WOMEN IN LAW:

JUGGLING THE BALLS OF LIFE

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[The Law] is a jealous mistress, and requires a long and constant courtship. It is not to be won by trifling favors, but by lavish homage.

(Joseph Story)

izquotes.com

- The legal profession like so many others does not lightly accept mediocrity.
- To uphold its true tenets, counsel is expected ... indeed *required* to not only work hard but also to meet and keep required standards as stipulated by the Legal Profession Act, the Legal Profession (Cannon of Professional Ethics) Rules and other "unwritten rules" expected within the profession

JUGGLING THE BALLS OF LIFE

 The tenuous balance between living one's best life and pursuing a career in the law can be quite difficult to maintain and this can be even moreso the case for females in the profession.

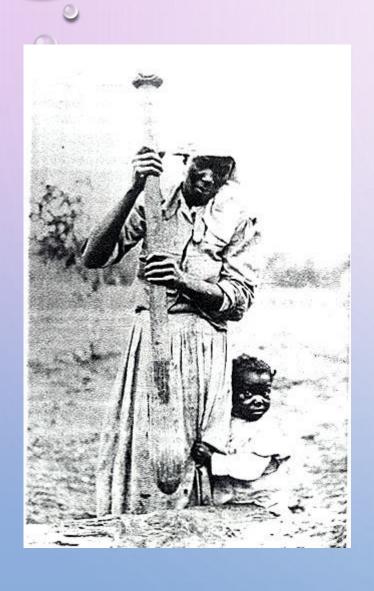


OUTLINE OF PRESENTATION

- Trace the development of women's involvement in the world of work generally and in the legal profession
- Look at the legal/statutory provisions made to accommodate females within the workplace
- Point to some of the challenges faced by females in the legal profession
- Give some practical tips to help women in the legal profession juggle the balls of life and promote wellness as a principle for individual counsel
- Sensitize those who manage/supervise women throughout the employment spectrum so they can enhance the work environment

- Women's involvement in the "workplace" began in the Garden of Eden
- Employment began with the concept of manual labour primarily in agriculture cultivating crops and rearing livestock for subsistence/barter and trade
- This mushroomed over time into the industrial revolution when as new ways of manufacturing evolved, the concept of factories came into being



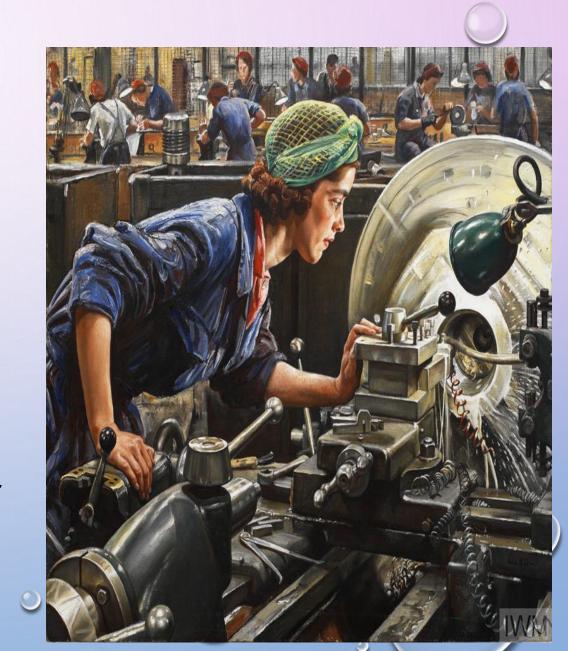


- In the Caribbean, the nascent world of work was impacted by the existence of the abominable slavery regime, where employment initially took little note of notions of contract or the wage/work bargain
- While long arduous hours in the canefields were commonplace, females were not only expected to do their fair share, many times with infants strapped to their backs, they were also subject to sexual abuses and in other instances they were also forcibly used as "breeders" to enlarge the workforce.
- Between 1834 and 1840 the formal end of slavery, laws were enacted to formalize the employer/employee relationship where labour was exchanged for lodging and supplies with minimal wages; no special provisions for women workers

- Work for women however has always been a dichotomy in that there was the stereotypical domestic roles which always fell to them;
- Often under-appreciated and unpaid without which households would not survive.
- Thus cooking, keeping house, doing laundry, raising children and even providing basic formal education for smaller children was all part and parcel of the lot of women from time immemorial.



- When women began to formally enter the workforce in larger numbers it really began on the basis of sheer necessity
- The outbreak of World Wars I & II therefore saw women taking their place "en masse" in factories, shops and offices as men headed abroad to fight
- After the end of both World Wars it became obvious that things could not remain the same after women's first foray into the formal workplace;
- The law had to acknowledge their existence and ever so slowly but surely legislative intervention began to impact females in employment.





Women were however initially expected to be engaged in the traditional stereotypical roles, such as nurses and teachers or encouraged to take on skills such as dressmaking, beauticians or secretaries as opposed to being doctors, attorneys, or even business persons.

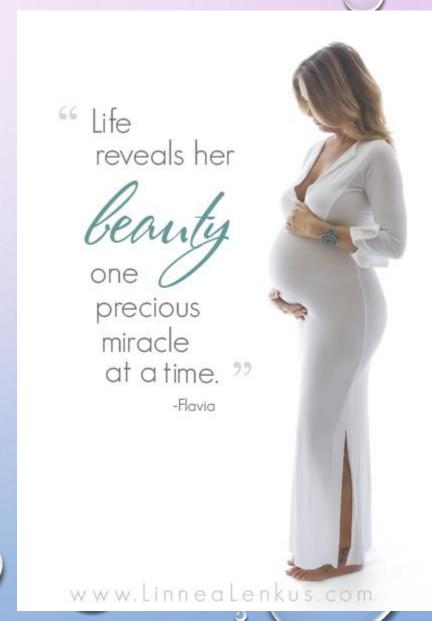
 The playing field was not level (arguably still not...)

