking for an in-house role because I can't do these hours. (Kate¹⁵⁵)

Even with the same human capital, women earn less than men, because they have less time and energy to devote to their careers, because of their household and motherhood responsibilities. This results in their self-selecting into less demanding jobs, to balance their professional and personal commitments. “The theory of compensating differentials suggests that mothers select family-friendly jobs which will allow them a more favourable work-life balance and, in return, accept lower wages” ([Shanks, 2012, p. 7](#)). This is indicative that the societal and cultural expectations of ‘the good mother and all giving mother’, results in women and mothers making trade-offs and sacrifices for the greater good of the home and family. While some women self-selected into less demanding positions, others indicated that upon their return from maternity leave, they found that management placed them into in-house positions without consulting them. It was assumed that they would not be able to cope with the work demands and so they were placed into positions that would be able to ‘accommodate their new lifestyle’. This option was certainly career limiting. Miche¹⁵⁶ narrates the response she received from her superior after she raised this concern with him:

I went in as a non-billable attorney, so I'm in risk [risk assessment]. I'm basically in-house legal or general counsel... I knew that my career was going nowhere..., I said to [the] head of risk¹⁵⁷ ... “What are the chances that I'll ever become head of risk?” And he said, “Well, you've got a salary, you're a woman, you've got a family, so probably you'll never become head of risk. (Miche¹⁵⁶)

Another woman remarked:

¹⁵⁵ Kate, Indian, associate, married, Malusi Attorneys, 21 September 2017.

¹⁵⁶ Miche, white, in-house counsel, married, Adams & Sullivan Attorneys, 2 March 2018.

¹⁵⁷ Referring to a white male.

When I first fell pregnant, they didn't know what to do with me. And one of my partners¹⁵⁸ suggested that I speak to his wife who was also a lawyer. Basically, so I would find out how nice it was to just stay at home. (Michelle¹⁵⁹)

The views held by the Head of Risk¹⁵⁸ in Miche's¹⁵⁶ narrative and the partner in Michelle's¹⁵⁹ narrative represent the "hegemonic influence of patriarchy and male-dominance attempting to reassert itself in the face of dissenting views and actions" ([Chitapi, 2015, p. 5](#)). Such views echoes that of Melius De Villiers who more than a hundred years ago in the *South African Law Journal* proclaimed that "it is absolutely most undesirable that women should be allowed to become practicing members of the legal profession" (De Villiers, 1918: 289 cited in [Chitapi \(2015, p. 5\)](#)). While such views may not be voiced easily given the progressive laws on discrimination and equality in South Africa, it nonetheless reflects the views still held by many men in the profession. It furthermore underscores society's stereotypical gendered roles of women as carers and nurturers of the family and the man or husband as the provider and breadwinner.

Thornton and Bagust ([2007](#)) point out that woman attorneys are increasingly assigned to knowledge management, which is the new underclass of lawyering. This type of work is usually in a support capacity like HR and RA. It is usually mundane and can be done the following day if needs be, unlike the immediate response and constant availability demanded from corporate practice. The authors point out that as soon as a woman announces her pregnancy, the nature of the work assigned to her may change in preparation for her new role after maternity. Women are therefore disproportionately receive less prestigious work and earn less money ([Thornton & Bagust, 2007](#)). The shift from highly competent attorney to support

¹⁵⁸ Referring to a white male.

¹⁵⁹ Michelle, white, partner, married, Malusi Attorneys, 20 September 2017.

worker is a shock for many women. Shanks asserts that “employers exercise choice and discretion that constrain mothers' employment opportunities. These may operate regardless of individual mothers' work force attachment, qualifications or professional ambitions” ([2012, p. 9](#)). Research indicates that masculine workplace cultures do not present mothers with an alternative, but rather a take it or leave it scenario, encouraging them to accept lower status work or downplay their motherhood identity ([Cahusac & Kanji, 2014](#); [Woolnough & Redshaw, 2016](#)).

6.3.3 Stunted path to partnership

The impact of pregnancy and children on a women's legal career is powerfully captured in the following extract:

A woman has a limit, and that limit is reached when she falls pregnant.

(Samantha¹⁶⁰)

The women were unequivocal about the fact that pregnancy and motherhood delayed a women's progress of attaining partnership. This sentiment is reflected in the following quotations:

Women that have had children before they become directors will take longer than the others to become partner. (Tania¹⁶¹)

Women have to take those choices and men seldom have to makes those choices and that's the only reason why the same number of women and men who start out in this firm don't get to equity partner. (Mandy¹⁶²)

¹⁶⁰ Samantha, Indian, partner, divorced, Malusi Attorneys, 20 September 2017.

¹⁶¹ Tania, white, associate, married, Adams & Sullivan Attorneys, 29 November 2016.

¹⁶² Mandy, white, partner, divorced, Smith & Partners, 18 November 2016.

The biggest milestone in an attorney's career is being promoted to partnership with all its benefits. However, one of the biggest impediments in the women's professional career is the ability to reach the partnership level. On average, it takes approximately seven years to reach partnership; but motherhood significantly delays this by a few years, with some never achieving partnership, as they are unable to keep abreast with the hyper-competitive culture. Those women, who consciously made the decision to remain childless or delay motherhood, did so because they were cognisant that it would result in their chances of attaining partnership. Motherhood was also one of the reasons why so few women made it to partnership:

It [children] would delay my progress towards partner, this is the reason why there's so few female partners relative to males. (Zinzi¹⁶³)

It is well documented that for many women in the profession pregnancy and motherhood may signal the end of partnership prospects ([Bambauer & Rahman, 2019](#); [Noonan et al., 2008](#); [Rhode, 2001](#); [Sommerlad et al., 2010](#); [Walsh, 2012](#)). Since women take periods of time out of their career to care for and nurture their children and families, they are labelled as uncommitted to their career. This provides a justifiable reason for their stunted career as they did not 'perform'. Cuddy et al ([2004](#)) remarks that when professional women become mothers, they are confronted with the perception that they are not competent enough and are viewed through their motherly role. They are therefore less likely to be promoted. This is particularly the case for women in the middle of the earnings distribution ([Hodges & Budig, 2010](#)), at the associate level. This is usually the level at which women are climbing the corporate ladder towards partnership and having or considering having children. There is also a trend for women to have children after attaining partnership. This, however, results in a high number of women partners taking longer career breaks. As long as women are confronted with societal and cultural

¹⁶³ Zinzi, black, candidate attorney, single, Malusi Attorneys, 20 September 2017.

expectations of motherhood and while their ‘biological clock’ keeps ticking, it becomes clear that there is perhaps no best time to have children, as women will always be disproportionately affected. Thornton and Bagust (2007) further argue that flexible work arrangements is one of the key factors restricting women to subordinate positions and restricting their partnership prospects.

6.3.4 Leave practice

The ‘opt out’ trend amongst professional women has become increasingly popular after motherhood, where they either temporarily or permanently leave their jobs as they pursue motherhood on a full-time basis ([Bambauer & Rahman, 2019](#); [Grant-Vallone & Ensher, 2011](#); [Lovejoy & Stone, 2012](#); [Woolnough & Redshaw, 2016](#)). Many women who do return to work do so on a part-time basis ([Kanji, 2011](#)). The women reported that once they become mothers, they were overwhelmed with work pressures and trying to be the attorney they were before having children. This is owing to them having to fulfil both their role as mother and attorney, which is an endless battle. They struggle to adapt to the work-demands and expectations of the profession, which is at odds with their motherly functions and beliefs. The only way out is to leave practice. Miche¹⁶⁴ referred to her colleague:

A colleague of mine left practice... she left practice for about five or six years, because she just said she couldn't do it. She had a sick child and [it] just wasn't an option. So, while everyone has to be there, accommodating, you just can't do it. Somewhere it's going to falter, and you don't want it to be your children. (Miche¹⁶⁴)

¹⁶⁴ Miche, white, in-house counsel, married, Adams & Sullivan Attorneys, 2 March 2018.

And I actually tried to resign during my maternity leave because I thought, "I don't know how I'm going to do it." And I just didn't want the pressure of having to go back when I wasn't ready, I didn't know who was going to look after my baby.

(Lisa¹⁶⁵)

Some women have made the decision that once they have children, they will leave practice as they feel they will not be able to lead a successful practice and be a mother. This is succinctly captured by Karabo¹⁶⁶:

When I have kids, then I'll have to leave practice because of the volatile environment that this is...When I do decide to have kids I'll leave, definitely I'll leave this, because of the hours and because of the ruthless environment. It's very, very ruthless. It's very cut-throat, and you just don't have the appetite for that.

(Karabo¹⁶⁶)

In light of the above, Liebenberg and Scharf (2019) found that sixty percent of women leave practice because of caretaking commitments. Similarly, Durrani and Singh (2011) note that women are more likely than men to leave law firms before reaching partnership. These trends are often attributed to the male-dominated organisational culture being an obstacle to women's careers, thus resulting in rising levels of attrition rates at the associate level, well before a woman attorney has become profitable (Bruck & Canter, 2008; Watts, 2009). The above discussion illuminates the ruthless competitive culture of the legal profession which often forces women to leave practice, because their role and function as a mother cannot be accepted and is at odds with the professional culture. On the other hand, it is also clear that the women actively accepted socially and culturally prescribed discourses of mothering. Women leaving

¹⁶⁵ Lisa, white, partner, married, Malusi Attorneys, 21 September 2017.

¹⁶⁶ Karabo, black, associate, married, Malusi Attorneys, 5 October 2017.

practice as they approach partnership, is what Liebenberg and Scharf ([2019](#)) refers to as the ‘leaky pipeline’. Women account for more than half of law graduates and are entering the profession in record numbers but are leaving practice at higher rates than their male counterparts. These women are leaving practice at senior associate level which resonates with the findings in Chapter four, which found that there are far fewer women at the practising and partnership level than expected. The high rate of women attrition leaves a limited number of potential role-models and mentors for younger attorneys, and results in law firms having fewer senior women who can participate in important management decision-making, especially in effecting change that will benefit women ([Durant, 2004](#); [Rhode, 2001](#); [Sommerlad et al., 2010](#)).

Mothers are struggling to make their budgets and to rebuild their practices. They are being pressed into in-house positions which do not allow them to practice fully, and which restricts them from achieving partnership status. When it all becomes too much they are left with no choice, but to leave practice and do the one thing they are ‘destined’ to be – a mother! In 1988, Professor Marina Angel commented on women attorneys and motherhood:

Most people want children, but most male lawyers have them and most female lawyers don't. Ours is not a society that is supportive of working women with children. Early studies showed that women lawyers did not have children, or, if they did, they left the workplace or gravitated to jobs with less stringent work hours. ([Angel, 1988, p. 873](#))

More than thirty years later, the situation in South Africa (and many other parts of the world) remains unchanged. The act of caring and nurturing continues to be the work of women and mothers, “even if mother happens to be lawyer” ([Korzec, 1997, p. 117](#)). This view of childrearing has deprived women of the opportunities which are essential to achieving equality

at work. Motherhood introduces a number of challenges and complexities to the lives of women attorneys – pregnancy, maternity leave, childcare, and housekeeping or what many refer to as the ‘second shift’ after the normal workday ([Craig, 2007](#); [Hochschild & Machung, 2012](#); [Milkie et al., 2009](#)). Consequently, it exacts significant career costs for women attorneys. In the past two decades, a significant number of women in South Africa have entered the legal profession. However, mere access to the legal profession has not resulted in gender equality for women. Measured in traditional terms, their career growth into senior positions has not equalled that of their male counterparts. Joan Williams predicted that women on the ‘mommy track’¹⁶⁷ paid the price of the ‘motherhood penalty’ which created law firms that are “top-heavy with men and childless women supported by a pink-collar ghetto of mommy-lawyers without equity partnership status” ([Williams, 1988, p. 828](#)).

The conflict between motherhood and practising law is dramatic. The practice of law requires extensive time commitments¹⁶⁸ which far exceeds the traditional forty-hour work week. This requirement competes and conflicts with the time and commitment requirements of childrearing and domestic responsibility. This inevitably places “women lawyers in an unenviable position: awkwardly balanced between home and office” ([Korzec, 1997, p. 118](#)). For these women the price to pay is high, not only do they suffer in terms of salary, quality of assignments and promotions or career advancements, but in the end, they are more likely to consider leaving the profession or leave practice completely.

Women who choose to utilise flexible or part-time work options often find themselves ‘downgrading’ in terms of work quality and lower-level positions and are therefore unable to

¹⁶⁷ A term which refers to the way in which women, especially those with children prioritise motherhood or how they navigate WLB especially in respect of flexible hours which comes with reduced career opportunities.

¹⁶⁸ Discussed in Chapter five.

utilise their skills and competence fully ([Cahusac & Kanji, 2014](#)). Many women find that they have a reduced opportunity to training and development, access to networks, less chance of promotions and opportunities to supervise or manage others ([Davidson & Burke, 2011](#)).

6.4 Chapter summary

This chapter presented two key themes: firstly, it illustrated how women attorneys in South Africa are habituated into social and cultural constructs regarding their identities as mothers. Secondly, it highlighted how motherhood impacted on their legal careers.

By pursuing a professional career, the women rejected stereotypical notions that the only role women and mothers are confined to is the care of the home and children. Whether they were mothers already, or expressed the desire for motherhood, it was problematic when exercised together with pursuing a legal career. Hence their gender identity was not only rooted in motherhood and the home, but also their careers. The white middle-class notion of intensive mothering dominant within society, creates tensions in their role as mother and attorney. It resulted in interpersonal conflict, creating feelings of guilt and fear, emotional and physical exhaustion. The women desire satisfaction in their roles as both mothers and attorneys, but the two appear to be mutually incompatible. What this demonstrates is how the women experience role conflict where they are pulled in various directions as they respond to the different roles¹⁶⁹, identities, and the status they assume. The conflict the women experience relates to their desire to be successful in both their legal career and role as mother. These roles are thus incompatible and compete against each other. Motherhood puts a significant price on the legal careers of

¹⁶⁹ 'Roles' serve as a blueprint to guide our behaviour and beliefs, but also sets out the goals and tasks to pursue and carry out and how we should perform in a given scenario. Sociologists predict that role theory can predict our social behaviour and actions. The theory was developed by American sociologist Talcott Parsons through his work on social systems, together with German sociologists Ralf Dahrendorf and Erving Goffman.

women; however, the women were not passive recipients of these ideologies. They were active agents and made the decision whether to become working mothers or not, when to have children, whether to continue practising law and how they would balance their careers and motherhood. Each of their decisions was based on the social and cultural context in which they found themselves and the ideologies present in those contexts. Studies regarding motherhood have begun to focus on analysing the experiences of women as constructed by themselves ([Choi et al., 2005](#); [Jeannes, 2002](#); [Kruger, 2003](#); [Miller & Tina, 2005](#); [Weaver & Ussher, 1997](#)). These studies have concluded that although women struggle to resist the dominant ideologies of motherhood, their narratives and stories constantly refer to it, implying that ideologies relating to good mothering persist. The chapter further showed how white middle-class ideologies of intensive mothering exist alongside notions of alternate mothering, particularly prevalent amongst black women.

The chapter further illuminated how women attorneys traverse two fields every day – the home and workplace. Similarly, Smith ([1987b](#)) calls this the two subjectivities which cannot be blended. The concept of habitus establishes the deeply embedded gender identity as mothers. It is, however, important to consider the extent to which it is attenuated as individuals move between different fields. The incompatibility between gendered habitus in the familial field, is incompatible with the hyper-competitive masculine culture of the legal field. There is a dissonance in the practices, ideas and discourses of motherhood and the hyper-competitive masculinised culture of the legal field. Each time a woman leaves the workplace on maternity leave she has to re-enter the field at a disadvantage, which is why those women do not have children yet as they have observed what had happened to the careers of those women who had returned from maternity leave, choose to either make partner first (where the rules are slightly different) or leave the field entirely. The gendered habitus and capital which women have in

the familial field is not valued by the legal field, therefore they experience a disjuncture and conflict ([DeVault, 2006](#)). Each field is autonomous with its logic, habitus and capital or what Bourdieu calls ‘the rules of the game’ ([Bourdieu, 1986](#)). Those women who cannot play by the rules of the game (hyper-competitive culture) unfortunately struggle to lead successful legal careers to the same extent that men do. This chapter calls for a more appreciative acceptance of the instability of gender habitus in journeying different fields. It is therefore suggested that a feminist perspective should consider the ways in which gender; race, class, habitus, and field in varying context interact with each other.

The following chapter discusses how white middle-class social and cultural capital is valued in the legal field and how it serves to exclude black women who have not been habituated to these capitals.

Chapter 7: Understanding social and cultural capital in the legal field

7.1 Introduction

This chapter discusses two key themes emanating from the qualitative interviews. Firstly, how the concept of social capital extends itself [or operates] in the legal profession. And, secondly, how women attorneys acquire and reproduce cultural capital. Together, the themes paint a picture of the significance of social and cultural capital in the profession as a key enabler of social closure and exclusion for women. Each theme is discussed in greater detail.

