

# Woman's fight opens legal titans' secret files

## McCarthy Tétrault's treatment of women under the spotlight

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In the wake of a lawsuit alleging "systemic, gender-based discrimination," one of the country's biggest law firms is being forced next week to reveal top-secret data on the way it compensates and promotes lawyers.

McCarthy Tétrault LLP must also release an internal report on the status of women at the firm prepared by Catalyst Inc., well-known consultants on gender issues in the workplace.

It's believed to be the first time that a major Canadian law firm has been ordered to reveal such normally confidential information related to gender, one reason the case is attracting international attention in legal circles.

The Superior Court of Ontario has ordered McCarthys to provide that information as a result of a \$12 million lawsuit filed by a former McCarthys partner, Diane LaCalamita.

McCarthys, which "vigorously denies" that LaCalamita was a victim of any workplace discrimination, has until Sept. 7 to comply.

"I'd like to stress that this is not about McCarthys, per se," says LaCalamita's lawyer, Malcolm MacKillop, a partner at Shields O'Donnell MacKillop LLP. "It's a much broader issue."

While the legal profession has been historically dominated by men, more than half of all law school graduates are now women, he notes. "It's a significant issue for Canadian law firms."

Last year, in a bid to stop the exodus of women from the legal profession, the Law Society of Upper Canada launched its Justicia Project. It entails, among other things, encouraging Ontario's biggest law firms to develop parental leaves and flexible schedules to allow female associates to attend to their families without thwarting their chances of becoming partners.

Annual billing quotas common at law firms are seen as another obstacle to the progress of female lawyers who have families.

The LaCalamita narrative, according to her allegations, is all about a woman who is lured to a major firm with promises of a bright future, only to be pushed aside and eventually terminated by a firm "plagued by systemic gender-based discrimination."

LaCalamita, who was called to the bar in 1992, says she was recruited by McCarthys from rival Aird & Berlis LLP in 2003 to help create a group within the firm specializing in the legal issues of intellectual property. She claims she was offered a partnership that would give her a share of the firm's ownership and/or a share of its income.

But LaCalamita alleges that McCarthys and some of its partners "marginalized and isolated" her, excluding her from "senior level work" that would have been appropriate for someone who, like her, had been practising for more than a decade.

Nor was she made a full-equity partner in the firm. LaCalamita was terminated in 2006 and hasn't

worked as a lawyer since.

In its statement of defence, McCarthys says LaCalamita "was unable to meet the standards expected of senior lawyers practising litigation with the Firm."

Among other things, McCarthys claims that LaCalamita "displayed poor judgement as a litigator," was "unable to meet deadlines" and didn't fulfill expectations for billable hours.

"As there was no reasonable prospect of finding an alternative role within the Firm that was acceptable to both her and the Firm, and for no other reason, her employment was terminated."

McCarthys also denies that LaCalamita was offered a simplified path to equity partnership.

Under two court orders issued earlier this year, McCarthys must provide LaCalamita's legal counsel with a variety of confidential information about how lawyers were compensated and promoted between 2003 and 2006.

While McCarthys must reveal the data, the court has insisted that names and any information identifying clients or individual lawyers at the firm be removed.

MacKillop may also seek additional information on sexual harassment complaints as well as requests for pregnancy and maternity leave.

So far, however, no formal request for more information has been initiated, notes Terrence O'Sullivan, a partner at Lax O'Sullivan Scott LLP, representing McCarthys. "We'll see what their reaction is to the material we deliver."

None of the internal data would become public until raised during the trial, set to begin within the next 12 to 18 months.

In her statement of claim, LaCalamita alleges that after she joined McCarthys, four men were hired to the intellectual property unit, three of them as full-equity partners.

Two of the new partners had been practising for the same number of years as LaCalamita or less, she alleges. In addition, one of the two was being paid 90-120 per cent more than LaCalamita, while the other was earning 50-70 per cent more.

LaCalamita alleges McCarthys used "discrimination to keep women in salaried non-equity positions."

In 2004, McCarthys hired Catalyst to conduct a review of the hiring and advancement of women at the firm.

That report, according to LaCalamita's statement of claim, notes that while women make up one-third of the lawyer ranks at McCarthys, they comprise less than one-fifth of the equity partners.

Catalyst also found that, between 1999 and 2003, men advanced from being income partners to ownership partners at twice the rate of women.

According to LaCalamita's statement, Catalyst concluded that "broad and systemic cultural change" was needed at McCarthys to improve "the environment for and career dynamics of

women at the Firm."

In its statement of defence, however, McCarthys points to that report as evidence of its "efforts to retain and promote talented lawyers, not evidence that it discriminates against them."