



Victorian Equal Opportunity
& Human Rights Commission

Equitable Briefing Initiative

> Aggregate Data Report
Period One (January–June 2016)



**Victorian Equal Opportunity
& Human Rights Commission**

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Introduction

In 2014 the Commercial Bar Association of Victoria (CommBar), the judiciary and the Victorian Equal Opportunity and Human Rights Commission (the Commission) commenced work together to understand and address equity issues for female barristers at the commercial bar. Of specific concern was the notion that women practising at the Victorian Bar in commercial law were briefed less frequently than their male counterparts and received briefs of less value.

The Equitable Briefing Initiative was developed to better understand and analyse the briefing practices of firms and government entities who volunteered to be a part of the initiative by submitting data over a three-year period from 2016–19 on their briefing practices, and to focus on reducing any gender bias apparent in briefing practices.

Participants signed up to a 'Charter of Commitment' (the Charter) that records key initiatives to address the representation of women barristers at the CommBar. The Charter refers to development of an equitable briefing policy and commercial briefing shortlists, and steps to identify new women commercial barristers.

This report analyses results from the first stage of the Equitable Briefing Initiative. It aims to identify any bias in briefing practices and considers whether the number of briefs to female barristers are proportionate at each level of seniority, and whether the average value of briefs to men and women are equivalent at each level of seniority.

The data has been provided by 10 private law firms and three government entities, and initial findings are suggestive of biased briefing practices at the senior level.

In order to understand whether there is bias in briefing practices at the Victorian Bar, it is first necessary to understand the number and proportion of women who are practising barristers.

The Equitable Briefing Initiative approached this by looking at the Victorian Commercial Bar membership, and dividing barristers by their formal seniority (that is, Senior Council / Queen's Council) and their years of experience (those with fewer than 10 years are referred to as Junior barrister, those with more as Senior barristers).

Key findings show that female Senior Council / Queen's Council (SC/QC) receive 7.3 per cent of briefs, despite making up 10.6 per cent of this cohort. In addition, the average and median values of briefs received by male SC/QCs were higher than those received by women (\$35,080 compared with \$21,174); however, more evidence is required before we can come to a firm conclusion about bias in terms of the value of briefs.

At the non-SC/QC level, the picture is more ambiguous. Measuring the number of briefs to men and women does not indicate briefing bias in relation to non-SC/QC women who are barristers. There is also no reliable evidence that the average/median value of briefs received by women at the Junior and Senior levels is lower than the value of briefs received by men.

It is important to note that a lack of reliable evidence of bias does not mean that we determine that firms are unbiased in their briefing practices. With more data, and improved data reporting, from more firms in subsequent reporting periods, we will be able to draw more certain conclusions about how firms are briefing, and make concrete suggestions for areas of improvement.

In addition, it is important to remember that this data has been collected from a group of firms who have voluntarily signed up to be a part of the Equitable Briefing Initiative. As such, it would be inappropriate to generalise too broadly from the findings reported below. In particular, it is possible that data from a group of randomly selected firms would show more evidence of bias.

Targets

The Equitable Briefing Initiative established a series of targets which are discussed in more detail below. In this section of the report we set out the key Charter targets and how we have attempted to update these targets in order to understand briefing patterns across the different levels of seniority – junior, senior and Senior Counsel / Queen's Counsel.

Charter of Commitment targets

As at 30 June 2015, 28 per cent of CommBar members were women and this figure formed the basis of four key indicators that were developed to compare against in this study. The Charter targets ('the targets') referred to in this report are as follows:

- i. Our target is to brief in approximately equal proportion to the number of CommBar members who are women (which at 30 June 2015 is 28 per cent), in both the number of briefs and value of briefs; or
- ii. Our target is to brief in approximately equal proportion to the number of CommBar Junior Counsel members that are women (which at 15 September 2015 is 30 per cent) and the number of CommBar Senior Counsel that are women (which at 15 September 2015 is 16 per cent), in both the number of briefs and value of briefs.

How were barristers categorised?

Point i) of the Charter targets considers all barristers as a single group, regardless of seniority. This approach is problematic when considering both the number and value of briefs received. In terms of the number of briefs, collapsing all barristers into a single group can mask differences within levels of seniority. For example, a finding that women receive a proportionate number of briefs overall does not necessarily imply that they receive a proportionate number of briefs at every level of seniority.