7.2 Theme 1: Towards an understanding of social capital in the legal field

This theme discusses social networking as a key component of social capital.

Social capital consists of an individual's social networks and connections, friendships, and the membership of groups and societies that perform 'networking' functions. ([Cook et al., 2012, p. 1748](#))

[It] can be understood as a resource available to individuals derived from their location on a structure of social relations. ([Adler & Kwon, 2002, p. 18](#))

Social capital improves the chances of obtaining a very wide variety of benefits, ranging from instrumental rewards, such as faster promotions or better jobs, to expressive rewards such as better mental health and even an increased subjective feeling of well-being or life satisfaction ([Adler & Kwon, 2002](#); [Lin, 2000](#)). This theme derived from the fact that all the women in the

study reflected on social networking as a key component of professional culture. They attributed the significance of social networking to the profession's reliance on clients for business opportunities, a key determining factor for an attorney's career progression. The aim of networking is therefore fruitful relationships, which is the essence of business development in the profession. Establishing and retaining social networks is a critical aspect in an attorney's career and requires significant time investment. The more often it is done the better for the attorney, the firm and other members in the network:

So, it's encouraged that we obviously network as much as possible for client-generation, to increase our profile and also the profile of the firm. So, whenever possible, it's encouraged that... we sort of run our own practices, we're left, in a sense, to our devices. But we [are measured] at the end of the day on our performance appraisals. So, you need to demonstrate that you have done a significant amount of client networking throughout the year and what mandates or what clients you've actually managed to secure. Lack of it, is what they sort of judge you on at the end of the day. So, the more, the better. (Amy¹⁷⁰)

7.2.1 Networking as a form of endorsement

The legal profession is a referral profession with the women highlighting the importance of being connected with the 'right' people when networking:

When you introduce yourself, you need to be just bit more. "Oh, I'm so and so's partner or associate or whatever", you kind of just have to make your presence known. (Nadia¹⁷¹)

¹⁷⁰ Amy, white, partner, single, Adams & Sullivan Attorneys, 27 February 2018.

¹⁷¹ Nadia, white, associate, married, Malusi Attorneys, 20 September 2017.

Networks are particularly important as a form of endorsement to establish a rapport on the merits of a particular candidate. Access to networks is critical to the success of an attorneys' practice. By not attending networking events with the right people, attorneys risk losing valuable opportunities, such as client generation and building their professional profile.

7.2.2 Building social networks

The networking activities attorneys engage in commonly include coffee dates, luncheons, and dinners, playing golf and watching sporting events in the executive suites of sport stadiums. The women found golf to be a meaningful network activity amongst men and their clients, incorporating both business and leisure. The importance of fulfilling the client's preference for golf was emphasised. Anna¹⁷² points out how a game of golf can serve to exclude women who do not play the sport:

Yes, obviously if your client has a preference of dealing with men; playing golf with men you know, networking is always a game of golf. Some females play golf, that's great. I don't even do sport at all, so that's already exclusive. You can join for drinks afterwards, but now they talk about the game they had; you know. (Anna¹⁷²)

On this note, Warde (2011), furthermore points out that white middle-class men place emphasis on the sociability aspect of sport and derive great benefit by participating in sports such as golf or squash. This is congruent with the literature that sport is a meaningful networking activity strengthening political and business relations. In this case, Bourdieu's analysis states that:

It can easily be shown that the different classes do not agree on the profits expected from sport, be they specific physical profits, such as effects on the external body, like slimness, elegance or visible muscles and on the internal body, like health or

¹⁷² Anna, white, associate, co-habiting, Adams & Sullivan Attorneys, 27 February 2018.

relaxation; or extrinsic profits, such as the social relationships a sport may facilitate, or possible economic and social advantages. ([Bourdieu, 1984, p. 211](#))

In addition to sport, a culture of consuming alcohol after a game of golf also serves to exclude those attorneys who do not consume alcohol. Those who do not consume alcohol would not be invited to social events and even if they were invited, they struggled to socialise with those who were consuming alcohol.

I do come from a home where we don't really drink a lot. Alcohol's not really a thing and in a social environment and in law firms in most corporate environments these days it seems drinking is the thing so you know, if your mentor is also one of the socialites how will you relate? (Anna¹⁷²)

So [a] lot of these social events that happen in the evenings is more about getting clients and having a drink or two and chatting...So as a team we don't really go out and do client lunches and that whole thing that attorneys are supposed to do. We don't really do that, no. Most of the seminars that I attend in the evenings is on my own, with normally a colleague from work or something. (Nadia¹⁷³)

Sommerlad ([2002](#)) also observes the relation between alcohol and networking, noting that there is often a loud, laddish, hard-drinking atmosphere amongst clients and male attorneys at social events, which has an exclusionary effect on women and those who do not consume alcohol.

¹⁷³ Nadia, white, associate, married, Malusi Attorneys, 20 September 2017.

7.2.3 Networking and billable hours

For some women networking is less of a priority, as they are actively trying to maximise their constrained time, so instead they focus on their billable hours, instead of networking with colleagues and clients:

Men play golf together and have accepted business sort of extra-mural activities you know, I think we¹⁷⁴ haven't yet developed that. We haven't developed that sort of level of socialisation outside the [workplace] ... I think we work too hard. We so focused on work that we forget that the other element of this is relationship based and social. So, I think that balance we haven't gotten right yet. (Natasha¹⁷⁵)

I do network. Not very often because we are busy professionals, so networking is a little bit down the priority list for us¹⁷⁶. For us it's more about getting the work out and billing the hours. So, when we do get a chance to network it's usually at industry events. (Kate¹⁷⁷)

In addition to focusing on their billable hours, some women also noted how they needed their partners'¹⁷⁸ 'permission' to attend networking events:

Yeah, we network. How often? Not so much because there's just no time for that because that's non-billable stuff. So, if you get an invite and you've got time and you've got permission from your partner, then you go and network with other colleagues or clients. (Karabo¹⁷⁹)

¹⁷⁴ Referring to women.

¹⁷⁵ Natasha, coloured, partner, married, Adams & Sullivan Attorneys, 24 November 2016.

¹⁷⁶ Referring to herself and other women.

¹⁷⁷ Kate, Indian, associate, married, Malusi Attorneys, 21 September 2017.

¹⁷⁸ Referring to law firm partner who is their direct line manager.

¹⁷⁹ Karabo, black, associate, married, Malusi Attorneys, 5 October 2017.

7.2.4 Networking and sociability

The importance of a sociable personality when networking was highlighted. The women who were not very socially confident or who had an introverted personality, struggled to network, as opposed to those who were more socially confident with extroverted personalities. This is aptly reflected in the sentiments shared by Thandi¹⁸⁰.

I am not a social person...The social events that I do attend are from work and usually networking that my boss is invited to. But I think my personality is so reserved (Thandi¹⁸⁰).

The women who considered themselves to be less sociable were aware of the limits this placed on their networking abilities and overall career opportunities. The ability to connect with people's personalities and sharing common interests are critical in maintaining successful networks. The narrative of Thandi¹⁸⁰ reflects two other aspects: (1) the reliance of junior staff on senior staff to endorse and market themselves and (2) implicit in this narrative is the profession's acceptance of a stereotypical masculinised personality reflecting confidence, assertiveness, extrovertedness, courage and boldness, which are proxies for sociability. In the *Sociology of Sociability*, Simmel (1949) advances that the workplace is more than a pragmatic and economic space, but also a social space where people or employees come together and interact with each other. It is also in these spaces where the rules, norms and values of the field are created and maintained.

7.2.4.1 Sociability, gender, and race in networking

The women who had the 'right' sociability recognised how racism and sexism served to exclude black women. These women often experienced hostility from largely white male

¹⁸⁰ Thandi, black, candidate attorney, Married, Malusi Attorneys, 20 September 2017.

clients dominating the industry, who have pre-conceived biases and stereotypes of black women attorneys and so they do not engage with black women.

I try to attend conferences...But again, when I get there, I'll find that most of the people there who are potential clients, will be white males. And immediately there'll be that barrier, even if I try to approach them. Immediately there'll be that barrier, all that prejudices. (Zinzi¹⁸¹)

Here, the intersectional nature of gender and race in networking is illuminated by white men not engaging young black women. This stems from historical stereotypes and prejudices that do not recognise women and black women as bona fide attorneys in the corporate world. It thus adds credence to existing research documenting the intersectional experience of black women who have unique experiences in the profession.

7.2.5 Women, marriage, and networking

Married women expressly drew attention to the difficulty they experienced attending networking events which typically occur outside of regular office hours. They felt that it was easier for male colleagues to attend such functions:

Our male counterparts are going to those dinners; they are going for those drinks; they are going for those after-hours events because they would then just tell their wife, "cheers, I'm coming home late". It's different for a woman to tell their husband, "I'm going for drinks. I'll see you later" it's just a historic issue. No matter how modern and supportive and understanding your husband might be, it has a negative connotation, "oh my wife's coming home late two, three nights,

¹⁸¹ Zinzi, black, candidate attorney, Malusi Attorneys, 20 September 2017.

because she's going out for dinners and drinks with other people who are mainly men. (Ruth¹⁸²)

The above quotation exemplifies social and cultural norms dictating women's position in the marital home which frowns upon women networking with other men. It is, however, acceptable for men to network because they are doing business and attending to work commitments. This is rooted in the notion that men are the breadwinners and providers of the home and family.

7.2.6 Identifying gendered, racialised and class-based networks:

“Unless you're a part of the blue-eyed boys club, you're gonna have to work ten times harder”¹⁸³

The most salient feature the women reflected on was the gendered and racialised nature of networks. The women consistently mentioned the hegemony of white male control and power in the networks:

The truth is, it's still a white boys club. It'll always be. Especially with men, the white male, sort of Afrikaans, it'll always be that. I even think... I'm sure for a black or coloured person they feel the exact same way that law firms are just by nature white-boys clubs. (Miche¹⁸⁴)

I think the legal profession is still very male-dominated. (Kate¹⁸³).

I think it's still very white male...It's very male-dominated. (Tania¹⁸⁵)

¹⁸² Ruth, black, partner, married, Adams & Sullivan, 5 December 2016.

¹⁸³ Kate, Indian, associate, married, Malusi Attorneys, 21 September 2017.

¹⁸⁴ Miche, white, in-house counsel, married, Adams & Sullivan Attorneys, 2 March 2018.

¹⁸⁵ Tania, white, associate, married, Adams & Sullivan Attorneys, 29 November 2016.

Being a member of these networks can increase members' labour market opportunities as it provides access to valuable social capital resources such as information, influence and status which are embedded in these networks ([McDonald, 2011](#); [Oakley, 2000](#)). On the other hand, exclusion from the old-boys network will restrict access to social capital and the opportunity to information, status, and influence. Network processes have also long been implicated in the reproduction of gender and racial inequality ([Benschop, 2009](#); [Blass et al., 2007](#); [Rhode, 2001](#)).

The women remarked that these networks were not always developed in the workplace and neither did male attorneys become part of the old-boys network by virtue of having a law degree. Rather, it is about *where* they obtained their law degree and *who* their friends were or *who* they affiliated themselves with at school and university. These were often prestigious and elite all-boys schools such South African College Schools (SACS), Bishops Diocesan College (Bishops), King Edward III and elite historically white universities such as University of Cape Town, Stellenbosch University, and the University of the Witwatersrand. It was ultimately about what connections were made before practising. This is indicative of the long-standing historical linkages between men. Some men often practiced at the firm as a friend or became the client of a graduate friend, or upon recommendation of a friend. In other instances, juniors strategically associated themselves with their senior more powerful colleagues. Senior male colleagues are often drawn to junior colleagues because they see similarities between themselves and the younger male and therefore, they start building a relationship and moulding the career of the junior attorney. This indeed demonstrates how the 'old-boys' network facilitates solidarity amongst men, to women's exclusion. Rhode ([2001](#)) argues that people generally feel most comfortable with those who are like them in important aspects, such as gender. In this context, attorneys refer work to males whom they know and with whom they have a relationship. These relations are not necessarily built on friendship but are rather

political with the aim of growing business and climbing the corporate ladder. The findings reflect the gendered, racialised and class dimensions of the old-boys networks, underpinned by historical linkages and cultural capital (having access to elite schooling and universities). The old-boys network is a synonym for an ‘alumnus’ who has strong connections to the school and university they attended, as illustrated above.

The legal profession is a referral profession. Accounts from the women indicate that the proportion of work referred to women is limited, because referral patterns are unevenly spread in favour of men. The old-boys’ network offers the best resources, as members refer work to each other. This consequently allows work to be kept within the network, therefore men are able to perform and rise up the corporate ladder. This is succinctly captured in the following quotations:

[There is] a lack of opportunities in referral work. So, we also rely a lot on internal referrals. And there’s definitely a tendency for male colleagues to refer work to other male colleagues. (Amy¹⁸⁶)

They kind of give work to their ex-friends from their old-boys’ clubs; often those will be male. So, if you’re gonna [going to] stick to those kinds of old-boys’ clubs then the women are going to struggle to get that work. (Cheryl¹⁸⁷)

The women felt that because they were not part of these networks, they lost out on referrals and opportunities as their male colleagues and therefore needed to work much harder to prove their capabilities. Black women particularly felt the need to prove themselves in relation to

¹⁸⁶ Amy, white, partner, single, Adams & Sullivan Attorneys, 27 February 2018.

¹⁸⁷ Cheryl, coloured, associate, married, Smith & Partners, 18 November 2016.

their male colleagues, but also their white women colleagues, to be recognised as capable attorneys. Ruth¹⁸⁸ lamented:

As a black female you do really have to work four times harder to get to a point where you're taken seriously, where someone's willing to hear what you have to say... you struggle as a black female to fit into the environment. (Ruth¹⁸⁸)

The younger women felt that they could benefit from gaining knowledge and experience from their older and more experienced male colleagues but felt intimidated by the dominance of the men and the close ties they had with each other. The dependence on referral work from largely senior male colleagues resulted in many women feeling demotivated and irrelevant and subsequently 'giving up'. The dominance of the old-boy networks in the profession reflects McDonald's (2011) discussion on segregated networks, which indicate that access to social resources depends on the race, gender and class composition of its members. Hence, social resources are clustered amongst specific groups of people, in this case mostly white middle-class men. Therefore, a network consisting mostly of white middle-class men provides the best access to social capital, to which women are not privy (McDonald, 2011). Women, therefore, have to find their own networks.

7.2.7 Building supportive networks of their own: Women attorneys and mentorship

Research is increasingly focusing on the role of mentoring. In this study, the women noted that mentoring was critical to their career advancement and job satisfaction. The women felt that there is huge benefit derived from having peer support, providing them with general guidance to navigate the profession, building and fostering knowledge and skills transfers and creating

¹⁸⁸ Ruth, black, partner, married, Adams & Sullivan, 5 December 2016.

opportunities. However, these networks are different to the old-boys network because they are ‘new’ networks, which do not have the same history and gravitas as the old-boys network. Hence these networks do not seem ‘natural’ and built into the social fabric of the profession.

At Adams and Sullivan Attorneys, the current approach to mentorship was geared towards ‘matching’ a new candidate attorney with a more senior attorney, usually an associate. Senior associates would be paired with a junior partner and junior partners with more senior partners, with the aim of “*showing the person around and giving them advice and guidance on how to navigate this new profession*” (Akhona¹⁸⁹). At Malusi Attorneys, Samantha¹⁹⁰ occasionally organised coffee dates with some of the more junior women who wanted to discuss any concerns or challenges they were experiencing or even just to unwind. These are, however, not formalised initiatives and largely voluntary, with people generally not participating, and therefore not having the same results as the old-boys network did. While networking is generally an informal activity, the women felt they could benefit from a formalised programme, given the plethora of challenges confronting women in the profession. Such an initiative is, however, confronted with an array of challenges.

The women were particularly dependent on older or senior partners to mentor them, as they had a wealth of knowledge and experience. They, however, stated “*that not all partners can mentor and those who agree to mentor [are] sometimes not good mentors*” (Samantha¹⁹⁰). Competition and intimidation were cited as one of the key reasons why some partners were not willing to support and mentor junior colleagues. This was particularly the case with older partners who were not willing to mentor junior colleagues, because they did not want to impart

¹⁸⁹ Akhona, black, associate, single, Adams & Sullivan Attorneys, 27 February 2018.

¹⁹⁰ Samantha, Indian, partner, divorced, Malusi Attorneys, 20 September 2017.

their knowledge. These partners felt that they had worked very hard over the years to establish themselves and therefore had a fear of losing their practice to younger attorneys. For Nadia¹⁹¹,

[A] lot of the partners that they get in laterally is based on their experience. So, they're obviously very sought after in the industry. I also think some partners don't want their juniors to be on the same level as them. So you maybe have a partner in your team who's fifty-five years old or whatever, and he's got a senior associate who's been in this team who's about thirty-five and I think there's that fear of the thirty-five year old senior associate one day being better than the fifty-five year old partner. Yeah, I think that's the one thing that would probably stick out the most as the reason for not promoting people in your team so you don't want them to overtake you and maybe even steal your clients if you can call them that. (Nadia¹⁹¹)

Observing racial dynamics in the profession, black women felt that white partners, irrespective of gender, are more willing to impart their knowledge to other junior white colleagues.