THE PROVERBIAL "GLASS CEILING" EMERGED



INTRINSIC FEMALE CONCERNS...

- Another issue which confronts female workers is related to the innate nature of being a woman, and has impacted their ability to continuously participate in the workforce at particular times in their life cycle.
- This is both the blessing and bane, the very fundamental core of womanhood; it is our reproductive capacity.
- With this specific characteristic, comes various issues that vary from woman to woman, ranging from absolutely no impact to the other end of the spectrum of severe interruptions.



INTRINSIC FEMALE CONCERNS...

- it may mean that some women experience debilitating menstrual pain on a monthly basis such that they are unable to perform their functions at these times
- in some cases when female employees become pregnant they may experience health challenges throughout some or all of their pregnancy.



• These major well-being concerns which are unique to women, can by their nature negatively impact business operations since female team members may become unavailable to their employers possibly causing service disruptions and added costs to find replacements.

 It is in this context that women may advertently or inadvertently face discrimination in employment.

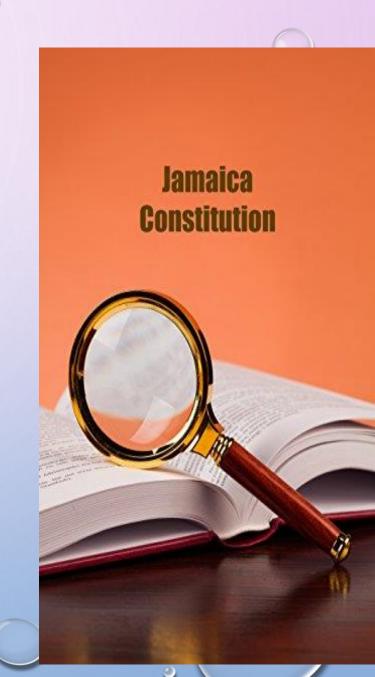
• The law should therefore be a part of a solution in tackling these possibilities if the playing field is to be level for both men and women.

LEGISLATIVE INTERVENTIONS... INCREMENTAL AND INADEQUATE?

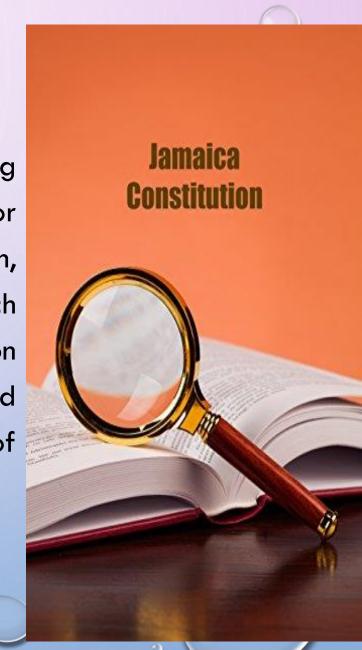


JAMAICAN CONSTITUTION:

- One would expect that the country's Supreme Law would frontally address the issue of discrimination against women. However what appeared was a mere adumbration of the concept
- Chapter III, the Fundamental Rights and Freedoms chapter Section 13
- "... Every person in Jamaica is entitled to the fundamental rights and freedoms of the individual ... has the right whatever his race, place of origin, political opinion, colour, creed or <u>SEX</u> but subject to respect of the rights of and freedoms of others and for the public interest, to each and all of the following, namely;
- Life, liberty, security of the person, the enjoyment of property and the **PROTECTION OF THE LAW**
- Freedom of conscience, of expression and of peaceful assembly and association
- Respect for his private and family (emphasis supplied)



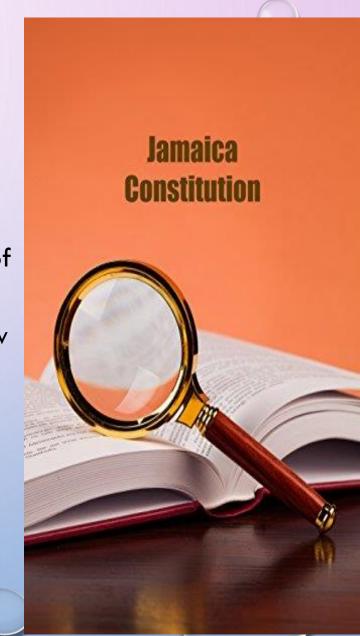
- JAMAICAN CONSTITUTION:
- Section 24 (3) states that
- "in this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinion, colour or creed whereby persons of such description are subjected disabilities or restrictions to which person of another description are not made subject or are accorded privileges or advantages which are not accorded to other persons of another such description"
- THERE IN NO SPECIFIC MENTION OF GENDER/SEX IN THIS PROVISION



- JAMAICAN CONSTITUTION:
- Charter of Fundamental Rights and Freedoms (Constitutional Amendment)
 Act, 2011
- The State is charged with the obligation inter alia to promote universal respect for and observance of human rights and freedoms to the extent that these rights and freedoms do not prejudice the rights and freedoms of others and are guaranteed except the removal of the rights are demonstrable justified in a free and democratic society and further no law should be passed or any organ of the state should take any action that abrogates, abridges or infringes on such rights.