Considering all barristers as a single group is even more problematic when considering the value of briefs. Since barristers who are more senior tend to get higher value briefs, and given men tend to be more senior than women, a finding that men get a higher proportion of the value of briefs is not of itself evidence of biased briefing practices.

These issues can be dealt with, to some extent, by categorising barristers according to their level of seniority, as the targets do in point ii). However, for this to be effective, the categories must not be too broad. For example, it is probably reasonable to consider all SC/QCs as a single group. Analysing all briefs to non-SC/QCs together, on the other hand, is problematic if the men in that category tend to be more experienced than the women (or vice versa).

Fortunately, the data provided by firms breaks barristers who are not SC/QC into two additional categories; those with less than 10 years at the bar ('Junior') and those with more than 10 years at the bar ('Senior'). Division of non-SC/QCs into Junior and Senior categories allows us to analyse the briefing data in a more informative way.

To avoid confusion with the references to 'Senior Counsel' and 'Junior Counsel' used in the Charter targets, this report adopts the following terminology:

- 'SC/QC' to refer to any barrister who is Senior/Queen's counsel;
- 'Non-SC/QC' to refer to any barrister who is not SC/QC, regardless of seniority;
- 'Senior' to refer to any barrister who is not SC/QC and has more than 10 years of experience at the bar; and
- 'Junior' to refer to any barrister who is not SC/QC and has fewer than 10 years of experience at the bar.

The Charter targets refer to CommBar members, rather than all barristers who practice commercial law. At this stage, however, it is not possible to obtain the numbers of male and female barristers at the Junior and Senior levels of seniority from the CommBar website in any manner other than manually checking each barrister's

website. Without this information, it is not possible to determine whether women are receiving a proportionate number of briefs at those levels of seniority. To address this issue we have used the Victorian Bar (VicBar) website to provide a proxy breakdown of barrister numbers at the Junior and Senior levels. Further, consistent with the focus on CommBar barristers and Charter targets, this report separately examples the data with respect to the proportions of CommBar members who are women at the SC/QC and non-SC/QC levels.

Percentage of women at each level of seniority – VicBar and CommBar figures

If we consider CommBar membership, women are over-represented at the non-SC/QC level (making up 31.1 per cent of non-SC/QC CommBar members) and under-represented at the SC/QC level (16.6 per cent of whom are women).

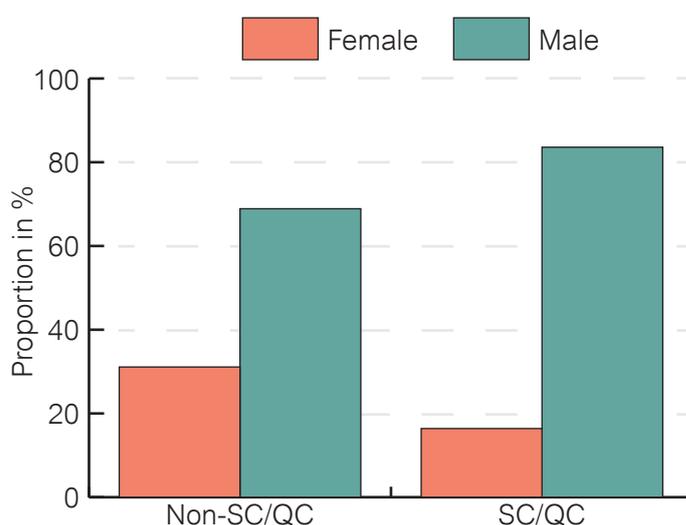


Fig. 1 Proportion of men and women by level of seniority. Data from commbar.com.au, retrieved July 2016.

There are 1402 barristers registered on the VicBar website who list commercial law as an area of practice ('barristers', unless otherwise noted). Of this number, 310 (22.1 per cent) barristers are women however, as shown in Figure 2 below, women are significantly over-represented at the Junior level, and under-represented at the Senior and SC/QC levels.