If a partner doesn't impart knowledge on you, forget it, you will not know anything after that. But as soon as the partner is partnered with a white person, a white counterpart, male or female, then the knowledge starts pouring out. And the person becomes absolutely amazing in that department. (Karabo¹⁹²)

This certainly solidifies the experience of white attorneys and simultaneously strengthens the old-boys or 'whites-only' networks. In addition to improving knowledge and experience, it builds the professional profile of the attorney and brings him or her into the white middle-class elite. Black attorneys unfortunately continue to bear the brunt of such inequalities. Some women noted that gender, race, and class divides and diversity often cause people not to be

¹⁹¹ Nadia, white, associate, married, Malusi Attorneys, 20 September 2017.

¹⁹² Karabo, Black, Associate, Married, Malusi Attorneys, 5 October 2017.

cognisant of the unique challenges black women experience, and therefore they may not be able to provide the support needed. Considering this, Zinzi¹⁹³ comments on her partner's¹⁹⁴ inability to support her:

[She does] not assist in anyway because she's white. So, she's not very aware of the prejudices that I experience being a black female lawyer. (Zinzi¹⁹³)

Not only are some partners not willing to impart their knowledge, but there is also a lack of women (especially black women) in senior and leadership positions who are able to affect any meaningful support for women attorneys. On this note, Edith¹⁹⁵ and Natasha¹⁹⁶ lamented the lack of women in senior positions:

You can have an incredible support structure between women in the firm, but it helps to have somebody from a leadership position in the firm and there aren't that many women in leadership positions in the firm. (Edith¹⁹⁵)

I think women have very little influence on the legal profession. I just don't think that there are enough numbers at management level to influence key sort of transformation agendas or even general key management agendas. The minute that mechanism is based on... is determined by a male or is a structure [where] the origins aren't in a female solution then you basically asking your opposite sex to come up with a solution that only females can come up with and I think that's the problem we have is that we don't have enough female-based solutions to

¹⁹³ Zinzi, Black, Candidate Attorney, Single, Malusi Attorneys, 20 September 2017.

¹⁹⁴ She is a white woman.

¹⁹⁵ Edith, black, candidate attorney, Single, Adams & Sullivan Attorneys, 14 December 2016.

¹⁹⁶ Natasha, coloured, partner, married, Adams & Sullivan Attorneys, 24 November 2016.

*advancement of women in the workplace. They're all male based
advancements. (Natasha¹⁹⁶)*

In support of Natasha's¹⁹⁶ account, the women employed at Adams and Sullivan Attorneys spoke enthusiastically of Samantha's¹⁹⁷ (who is a member of the firm's EXCO) willingness to implement a formalised mentorship programme for women. She has made recommendations to management for a formalised mentorship programme but has not received buy-in from her largely male colleagues serving on the EXCO. On this note, Sommerlad ([2002](#)) notes that even when women make partner and nominally achieve authority, the real power still resides with the EXCO, which is largely male, both in terms of culture and personnel. This not only displays women's limited voice in the profession, but the professions lack of commitment to the career development of women. Collins' ([1989](#)) found that black executives are often hired to fill non-central positions within corporations, which has effectively marginalised them from corporate decision making, which in turn inhibited their career advancement. Women also tend to occupy lower ranking positions within work organisations, which hinders their access to high status network contacts ([McGuire, 2000](#)). This has been confirmed in the quantitative analysis discussed in Chapter four, with women having low levels of representation at the partnership level but over-represented in entry level positions.

Despite the low number of senior women in the profession, the women highlighted that as a collective they were not adequately supporting each other, which was a major stumbling block to peer support. One of the reasons attributed to the lack of collective support is the glass ceiling and 'queen-bee' syndrome which is captured in the following comments:

¹⁹⁷ Samantha, Indian, partner, divorced, Malusi Attorneys, 20 September 2017.

Look, I mean I'm not sure one is probably a type of competitiveness so they don't want to support and they feel threatened by other women because they've assumed because of this glass ceiling that's been there for ages that there will only ever be place for one woman at the boardroom table and the second thing is you often get comments like, "why should women be treated different?". (Cheryl¹⁹⁸)

Coming up against a more experienced male practitioner on the other side can be quite intimidating. But coming up against a more experience female practitioner on the other side can actually even sometimes be more intimidating for a junior. Because a lot of female practitioners have found that they've... had to work harder than their male counterparts to get to where they are. (Lisa¹⁹⁹)

The mentorship initiatives or networks which women rely on have been labelled as the 'wrong network' approach ([McDonald, 2011](#)). These 'wrong networks'²⁰⁰ which women and blacks rely on, provides very little access to social and labour market resources in comparison to the old-boys networks which have a long-established history in the profession. Women's networks are bedevilled with a plethora of challenges which the old-boys' networks do not have to contend with. The current initiatives which exist do not appear to be focused on business opportunities, but rather as a platform to raise any concerns the women may have. Differences in access to these segregated networks could therefore explain persistent gender and racial inequality in labour market outcomes and how closure operates.

This theme thus far has stressed the importance of networking, relationships and mentoring in the profession which has a categorical effect on women. The ways in which men and women

¹⁹⁸ Cheryl, coloured, associate, married, Smith & Partners, 18 November 2016.

¹⁹⁹ Lisa, white, partner, married, Malusi Attorneys, 21 September 2017.

²⁰⁰ Networks which women and blacks rely on, providing them with little access to resources and opportunities ([McDonald, 2011](#))

rely on networking is distinctly different. For men, the old-boys network has been paramount in building and advancing their legal careers. Women, however, rely on mentoring relationships, which have not advantaged their careers in the way the old-boys network has for men. Historical and societal gender and racial stereotypes and biases influence the way networks and relationships operate in the profession. Gender stereotypes and biases are constitutive of the networks in such a way that women are often excluded from them.

Social and cultural capital underpins the longstanding success of the old-boys networks. Many women lack the social and cultural capital - the codes and modes of behaviour, contacts, relationships, learned and acquired through years of connections at high schools and university, to insert themselves into these networks. There are instances where women resist these networks because of the competitive culture to bill, or social and cultural constructs determining a woman's place. Moreover, networking and referral opportunities function in spaces such as golf estates, where women were historically excluded, based on stereotypes ([Chitapi, 2015](#); [Pratt, 2012](#)). Given their exclusion from these networks, many women rely on mentoring relations to acquire their social and cultural capital. They depend on these relationships to observe the modes and codes of behaviour they would otherwise not have been exposed to, but this has proven to be inadequate and does not operate with the same gravitas as the old-boys networks.

7.2.8 Sexual harassment: "It's from subtle to extreme"²⁰¹

Sometimes it comes out in explicit like, you know, inappropriate SMSes over a weekend, say for instance. That's the one that's very clear that you are guilty of

²⁰¹ Yolanda, white, candidate attorney, married, Adams & Sullivan Attorneys, 24 November 2016.

that. It's not explicit it's just the mannerism and it's the way and it's the type of conversation you have at the lunch table. (Anna²⁰²)

The reader may wonder why I deemed it appropriate to place this theme under the broader theme of networking and relationships. I intentionally placed this section here as it shows how women rely on referrals and endorsements from their largely male colleagues and how they are silenced by acts of sexual harassment²⁰³, as this will tarnish their relationships and hinder their work opportunities. In addition, old-boy networks endorse such incidents as the men (attorneys and clients) are complicit in sexual conversations, lingo, comments, and acts, strengthening women's silence and the success of the old-boys networks. It is also often at networking events that such behaviour emerges.

I mean like the sexual harassment that women get and that they experience and is normalised, that is a stumbling block... really most senior directors know about it; support staff definitely knows about it. It's something that's common knowledge. (Yolanda²⁰⁴)

Research indicates that sexual harassment in the workplace is rife and a major impediment to the professional careers of women. This is particularly prevalent in male-dominated organisations where networks operate ([Pender, 2019](#); [Rhode, 2001](#)). Sexual harassment can, and does, affect both men and women. In this study the perpetrators were senior male colleagues and clients, with less senior and junior women as the victims. In this study, only four women raised the issue of sexual harassment. This is in no way suggestive that the other

²⁰² Anna, white, associate, co-habiting, Adams & Sullivan Attorneys, 27 February 2018.

²⁰³ I acknowledge that gender harassment is also a form of sexual harassment which does not necessarily involve sexual cooperation and is equally as pervasive and damaging to women's careers. Gender harassment does feature in this study under themes such as gender bias and stereotypes. However, the aim here is to focus on sexual harassment as conceptualised by the participants.

²⁰⁴ Yolanda, white, candidate attorney, married, Adams & Sullivan Attorneys, 24 November 2016

women did not experience it or had an opinion, but rather that the sensitivity of the matter and the fear of victimisation made it quite a difficult subject to engage in. This was not a topic I specifically decided to explore, rather it was raised by the interviewees. Only if they raised the issue did we converse.

I am aware of it [sexual harassment] happening more frequently than it should. It might not be in very explicit ways, very implicitly, but yes, I think it's a big problem.

(Anna²⁰⁵)

Sexual harassment, yes, I know a lot...I've never experienced, but I know of sexual harassment cases. (Tammy²⁰⁶)

Clients too. Everyone does it [sexual harassment]. (Phumza²⁰⁷)

The chilling extracts above indicate the existence of rampant sexual harassment in the profession. It either happened to the women themselves or someone they knew someone who was a victim of sexual harassment. Sexual harassment in the profession is not always explicit and ranges from subtle to extreme. The nature of such encounters includes inappropriate text messages, phone calls or sexual lingo and comments. The more extreme forms would be touching and groping.

When the women spoke of their sexual harassment experiences, I became silent as I witnessed the raw emotion, fear, anger, and anxiety with which they expressed themselves. Some women spoke and suddenly became silent, their eyes filling with tears. I must admit when discussions of this subject arose, I did not ask too many questions or probe the topic any further, as I was

²⁰⁵ Anna, white, associate, co-habiting, Adams & Sullivan Attorneys, 27 February 2018.

²⁰⁶ Tammy, white, associate, single, Adams & Sullivan Attorneys, 24 November 2016.

²⁰⁷ Phumza, black, candidate attorney, single, Malusi Attorneys, 21 September 2017.

taken aback that it silenced women attorneys in so many ways. I recall one incident of a woman crying and telling me she was experiencing sexual harassment and has spoken to her husband about it, but they were uncertain of how they should approach the situation because of the repercussions it will have on her career. As much as I felt ethically and morally obligated to report this to the firm, I knew I could not, as the implications for the woman would be ruinous.

The theme of sexual harassment confirms MacKinnon's (1979) thesis that sexual harassment is concerned with power relations, where senior male attorneys, partners and clients execute their power over women in less senior positions and silence them. Because law is a referral and endorsing profession many women are silenced as they depend on their perpetrators - who are often senior men for work opportunities. Here Phumza²⁰⁸ powerfully captures the power dynamics and competitive work culture influencing her dilemma:

I think I just brush it [sexual harassment] aside. Because I've had this experience more than once, more than twice, where I'm working on a matter with an advocate and then he just starts saying these sexual things to me. Or he calls me late at night. Or a partner who says these weird things or looks at you in a disgusting way. And I spoke to my mentors about it and most of them said I must be very careful how I deal with it. Because I don't want to create such an uproar that next time, they might have a prospective business opportunity they won't consider me, because now we're not on good terms. So, it's this weird thing where you want to assert yourself and let this person know that you're not a piece of meat. But you don't want to make him too angry so he can still give you work. But obviously if he still

²⁰⁸ Phumza, black, candidate attorney, single, Malusi Attorneys, 21 September 2017.

gives you work then you still have to interact with him, so you still have to encounter this behaviour. (Phumza²⁰⁸)

As practitioners of the law, the women were well-informed of their legal rights regarding sexual harassment in the workplace. They were however quite clear that reporting any form of sexual harassment with the exception of ‘explicit’ rape may not be very useful and “*if you very brave you can report it*” (Anna²⁰⁹), but can face severe career implications, especially if reporting a senior colleague or client. Others felt that HR who is required to protect the interests of staff [is] “*not an effective forum, not at all*” (Yolanda²¹⁰). In addition, Tammy²¹¹ reflects on the outcome of reporting sexual harassment perpetrators:

Yes, we’ve got systems in place at our firm but sometimes it’s a matter of, like you know when you’re sexually harassed, you know there’s a system, but you also know there’s going to be consequences; a person is going to be reported, they are going to mention your name, so I think there is a lot of people that just leave it because of the whole formal process. So even though there are processes; it sometimes can make matters worse. (Tammy²¹¹)

I would like the reader, irrespective of gender to consider the following: Imagine you are being sexually harassed at work, you are silenced, you are fearful, you are angry, you are anxious. You have no support, because you, the victim will be further ostracised, by the very structures that should be protecting you! Every day you wake-up, don your best attire and put on that smile, and start billing, but underneath you are experience a range of emotions that dare not get expressed. Reversing the roles, you could be the husband or partner of an attorney. Society says you should protect your wife or partner, you know she is being sexually harassed, you are

²⁰⁹ Anna, white, associate, co-habiting, Adams & Sullivan Attorneys, 27 February 2018.

²¹⁰ Yolanda, white, candidate attorney, married, Adams & Sullivan Attorneys, 24 November 2016.

²¹¹ Tammy, white, associate, single, Adams & Sullivan Attorneys, 24 November 2016.

angry, you are hurt, but you too are silenced, because she says, ‘just leave it, hopefully he²¹² gets the picture’, but he never does. He knows he has power over her!

Despite women having enforceable legal rights against sexual harassment in South Africa and the workplace, victims of sexual harassment are silenced by a system that continues to favour toxic misogyny, patriarchy, and the abuse of power relations. On this note, Pender ([2019](#)) found that 75% of sexual harassment cases in the profession go unreported, one in three women experience sexual harassment in the workplace, 37% of women exit the workplace owing to sexual harassment. In South Africa, 43% of women and 12% of men report being victims of sexual harassment. It is unfortunate that the evidence before me leads me to question the integrity of the legal profession, the custodian of justice in society. To what extent are women protected by a profession that sees no issue in committing such atrocious acts of human rights abuse?

²¹² Referring to perpetrator

7.3 Theme 2: The acquisition and reproduction of cultural capital in the legal profession

This section discusses the theme of cultural capital in the profession. The theme emerged as central to the ways in which the women experienced social inclusion or exclusion. They reflected on ‘what they speak’, ‘what they wear’ and ‘how they speak’ as grounds for social inclusion and exclusion in the profession. The discussion explicates the social and economic value of cultural capital in the profession, as well as the lack thereof, which ultimately results in social closure and inequality for the women. The intersectional nature of cultural capital along the lines of gender, race and class in the profession is illuminated.

7.3.1 Education as enabler of cultural capital

In speaking about their life histories, the women reflected on their own education and that of their parents and siblings. A key determining factor of an attorney’s cultural capital is the quality of her education. This largely stems from the cultural capital and education of her parents. Most of the white women interviewed attended Stellenbosch University, University of Cape Town (UCT) and the University of the Witwatersrand (Wits) which are regarded as South Africa’s elite universities. These women also attended private or former model - C²¹³ schools. Some women noted how not having attended one of the elite historically white universities raised scepticism about their legal competency. Attorneys who had graduated at formerly white universities were considered more competent and better trained. The women who attended formerly black universities are forced to work much harder to prove their capabilities.

²¹³Refers to previously semi-private and whites-only government schools in South Africa, introduced in 1991 by the apartheid government. The term model - C is still commonly used to describe former white schools.

I feel strongly enough to say that it's [competency] questioned, but I definitely feel that I have to work harder to prove myself. I think there's also a perception that if you're not from one of the Cape Town universities or you're not from Wits then you have a little bit of a lesser education. If you studied at UKZN²¹⁴ or if you studied, say for example, at one of the Limpopo²¹⁵ universities, I think those candidates have to prove themselves a lot more because it's assumed that if you don't come from the Wits or you don't come from a UCT then you're not a top student, you're not academically educated to the level of a Wits student. So, in those aspects, yeah, I definitely think not colour, but I think it's also where you studied that you have to prove yourself a little bit more and show that you're competent before people start to trust you. (Kate²¹⁶)

A large proportion of white women who attended historically white universities also have parents who were educated at university and were professionally employed. Either one or both parents were employed as attorneys, advocates, accountants, banking executives, academics, doctors, engineers, or information technology (IT) specialists. This is especially important in providing early exposure to the professional work culture as well as general middle-class life experiences²¹⁷. Two women spoke of their early exposure to the legal profession as they both had parents practicing law. Other women noted how having professionally employed parents provided them with a privileged middle-class upbringing allowing them to attend more affluent schools, exposure to travel and extracurricular activities.

²¹⁴ Abbreviation for University of Kwa-Zulu Natal (historical black university)

²¹⁵ Rural province in South Africa.

²¹⁶ Kate, Indian, associate, married, Malusi Attorneys, 21 September 2017.