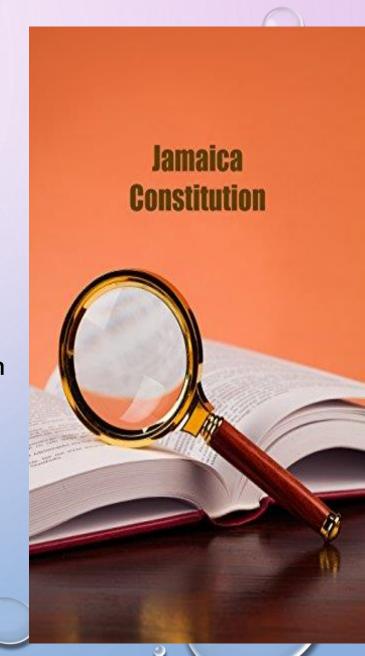
Section 13 (3) refers to one such right as being:

- (I) the right to freedom from discrimination on the ground of-
- (I) being male or female;



JAMAICAN CONSTITUTION:

- Professor Rosemarie Antoine has argued that that although there
 was a superficial attempt to locate gender equality in the
 Constitution, there was little attempt to propagate any real gender
 rights discourse on the subject of discrimination
- FOOD FOR THOUGHT....
- Rose-marie belle Antoine, 'Women's Right to Work in the Caribbean Workplace – with Special Reference to CEDAW and ILO Conventions' —2005. P 78.



- WOMEN (EMPLOYMENT OF) ACT:
- It prohibited women from being employed in "industrial establishments" at night (meaning between 10pm to 5am). **Exceptions**
 - Where day work was interrupted by unforeseeable cause,
 - Where it was necessary to reserve raw materials which were subject to rapid deterioration
 - Being engaged in a responsible position in management not ordinarily engaged in manual labour
 - The packaging of fresh fruit,
 - Nursing or caring for the sick,
 - Working in a public cinema or theatre
 - Working in a hotel, guest house bar or club
 - Working as a pharmacist
- Curtailed the total number of hours that the female employee could work to 10 hours in any 24 hour timespan

- WOMEN (EMPLOYMENT OF) ACT:
- In many ways, this was in fact a discriminatory piece of legislation
- It limited the ability of female employees to work past specified hours.
- The Act also empowered the labour minister to make regulations to restrict or prohibit employment generally, before or after childbirth, prescribe hours of work, and provide for the health and safety of women in industrial undertakings.
- It is submitted that this law was more honoured in the breach over the years
- It was totally repealed in 2014 under the provisions of The Employment (Flexible Work Arrangements) (Miscellaneous Provisions) Act.

- FACTORIES ACT/REGULATIONS:
- Addresses the regulation of working conditions in establishments classified as a being a "factory"
- A whole host of other establishments that fall outside the Act's remit and as such any protections offered therein are not necessarily of universal application

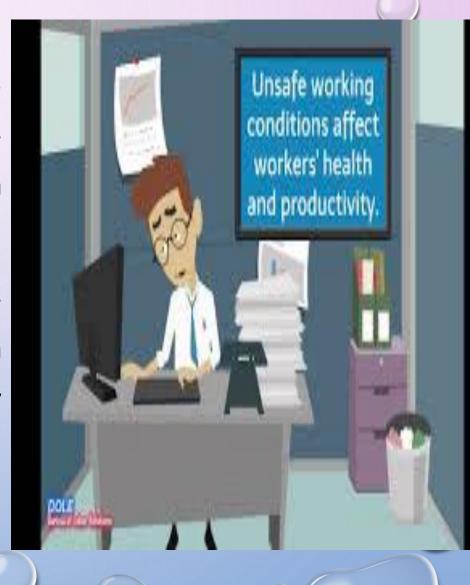


- FACTORIES ACT/REGULATIONS PROVISIONS:
- Sufficient sanitary conveniences must be provided, maintained and kept clean; in cases where females are employed there must be a least one (1) suitable sanitary convenience for every twenty-five (25) females
- Where both sexes are employed the sanitary conveniences for each sex must be separate and suitably placed.
- Adequate and suitable facilities for washing for each sex must be provided and maintained and shall include basins, soaps and clean towels

- FACTORIES ACT/REGULATIONS PROVISIONS:
- Where females are employed a suitable restroom shall be provided, which shall be equipped with adequate and suitable facilities for resting and shall be properly maintained
- Adequate suitable facilities for changing of clothing and accommodation for clothing not used during working hours be provide and maintained
- Separate accommodations shall be provided for persons of each sex and shall include adequate shower bath facilities

 WHILE SOMEWHAT COMMENDABLE, THESE PROVISIONS COULD BE CONSIDERED AS RUDIMENTARY AT BEST.

- OCCUPATIONAL SAFETY AND HEALTH BILL:
- There is no doubt that there needs to be more overarching legislative provisions in which more detailed steps are taken to meet the needs of women in workplace settings.
- Issues such as protection of women by ensuring a safe and healthy work environment free from hazards which could potentially impair their reproductive health, for example ought properly to be examined



OCCUPATIONAL SAFETY AND HEALTH BILL:



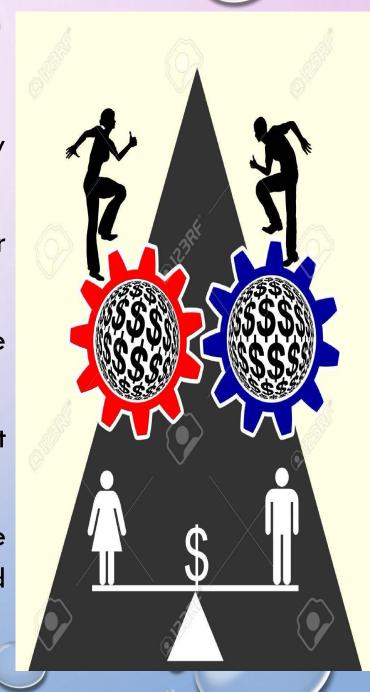
- Also accommodation to address women needs within the workplace when they are pregnant (if required) is necessary.
- It is therefore hoped that the new Occupational Safety and Health Bill tabled in Parliament in 2017, (which is expected to repeal the Factories Act) and which is currently being reviewed by a Joint Select Committee will provide a more progressive and comprehensive approach to dealing with women's issues in the workplace