Of the barristers who listed commercial law as an area of practice

- 507 are Junior barristers - 184 (**36.3 per cent**) are women
- 659 are Senior barristers - 101 (**15.3 per cent**) are women
- 236 are Senior Counsel/Queen's Counsel - 25 (**10.6 per cent**) are women

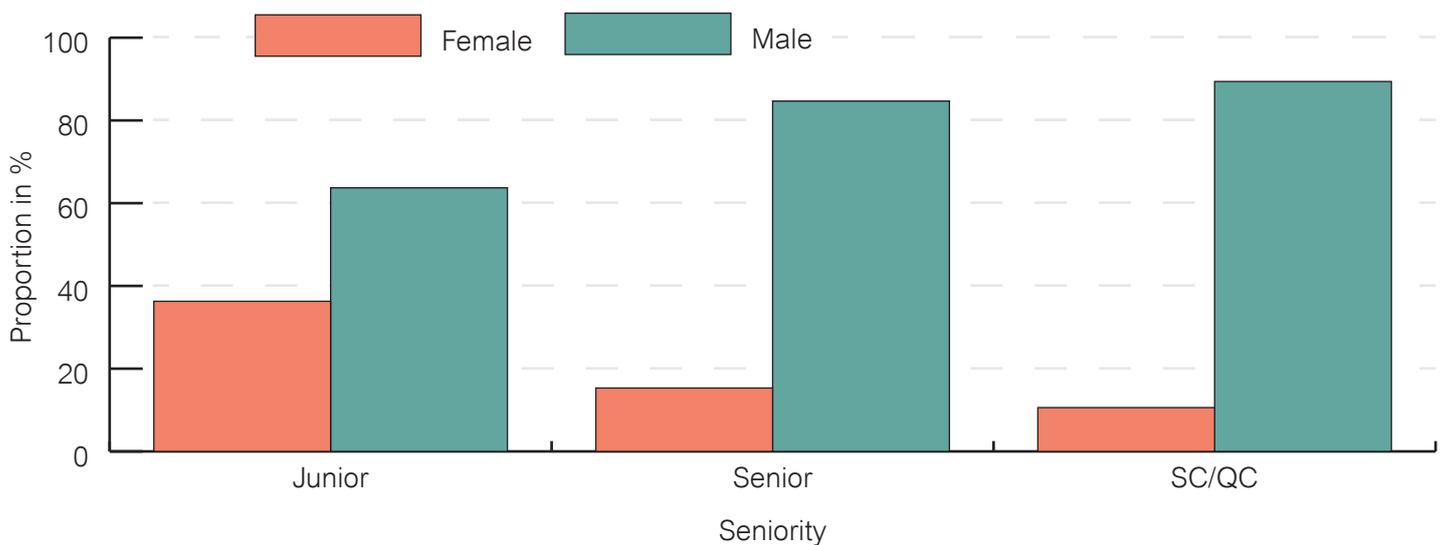


Figure 2. Proportion of men and women by level of seniority. Data from vicbar.com.au, retrieved 26 June 2017.

Data collected

The data on which this report is based were collected from a group of 13 law firms in the period between 1 January 2016 and 30 June 2016 (‘the reporting period’).

In total, firms provided details of 2209 briefs. The gender of the barrister briefed was provided in all of these cases. There were 25 cases in which the value of the brief was not recorded, and 192 cases in which the seniority of the barrister was not recorded. These cases were excluded from the analyses and discussion below. An additional issue is the possibility of duplicate entries.¹

The firms provided a range of briefing information during the reporting period including the gender and seniority of the barrister briefed, the value of the brief, the type of appearance, the jurisdiction, area of speciality and reason for brief.

¹ It is difficult to detect duplicates in these data because of the possibility that a firm may have briefed the same barrister for the same amount in a different matter. That is, we might have two entries in which a junior male barrister is briefed to provide advice where the value of the brief is \$5000. Without more information, it is impossible to know whether the two entries are separate matters or simply a mistake in which details of the same matter were recorded twice. A search for duplicate entries reveals 48 possible duplications. Due to the small number of cases and the uncertainty involved, these potential duplicates were retained in the dataset. All of the analyses reported below have also been run with the potential duplicates removed; none of the conclusions change.

This report focuses on first main variables (gender, seniority and value) as these are the key indicators of bias. The remaining variables are not discussed in this report as this information was not consistently provided by firms.