²¹⁷ See previous discussions.

So, yeah, I had all the usual luxuries when coming from that [middle class] background. (Claire²¹⁸)

My dad also goes abroad quite a lot, so I spent some school years in Germany as well while he was on sabbatical. (Tammy²¹⁹)

Such a privileged upbringing has provided white middle-class women with cultural capital, which is nearly impossible for black underprivileged women to acquire, as the majority are first generation professionals and do not have educated and professionally employed parents to provide them with the middle-class cultural capital valued by the profession.

7.3.2 What and when to speak: “I’ve never played squash, so I can’t engage²²⁰”

The importance of collegial socialising or conversations within the office space was considered an important part of an attorney’s time in the office. Such conversations occurred during lunch and coffee or tea breaks, when walking through the office corridors, or taking the elevator. The conversations often centred on extra-curricular activities such as sports and travel or current events in the media. Tennis, squash, cycling, and horseback-riding featured as prominent sports and extracurricular activities amongst white attorneys and formed the basis for conversations. Black women, however, felt that these activities were the preserve of the white middle-class. They were not accustomed to these sports and could not converse with their colleagues on these topics. This subsequently served to exclude them.

²¹⁸ Claire, White, Associate, Married, Adams & Sullivan Attorneys, 27 February 2018.

²¹⁹ Tammy, white, associate, single, Adams & Sullivan Attorneys, 24 November 2016.

²²⁰ Phumza, black, candidate attorney, single, Malusi Attorneys, 21 September 2017.

If we're sitting as a group, you get conversations which as a person of colour, sometimes you can't participate in. So, for example, horse riding. As a person of colour, you know nothing about horse riding or travelling the world. So, once those discussions are being conversed you just sit there quietly, and you can't really participate. So, some conversations are done deliberately to exclude certain people. (Karabo²²¹)

In contrast, the women felt that conversations about soccer and rugby were more inclusive as these were more familiar to them allowing for more inclusive socialising:

So white men and women will talk about tennis or squash or cycling or all of those, not soccer. Because we²²² can all talk about soccer or rugby, we can all talk... And then obviously if that's not your thing then you can't engage...I've never played squash so I can't engage. (Phumza²²³)

This reaffirms Warde's (2011) research that golf, cycling and squash are the preserve of the middle-class, as the middle-class has a much wider range of exposure and experience to sport. In contrast, soccer is traditionally a sport played by boys attending public schools and thus became synonymous with the working class (Hughson, 2009; Warde, 2011). On this note, Bourdieu's (1984) theory of taste and distinction postulate that the type of sport people engage in is indicative of social class.

Conversations on travel and luxury holiday experiences are also popular markers of race and class amongst attorneys. Such conversations or topics systematically exclude black attorneys, because they felt that owing to their limited or lack of travelling experiences, they cannot

²²¹ Karabo, black, associate, married, Malusi Attorneys, 5 October 2017.

²²² Referring to black people

²²³ Phumza, black, candidate attorney, single, Malusi Attorneys, 21 September 2017.

engage in such conversations in comparison to their white middle-class colleagues who frequent both local and international travel. Many black attorneys have not had the privilege of traveling or exploring South Africa and international travel remains a distant dream. It is often assumed that by virtue of their professional status, black attorneys are on par with their white middle-class colleagues; however, it is an unfortunate reality that young black professionals in South Africa are burdened by the realities of black tax. Many black attorneys are not able to engage and acquire the experiences as their privileged colleagues as they are paying off student loans, supporting immediate and extended families and paying other debts. This is aptly captured by Zinzi²²⁴:

I mean, you'll find that they've [referring to white colleagues] travelled around the world and that's what they talk about during coffee breaks. And be able to spend their money easily whereas I've never travelled, I've never been out of the country, never had that privilege...And the way that I can spend my money is very limited, because I've got debt to take care of, I've got family to take care. And I can't participate in those types of conversations, because I can't relate to them. So that's another obstacle. So, it's difficult to form friendships or some level of being able to relate to colleagues is also very difficult. (Zinzi²²⁴)

The women emphasised the importance of the social space where collegial conversations occur and how such spaces serve to exclude certain groups. Elevators were considered inclusive spaces allowing small talk around the weather or current affairs. Certain spaces were also hierarchically and racially divided. The partner's executive dining rooms are reserved only for partners and systematically exclude all other staff. The space is furthermore racially divided

²²⁴ Zinzi, black, candidate attorney, single, Malusi Attorneys, 20 September 2017.

amongst the partners whereby certain race groups would meet at dedicated times. Karabo²²⁵ commented that:

My boss²²⁶ was telling me two days ago that even in the partners' executive dining hall you'll find that people are sitting in groups. So, the people of colour always go down there to have their lunch for example at quarter-to-two. Whilst everyone else [referring to white colleagues] goes and have their lunch at one o'clock. So, there's that division. (Karabo²²⁵)

Such divisions and actions were not explicitly formed, but rather, it was grounded-in the everyday unconscious thinking and actions of people.

Black women struggle to acquire the habits and tastes of the white middle-class culture, because they feel naturally, they are different since they do not share the same socio-economic and cultural backgrounds and life-experiences as their privileged white colleagues. They are thus unable to socialise and connect with their colleagues. Such actions or feelings should however not be seen as 'natural' or 'unconscious', but rather the effects of the normalisation of exclusionary practices that keep hierarchies intact. These are everyday mundane topics but serve as important signifiers of status and who is allowed to speak. It is also an important space in which the simple everyday conversations can shift to discussions around referrals, work opportunities or invitations to networking events²²⁷. This effectively excludes black women on all levels. Kanter (1977) cited in ([McDonald, 2011](#)) examined the 'shadow structure'²²⁸ within

²²⁵ Karabo, black, associate, married, Malusi Attorneys, 5 October 2017.

²²⁶ Black, male, partner

²²⁷ Recall discussion in Section 7.2.

²²⁸ Demonstrates how women and blacks are excluded from social activities and informal conversations, thereby excluding them from valuable opportunities, effectively hindering their career advancement ([McDonald, 2011](#))

corporations, revealing how groups such as women and blacks were excluded from informal conversations and social activities.

7.3.3 “I was never going to be taken seriously in a kaftan with pumps”²²⁹: Embodiment of corporate culture in the legal field

7.3.3.1 Professional embodiment and gender

The women expressed how professionalism was embodied through their physical presentation by wearing the prescribed dress or attire. It is important that their professional image exude ‘seriousness’ and ‘confidence’ in order to gain the trust and respect of colleagues and clients.

What I try to do is to dress in a way that makes me feel confident. And that's what I want to project; it's the confidence. (Michelle²³⁰)

You can't look like you're not serious enough. Because if you don't look serious and you don't look smart then nobody will trust you with their work...If you look at the corporate lawyers, you're more serious, you're more polished, you're more plain, because that's how you get taken seriously. (Phumza²³¹)

None of the firms had a specific policy dictating what is an acceptable dress code or professional appearance. There is an implicit consensus that attorneys should dress formally and smart. This is reflective of archetypal professional men in dark coloured (black or navy blue) suits with shirts and ties. The women thus struggled to negotiate their embodied professionalism. It is however implicitly expected of them to wear dark coloured skirts, dresses, or trousers, subtly reflecting a masculinised embodiment of professionalism.

²²⁹ Samantha, Indian, partner, divorced, Malusi Attorneys, 20 September 2017.

²³⁰ Michelle, white, partner, married, Malusi Attorneys, 20 September 2017.

²³¹ Phumza, black, candidate attorney, single, Malusi Attorneys, 21 September 2017.

The women were conscious of wearing trousers for them to be taken seriously amongst the largely male folk. By wearing trousers, the women seek to reaffirm their legal competency and capabilities and unconsciously provide themselves with a sense of masculine confidence.

As a woman I feel like your dress code has to be serious, you want to be serious, you want to be taken seriously so you're wearing your dark colours. When you go to meetings, you're conscious to wear pants. Because if you wear a dress or a skirt, people have a certain image of you. So, you want to wear pants to be taken seriously. When I've got meetings, I consciously wear pants. (Karabo²³²)

Senior men who are established in their career, received some flexibility, and were not always expected to wear a full suit and tie, as they have already earned respect from their clients and colleagues. It is particularly important for junior attorneys to uphold their professional image as they still need to earn respect and trust from partners and clients. This is articulated by Lisa²³³:

The partner wouldn't be happy with a young lawyer attending a meeting with a client without a jacket and tie, unless of course that had been something that they were happy to discuss. But often our partners might not [dress formally] because the clients know them, but you're creating an impression when you're still a junior. (Lisa²³³)

The formal attire of the profession dates to the history of the formal suit in 17th century Europe. Centuries have passed, but the suit continues to be worn by businessmen and dignitaries around the world. It has become a symbol of conformity and a silhouette that says, 'take me seriously',

²³² Karabo, black, associate, married, Malusi Attorneys, 5 October 2017.

²³³ Lisa, white, partner, married, Malusi Attorneys, 21 September 2017.

which was aptly particularised by the women. Therefore, many reflect on the notion of ‘power dressing’ and being taken ‘seriously’ in the profession. While the physical presentation of men can be relaxed, women present themselves more formally and in a masculine style to reflect ‘confidence’ and ‘seriousness’, which they are presumed to lack. Williams and Connell remark that “every interactive service job has an aesthetic component, that is, a set of normative expectations regarding appropriate appearance and demeanour” ([2010, p. 353](#)).

7.3.3.2 Professional embodiment and client relationship

Attorneys represent different clients and often present themselves in a manner that would appeal to the client. The women emphasised that their physical appearance is influenced by the departments in which they practice and the clients by whom they are employed. In pro-bono practices they would dress more casually to create a relaxed atmosphere, as the aim is to create a relatable image to the client. Pro-bono clients differ from corporate clients, as they are economically less fortunate. Pro-bono attorneys therefore do not want to create a status barrier by dressing in a way that will reflect their higher social status or capital. Others noted the importance of presenting themselves to their clients in a way that will allow their professionalism and legal intellect to be encapsulated through their physical appearance. The women employed by male-dominated clients and industries in the construction, engineering, and mining fields, experienced a lack of acknowledgement and respect as a bona fide attorney. Black women particularly felt obligated to prove themselves by presenting themselves in a manner that will allow them to project or command a formal and competent appearance in the male dominated boardroom:

I think you need to definitely dress in a certain way. No, I'm not saying provocatively. You just need to make yourself stand out. I find it particularly difficult in my field of specialisation, being construction. All our clients are

construction companies and engineers who are predominantly run by men. So it's more often than not that you're the only female in a meeting, let alone being a female of colour. That's even worse, because it's virtually a group of white men who are engineers and they've been in that field forever. So, you're either the only woman or you're the only black woman and no one talks to you, and no one takes you seriously. So definitely the way you present yourself and how you look, and stuff definitely is an important factor, because you need to kind of stick out.
(Nadia²³⁴)

The women thus emphasised that if they needed to command the boardroom, it helped to dress a little more. Samantha²³⁵ and Nadia²³⁴ exemplify the biases attached to women attorneys and black women, as well as the biases attached to certain practices and industries. It is thus imperative to know *who* the client is to satisfy their aesthetic preferences. In addition, this illustrates how attorneys are on the radar of the corporate gaze of their clients. It has been suggested that women attorneys often must craft and re-craft their physical appearance to match the requirements of their clients. This illustrates how clients take control over the physical body of women in the profession and how women must recraft themselves to refute any unsubstantiated stereotypes which their largely male clients may have of them. It is therefore paramount that women attorneys know their audience.

The discussion certainly reflects the emotional labour women attorneys must endure as they pursue their legal career. The women become emotionally vested in their physical appearance as they have to create a publicly observable display ([Ren, 2017](#)), but also need to create a favourable feeling and image to their clients and colleagues. This illustrates how the emotional

²³⁴ Nadia, white, associate, married, Malusi Attorneys, 20 September 2017.

²³⁵ Samantha, Indian, partner, divorced, Malusi Attorneys, 20 September 2017.

labour of women in the profession is subject to the control of clients, where the women dress in a manner to suit the client whom they serve. It furthermore exemplifies the intersectional nature of emotional labour for black women.

7.3.3.3 Professional embodiment and collegial relationships

Professional embodiment requires attorneys to meet the expectations of colleagues by presenting and conducting themselves to preserve their integrity and social standing with gravitas. Pro-bono attorneys may be more empathetic towards their clientele, but their colleagues have a different perception of them. They are often not taken seriously amongst their colleagues as the dress style does not subscribe to the image dictated by the profession. This is reflective of (1) the stigma attached to pro-bono work, because it does not bring in any money for the firm in comparison to litigation or commercial practice, (2) social status being important to the profession and (3) the importance of power dressing. This is described in the following quote:

When I took up pro-bono and I gave up my fee-generating practice, I was doing a lot of clinic work. I was going to these community clinics and law clinics and there your stilettos and your suits and all of that, you don't fit in. So, I have to dress down and I wear comfortable shoes, pumps, and I'll just wear loose pants and a loose top and a jersey...And I found, for those two years, people didn't even see me. They²³⁶ didn't even see me in the room and I felt that they didn't even take me seriously...So I just went back to wearing my court heels and my black dresses...I come to work every day looking like this [formal] because then partners see you as

²³⁶ Referring to colleagues.

a [potential] partner and they see you as a lawyer and they listen to you.

(Samantha²³⁷)

7.3.3.4 Professional embodiment and career progression

She's just a good worker, but she doesn't look like them²³⁸ and she doesn't

sound like them and she doesn't dress like them. (Samantha²³⁷)

Samantha's²³⁷ account above reflects the reality of many black women in the profession. Black attorneys from disadvantaged socio-economic backgrounds often do not exhibit the physical appearance valued by the profession which is largely centred on white middle-class standards. Many black attorneys do not have the economic capital to invest in a professional wardrobe when entering the profession. A large proportion of black women are first generation professionals and do not have any prior knowledge and exposure to professional culture. It is thus not ingrained into their habitus. Those women who do not embody the physical appearance valued by the profession are not recognised by their colleagues. They are not included in social events or collegial conversations. Such experiences negatively affect their career prospects and experience. They consequently do not build their social and economic capital, because they are not receiving the training and experience, they are supposed to, to help them improve their career prospects. Samantha²³⁷ illuminates this discussion and reflects on her experience of Katlego²³⁹:

I have one girl²⁴⁰ who's very poor, so her clothes are shabby and her hair's always in a pony [tied] and all of that. She works for a team where everyone wears the

²³⁷ Samantha, Indian, partner, divorced, Malusi Attorneys, 20 September 2017.

²³⁸ Referring to white middle-class women.

²³⁹ Young, black candidate attorney.

²⁴⁰ Referring to Katlego, effectively diminishing her.

power suit and the stilettos and the stockings every day and their hair's always in place. And they haven't actually spent time training her and teaching her almost as if she doesn't fit in...So I found that if you don't look like them, they won't take the time to train you and teach you... there's a definite bias against maybe black female candidates, but the partner is completely oblivious that there's a pattern in the candidates that she gives work to and that she doesn't give work to.

(Samantha²³⁷)

Chiu and Babcock, (2002) and Pettinger (2004) note the importance of physical appearance for job prospects and career progression. Correspondingly, Warhust and Nickson (2009) also reflect how critical a 'good' appearance is for career success. Furthermore, Oaff argues "if your gender and your race haven't kept you off the short list, your physical appearance still might" (2003, p. 7). It is unfortunately largely black women who experience prejudices and discrimination based on their physical appearance and aesthetics. This is often referred to as 'lookism'. Aesthetics thus explicates 'lookism' or gender employment discrimination on the basis of corporeality (Tietje & Cresap, 2005), arguably the new battleground in employment (Warhurst et al., 2012). Despite being qualified and having the requisite academic capital, many black women do not possess the aesthetics required by the profession. Several imageries are stacked against them: gender, race, class accent, hair, and dress.

7.3.4 Investment purchases: It's all in the brand

Branded clothing, shoes, and handbags such as Zara, Pierre Cardin, Fabiani and Pringle to name but a few are considered investment purchases symbolic of social status. It buys attorneys respect from their clients and colleagues and inadvertently reflects how good the attorney is. The extracts below reflect the importance of branded labels:

Even when the client looks at you, the client looks at what you wear and your shoes up until your coat or whatever, or what bag you have, to be taken seriously. And there's so much pressure because the people that you are meeting with, your clients, they are at the top. So obviously they're wearing all these fancy labels and you want to keep up, because as an attorney you're giving them advice, you want to also be taken seriously. So, there's a lot of pressure. (Karabo²⁴¹)

I decided to make a few purchases, investment purchases on holding. I bought this one pair of sandals...which was Pierre Cardin. Because when I wear that sandal, then all I have to do is cross my legs and then someone is looking at my feet. It gives an impression, "Oh my word, Pierre Cardin sandals". (Samantha²⁴²)

This section signifies how aesthetics in the profession is gendered, racialised and class-based (Ren, 2017). It certainly shows how aesthetics highlight the professional culture and strengthens professional status and branding. Rhode (2010) suggests that physical appearance can influence perceptions of competency, performance, career prospects, income, and status. Physical or aesthetic appearance of attorneys can thus be considered the ‘brand enhancers’ and ‘walking billboards’ of the profession. A woman’s aesthetic appearance is thus her branding kit. Women attorneys are subjected to multiple gazes or “subject to the critical eye of others” (Warhurst & Nickson, 2009, p. 86). Women attorneys are subjected to the corporate gaze of the firm and clients; however, black women are also subjected to the stereotypical racial white gaze associated with beauty and intellect. When the corporate gaze is combined with the racial white and male gaze²⁴³, the aesthetic labour of black women in the profession is intensified in

²⁴¹ Karabo, black, associate, married, Malusi Attorneys, 5 October 2017.