- EMPLOYMENT (EQUAL PAY FOR MEN AND WOMEN) ACT:
- The Law provides that no employer shall by failing to pay equal pay for equal work discriminate between male and female employees employed in the same establishment.
- Equal pay is defined as a rate or a scale of remuneration for work, in which there is no element of differentiation between male employees and female employees based on the sex of the employees



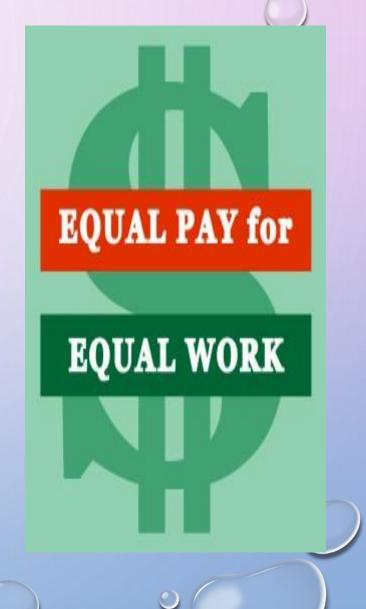


- EMPLOYMENT (EQUAL PAY FOR MEN AND WOMEN) ACT:
- "Equal work" is defined as work performed for one employer by male and female employees alike in which:
- √ The duties, responsibilities or services to be performed are similar or substantially similar in kind, quality and amount;
- √ the conditions under which such work is to be performed are similar or substantially similar;
- ✓ similar or substantially similar qualifications, degrees of skill, effort and responsibility are required; and
- ✓ the differences (if any) between the duties of male and female
 employees are not of practical importance in relation to terms and
 conditions of employment or do not occur frequently



- EMPLOYMENT (EQUAL PAY FOR MEN AND WOMEN)

 ACT:
- While Jamaica has implemented this law it does not however meet the requirements of international standards on the subject; in fact as far back as 1997 the International Labour Organisation (ILO) has been indicating to the government that the Act does not include the concept of "work of equal value" as required by the Convention.



- EMPLOYMENT (EQUAL PAY FOR MEN AND WOMEN)
 ACT:
- The concept of "work of equal value" is fundamental to the promotion and achievement of equal pay between men and women in employment and to reducing the gender pay gap.
- Gender Pay Gap in Jamaica appears to be real! A 2015 Gleaner report showed that women in Jamaica earn 60 per cent of their male counterparts' pay, which, alongside other disparities, has contributed to the country's fall in the rankings to 65 in the Global Gender Gap Report 2015.





• EMPLOYMENT (EQUAL PAY FOR MEN AND WOMEN) ACT:

• For every \$100 made by a man in Jamaica, a woman earns around \$60 on average.

A TELLING INTERNATIONAL REMINDER OF THE GENDER PAY GAP





- EMPLOYMENT (EQUAL PAY FOR MEN AND WOMEN) ACT:
- Perhaps an even further very telling illustration of just how (un)important or well used this law is, remains the fact that my research has not shown that there have been any actions brought under the Act and that it has never been amended in its 43 years existence, with miniscule fines and penalties still transcendent.



- EMPLOYMENT (EQUAL PAY FOR MEN AND WOMEN) ACT:
- While the Act makes provision for the employees to keep records the Minister has not given a guideline as to what these records should contain and further there is no provision in the law which mandates that the employer must publish the various salaries which is what would for the base for any claim.
- In fact we could find no complaints made under the Act or cases emanating from its provisions

If we make companies show how much they pay men and women, equal pay will take care of itself.



The Gleaner.com

- PUBLISHED: FRIDAY | APRIL 24, 2009
- EQUAL-PAY LAW INEFFECTIVE AND UNPOLICED ENFORCEMENT A 'WASTE OF TIME', SAYS LABOUR Ministry
- "...we do not have one million people working in the department. We are dealing with the things which are affecting people now, including keeping their jobs sudden dismissals and underpayment for work done," said Michael Kennedy, Director of the Working Conditions unit within the Ministry of Labour and Social Security. We do not have time to waste."





- is perhaps the most well-known of the laws related to women in Jamaica.
- Before its enactment, women in the workplace had no guarantee that upon undertaking that she would be paid during the period, that she would have a work to return to and even if she were to return her years of seniority and benefits were also not guaranteed

• MATERNITY LEAVE ACT :

- Section 3 of the Act, a female Jamaican employee is therefore entitled to paid maternity leave if she satisfies prescribed conditions. These conditions are:
 - She must have been continuously employed by her employer for a period of not less than 52 weeks at the date on which her absence begins
 - She must inform the employer that she wishes to be absent from work wholly or party because of her pregnancy or confinement and that she intends to return to work with the employer



MATERNITY LEAVE ACT:

- She must provide a Medical Certificate from a registered medical practitioner if the employer requests one, stating that it is necessary for the worker to be absent from work wholly or partly because of her pregnancy or confinement
- She must not be less than 18 years of age on the first day of the eleventh week before the expected week of confinement (the date the baby is due to be born). This practically works out to approximately the 5th month of pregnancy



• MAJERNITY LEAVE ACT :

- if an employer dismisses a woman without reasonable cause, wholly or partly because of her pregnancy, this is a criminal offence.
- An employer who refuses to permit a woman to return to work will be treated as having terminated the contract of employment without cause on the grounds of pregnancy.
- Women are also protected if a redundancy situation occurs while they are on maternity leave, as they must be allowed to return to work and alternative employment sought for her