Briefs

This section of the report considers whether the number of briefs to women at each level of seniority is *significantly different* from what we would expect given the proportion of female commercial barristers (see Appendix 1 for a discussion of the concept of significant difference in the context of number of briefs received). As previously discussed, we compare the data to both the proportion of female barristers who are CommBar members and VicBar members practising commercial law.

Proportion of briefs received by women compared with CommBar membership

Overall, 24.1 per cent of briefs went to women. This is a lower proportion than expected, given that 28.6 per cent of CommBar members are women. At the non-SC/QC level, 28.7 per cent of briefs went to women. This is significantly lower than expected, given that 31.1 per cent of non-SC/QC CommBar members are women.

Finally, at the SC/QC level, 7.3 per cent of briefs went to women. This is significantly lower than expected, given that 16.4 per cent of SC/QCs are women.

These results are summarised below, which compares the proportion of women at each level of seniority with the proportion of briefs that went to women.

The crosshairs represent a 95 per cent confidence interval associated with our estimate of the percentage of briefs going to women at each seniority level. Broadly speaking, that means we are 95 per cent confident that the “true” rate at which firms brief women falls within that interval. These crosshairs will become narrower (that is, our estimates will become more precise) as we get more data over subsequent reporting periods.

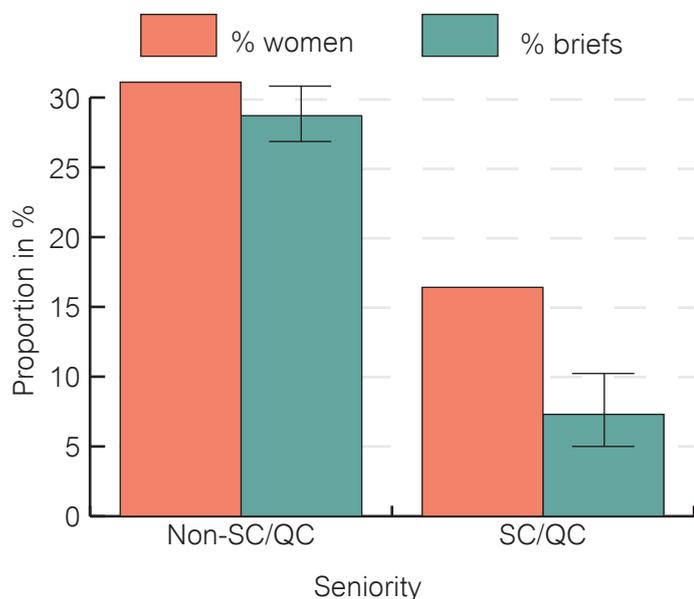


Fig 3. Proportion of women at each level of seniority (CommBar figures) compared with proportion of briefs to women. Data from commbar.com.au (retrieved July 2016) and EBI data for reporting period 1 January 2016 to 30 June 2016. Bars represent 95 per cent confidence intervals.

Thus, when we base our analysis on the proportion of CommBar members who are women we find that there are fewer briefs to women than we would

expect overall, at the SC/QC level, and at the non-SC/QC level of seniority (that is, combining the Senior and Junior levels). The discrepancy is particularly large at the SC/QC level, where women receive fewer than half the number of briefs we would expect based on unbiased briefing practices.

Proportion of briefs received by women compared with VicBar membership

Overall, 24.1 per cent of briefs went to women. This is a slightly higher proportion than expected, given that 22.1 per cent of barristers are women. This figure is broken down among the different categories as follows:

- Junior barristers – 41.6 per cent of briefs went to women. This is a higher proportion than expected, given that 36.3 per cent of Junior barristers are women.
- Senior barristers – 14.7 per cent of briefs went to women. This figure is not significantly different from the proportion of Senior barristers who are women (15.3 per cent).
- SC/QC barristers – 7.3 per cent of briefs went to women. This is significantly lower than expected, given that 10.6 per cent of SC/QCs are women.

Thus, if we base our analysis on the proportion of female VicBar members practising commercial law, the data show evidence of positive bias towards women at the Junior level (that is, women tended to receive proportionally more briefs than men); no evidence of bias at the Senior level; and evidence of negative bias at the SC/QC level (that is, women tended to receive proportionally fewer briefs than men).