²⁴² Samantha, Indian, partner, divorced, Malusi Attorneys, 20 September 2017.

²⁴³ The act of depicting women and the world from a masculine and heterosexual perspective.

comparison to their white counterparts. Physical appearances of women have long been subjected to class, particularly white middle-class ideals as a potential barrier to those individuals coming from working class backgrounds ([Karlsson, 2012](#)). The physical appearance of attorneys therefore communicates belonging to the class culture of the profession. In addition, it demonstrates the capitalist consumerist aspect of aesthetics. This capitalist consumerist aspect fits with the legal firm as a capitalist competitive enterprise similar to the clients it serves. Attorneys are thus expected to embody the principle of capitalist success through consumption and bodily representation. The findings not only illuminate the class association of aesthetic labour, but also its intersection with race and gender which is more often demanded from women rather than from men. Physical appearance in the profession is demanded from both men and women, but women are subjected to a set of visual criteria, from which men are generally exempt. Aesthetics in the profession is therefore not equally distributed but fractured by race, class, and gender. Otis ([2008](#)) concluded that aesthetic labour is a social construct stratified by class, culture, and ethnicity.

7.4 Speech and accent: “English is not our first language. You are seen to be less”²⁴⁴

We are aware that language is an integral part of social life with all its ruses and iniquities, and that a good part of our social life consists of the routine exchange of linguistic expressions in the day-to-day flow of social interaction...Language and social life are inextricably linked. ([Bourdieu et al., 1991](#))

Competency in the language is critical for the inclusion of ‘invaders’.([Puwar, 2004, p. 112](#))

²⁴⁴ Akhona, black, associate, single, Adams & Sullivan Attorneys, 27 February 2018.

In addition to negotiating their physical and aesthetic appearance, black women also have to manoeuvre another elusive criterion of professionalism - their speech and accent. They remarked how their legal competency is evaluated because English is not their primary language. They explained how their thought process and verbal articulation is not always in sync. They would process their thoughts in their primary language and then verbally communicate in English. They may not always be concise or may struggle to find the correct words to express themselves. They are consequently stereotyped as incompetent. For Akhona²⁴⁴:

The fact that [for] some of us English is not our first language and so it's really, you're at a disadvantage in that regard. Where sometimes you struggle to find the words, not because you aren't well-versed, but because this is not your first language. And I always try to explain to them when I think, I don't think in English. And so sometimes for a white [monolingual English speaker] person would see, "Why can't you just say that." You are seen to be less than [them] because you aren't as proficient as somebody else. And people forget that some of us are second, third or even fourth language [English speakers]. (Akhona²⁴⁴)

This is however not an indication of competency or an inability to communicate in English but reflects a spatial dimension where bi/multilingual speakers utilise or project their linguistic skills differently, which sadly has implications for how their legal proficiency is evaluated. It demonstrates how the women move between the different social fields they find themselves in and how they use language in each field, for example, they might use their primary language in their home or familial field and English in the legal field. At this point, Blommaert et al highlight that “a new environment can therefore affect the ability to deploy linguistic resources and skills and imposes requirements on us which we may fail to meet” ([2005, p. 198](#)). Not

demonstrating the English standard set by white monolingual speakers often results in bi/multilingual speaker's legal competency and intellect being questioned. Therefore, *“if you don't have a particular accent or your English isn't of a particular calibre, then...people just don't think that you're smart”* (Phumza²⁴⁵)

Some women regrettably internalise the stereotypes articulated by Akhona²⁴⁴ and Phumza²⁴⁵ and this results in them assimilating the speech and accent valued by the profession. Black women indicated that they often have ‘to give up’ something or ‘change how they speak’ to be recognised, because their colleagues and clients perceive them differently. This is owing to English not being their primary language and therefore they might have a different accent or way of speaking the English language, in comparison to their white English-speaking colleagues. By changing their accents or improving their language skills, they can relate and engage with clients.

We had to give up²⁴⁶ to be recognised here...your clients perceive you differently because you speak differently. And I think me, I've been able to relate to clients because I don't speak the same anymore. (Ayesha²⁴⁷)

Ayesha²⁴⁷ further elaborates how she and other colleagues need to ‘change themselves’ and assimilate the linguistic rhythms of the profession to be socially accepted amongst their colleagues and clients, but also to receive career opportunities so that they may develop in their careers:

Because I think for me to go up the ranks and for other people of colour who had gone up the ranks... we just change ourselves and remould ourselves to fit into a

²⁴⁵ Phumza, black, candidate attorney, single, Malusi Attorneys, 21 September 2017.

²⁴⁶ Referring to primary language.

²⁴⁷ Ayesha, coloured, associate, single, Malusi Attorneys, 21 September 2017.

white culture. It's given us an opportunity... I think it was an easy sell-out because I wanted a career and I wanted to be successful in law and I was very driven. (Ayesha²⁴⁷)

The intersection between race and language in South Africa cannot be ignored. South Africa is a linguistically diverse country boasting eleven official languages, but English continues to be the medium of communication in South African workplaces and higher education institutions. Many black bi/multilingual attorneys bear the brunt of not having the same linguistic proficiency and skills as their white monolingual counterparts. Having the same academic and human capital does not afford them the status of a bona fide attorney with legal intellect, but rather the one whose skin complexion and accent are deemed socially acceptable. On this note:

Two associates on the same level, one is white with an acceptable accent, and one is a black person from... Soweto²⁴⁸ ...and somebody walks in and asks for advice, it's like the attention will be more on this person who speaks better than the other person only because they just assume that this one hasn't learned enough because their accent is different. (Phumza²⁴⁹)

The illustrations by Phumza²⁴⁹ implicitly illustrates how black attorneys from the township²⁵⁰ who may not have attended a private, or former white model-C school, where 'white accents' and mannerisms are adopted, which would have exposed and provided them with the cultural and linguistic capital valued by the profession and even the wider South African society.

Bilingualism or even multilingualism is argued to be advantageous by improving employment opportunities, but these skills are often lacking when assessed against monolingual standards

²⁴⁸ Black township in Johannesburg.

²⁴⁹ Phumza, black, candidate attorney, single, Malusi Attorneys, 21 September 2017.

²⁵⁰ In South Africa the term township denotes a racially segregated and under-developed area.

([Kachru, 1996](#)). Monolingual speakers often assume that bilingual speakers have equal proficiencies in both languages. This is rarely the case, as bilingual speakers use their different languages for different purposes and in different social fields. The women indicated that they often used their primary language to communicate and socialise with each other as a means to remind them of their own culture. Ayesha²⁴⁷ relocated from Cape Town to Johannesburg and mentioned that she felt isolated since relocating to Johannesburg where she needed to assimilate and thus felt removed and isolated from her Afrikaans Cape culture and dialect. She befriended two colleagues from Cape Town and amongst them they are able to speak about their culture and local dialect, such as saying, "*Awe, bra. Hoe gaan dit?*" (Hi, my friend, how are you?). Bilingual speakers may capitalise on their primary or secondary language to build their social relations and overcome the isolation that can be experienced from relocating.

Language operates as a form of differently valued cultural capital. English in particular is a sought-after linguistic resource owing to its dominance in education, employment, and economic affairs. This legitimises its high status and reproduces a social order where a particular standard, usually that of white upper class and monolingual speakers of the language is considered normal and natural. Lan ([2011](#)) argues that the English language is a valuable form of capital which is highly racialised and attached to white skin, where white middle-class accents are deemed 'proper'. In this vein, Bourdieu et al ([1991](#)) comments that linguistic habitus is a subset of class habitus. Language is therefore not only a form of communication, but also a mechanism of power. The language and accent an attorney adopt is reflective of her relational position in the legal field. Its proficiency is a primary concern for 'interactive professions' such as law, where good communication skills are required ([Harrison, 2013](#); [Hawthorne, 2007](#)).

With English, it is believed, one can get a better job, absorb knowledge and information, and ultimately, be recognised as someone who is respected and appreciated. It is furthermore considered to be an essential language for social inclusion, in a broad sense: a conduit for economic and social advancement ([Park, 2011](#)). Graddol predicted that the language is a “near universal basic skill” ([2006, p. 99](#)) in the contemporary workplace and serves as a discourse of justification for the global spread of the language, by promoting it as an emancipatory and liberating language. These assumptions shape the linguistic investment black attorneys are willing to make, motivating them to improve their skills in order to access better education and labour market opportunities ([Heller, 2002](#); [Park, 2011](#); [Prendergast, 2008](#); [Vaish, 2008](#)).

The language used by attorneys signifies their accumulated linguistic resources. Black attorneys like Ayesha²⁴⁷ adapt their speech and accent to the demands of the legal field, in the hope that they will reach a level of measurable competence which will provide them with economic and social capital. However, for many black women, such a promise obscures the very manifestations of inequality that projects of social inclusion aim to address. It is black bilingual or multilingual women who do not have the linguistic capital demanded from the dominant social order in the profession who are confronted with linguistic challenges.

7.5 Chapter summary

This chapter stressed the importance of social and cultural capital in navigating the legal field. It is, however, unevenly distributed along the lines of gender, race, and class. Many women do not have the requisite social and cultural capital in comparison to their male counterparts. While women of all racial and socio-economic backgrounds lack the capital valued by the profession, it is black women who are significantly compromised. The capitals that the women do have and rely on are not appreciated and legitimised in the profession. The social and cultural capital

of white middle-class men is embedded in the professional habitus and so it is woven into the social fabric of the profession and unconsciously ingrained as they navigate the profession. The chapter not only shows women's lack of social and cultural capital, but also the intersectional nature of their exclusionary experiences. Women do not experience a lack of capital homogeneously, but rather intersectionally, where not only their gender compromises their success in the profession, but also their race and class. Therefore, an individual's experience cannot be captured by one social construct alone, for example, gender, but they are the sum of multiple and complex intersecting social characteristics ([Aulack et al., 2017](#)). By examining intersectionality, a more nuanced understanding of women's experiences emerges.

The interconnectedness of Bourdieu's forms of capital emerged as an important basis by which social and cultural capital is acquired. While the key themes to emerge focused on social and cultural capital, economic capital implicitly emerged as a driving force in acquiring social and cultural capital. Hence, social, and cultural capital can only be acquired to the extent that economic capital is acquired. Capital is mutually constitutive. Economic capital affords time and resources to invest and acquire social and cultural capital, which in turn can provide access in economic capital, as illustrated in Figure 7-1.

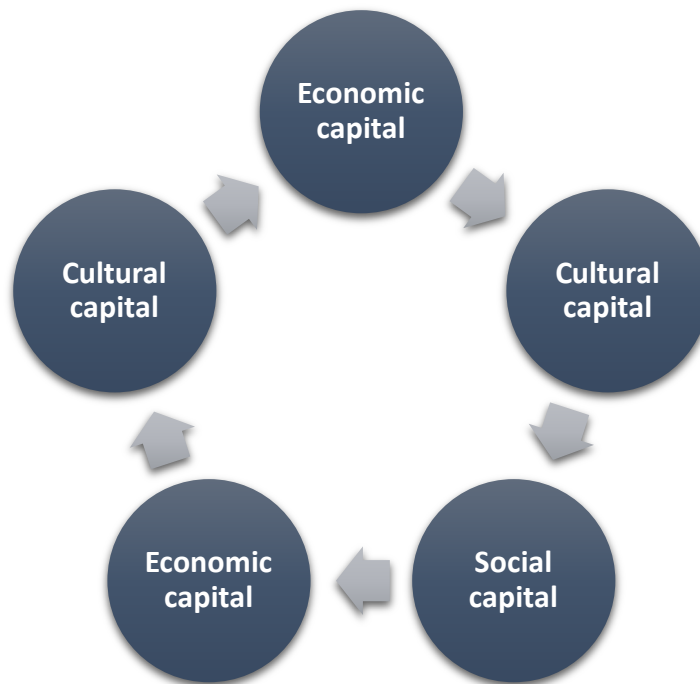


Figure 7-1: Capital flows

Edgerton and Roberts, therefore state that “socioeconomic success is also associated with greater social capital in that ones’ social network becomes broader, more influential, and more conducive to opportunity and further enhancement of ones’ other capital stocks” ([2014, p. 195](#)). Furthermore, notions of professionalism were encapsulated through the physical body – most notably through dress, self-presentation, speech, language, and accent. Thornton and Bagust ([2007](#)) note how the body is integral to the culture of the legal profession. Reflecting Bourdieu’s thesis in contemporary societies, the physical body is essential in attaining status and distinction ([Bourdieu, 1984](#)). Haynes ([2012](#)) notes that through physical capital the body holds symbolic power. There is clear relation between the body and habitus, and how context of embodiment influences outcomes for women. Bourdieu’s concept of habitus is therefore critical in understanding professional culture and socialisation. The value of white middle-class and masculinised notions of professional embodiment is entrenched in the professional culture, to such an extent that it is considered ‘natural’. Thornton and Bagust ([2007](#)) suggests that

professional identity encapsulated through the body is inherently masculine. Those individuals or groups who can identify, relate and reproduce will be rewarded and accepted ([Haynes, 2012](#)). This relates to what Bourdieu terms symbolic violence²⁵¹ – where marginalised groups unconsciously internalise the dominant social order, but also where dominant groups believe that that domination is legitimised ([Bourdieu, 1990b](#)). Bourdieu’s notion of ‘state nobility’ allow elite organisations such as the legal profession “to attract individuals who most closely conform to its explicit and implicit demands and who are the least likely to alter it” ([Bourdieu et al., 1996, p. 104](#)). Haynes ([2012](#)) thus argues that it allows the profession to recruit selected groups who will reproduce the dominant social order, becoming embedded in the profession and difficult to change or alter the embodied culture of the profession.

There is no doubt that professional organisations have long been labelled gendered masculine, where women’s bodies have been devalued and marginalised. Haynes ([2012](#)) argue that professional embodiment in the context of professional work like law demands a particular type of physical capital arising from the nature of the profession. She found that while the women in her study were conscious of managing their embodied identities and tried to resist some of the dominant cultural norms, the women in my study, however, did not show clear acts of resistance. Instead, they were attentive to the ‘illusion belief in the game’, where they played the game in order to succeed. This indicates that they were agentic and often endorsed white middle-class and masculinised values which they might otherwise wish to reject.

Through Bourdieu’s concept of capital, it is evident that professional embodiment in the South African legal profession is decidedly white middle-class and masculine. This chapter has

²⁵¹ Reflects the subtle, hidden and invisible nature of various forms of domination in everyday experiences. ([Bourdieu, 1990a](#); [Bourdieu, 2000](#))

shown how certain forms of capital are considered legitimate and the implications it has on the career progression of women, especially black women. Much of this chapter resonated with the work of Haynes ([2012](#)) on professional identity formation in the legal and accounting professions. The author suggests that her scholarship be extended to include other social groups such as race and class. I therefore extend this scholarship by illustrating the intersection of gender, race and class in the professional embodiment of the South African corporate legal field.

In the following chapter I reflect on some of my experiences during this research.

Chapter 8: Reflections

“The end is just a new beginning” (J. Stanford)

8.1 Introduction

In this final chapter, I consider it important to reflect on my research experiences and encounters during the fieldwork and research process. My experiences are therefore a part of the data and not removed from it. My goal is to enrich the data and analysis I have provided in the study. I thus strategically and critically “insert the ‘I’ back into research” ([Nadar, 2014, p. 26](#)). These reflections have provided me with an insider perspective of the material realities confronting the women daily. I thus reflect on my own positionality²⁵² and habitus during the research process. Gasa ([2007](#)) is of the opinion that the numerous positions African women scholars employ can be used to the advantage of the research and should be mustered as it adds a nuanced perspective in studying people²⁵³. Nadar states that to be “reflexive means that one recognises that the process of research is as important as the product” ([2014, p. 26](#)). Reflexivity is important in thinking how the research has been conducted and how the research process contributes towards the final outcome ([Hardy et al., 2001](#)). Through my reflections I guide the reader through my own experiences, but also show how it resonates with the findings of this study. It allows the reader an opportunity to reflect and ponder on my experiences and what findings have been presented in the analysis chapters.

²⁵² I did not occupy one position, but rather multiple and intersecting positions, whether as a woman, coloured woman, mother, university student or professional researcher.

²⁵³ Benya ([2016](#)) in her investigation of women in South African mines provides a fascinating account of her experiences in the mines during the research process.