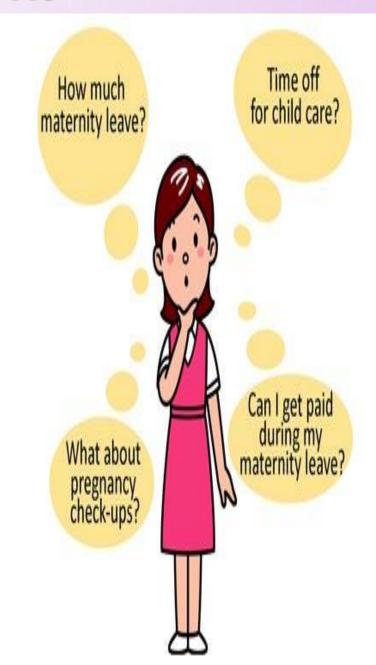


NEVEAST SUPPLIES LIMITED V KARMA-GAYE WILLIAMS

IDT 2/2015 (UNREPORTED) DELIVERED NOVEMBER 3, 2016

• Ms. Williams was employed in August 7, 2012 and later appointed in the capacity of In-House Sales Representative and Drawing Technician. proceeded on 3 months Maternity Leave on January 10, 2014 to end on April 9, 2014; she was invited to a meeting on March 25, 2014 and given a dismissal letter (and asked to exit through the back door), purportedly because the "the economic conditions in the industry resulted in slow sales". In deciding that the employee was unjustifiably dismissed, the IDT considered that not less than 2 months after her termination, the same job was publicly advertised. They also examine MLA provision relating to the employee's right to return to work, and they accepted her testimony that she had advised the employer that she would return. They accepted there was a clear breach of the MLA and awarded her compensation in the amount of \$1,750,000.00.

- MATERNITY LEAVE ACT:
- The provisions are however in some ways limited;
- only 8 weeks' pay mandated during the period although there is an additional 4 weeks period of unpaid leave.
- MLA does not meet the minimum standard recommended by (ILO) which is 14 weeks paid time off with a compulsory period and 6 week compulsory period after childbirth during which women are not to be allowed to work.





"If you plan to stop working to have your baby, please do it during a coffee break and try not to disturb your coworkers."

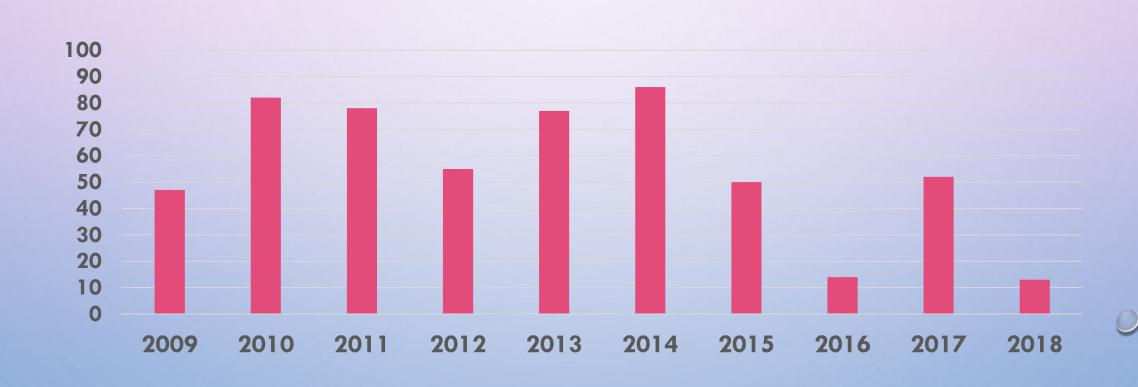
MATERNITY LEAVE ACT:

- The provisions are however in some ways limited;
- the female employee may not be able to access maternity leave with pay if she has more than 3 children while working with the same employer.
- a woman will lose her right to return to work unless she serves on her employer a notice that states the day on which she proposes to return to work.
- discrimination with respect to Domestic Workers as they are covered under the National Insurance Act where they receive the 8 weeks pay (if qualified) based on the current rate of the minimum wage.

MATERNITY LEAVE ACT:

- The Maternity Leave Act has also never been amended, thus the fines and penalties are virtually obsolete, with the most egregious fine being \$J1,000.00 or 6 months imprisonment for dismissal of an employee on the grounds of pregnancy.
- The data from the Ministry of Labour also shows a paucity of complaints for breach of the Act, which while it could possibly be because there are no challenges, it is submitted is unlikely

Maternity Leave Complaints Ministry of Labour Pay and Conditions of Employment Branch (PCEB) 2009-2019



MATERNITY LEAVE ACT:

- It must be remembered that this is a direct cost to the employer and in cases where they have to employ replacement this would mean they are salary costs are doubled.
- Perhaps one way to deal with this challenge would be for the government to expand the NIS to provide the payment of the benefit to all registered female employees, or offer a tax rebate to employers who do so to encourage compliance in the best interest of all parties.



SEXUAL HARASSMENT BILL:

- After decades of fierce debate and discussion in the public domain Jamaica we thought we were one step closer to legislating and instituting a legal framework to statutorily regulate sexual harassment within the society.
- In December, 2015 the then (PNP) government tabled the **Sexual Harassment Bill (2015)** Since the new (JLP) administration has been installed in March 2016
 the Bill has not yet been retabled for deliberation by Parliament;
- The current Minister of Gender Affairs has recently advised in June 2018 that
- the Sexual Harassment Bill which was tabled is currently being reviewed and would be retabled "within weeks".... We are still waiting....



The Bill stated that sexual harassment is....