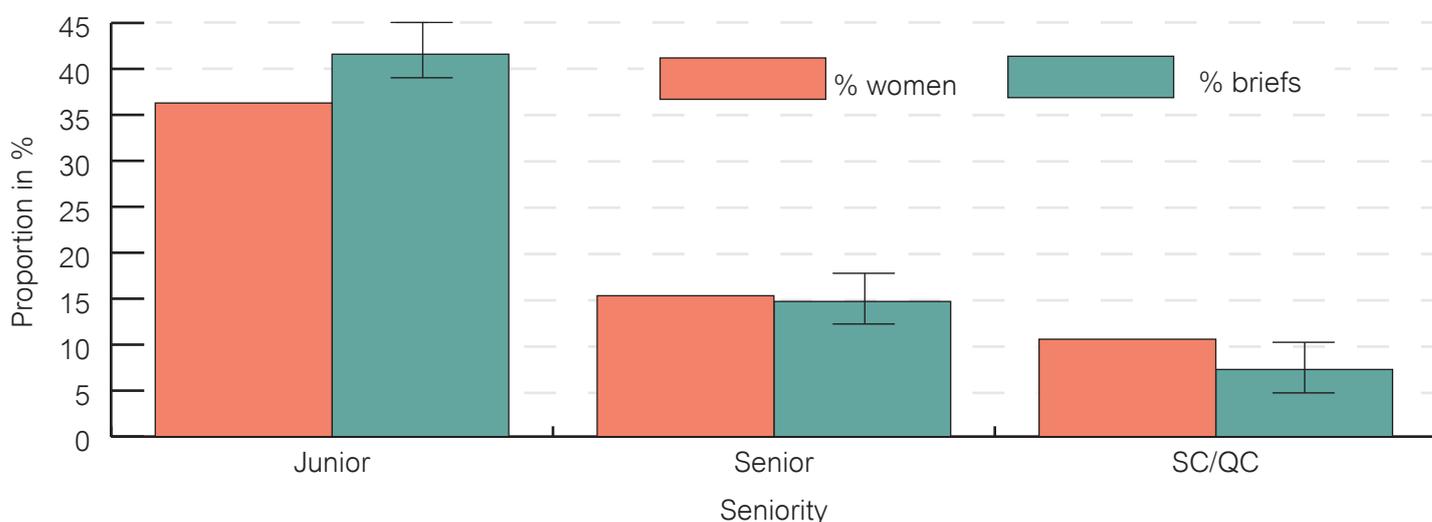


Fig 4. Proportion of women at each level of seniority (VicBar figures) compared with proportion of briefs to women. Data from vicbar.com.au (retrieved 27 June 2017) and EBI data for reporting period 1 January 2016 to 30 June 2016. Bars represent 95 per cent confidence intervals.

Seniority	Gender	Average value of briefs	Standard deviation	Median	Significant difference?
Junior	Male	\$12,489	\$25,819	\$4,500	No
	Female	\$10,734	\$18,274	\$4,390	
Senior	Male	\$14,606	\$29,413	\$5,610	No
	Female	\$14,937	\$22,562	\$7,414	
SC/QC	Male	\$35,080	\$77,544	\$11,580	No
	Female	\$21,174	\$30,894	\$9,341	

Table 1: Summary of brief value by seniority and gender.

More information about what standard deviations and medians represent, and how they relate to the average value, is contained in Appendix 2. The final column (“Significant difference?”) summarises the results of statistical tests that aim to determine whether the average and/or median value of briefs to men and women at each level of seniority are significantly different from each other. Further discussion of the concept of a “significant difference” as it relates to average value is contained in Appendix 3.

Summary – number of briefs

At the SC/QC level, we find that there are fewer briefs to women than expected regardless of whether we base our analyses on the CommBar or VicBar figures; however, the discrepancy is more pronounced when we base our analyses on CommBar membership.