Who am I?

I was born and raised in Grassy Park, a working- and middle-class community in the leafy southern suburbs of Cape Town. I was fortunate that I had a very privileged upbringing. I attended public primary and high schools with modest facilities. I always excelled academically in school and was always a ‘model’ student. I was raised protectively and conservatively in a Christian home and made aware of my role and place as a girl and woman in society. My parents and family always sought to empower myself and encouraged me to be independent and have a voice. They always supported my life goals and encouraged me to reach for the skies and make my mark in this world. After completing grade twelve I attended the University of Cape Town. I was also the first in my immediate (being the eldest) and extended family to attend university. This came with a lot of pressure to excel academically. After completing my Master of Philosophy degree in Public Policy and Administration, I was ready to take a break from studying and venture into the world of work, although I knew I wanted to complete a PhD. I was not ready emotionally, mentally, and intellectually. I also needed to work as I no longer had the financial support of my parents and bursars. I was fortunate to secure a few internships after graduating, before starting work at the HSRC where I started my research career. It was at the HSRC where I was fortunate to be supervised by a remarkable manager, Dr Glenda Kruss, and had Dr Angelique Wildschut as my mentor and supervisor. It was at the HSRC and under the leadership of these women where my research skills and passion for research grew. At the time I was in my late twenties and ready to get married to my coloured Muslim husband, who had just completed his PhD in Computer Science. After we got married, I relocated to Pretoria to be with my husband who had, prior to this, relocated to Pretoria as a condition of his PhD bursary to work for the company who financed his studies. I was fortunate enough that the HSRC had an office in Pretoria, and they allowed me to transfer to that office. As time passed, I realised I needed my PhD if I wanted to improve my career prospects in

research and academia. I started exploring different topics and scouting for universities and supervisors, until I met my phenomenal supervisor, Dr Khayaat Fakier. Starting my PhD journey coincided with a new job opportunity for my husband in Cape Town and we relocated to Cape Town as I was once again allowed to transfer. Soon we decided to start a family. I continued working at the HSRC where I was often travelling for conferences, meetings, or fieldwork. I was also registered for my PhD and started my fieldwork. Everything was a juggling act. It is during this time that I become aware of my multiple and conflicting roles and identities.

8.2 An insider perspective

In this section, I reflect and narrate my personal experiences during the research process and data collection. I also provide anecdotes of my conversations with my husband and my diary entries. I specifically draw the reader's attention to particular themes in the study which gave me an insider perspective on the experiences of the women. It furthermore validated and strengthened my interpretations and analysis of the women's accounts.

8.2.1 Motherhood... my first priority

*I never imagined having a chapter on motherhood in my thesis. I am perplexed that this is still an obstacle in women's careers. This chapter made me reflect on so many things in life. **Diary entry: 4 February 2020***

It was in writing Chapter six: *First a mother, then a lawyer*, that I began doing some deep introspection. In many ways this chapter sits closest to my heart. It has allowed me to do much introspection and ponder on my identity as a mother, wife, academic, scholar and woman.

During my four years of doing this PhD, I became a mother to two beautiful boys, who have been the cause of my insanity, but have also kept me sane. I would not exchange anything for this privilege. In addition to the notion of voice in this study, the following reflections provide a raw encounter through my journey.

In February 2017, a week before I gave birth to my eldest son, I registered for my PhD. At the time, I was employed as a researcher at the HSRC. I was traversing three separate fields, each with its own demands, but my role and identity as a mother was embedded in me – above all else, it unapologetically took precedence. I took six months maternity leave to care and nurture for my son, just as I had been taught to do. I was consumed by him; he was all I knew. Back at work, I needed to juggle motherhood, being a wife, work and a thesis, together with many other personal commitments and responsibilities. For months I cried daily, I was missing out on my son's milestones; I was not caring for him. To make me feel better, every day I went to work with my green cooler bag, breast pump, milk bags and baby wipes. I would religiously express my breast milk every two hours. At the end of each day my son had his 'golden milk' for the following day, while my mother was caring for him during the day. This provided some validation to me that I was still fulfilling my role as a mother.

After a few months back at work, I needed to travel to Pretoria. Before I became a mother, I had no issue packing my bags and taking a 6:00am flight. This time it was different. I dreaded leaving my son. I was paralysed with fear, anxiety, and guilt. Who was going to take care of him? He is going to cry and miss me so much, I thought. I could not delay this meeting and dared not object to it at work, because I did not want anyone to judge me and think I was failing in my career. Fortunately, I had amazing and supportive colleagues, but I still did not raise my fears. My husband assured me our son would be fine in his care; it was only for one night. To

demonstrate my commitment to motherhood, I kept expressing his ‘golden milk’ as I had done before. The following day I returned home, and it was magical. I was relieved that I could be a mother again. Expressing breast milk was symbolic of me not failing as a mother while I was away from my son. I was still caring and nurturing him while I was away from him.

A few months later, I needed to get back to my thesis and needed to conduct interviews for an entire week in Johannesburg. Again, anxiety, fear and guilt overcame me. How could I abandon my son for a full week? This is not what mothers do. My child needs me, but I also had a PhD project which needed me, and I needed the PhD. I needed it to build my portfolio of capital. My husband is a present and active parent who wholeheartedly supports me as a woman, a mother, a parent, wife and an intellectual. To assist me, he put in leave and as a family we made our first trip to Johannesburg. While I did my interviews during the day, he took care of our son. I, however, strategically booked our accommodation close to the firms where I was conducting my interviews, so that I could run back to the hotel to check on my son whenever I had a break between interviews. I constantly felt guilty that my husband had sacrificed his annual leave to be cooped up in a hotel room with our teething baby. I was exhausted, but I could not wait for my interviews to end each day so that I could return to my son.

Every day I moved between being a mother, professional researcher, and student. I increasingly realised I was struggling to ‘balance’ everything and finding the time to complete my PhD. After my son’s first birthday, I decided to pursue my PhD full-time. We also wanted another child, but I knew the impact it was going to have on my career once I started working again. I was already taking three years to pursue my PhD and if I worked again, it meant at least another six months of maternity leave. It would significantly stall my career. Either way, I was not going to win, and decided I would try to conceive my second child while doing my PhD – I’d

be killing two birds with one stone. My thinking was that it would take some time before I became pregnant again. Surprisingly, I was pregnant with baby number two one month later. I was in disbelief that it happened so soon. I did not have enough time to plan the rest of my PhD and ‘balancing’ it with motherhood. Nonetheless, there are two little boys who had stolen my heart. My anxiety and guilt only intensified. It breaks me every time I needed to retreat to another room in the house while my mom or husband ‘supervised’ the boys. Again, to prove my commitment to motherhood, I would prepare their meals, I would do story-time, I would put them down for a nap, because that was the very least, I could do. How could I not do it, when I am in the house? Like the women in this study, I did not want to be judged that I was avoiding my responsibilities. I wanted to prove to everyone, especially to my mother that I could be ‘superwoman’ and I was not going to neglect or fail in either my family or my career aspirations. In hindsight, motherhood always comes first, because, I too have been habitually socialised in the construct that my identity as a woman is to care for and nurture my home and family, and everything else comes later - irrespective of the cost.

8.2.2 An experience of client demands, the billable hour and availability

This one woman made me wait forever. I sat there all the time waiting like a fool. I was so ticked off. First, she was late, and then when she eventually arrived, she kept working on her laptop and taking phone calls, while she was supposed to be interviewed. She just stopped midway through our conversation to reply to an e-mail as if I was not even there. Conversation: 5 December 2016

My interview with Ruth²⁵⁴ was scheduled for 8:00am. She requested that the interview be done first thing in the morning, before her daily work commenced. I arrived at the office a few

²⁵⁴ Ruth, black, partner, married, Adams & Sullivan Attorneys, 5 December 2016.

minutes before 8:00, ready to start our interview. She was, however, running late. Eventually I approached the reception staff, stating I had an interview scheduled with Ruth, but she was yet to arrive. They confirmed my suspicions that she was late, and I continued waiting. I became quite anxious, because all my subsequent interviews would be delayed or potentially cancelled. There was nothing I could do but wait. I would deal with the fallout later! The warm cappuccino, chocolate-chip and almond-nut cookies kept me company, the hospitality extended by the firm was first class. Finally, she arrived at 8:55. She was quite frazzled and apologised haphazardly. She mentioned that she had been requested to deal with an urgent matter for a very important client. She apologised beforehand that our interview may be interrupted as she might have to answer phone calls and switch on her laptop. Ruth²⁵⁴ did not mince her words when the first call came. Soon the laptop went on. She was typing away on her laptop, e-mail after e-mail and phone call after phone call. Anxious, frustrated, and annoyed that someone could disrespect my time after scheduling a meeting at her convenience. I composed myself and at this point I realised the nature of this profession – a highly demanding environment driven by client demands and time pressures. Eventually our interview continued, albeit very rushed. She asked if she could complete her diary schedule in the afternoon and e-mail it to me, to which I sympathetically agree. Two weeks later, still no e-mail, eventually after a few more follow-ups I received an e-mail sometime in January 2017 with the diary schedule attached.

On another occasion, I was scheduled to interview Karabo²⁵⁵. I flew to Johannesburg, and this was the last day after a week of interviews. We were scheduled to start the interview at 12:30. She did not arrive as scheduled and the secretary noted that she was at court and was running a little late. I continued waiting. I was getting very frustrated and impatient as I was concerned

²⁵⁵ Karabo, black, associate, married, Malusi Attorneys, 5 October 2017.

about the traffic as I needed to be in another part of Johannesburg later that day. I waited for two hours. At 14:30, she called to say she would not be returning to the office any time soon as she was caught up in a client matter and she would reschedule for a telephonic interview. At the time, I was immensely frustrated that my time was being disregarded; however, it was in these moments that I realised how frustrating and cumbersome research could be and how such experiences bring certain aspects of the research to the fore. It is through this interaction that I witnessed and experienced the powerful and influential role of the client, the power of the billable hour and the need to be available, irrespective of personal commitments – time and money was on the table, and nothing else mattered! Through these encounters it is evident that Ruth²⁵⁴ and Karabo's²⁵⁵ personal time and commitments did not matter. I did not matter; my research did not matter; only the client mattered because s/he was the 'bread and butter' of the profession. These moments laid bare the women's commitment, loyalty, and work ethic. Reflecting on this experience together with the narrations of the women, illustrates how the client takes centre stage in the profession.

8.2.3 An embodied experience through the legal field

My day went well. I heard some interesting stories. The hospitality was really good. Everything is so well put together – the building and people.
You can definitely see it is a law firm. Conversation: 21 September 2017

Glowing porcelain tiles, polished chrome handles and bars, sparkling windows and ever green plants adorn reception entrances of the firms I visited. The interior and exteriors of the buildings were sophisticated and modern, pristine, fresh, and looked professional. The reception and security staff were impeccably presented and always wore black or navy-blue. Interestingly,

the frontline staff represented both genders. The men in the firms wore black trousers, white shirts, ties and formal shoes. The women wore knee-length skirts with stockings, a shirt and blazer jacket and court heels. They were perfectly groomed. They always presented themselves in a friendly and supportive manner, yet they came across as very serious. They spoke eloquently, with their speech and accents well projected. At one of the Cape Town firms, one member of the reception staff was a coloured, middle-aged woman. When she conversed with me, her colleagues, or answered the office phone, she spoke eloquently and with a distinct 'professional' accent. However, on my way to the bathroom, she made her way to an empty office while speaking on her cell phone. I could not help to eavesdrop. Her natural tone and accent were completely different to what she presented in her professional capacity. This made me realise how people adapt their language and accent to assimilate professional standards.

Upon my arrival I was always offered a cappuccino, cookies, and water. Soon thereafter, I was presented with a menu to select my lunch and beverage option, which was freshly prepared and delivered timeously. The reception and kitchen staff regularly made sure I was well hydrated, and everything was going smoothly. Beverages are available to all staff members, and they can order lunch or dinner off the menu at a reduced fee, although this is a free perk to partners. This allows staff to spend more time in the office without having to worry about meals.

One afternoon, after a few days of back-to-back interviews, I had a short break and needed to use the bathroom. I opened the door of the boardroom where I was conducting the interviews, and a group of four or five white people whom I assumed were attorneys (men and women) were conversing in the corridor. They raised their head to see who it was, they gave me a brief disinterested look and continued their conversation. No eye-contact, smile, greeting or acknowledgement! Nonetheless, I went to the bathroom where I observed a group of

approximately twelve to fifteen men, comprising nine Asian men, five white men and one black African man. I assumed this to be six attorneys and a group of Asian clients. They all wore black suits and were totally expressionless. They all had electronic devices or paper files in black leather files. It looked like a serious business conversation.

On many other occasions, I used the corridors as I made my way to the bathroom or entered and exited the building or used the elevators, but I was never greeted, no-one made small talk, apart from my interaction with the frontline staff, or the women I interviewed. There was an exception on one occasion, where a coloured male janitor greeted me, but he still looked a little uncertain. I assume he was not sure of my place in the organisation but felt comfortable enough to greet. In all likelihood, because we were both coloured and therefore there was some form of connection.

In writing this thesis I realised that every aspect of the culture and habitus of the profession, its building, furniture, its people, and all its visual representations were based on sophistication and elegance, reflecting an elite middle-class status. It was then clear that my physical appearance did not fit the required appearance of the profession and therefore it was obvious to the people in the firm that I did not belong. And the message was clear - if you do not look like us, we do not see you and will not engage with you!

The purpose of capturing my experiences and observations validates the daily experiences many women and especially black women have - they do not embody the desired white middle-class appearance required by the legal profession. I now know why, despite all the hospitality I received, I still felt like an outsider.

8.3 Reflecting on the women's experiences

The women who participated in this study graciously shared their personal lives and experiences with me. Because their stories had previously been untold, I had an immense responsibility to narrate their stories respectfully and authentically. I always listened with empathy and allowed them the freedom to speak from the heart. I recognised that there were many aspects in their personal and professional lives that mirrored my own. There were times when I saw my own image in these women and thought that these women were like me in so many ways. But while we are all women, we are different in so many ways. We each have our own experiences, journeys and stories to tell. I have grown so much as a researcher and intellectual, I have gained so many skills and learnt so much about gender, race, class, professions, culture, identity - the list is endless. I feel privileged to have interviewed the women who shared their stories and experiences so generously.

8.4 Chapter summary

For a very long time I looked forward to letting go of this monumental study and document which has consumed me for such a long time. It was a part of me, it was my life. It became the everyday talk in my home. It followed me everywhere I went. Finally, I found myself with a complete draft and realised I had completed it. I was nearing the end. However, it did not take me long to realise that this was only the beginning of my journey as a researcher, scholar and academic. During this PhD process, I experienced so many emotions – frustration, elation, and trepidation. There were delays of various sorts, unforeseen events, and circumstances which could easily have made me throw in the towel. It was, however, through all of these that I discovered who I was, what I wanted and what mattered to me in life. I discovered qualities about me that I did not know I had, or what I had previously lacked. PhD research is lonely and isolating, it is not an easy journey, and neither is it a quick or straightforward process and you

certainly come out on the other side a different person, in whatever form you want to see it. I would not have seen the success of this project without the mercy and grace of God, the unconditional support of my husband, two precious children, family, friends, and colleagues.

Who am I not to believe in myself, when so many people believe in me?

Chapter 9: Concluding the study

9.1 Introduction

My overarching goal in this dissertation was to add to the developing, but limited body of knowledge on women in the South African legal profession. I was furthermore motivated by the lack of knowledge about the profession and broader sociology of professions discourse in the global South²⁵⁶. Schultz and Shaw aptly argue that “what remains to be written is the story of women lawyers in underdeveloped and developing context”²⁵⁷ ([2003, p. xxv](#)). I am confident that this study minimises this lacuna by locating South Africa within the broader global literature. This was a comprehensive study and can be closed from various vantage points. In this final chapter, I conclude the investigation by returning to my research questions which I briefly summarise. I then engage with the theoretical, methodological and policy implications of the study. I also consider the Covid-19 implications for professional work and research and finally provide directions for future research.

9.2 Research questions and argument

Research question 1: To what extent has the profession been feminised?

The objective of this question was to quantitatively contextualise the investigation by foregrounding the numeric trends with respect to gender and race in the profession. The analysis to this question was presented in Chapter four: *A quantitative analysis towards*

²⁵⁶ Faulconbridge and Muzio ([2012](#)); Kuhlmann ([2013](#)); Michelson ([2013](#)) and Yee ([2001](#)) have made calls for the literature to be extended to the global south for a more complete sociology of professions discourse to emerge.

²⁵⁷ This quote was previously used in Section 1.4.

transformation. In Chapter four, I provided an exhaustive analysis on the state of feminisation in the profession. The findings confirmed that the South African legal profession is undeniably a white male-dominated profession. The entry level of the profession, predominantly university enrolment and graduation levels, vocational training and admissions have been numerically feminised. The profession is, however, less feminised and representative of women at the practising and partnership levels. Comparable findings were observed about race. The entry level of the profession is more favourable to the black population with the practising and partnership level more open to the white population. In considering the goals of the EEA ([Republic of South Africa, 1998](#)), it can be deduced that the South African legal profession has achieved broad representivity as opposed to demographic representivity.