❖The making of a <u>sexual advance</u>

Towards a person by another person who

*Reasonably regards the advance as <u>unwelcome</u>, <u>offensive</u> or <u>humiliating</u>

DEFINITION OF "SEXUAL ADVANCE"

- Physical contact of a sexual nature
- Demand or request for sex or favours of a sexual nature
- Sexually coloured remarks
- Sexual advances
- Sexual suggestions
- Sexual innuendos
- Showing pornography or the display of images or objects of a sexual nature
- Any other physical, gestural, verbal, non-verbal conduct of a sexual nature



UNDERLYING PRINCIPLES OF THE SEXUAL HARASSMENT BILL

QUID PRO QUO

Receipt of employment related benefits made contingent on request for sexual advances being fulfilled and conversely if such advances are rejected detriment ensues

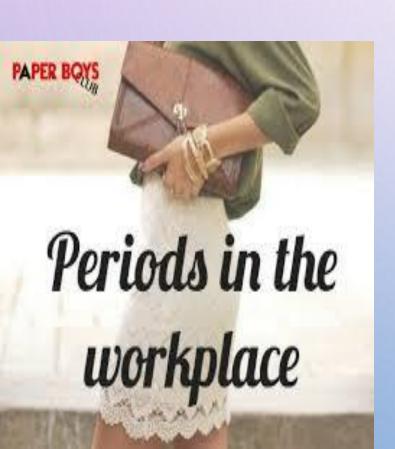
HOSTILE WORK ENVIRONMENT

Workplace is polluted by actions of a sexual nature that creates an intimidating offensive and unfavourable atmosphere to the worker

MENSTRUAL LEAVE:

- It should be noted that Italy was the first European country to actively consider legislation for paid Menstrual leave- MPs in the country debated legislation which would see ladies who suffer from dysmenorrhea, a condition that makes periods extremely painful, free to have three days of paid leave every month
- In Japan and South Korea Indonesia, Vietnam, South Korea, Taiwan and China are allowed to request days off work as "menstrual leave

MENSTRUAL LEAVE:



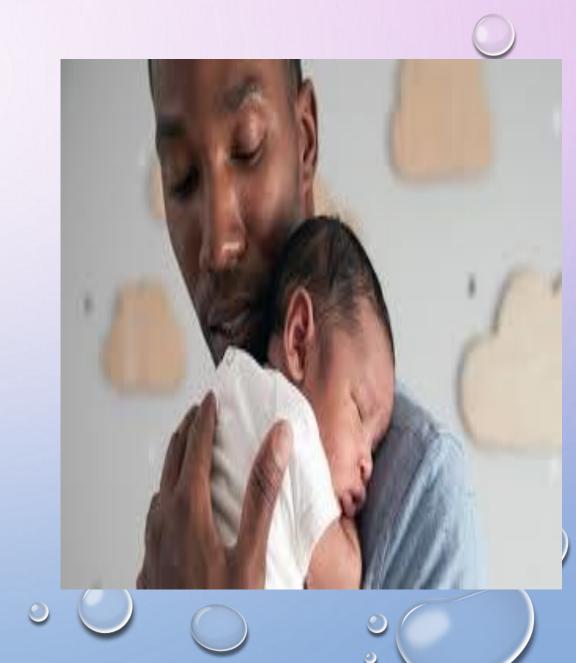


The Washington Post

Giving Italian
Women
'Menstrual Leave'
May Backfire on
Their Job
Prospects

• PATERNITY LEAVE:

 Paternity leave is defined as a jobprotected period of leave for employed men, with income support provided in some cases. Paternity leave is a short period of leave for the father to take immediately following childbirth to help care for the child and assist the mother.



• PATERNITY LEAVE:

- Last year the Permanent Secretary in the Ministry of Gender Affairs at the celebration of International Men's Day on November 19, "The Government is facilitating discussions on the introduction of a Paternity Leave Act, to encourage shared parenting, support and mentoring."
- He also indicated that there would be consultations on the relevance of paternity leave to the Jamaican society and the parameters of the Paternity Leave Act"



• BREAST FEEDING BREAKS:

- In Australian Federal Law breastfeeding is a right, not a privilege;
 it is illegal in Australia to discriminate against a person either directly or indirectly on the grounds of breastfeeding
- For example, an employer may impose a requirement on all employees that they must not make any breaks for set periods during the day under any circumstances. Such a condition would particularly disadvantage women who need to express milk

Best Practices To Accommodate Pregnant & Breastfeeding Women

In order to foster a respectful and equitable work environment, employers should be supportive, flexible, and creative in developing accommodations for pregnant and breastfeeding women.

Possible accommodations may include:



Flexible work hours



Different job or duties





Part-time work



Longer or extra breaks during which to nurse

WOMEN IN THE LEGAL PROFESSION



WOMEN IN THE LEGAL PROFESSION

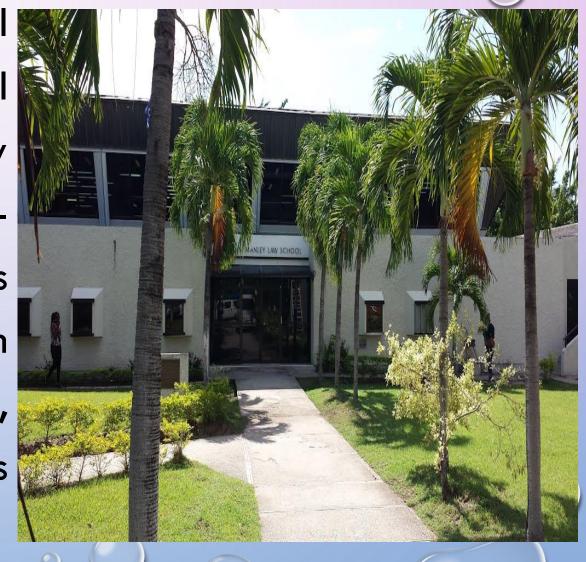
- Sex Disqualification (Removal) Act 1919 (UK) 1944 (Jamaica): made it illegal to exclude/disqualify women from jobs because of their gender or by marriage.
 - "....exercise any public function, or from being appointed to or holding any civil or judicial office or post, from entering or assuming or carrying on any civil profession or vocation or for admission to any incorporated society ... exempted by sex from liability to serve as a juror."