The situation is less straightforward at the non-SC/QC level. If we base our analysis on CommBar membership, we see that women receive fewer briefs than expected. If we use the VicBar figures, we see that women receive proportionally more briefs than men do at the Junior level, and about the same number of briefs as men at the Senior level.²

As such, the conclusions to draw about whether there is evidence of bias in terms of the number of briefs depend to some extent on whether we compare the briefing data with the proportion of women who are CommBar members or the proportion of VicBar members who practice commercial law. Presumably, CommBar members are those for whom commercial law is the major focus of their practice, while some VicBar members who list commercial law as an area of practice may only take commercial matters rarely.

Value of briefs

This section of the report considers whether the average value of briefs to men and women are significantly different at the Junior, Senior and SC/QC levels.

Comparison of average/median value of briefs

The value of briefs to male and female barristers at each level of seniority is summarised in Table 1 above.

When we examine the final column of the table, we see that the data do not provide reliable evidence of bias in the value of briefs at any level of seniority. These results are not surprising at the Senior and Junior levels, where both average values and medians are quite similar for men and women. However, at the SC/QC level, the average value of a brief to a man was around \$14,000 higher than the average value of a brief to a woman (\$35,080 compared with \$21,174); as such, the lack of any “significant difference”/reliable evidence here might be somewhat surprising.

Statistically, there are two main reasons for this. The first is that the level of variability in brief value is particularly high at the SC/QC level.³ The second is that our sample size is quite small at the SC/QC level, particularly with respect to women (see Appendix 3 for further discussion). When we are able to include data from subsequent reporting periods in our analysis, we will gain a clearer picture of what is happening.

The median value of briefs by gender and level of seniority is shown in Figure 5 below.

² These differences arise because there are a higher proportion of female CommBar members than there are women who list commercial law as an area of practice on the VicBar website.

³ Note the large standard deviations; note also that the median values for men and women are much more similar than the averages

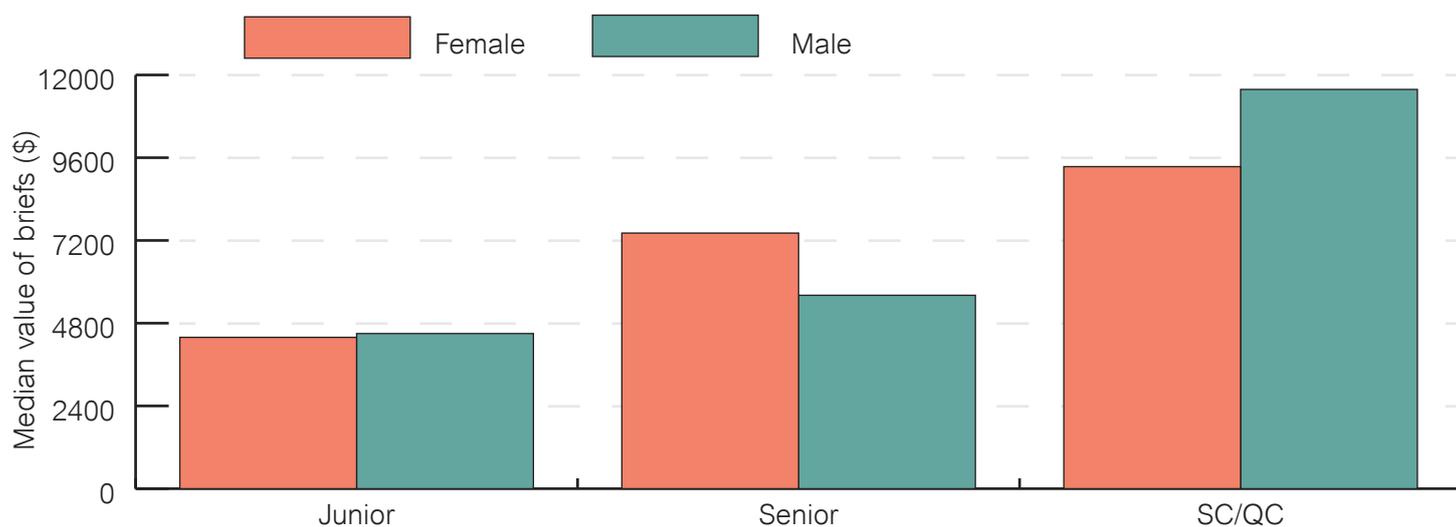


Figure 5: Median value of briefs by gender and level of seniority

Conclusions

Overall, the data from this first reporting period allow us to make some interesting conclusions while leaving a number of questions open. There is most evidence of bias in relation to briefing of SC/QCs. Women at that level of seniority tended to receive fewer briefs than men over the reporting period, and there is some suggestion (though not enough evidence to come to any firm conclusion yet) that those briefs to women tended to be lower in value than the briefs that men received. Additional data will help us to determine the extent of any bias experienced by women at the SC/QC level.