Quantitative analyses are necessary and provide an important context for interrogation, but it cannot explain the manifestation and persistence of inequality. While all women possess and enter the profession with the requisite academic and human capital, this, together with transformation laws and policies, has proven to be insufficient in transforming the profession for women and blacks. This analysis was unable to elucidate *how* and *why* women experience social closure. It was not able to draw out the ambiguities, complexities, and nuances in showing how and why inequality and marginalisation occurs. It is with this in mind that the rest of the dissertation engages with. I argue the importance of engaging directly with women, having conversations, illuminating their experiences and voices, if we truly want to uncover and understand the persistence of inequality and marginalisation.

Research question 2: What are the factors that impede the career prospects of women?

The aim of this question was to make explicit the gendered organisational, social, and cultural factors that impact the experiences of women, thereby enabling social closure and giving rise to the white male-dominant profession. It allowed the women to bring their voices to the fore, to tell their stories, which would otherwise not be told. Three compelling chapters emanated from this analysis. In Chapter five: *Time is money: The hyper-competitive field of corporate law*, I shed light on the hyper-competitive culture of the profession. This was advanced through an emphasis on working long and irrational hours, the expectation of total and open-ended availability to clients and displaying physical presence. This culture is embedded into the social fabric of the profession through the billable hour and the powerful role and influence of corporate clients.

Chapter six: *First a mother then a lawyer* provided a fascinating account of how the women constructed their notion of motherhood. It demonstrated how the women navigate two distinct and contradictory fields: motherhood and a legal career. The chapter documented how the women were habituated to construct their motherhood identity socially and culturally and how it conflicted with the hyper-competitive culture of the profession as discussed in Chapter five. Both these fields have their own habitus and logic, which are inadvertently in conflict, resulting in major career impediments for women. It is in traversing these two fields that the women experience what Smith (1987b) calls a line of fault and bifurcated consciousness. It is through this that we get a distinct and true sense of the challenges confronting women attorneys.

In Chapter seven: *Understanding social and cultural capital in the legal field*, I exemplified the gender and race findings in Chapter four by highlighting the social class structure of the profession. It found the profession to be a white middle-class profession which was legitimised through the valorisation of social and cultural capital of various sorts, which was distinctly white middle-class. The Chapter showed how social and cultural capital is stratified by gender, race, and class.

9.3 Theoretical implications

A notable theoretical implication of this study is that the intersection of gender; race and class positions cannot be divorced from each other. The way in which social closure manifests itself in the South African legal profession must be viewed through an intersectional lens. In addition, social closure presents itself in informal, hidden, and invisible ways. In demonstrating this, this study draws on related concepts of individual experience, intersectionality, voice, field, culture, habitus, and capital.

9.3.1 Individual experience, intersectionality, voice and agency

I started this study with the aim of positioning women attorneys at the centre of my research, with the goal of locating their everyday experiences and the materiality of their lives, by providing an authentic understanding of what life is like for a women attorney in South Africa. In my engagements with the women, they carefully positioned themselves between being an attorney and ‘being a woman’ and the various roles women can assume – mother, wife, partner, etc. I consistently reflected how these positions resonated with Smith’s (1987b) notion that most women experience two subjectivities organised around their career and personal lives, or how they experienced a bifurcated consciousness. This also spoke to Bourdieu’s concept of field, where I noted how the women journey through two distinct fields – the legal field and

private/familial field. I found these conceptualisations advantageous in understanding and explaining how the women reflected on their experiences. It is also through an emphasis on individual experience and a state of bifurcated consciousness that I was able to reflect on the various positions, I assumed which shaped my individual experiences. For a long time, sociological research in South Africa has been reduced to race only, owing to social and political changes which prioritised particular forms of intersectionality, with race largely prioritised over gender ([Moolman, 2013](#)). This study emphasised that women are by no means a homogenous group. Their experiences are shaped by multiple socially constructed intersecting identities and standpoints. Levine-Rasky rightfully notes that:

The intersectionality perspective asserts that race and gender constitute each other such that one identity alone (e.g. gender) cannot explain the unequal or disparate outcomes without the intersection of the other identity or identities. ([2011, p. 241](#))

It is these intersecting and overlapping identities that render a unique, nuanced, and complex experience. The complexity of women's lives would be dismissed if I reduced this investigation to a gendered lens only. Such a dismissal would not have been able to capture the lived experiences, realities, and on-going negotiations these women are confronted by every day. Employing the concept of intersectionality recognises that women are the central concept of difference, but that there are also other differentiators such as race and class which are important in creating a complex methodology of analysis needed in studies such as these. This is particularly relevant to Western scholarship, which has dominated feminist and sociology of professions literature, largely reducing women to a hegemonic category. "By denying the subjectivity and positionality of certain groups, it undermines that group's experiences...historically such denial led to the production of knowledge that has neglected them while other groups experiences are privileged" ([Hussein, 2015, p. 87](#)). I argue that the

story of South African women, women in Africa and elsewhere are deeper, more complex and filled with more ambiguities than previously recognised. Through deep introspection with intersectionality, I was able to recognise the commonalities shared amongst women, but also how different we are.

Women's voices are central to this research. Nkomo ([2013](#)) is of the opinion that if we are to do justice in transforming South African society, then we need to holistically engage with women's voices and experiences. I argue that women's voices have been silenced for far too long. It is through explicating voice that we are able to excavate the raw, unearthed stories of women, the stories and experiences that would otherwise have remained untold. The concept of voice allowed me the opportunity as a black woman to add my voice and knowledge to sociology scholarship, which has long been the preserve of the dominant hegemonic white and Westernised sociology canons. I also note that women's presence in the profession does not translate to their having a voice to facilitate any meaningful change actively. This is owing to them not occupying positions of power which provides them with authority to add voice, but also a culture that silences women's voices in the profession. It is however through the concept of voice that I was able to illuminate the lived and material realities confronting women in their legal careers.

Through the concept of agency, I was able to uncover the choices and decisions the women made for themselves and which they deemed were right for them. Overall, the study demonstrates the challenges confronting women attorneys and the ways in which they experience marginalisation and inequality. However, it is important to note that the women were not passively accepting the status quo. In contrast, they were rational actors and exercised their agency in various ways. The women did not always show clear acts of resistance, and

even if they did, it was exercised alongside acts of endorsement of the ‘illusion belief in the game’ where they played the game in order to succeed, endorsing white middle-class and masculinised values in various ways. I would like to highlight and reiterate four scenarios where black women²⁵⁸ exercised their agency albeit in what was ostensibly a challenging position:

*Ayesha*²⁵⁹: Purposefully changed her accent to ‘fit’ into the professional culture so that she may progress in her career.

*Samantha*²⁶⁰: Intentionally wore branded labels so to improve her social status amongst her colleagues.

*Thandi*²⁶¹: Went against Western middle-class ideologies of intensive mothering and made the decision to send her child to her mother so that she can focus on establishing her career.

*Karabo*²⁶²: Knew she was often used as a black woman to gain large corporate deals; she nonetheless used this opportunity to further her skills and build her career.

While their agency may not fundamentally have transformed the profession or changed the conditions of systemic oppression and marginalisation, they have temporarily destabilised, circumnavigated, and manipulated the conditions in order to reach specific goals. While such acts of agency should not be idealised or may not be considered liberating, it is indeed an intentional act requiring strategic thinking. It is not about if or whether women have agency,

²⁵⁸ I am not suggesting that other women did not exercise agency.

²⁵⁹ Ayesha, coloured, associate, single, Malusi Attorneys, 21 September 2017.

²⁶⁰ Samantha, Indian, partner, divorced, Malusi Attorneys, 20 September 2017.

²⁶¹ Thandi, black, candidate attorney, married, Malusi Attorneys, 20 September 2017.

²⁶² Karabo, black, associate, married, Malusi Attorneys, 5 October 2017.

but rather how they exercise their agency. The decision making process and the end goal influencing the women's agency was consistent with the conceptualisation offered by Alkire (2008), Kabeer (2008) and Sen (1985). The kind of agency a woman has depends on how she is positioned within the social sphere. Black women's agency is often at odds with dominant social and political schemas. It is important that we consider a heterogeneous paradigm for agency to illuminate the different modalities of agency, which may be socially displaced or distorted, but it is still agency. Instead of asking how they lack agency or the failure thereof, we should instead look at the ways in which women exercise their agency, how is their agency positioned and exercised with respect to their gender, race, and class across spaces. It is also important to note that women can exercise their agency in one space and not in another.

9.3.2 Space, culture, capital, and habitus

While the focus of this study was to expose the rampant inequality within the professional structure and culture, it was necessary to show the nuances, complexities, and ambiguities in the experiences of the women. Through space, culture, capital, and habitus the internal, invisible and hidden mechanisms of social closure is illuminated. It is through this conceptualisation that we get a profound sense of the materiality of the white male-dominant and middle-class profession.

9.3.2.1 Spaces as sites of social closure

In this study, I make a contribution to Bourdieu's (1985) concept of field, noting that the field is a social space where a particular culture is present, with its own rules, practices, and schemes. Agents in the field are familiar with the common culture operating in the field. At the outset of the study, I indicated that the legal profession can be viewed as a social field. The legal field was the main point of study in this research; however, it is not static, but a fluid space. It

interacts with other fields and is composed of other micro fields each with its own logics and rhythms. Spaces are highly gendered, racialised and classed, interconnected and contested. Bourdieu (1986) postulates that the habitus and field are well-aligned, and people remain in the field they resonate with. However, Bourdieu does not adequately recognise and capture the way different fields interact with each other. It is in Bourdieu's concept of field, that I locate and take forward Smith's (1987b) thesis on the two subjectivities experienced by the women and how they experience a disjuncture and collide (Chambers, 2005; McNay, 1999).

What I also contribute through this thesis is how each space within a work-environment is comprised of various other micro spaces, each producing distinct and contradictory outcomes for gender, race, and class outcomes. This was particularly expounded in chapter seven where the women spoke of the various social spaces within the profession (tea rooms, elevators, dining halls, networking spaces) and who could occupy these spaces and under what conditions. It is also important to acknowledge that there are other actors within spaces which indirectly impact on the field, for example clients, and how the women navigate these spaces and interactions. It is through the concept of field that we can locate the spaces in which inequality and marginalisation occurs. This is indicative of the fluidity in social spaces.

9.3.2.2 Enacting a white, male-dominant and middle-class culture

Acker (1992) and Goetz (1997) both contend that organisations are inherently gender-structured spaces and how organisational cultures influence and contribute towards gendered outcomes in professions. The concept of intersectionality exposes not only the gendered organisational culture, but also the racial and class-organisational culture that operates in the profession – white male-dominant middle-class culture. If we accept that habitus relates to the knowledge resources and how social norms develop and embed themselves in individuals, then

we can locate the invisible and unconscious way in which culture maintains itself. Through habitus we can identify which norms, values, and practices are legitimised. Habitus provides a profound sense of how culture embeds itself in individuals and professions, thus making it very difficult to effect any form of change ([Schein, 1985](#)).

The hyper-competitive business culture valuing long hours, open-ended availability, physical presence, and networking demonstrated a highly masculinised culture that operates under a gender-neutral discourse. It is through an emphasis on a hyper-competitive business culture embedded in the profession that I was able to introduce the notion of time as a form capital. The hyper-competitive culture is highly dependent upon time investment and thus warrants a consideration and exploration of time as a form of capital. It is through a relation an interaction between field, habitus, and capital that the culture appreciated in various spaces is uncovered. Habitus exposed how an elite male-dominant and white middle-class culture permeates the profession. The professional culture that operates is masked under nuanced, subtle, hidden and often invisible patterns of doing and thinking, usually operating under seemingly neutral discourses, when in fact it is highly gendered, racialised and classed. It is this culture that masks and perpetuates rampant inequality and marginalisation. For any radical shifts to occur there needs to be active engagements with prevailing cultural discourses.

9.3.2.3 Whose capital matters?

The significance of social and cultural capital is a key enabler of social closure and exclusion for women. All women have what Bourdieu calls a portfolio of capital. Through his concept of capital, I was able to illuminate the form and type of capitals that are valorised in the profession and how it embeds itself in the professional culture. To begin, I stipulated that to enter the profession, all attorneys are required to have the necessary academic and human capital as

stipulated by the LPA ([Republic of South Africa, 2014a](#)). This capital only suffices to enter the profession but does very little to build and grow a legal career. Social and cultural capital were the two dominant forms of capital that are valued. This discussion was accentuated in Chapter seven. The social and cultural capital of the white middle-class was outstandingly respected. Through the forms of capital, we get a sense of the negotiations and trade-offs that the women make. Capital was particularly useful in capturing the class structure of the profession. It is not only about who has what capital and how this presents itself, but also whose capital is authenticated and legitimised. Furthermore, the social and cultural capitals of the white middle-class are valued and respected resources in the profession. This capital was usually acquired owing to white attorneys having greater economic capital (material resources, wealth), suggesting that they have knowledge and are accustomed to experiences such as travelling, knowledge of professional work, language and education, clothing, etc. Through this, the transformational nature of capital is illuminated. Capital resources capture the symbolic value of social status, prestige, professionalism. It furthermore accentuates who has power and authority in the profession, who are the insiders and outsiders.

I was able to show how the social capital of women and black women has not gained legitimacy in the profession. Women rely on mentoring in the same way men rely on ‘old-boy’ networks, yet it is not valued. Black women have a valuable social capital through their extended networks which allows them to build their careers and thereby accumulate and grow their capital portfolio, yet it is devalued. This was aptly noted in Thandi²⁶³ and Samantha’s²⁶⁴ narrations²⁶⁵. I must admit that I was initially astounded at Thandi’s²⁶³ narration of how she sent her child to her mother in another province. From my position as a mother, I passed

²⁶³ Thandi, black, candidate attorney, married, Malusi Attorneys, 20 September 2017.

²⁶⁴ Samantha, Indian, partner, divorced, Malusi Attorneys, 20 September 2017.

²⁶⁵ See Section 6.2.3.

judgements – how could she do something like that? On the other hand, I resonated with Samantha²⁶⁴ whose unemployed sister took care of her home and son while she pursued her career – that seemed more ‘acceptable’. As a *black coloured* woman, I understand and appreciate the value of extended family networks especially for working women, but I could not resonate with Thandi²⁶³ - a *black African* woman whose culture normalises, and values extended networks, where it is accepted for children to live with their grandparents and extended relatives while parents work in another town, city, or province. It is through such discourses and cultures that I learnt and appreciated the intricacies, experiences, and material realities of black women. I have also come to realise how black women draw on their own social capital to enable their career success in an otherwise hostile professional environment and how this is an exemplary demonstration of agency that subverts the dominant Western white cultural wielding of motherhood against women. It is through this that intersectionality renders itself as a powerful conceptual lens to evaluate lived reality.

In my conversation with a white woman who was originally from Durban, but relocated to Cape Town, she told me how she wished she had an extended family network, especially grandparents for her child, as she believed grandparents have an important role to play in a child’s life. Instead, her daughter is growing up without her grandparents, and it is for this reason that she utilised the service of ‘rent a granny’ to fulfil the grandparent role in her nine-year-old daughter’s life. In another conversation, a white woman mentioned how she struggled with the demands of motherhood and appreciated that her mother was able to assist her. She furthermore echoed the African proverb, ‘It takes a village to raise a child’. She anecdotally mentioned that white women are often silenced by societal discourses to uphold the intensive mothering values and are thus afraid to ask for ‘help’. This adds credence to the value and appreciation of black women’s social capital through extended family networks. What this also

illuminates is how intensive mothering discourses and mothers not asking for help is rooted in discourses of white femininity and racialised patriarchy. I do not use white femininity here to refer to the white physical body, but rather as an ideological construction pertaining to the conceptualisation of white women and their place in the social order as mothers, wives and sites of reproduction and domesticity.

In the main, engaging with conceptualisation on field, capital, habitus, and culture fosters an understanding of how and why inequality, marginalisation and social closure unfold. It demonstrates how social fields such as professions become the preserve of a particular social group. It is through the feminist, Bourdieusan and organisational culture concepts that we can see how the experiences and contribution of women in the legal profession (and other fields) has been trivialised, how social spaces have been structured, organised, legitimised, and privileged on the basis of gender, race, and class.

9.4 Methodological implications

The methodological implications that I wish to highlight is concerned with the value of employing a MMR design and incorporating feminist theoretical constructs into the research methodology. This study demonstrated the value of incorporating a MMR design in a single study investigating professional occupations. It successfully showed how the two approaches can support and complement each other. A large portion of sociological studies on professions either adopt one of the two, or rarely combine both. I do however acknowledge the data and resource limitations that can impact such a study. It is for this reason that I am extremely grateful that I was able to access both quantitative and qualitative data. My aim was not to provide statistically generalisable findings, but rather to use the quantitative data to contextualise the investigation and explore the nuances and complexities of women's

experiences in the qualitative research further. Through interviews I was able to gauge the nuances, complexities and negotiations that cannot be known and explained through quantitative analyses alone. My use of a diary schedule contributes to the growing literature on the use of diary methods ([Plowman, 2006](#), [2010](#)). The diary activity proved useful as it validated the interviews in terms of the time spent on work, in comparison to all other life activities. The diary schedule also allowed the women an opportunity to reflect and take stock of their lives. This was interesting as the expressions on the women's faces were priceless after they had calculated the number of hours they spent at work. Incorporating feminist theoretical constructs of lived experience, intersectionality and voice into the methodology was particularly valuable in explicating the challenges confronting women.