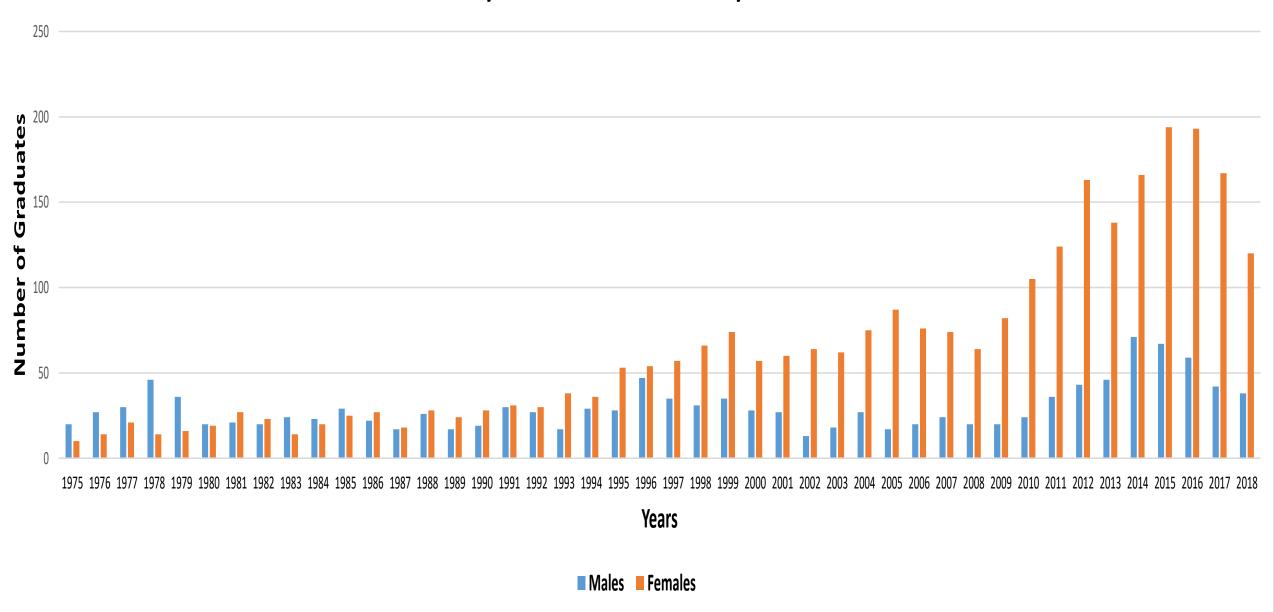


WOMEN IN THE LEGAL PROFESSION

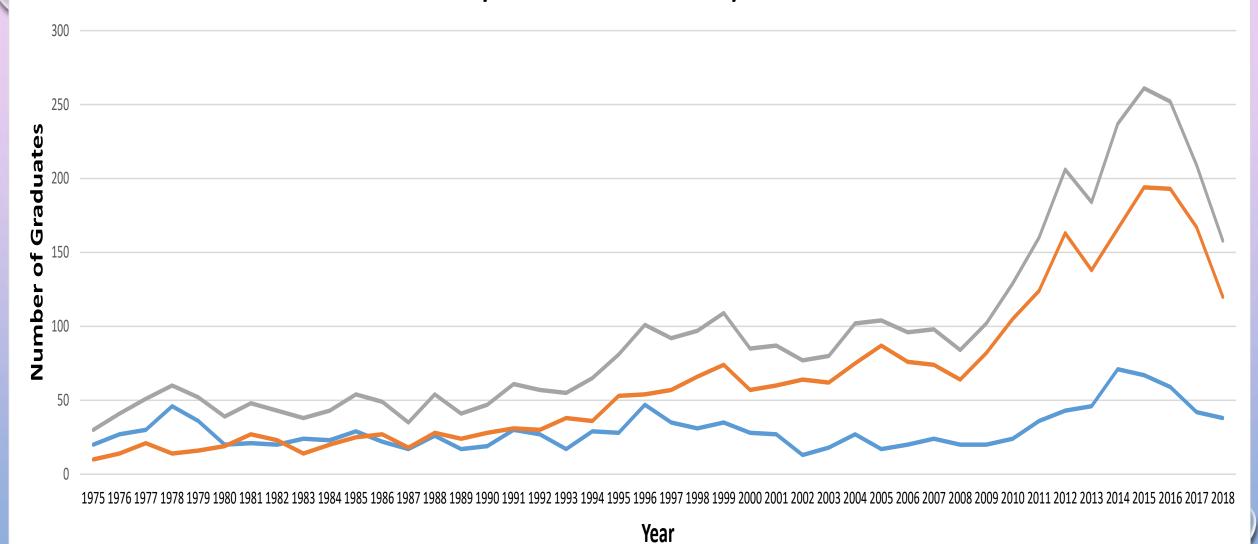
· Let us take a look at the numerical representation of females in the legal field. Starting at the Norman Manley Law School (NMLS) over its fortythree (43) year history, there has been a dramatic change not just in the increased number of graduates, but also the ratio of men to women as is illustrated in the charts below