Results were more encouraging at the non-SC/QC levels of seniority. Based on CommBar membership numbers, there was evidence that men received more briefs than women, but the discrepancy was not particularly large (the difference between the proportion of women CommBar members and the proportion of briefs they received was only 2.4 per cent); in addition, there was no evidence that the value of briefs to women was lower at either the Junior or Senior level.

As previously mentioned, we will be able to make firmer, more precise conclusions as more data are received over subsequent reporting periods.

Appendices

Appendix 1: Determining whether the proportion of briefs to women is significantly different from the proportion of women barristers

If briefing practices are unbiased, we expect that the number of briefs that women receive will be proportionate to the number of women barristers. That is, if 20 per cent of barristers at a given level of seniority are women, we expect those women to receive around 20 per cent of the briefs. Of course, we don't expect them to receive *exactly* 20 per cent of the briefs in every reporting period; even if briefing is unbiased, in some six-monthly periods women will receive less than 20 per cent of the briefs (and in other periods they will receive more).

This variability is referred to as sampling error, and the aim of statistical analysis is to determine whether a difference between what we observe and what we expect is more likely to be sampling error (in which case we conclude that there is no reliable evidence of bias) or evidence of a *significant difference* (for example, the true rate at which firms brief women in the long-run is lower than we would expect, and this is suggestive of bias).

Whether a difference between the observed number of briefs to women and the expected number is significant depends on the size of the difference and the number of observations we have.

Appendix 2: Additional information about standard deviations and medians in Table 1

There are several things to note about the summary statistics in Table 1. The first is that the variability in the value of briefs (indicated by the values in the standard deviation column) is high. The standard deviation is a measure of how much variation there is from the average value in a set of numbers. For example, take two sets of numbers, A and B:

A = [10, 11, 9, 10, 10, 10]

B = [0, 20, 5, 15, 2, 18]

The average of both these sets is 10. However, the standard deviation of Set B is 8.7, while the standard deviation of Set A is only 0.6. The large standard deviations in our data indicate that the value of briefs varied widely. At each level of seniority, the value of briefs ranged from less than \$400 to at least \$250,000.

The presence of a relatively small number of very high value briefs ('outliers') can make the averages in Table 1 above a somewhat misleading measure of the typical value of a brief. As an example, we take Set A from above and add one more value (100) to it:

A = [10, 11, 9, 10, 10, 10, 100]

With the addition of just one number, the average of Set A has shifted from 10 to 22.9. And yet, 22.9 might not be the best indication of a typical value in Set A. This is why the median is also given in Table 1. We obtain the median by arranging numbers in ascending order of value, and then taking the middle number. For set A, the median does not change when we add the extra number in the example above (it stays at 10); in other words, the median is less sensitive to outliers than the average. In some circumstances, this can make the median a better indication of the typical value in a set of numbers than the average.

Appendix 3: Determining whether the average value of briefs to women is significantly different from the average value of briefs to men

As with the number of briefs, the phrase 'significantly different' in relation to the value of briefs refers to a difference beyond what we would expect as a result of sampling error. To take an example; even if there were no bias in firms' briefing practices, we would not expect the average value of briefs to men and women at each level of seniority to be exactly the same. Thus, if the average value of briefs at a given level of seniority was \$5000 for men and the average value of briefs to women was \$4900, we would be unlikely to conclude that briefing was inequitable. If the figures were \$5000 and \$1000, on the other hand, we might. Whether two averages are significantly different from each other depends on:

- the number of observations we have (with more data, we can be more confident that the average we've obtained from our sample reflects the "true" average);
- the variability of those observations (our estimate of an average value is more precise if most of the values in our sample are close to the average, that is, the standard deviation is small); and
- the size of the difference (larger differences are more likely to reflect a "true" difference rather than sampling error).