

Lawsuit alleges sexist practices

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An explosive piece of litigation brewing between one of Canada's top-tier law firms and one of its former lawyers touches on the hottest issue facing the legal community today -- the retention and promotion of women.

Diane LaCalamita has sued McCarthy Tétrault for \$12-million and is seeking, among other things, a declaration from the Ontario Superior Court that her former firm discriminated against her on the basis of gender when it didn't offer her an equity partnership, which is an ownership stake in the firm.

She claims female lawyers with equal or greater numbers of years at the Bar are paid less and billed out at lower rates than male colleagues. She also alleges the firm engaged in a practice of increasing profitability by paying women a salary less than the value of the work they generated and accuses law firm managers Kirby Chown and Malcolm Mercer of an "abdication of their management responsibilities."

McCarthy's statement of defence denies those allegations. The firm "strenuously denies that LaCalamita was the victim of any form of discrimination."

The law firm has turned the tables on Ms. LaCalamita, alleging that she didn't stack up to the firm's equity partnership criteria and that she spurned its offer to help her build a drug and health regulatory practice.

In its statement of defence, McCarthy Tétrault alleges Ms. LaCalamita "never performed at the level required for admission to equity partnership." It identifies six alleged shortcomings in her practice, among them that she was unable to meet deadlines, that she did not meet the firm's minimum expectation for billable hours, and that she displayed poor judgment as a litigator.

The firm said the criteria include "enthusiastic reception" by the partners of the firm. Because she was unable "to meet several of the criteria," the firm said she "could not have expected to be enthusiastically received into the partnership by many of those with whom she had worked on a regular basis." The firm paid her more than \$200,000 in severance.

Ms. LaCalamita and her lawyer, Malcolm MacKillop, of Shields, O'Donnell, MacKillop, declined to comment on the lawsuit.

Terry O'Sullivan, of Lax O'Sullivan, which is representing the McCarthy firm, said in an interview: "As you can see from my client's statement of defence, they are and will continue to vigorously defend this claim, which they believe is totally unwarranted. Because the matter is now before the court, I don't have any further comment at the present time." The lawsuit was filed on April 15, 2008.

Ms. Chown, Ontario regional managing partner of McCarthy Tetrault, said in an interview: "We have made significant efforts around this issue of retaining and advancing women, which is certainly something that doesn't affect just us, but is something that affects the whole profession."

Ms. LaCalamita, an intellectual property lawyer and litigator who has been practising since 1992, claims McCarthy lawyers wooed her from Aird & Berlis in 2003 to help build the firm's IP litigation group. However, the "representations and promises to the plaintiff were negligently made, were not honoured and in the result were not true."

She alleges in her statement of claim that an offer to become an equity partner never materialized as promised and her "practice was artificially restricted and isolated and commitments made regarding compensation and admission to equity partnership were disregarded."

She alleges that her complaints about the breach of promises made to her were "ignored" and that this all played out in a law firm environment allegedly "plagued by systemic gender-based discrimination and a culture of discrimination."

The claim alleges that "there is anomalous representation of women in the ranks of the partners as compared to the number of (i) partners and (ii) women lawyers in those groups."

To support that allegation, she refers to firm statistics on who made partner and a Catalyst Inc. report commissioned by the firm.

The claim describes Catalyst as a not-for-profit organization focused on the advancement of women in business and the claim states the organization was hired to "study, report on and make recommendations with respect to improving the opportunities for the advancement of women at the firm."

The claim alleges that "the IP litigation subgroup has never admitted or had any female IP litigation partners to date" and that a "significant number of female associates, counsel and income partners have departed from the firm." The claim alleges that "men are advanced and admitted into equity partnership earlier in their careers and at a higher rate than women."

The law firm denies that "there is a culture of discrimination or any systemic gender-based discrimination within the firm."

The firm alleges "LaCalamita did not have a sustainable practice or the necessary skills and attributes to become an equity partner as a litigator."

The defence states that Ms. LaCalamita "never complained of discrimination of any kind while she was employed with the firm, despite being aware of the formal complaints process in place to address such allegations."

"The firm offered LaCalamita professional coaching on more than one occasion in an attempt

to assist her with her performance issues. She never accepted the firm's offer."

As for the Catalyst report, the defence claims that "the retention of women in senior positions is a profession-wide challenge, and one that every law firm faces. To the extent that the report is at all relevant to this matter, it is evidence of McCarthy's efforts to retain and promote talented female lawyers, not evidence that it discriminates against them."

Ms. Chown told Behind the Bar that the report did not find systemic discrimination at the firm. "What the report did was look very closely at our firm across the country and identify issues that we faced. The issues facing women at McCarthy weren't that much different than the ones facing women across the profession generally."

The suit comes at an interesting time in the profession. Ms. Chown was recently awarded the Law Society Medal, an award from the legal regulator the Law Society of Upper Canada for her work on the issue of retaining women. As well, the Law Society recently released a report on retention of women within law firms and calls on bigger firms to adopt such programs to retain and advance women in the profession.

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