Norman Manley Law School Graduates By Gender 1975-2018



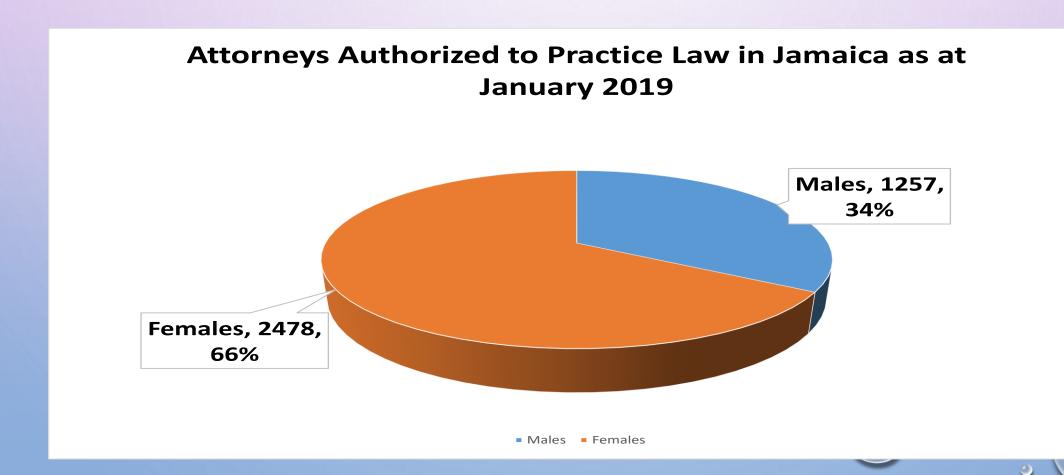
Norman Manley Law School Graduates By Gender 1975-2018





—Males —Females —Totals

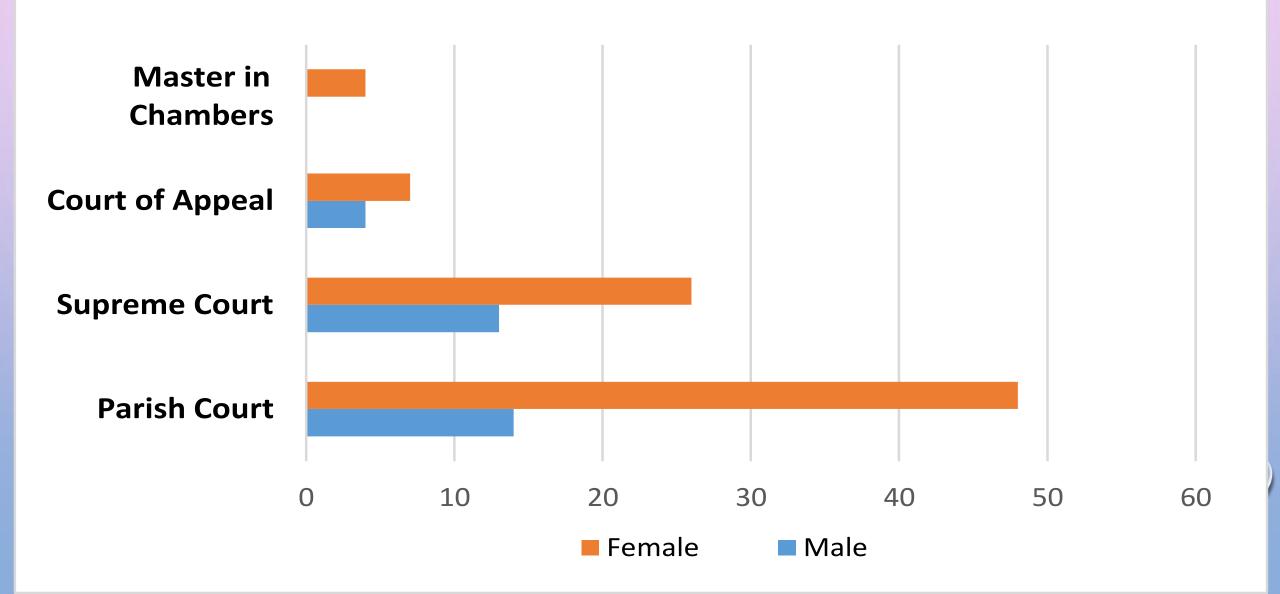
With this proportionate of **Male vs. Female graduates**, it is clear therefore that there would have to be a commensurate ratio of practicing attorneys in the jurisdiction as is illustrated in the chart below:



WOMEN IN THE JUDICIARY

• In her Article "Women Workers and the Law" Millicent Rickman indicated that the first female Resident Magistrate was appointed in 1956. In 1975, the same year that the NMLS graduated its first batch of attorneys-at-law there were a total of 27 Resident Magistrates 11 of which were women. There were a total of 20 Supreme Court Judges and Court of Appeal and at that time only 1 was sitting in either court and even then in an acting capacity at the Supreme Court level.Just look at us now!!

Jamaican Judiciary by Gender @ February 2019





A VIVID REPRESENTATION



A FEMALE SOLICITOR GENERAL AND A FEMALE DPP





A FEMALE MINISTER OF JUSTICE, AND 2 FEMALE ATTORNEY GENERALS





A FEMALE CHIEF JUSTICE AND A FEMALE (ACTING) PRESIDENT OF THE COURT OF APPEAL





ON THE POLITICAL STAGE A FEMALE PRIME MINISTER



- In the modern technological era, while the manual aspect of work has somewhat moved to the background, there is nevertheless the very real threat that work can overtake other aspects of life.
- Now these endeavours are not limited to an office, a shop, a factory or some other facility, but rather it has become invasive with many feeling electronically leashed by, beepers, cell phones and computers.
- Perhaps the way to go is to use these devices as a tool to make life easier as a working woman as opposed to looking at it as a burden; let us explore all possibilities!!

PRACTICAL APPLICATION...