My personal experiences and encounters in the field have enriched the data of this study. It proved to be a validating testimony as to how the women experienced marginalisation, exclusion, and inequality. It allowed me to experience how the women negotiated their careers, personal lives, and the various positionalities they assumed. I am grateful for the embodied disposition I acquired and experienced in the field. It gave me an opportunity to reveal the nuances, complexities and subtleties which would not be unearthed through interviews, but only through personal encounters and in-depth reflection and negotiating my feelings, experiences, questions, and thoughts. It took me many months of pondering on my thoughts and experiences before I realised that this was in fact a legitimate experience and not an over-analysis of the situation. By having these experiences, it gave me a feel for the day-to-day culture of legal practice. If I had not reflected on my experiences, I would not have been able to comprehend the complexity of the legal field. I believe that this experience, reflection, and immersion contributed immensely to this study and has enriched my data. It not only gave the

perspective of the women, but also of the researcher. It therefore contributes to the growing value of the researcher herself as an ‘instrument’ in meaningful research.

9.5 Policy implications

The biggest policy implication emanating from this research is the lack of harmony between policy discourses and the material realities confronting women. It cannot be repudiated that the inclusion of women in the South African legal profession has been a remarkable step in ‘cracking’ the glass ceiling. However, we are inundated with evidence that indicate this is not sufficient to facilitate any meaningful change and transformation in the profession. Legislation and numeric targets are only the start. A transformative and inclusive agenda for women in the legal profession and elsewhere, must be more imaginative than enacting legislation, policy, and numeric targets. Despite the removal of formal barriers and legislation that has barred women’s entry into the profession, there remains a persistent culture which serves to include and exclude. To facilitate any meaningful change in the profession, we need to understand and interrogate how these are produced, maintained, and reproduced. The enactment of legislation and the setting of numerical targets are indeed necessary and worthwhile, as it facilitates the opening and enabling of spaces. It facilitates a normative function in that they contribute towards the challenge and subversion of inequality. However, it does not lead to any radical transformation or change. Legislation, policies, and targets are unable to address the ways in which social closure operates to exclude and marginalise women and blacks. It does very little to virtually nothing to illuminate the nuances and complexities of cultures and practices, which are “often hidden patterns of thinking, doing, saying, interacting that subordinate women” ([Benya, 2016, pp. 393-394](#)). These are the issues that need to be central to the transformation process of the legal profession. To facilitate any meaningful transformation, we will need to engage with

subjective experiences, gender, racial and class regimes how they interact with professional cultures and practices, and the societal perceptions and expectations placed on different groups. We furthermore need to engage innovatively and address the perceptions and attitudes of attorneys, management, clients, and women themselves, as they are central in fostering the transformation project of the profession. This is equally and perhaps even more important to South African society.

The presence of women and blacks has changed the composition of the profession and has without doubt created a threat to the hegemonic white male middle-class power. From the evidence displayed in this thesis, I am not convinced that there is sufficient pressure on the profession to suggest that there is a 'crisis' in it in need of change. However, what is important is that we do not undermine the capacity of women to transform and change the profession or underestimate their race in challenging white male power and inequality in the profession. The very presence of women and blacks in the profession, especially in senior positions (the few that there are) is a disruption and transformation to the hegemonic structures. We cannot undermine or dismiss this, simply because it does not lead to any radical change. Yet it has opened the possibility and created the space for change. The impact of women on the profession itself may be contested; however, what cannot be disputed is the presence and ability of women to practice law and how their presence has disrupted the hegemonic structure that have been the gatekeepers to the profession and thereby made the space uncomfortable for the 'insiders'. I would suggest that we engage with the findings presented in this study and those of previous studies and start having these conversations within law firms. It is here that we can start to foster positive policy change with the aim of expanding it nationally. This is not only applicable to the legal profession, but also to other male-dominated professions experiencing similar structures and cultures.

9.6 Implications of Covid-19 pandemic

This research was concluded before the novel coronavirus (Covid-19) pandemic took control of the world, which nonetheless warrants some consideration. The Covid-19 pandemic, which is sweeping the globe, needs no introduction. In addition to health implications, it has challenged society in ways previously unimaginable. It has forced us to reconsider our everyday practices, including the way we work. The South African government, like many other governments across the globe, actively encouraged workplaces where possible, to allow staff to work from home (WFH). Before the pandemic, WFH was a dream to many and was met with disdain and scepticism ([Ibarra et al., 2020](#); [Vyas & Butakhieo, 2021](#)). This was captured through the women's comments.

While many attorneys (men and women) have long been requesting flexible work arrangements, the current WFH policies have indeed challenged the 'bums on seats' culture of the profession. However, while it challenges some cultures which operate in the profession, it also highlights the potential implications of extended WFH for women. We could potentially witness a 'gender skew', where women are likely to continue WFH with men disproportionately going into the office, visibly contributing to business with women occupying the 'out of sight, out of mind' mind-set ([Ibarra et al., 2020](#)). It thus becomes critical that law firms find innovative ways to reward people and evaluate their output in relation to their actual contribution, rather than valuing 'presenteeism' which disproportionately favours men and harm women's careers. This certainly has implications for who is available for 'quick' or informal meetings and decision-making processes, which are bound to exacerbate existing disparities between men and women. When women are only available for formal or official communications, they are effectively being excluded from the myriad of informal

conversations and practices that shape decisions. Men are therefore in all probability gifted more privileged access to the office than women.

We also know that women are disproportionately affected by a lack of networking opportunities and the career opportunities which come with it. Networking is important for work allocations, referrals, and the building of capital and subsequent career progression. It is, however, necessary to consider how WFH exacerbates current inequalities, thereby increasingly reducing opportunities for ‘face-to-face’ networking. Ibarra et al (2020) note that WFH can have dire consequences for those in the middle ranks of organisations, as they are usually at an age and stage in their careers where their advancement either accelerates, plateaus or sputters out. The lack of networking and post-meeting conversations and career coaching, or opportunities which might arise from these encounters are indeed lost, as virtual meetings do not provide the same feedback or opportunities. WFH policies are likely to increase work/family conflict, as it increases the work and domestic burden on women, while men are likely to prioritise paid work while WFH.

I was fortunate to have conducted my research prior to the Covid-19 pandemic and it allowed for rich and in-depth investigation. I am confident that the depth of my study could not have been captured if this research had been done during the pandemic (it is also highly likely it would not have been feasible). This research would have been compromised had the study been done telephonically or employing the use of online survey methods. On this note, we will need to consider what Covid-19 means for the future of research - at least in the short term.

9.7 Implications for future research

In this research, I have adopted a robust sociological and methodological framing. I believe that the theoretical and methodological framing underpinning this study has successfully illuminated a valuable investigation. I have provided an important starting point for exploring the complex and nuanced ways in which women experience inequality, marginalisation, and exclusion. I would encourage future research studies to further employ feminist, Bourdieusan and organisational culture theories, as well as MMR designs, in order to engage with issues confronting women both critically and holistically in professional spaces. While I have effectively demonstrated the experiences of women attorneys in South Africa, I need to acknowledge that the research should be extended to include men to present a complete gender discourse. I believe this will allow us to engage all parties, which can contribute in our efforts to transform the profession. I also propose that an investigation into smaller firms be conducted, so that we can assess the dynamics in different settings. It would be a major contribution if we are to conduct a comparative study across other professional occupations, which also have a long history of white male and middle-class dominance.

9.8 Concluding summary

I believe this study in its entirety is a compelling and important investigation. It has adequately answered the intended research questions and my theoretical and methodological decisions have proven to render a successful study. The thesis contributes to the scholarship on the legal profession in South Africa and provides a Southern and intersectional perspective to the sociology of professions, which has long been lacking. The thesis has illuminated the necessity of investigating, exploring, and giving voice to the experiences of women in the legal profession. This case study on women in the South African legal profession draws on the perspective of women inserting themselves in a traditionally white male-dominated and

middle-class profession and the inequalities they encounter. It is a study on what is masculinised, white, and middle-class and how those locations and voices have become naturalised, universalised, and embedded in institutions. This thesis thus amplifies the voice of black women speaking back to those social groups and institutions which hold them back from taking their well-deserved position in their professions and in society.

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Appendix A: Interview guide questions

Interview date:

Interview #:

Section A: Profile of Participant

Race					Age			High School			Highest qualification				Specialist area	University
B	C	W	Indian/Asian	Other	18-29	30-45	46-65	Public	Former model C	Private	Degree	Honours	LLM	PhD		

Designation				
CA	Associate	Senior Associate	Salaried Partner	Equity partner

Time period in current position		
<5	5-10	>10

Time period in organisation		
<5	5-10	>10

Marital status					How has your marital status affected/influenced your career?
Single	Married	Divorced	Widowed	Co-habiting	

Do you have children?		How has this affected/influenced your career?
YES	NO	

Type of employment		How has this affected/influenced your career?
Full time	Part time	

Section B: Introductory Questions

1. Please provide a brief resume of your career. (Where do you come from? Where did you study? What kind of training did you complete? How did you come to be in your present job?)
2. How has your personal life influenced your career?
3. Do you have au pair, nanny or any other additional support service to assist you with your domestic responsibilities?

Section C: Guide Questions

Promotions and partnership

4. What is the daily work routine of attorneys who are not yet partners?
5. What is the daily work routine of partners?
6. What are the criteria for promotion to partnership? Who determines these criteria?
7. Which additional factors can assist women to advance/succeed in their career? For example, family/spouse/partner support, etc.
8. Why do you think there are so few women at the partnership level?

The profession

9. What is the most prestigious and least prestigious area of specialisation? Are women attracted to certain areas of specialisation?
10. In which ways, if any, has the legal profession changed?
11. To what extent do/ are women able to influence the legal profession?
12. To what extent has gender equality has been achieved in the legal profession and in your firm?
13. Do you have flexible working conditions? If so, do you make use of them?
14. Do you have issues with gender advancement in your firm?
15. What are the everyday obstacles confronting women in the profession?

16. In your view, what are the reasons for women's lack of career advancement?
17. Which structures are in place to assist women? e.g. mentorship, etc.
18. What are some of the biggest challenges for women in the legal profession? Are there barriers that impede the growth and development of women?
19. How can the legal profession be a more female-friendly environment, or more balanced for both sexes?
20. Do you think that men and women have an equal chance of progressing in their careers? Why?
21. Do you think it is necessary to advance the career of women?
22. How do you think the profession should be altered to become more female friendly?

Clients

23. How do/can clients influence the legal profession?
24. Is gender a factor to clients?

Appendix B: Diary schedule

Interview date:

.....

Interview #:

Please select an activity number as listed below and fill it in next to the applicable time to illustrate what a typical weekday in your life might look like. You may have more than one activity during a specific time period. For example, 24:00-01:00 = 9 (Sleep)

- 1 – Work-related (meetings, clients, court, office, administration, etc)
- 2 – Networking
- 3 – Leisure
- 4 – Childcare (preparing children for school, homework, extra-mural activities, school meetings, etc.)
- 5 – Household chores
- 6 – Cooking
- 7 – Elder care
- 8 – Family commitments and responsibilities
- 9 – Sleep

TIME	ACTIVITY
4:00 - 5:00	
5:00 - 6:00	
6:00 - 7:00	
7:00 - 8:00	
8:00 -9:00	
9:00 -10:00	
10:00 -11:00	
11:00 -12:00	

12:00 - 13:00	
13:00 - 14:00	
14:00 - 15:00	
15:00 - 16:00	
16:00-17:00	
17:00-18:00	
18:00-19:00	
19:00-20:00	
20:00-21:00	
21:00-22:00	
22:00-23:00	
23:00-24:00	
24:00-01:00	
01:00-02:00	
02:00-03:00	
03:00-04:00	

Appendix C: Consent form



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jou kennisvennoot • your knowledge partner

STELLENBOSCH UNIVERSITY

CONSENT TO PARTICIPATE IN RESEARCH

I am Tamlynn Meyer, a doctoral student in the Department of Sociology & Anthropology at Stellenbosch University. I am inviting you to participate in my research, which will contribute towards the completion of my doctoral dissertation. You are invited to participate in the research, as you are employed as a woman attorney and can add value in explicating the realities and experiences of women attorneys in South Africa.

1. Purpose of the study

The purpose of the study is to understand how and why women attorneys are underrepresented at the partnership level in the profession. Information from this study can inform organisational policies and practices to ensure that both the needs of male and female attorneys are met.

2. Procedures

If you volunteer to participate in this study, you are requested to do the following things:

To voluntarily participate in a (1) focus group and/ or (2) individual interview and/or (3) participant observation.

The focus group is an interview in a group-setting with at least five female attorneys. The idea is to have an interactive session where participants are free to talk to the extent that makes them feel comfortable. The interview should take sixty minutes to complete. The interview will be conducted at your firm's premises in a private room. While every effort will be made by the researcher to protect the confidentiality of your information, I cannot guarantee that other participants in the focus group will respect confidentiality, even though every member will be encouraged to do so. For this reason, you are advised not to disclose personally sensitive information in the focus group.

The individual interview will be a one-on-one interview with the researcher. Here you will have the freedom to speak to the extent that you are comfortable. The interview should take 60 minutes to complete. The interview will be conducted at your firm's premises in a private room or at a location convenient and comfortable to you.

Observations will only be conducted if you agree to it. The idea is to shadow the daily work routine and activities of lawyers. Observations are anticipated to take one working day as per the office hours of the participant.

3. Potential risks and discomforts

There should be no foreseeable risks, discomforts, side effects or benefits from this research.

4. Potential benefits to the participant

There are no immediate benefits to you from participating in this study and you will not be compensated for billable hours. You are therefore asked to participate voluntarily in the study for at least a *sixty-minute focus and/or an individual interview*. This study will be helpful in that we hope will promote an understanding of the legal profession and the factors which influence the promotion of women lawyers.

5. Payment for participation

Participation in this research is ***voluntary***. There will be no remuneration or any other direct benefit for participation. Refusal to participate will involve no penalty or loss of benefits to which you are otherwise entitled. You may discontinue participation at any time without penalty or loss of benefits.

6. Confidentiality

Any information that is obtained in connection with this study and which can be identified with you will remain confidential and will be disclosed only with your permission, or as required by law. Confidentiality will be maintained by means of storing information in a locked filing cabinet at the researcher's premises or in a password-protected file on my personal computer. Only the researcher will have access to this information during and after the study.

The information will not be made available to any other third party.

With your consent, the interview may be audio-recorded to ensure accuracy. The audio recordings and notes taken during the interview will not be made available to any persons other

than the researcher concerned. The researcher will store the files in a secure database for the duration of the project. The data will be destroyed after five years from the date of study completion.

If quotations are used in the analysis of the dissertation or any academic outputs, you will be given the right to review the quote to indicate whether it is a true reflection of what you had said. Where quotations are used, pseudonyms will be assigned. Hence, the names of participants and their firms of employment will not be disclosed in the study.

7. Participation and withdrawal

You can choose whether to take part in this study or not. If you *volunteer* to be in this study, you may withdraw at any time without consequences of any kind. You may also refuse to answer any questions you don't want to answer and still remain in the study. The investigator may withdraw you from this research if circumstances arise which warrant doing so.

8. Identification of researcher

If you have any questions or concerns about the research, please feel free to contact

Ms Tamlynn Meyer (Student)

tmeyer@hsrc.ac.za

Dr Khayaat Fakier (Supervisor)

kfakier@sun.ac.za

9. Rights of Research Participant

You may withdraw your consent at any time and discontinue participation without penalty.

You are not waiving any legal claims, rights or remedies because of your participation in this research study. If you have questions regarding your rights as a participant, contact Ms Maléne

Fouché [mfouche@sun.ac.za 021 808 4622] at the Division for Research Development.

SIGNATURE OF RESEARCH PARTICIPANT

The information above was described to me by **Tamlynn Meyer** in English and I am a participant in command of this language, or it was satisfactorily translated to me. I was given the opportunity to ask questions and these questions were answered to my satisfaction.

I hereby consent voluntarily to participate in the *interview* of this study. I have been given a copy of this form.

I hereby *consent/ do not consent* to the audio recording of the interview.

Name of Participant

Signature of Participant

Date

SIGNATURE OF RESEARCHER

I declare that I explained the information given in this document to _____
[*name of the participant*]. She was encouraged and given time to ask the researcher any

questions. This conversation was conducted in *English* and [*no translator was used/this conversation was translated into _____ by _____*].

Signature of Researcher

Date