

Australian Women Lawyers Association
Fourth National Conference
Women Lawyers in a Public World

Chief Justice Robert French AC

11 August 2012, Australian National University, Canberra

President, Rebecca Lee, Chief Justice Bryant, my colleague, Justice Virginia Bell, ladies and gentlemen. It is almost a unique privilege to be invited to make these introductory remarks at the Fourth National Conference of the Australian Women Lawyers. The privilege is almost unique because, so far as I can tell by looking at your program, I am one of only two male persons speaking to you at the conference. I note, however, that your organisers have chosen to play down my maleness. On the cover page of your program I am listed under the heading: 'Prominent women speak about the opportunities and challenges in creating justice and practising law in today's world.' I also note that the presentation to be made by my colleague, Justice Bell, is worth one half of a Continuing Professional Development Point. This Introduction has been valued at no Continuing Professional Development Points.

I suppose I can make some claim to legitimacy as a speaker at your conference having married, in 1976, the first woman to practice at the Independent Bar in Western Australia and being, to my surprise, still married to her 36 years later. I remember many years ago remarking to a former office bearer of the WA Women Lawyers' Association that Valerie had not experienced any difficulty getting good work at the Bar in the 1970s. I was asked, with just a hint of disapproval: was she pretty? Well, of course, there is only one answer to that question: yes, was and is!

Undoubtedly my wife had some advantages. First, Western Australia being a fused profession, many of the men practicing at the Independent Bar had been in practice for 10 years or more as barristers and solicitors before making the move. They were generally a fairly civilised group of people who were not threatened by a young female barrister and

were comfortable with offering her work. Secondly, she had gone through a male dominated law school in the late 1960s and would take no nonsense from insecure misogynists. Thirdly, she had novelty value. It must be said, however, that for the rapidly increasing number of women who entered the profession in the 1980s things did not always go smoothly. Their difficulties and challenges led to the emergence of associations of women lawyers in the different jurisdictions of Australia and, ultimately, the Australian Women Lawyers, which celebrates its 15th anniversary next month.

I became conscious of the challenges facing women practitioners as the husband of a woman lawyer and later in my role as a Judge. For the first ten years of our marriage, Valerie took primary responsibility for our three sons and at the same time juggled a variety of part-time jobs to keep her curriculum vitae alive and help pay the mortgage. She was a part-time magistrate, a sessional lecturer in law for social work students at one university, and for business law students at another. She also served as a part-time member of the Social Security Appeals Tribunal.

After ten years she returned to the Bar for about 18 months and then went to a large law firm. In 1990 she applied for a job as a magistrate. Some of her women friends told her that she was throwing her career away. As it turned out, she was not. Asked by the interviewing panel why she was applying for the job she said she had three reasons aged 12, 9 and 7. She served as a magistrate for four years, was appointed to the District Court in 1994 and retired from that job in February 2009. In the meantime she served, when a magistrate, as Mining Warden for Western Australia and, when a District Court Judge, as President of the Childrens Court and later President of the Prisoners Review Board. I suppose what her case demonstrates is that there is no blueprint or one-size-fits-all career path for women or, indeed, for anyone in the profession. Just as the profession and the judiciary should welcome diversity in sex, ethnicity, education and socio-economic backgrounds among their members, their members should welcome diversity in law jobs and career choices and not stamp one path or another as the golden brick road to success.

I acquired a more detailed knowledge of the factors which gave rise to women lawyers organising themselves into associations in 2007. That knowledge arose out of a case I decided in the Federal Court on the question whether the Victorian Women Lawyers'

Association was a charitable institution for the purposes of exemption from the obligation to pay income tax.¹ Counsel for the Association was Alexandra Richards QC who was one of the Founding Members of Australian Women Lawyers.

The evidence included a detailed history of the formation and activities of the Association. It began with a seminar, organised in 1993, by the Young Lawyers' Section of the Law Institute of Victoria in conjunction with the Law Council of Australia. The Chief Justice of Victoria, the late John Phillips, chaired the session. The seminar was focused on the phenomenon of women, who had been graduating from law schools in the same numbers as men since the 1980s, leaving the profession. A Law Institute of Victoria study at the time showed that women lawyers who remained in the profession were progressing more slowly and earning less than their male counterparts.

Issues highlighted in the seminar included so-called glass ceiling factors inhibiting women's full participation and advancement in the legal profession and, in particular:

- exclusion from marketing initiatives, including client entertainment and promotional presentations;
- deprivation of key information;
- allocation of work of an inferior or limited quality as opposed to more challenging work which would provide greater career opportunities;
- poor supervision and lack of mentoring;
- lack of network nurturing which might involve skills not previously promoted or nurtured in aspiring young women lawyers; and
- the reticence of law firms to come to terms with the flexibility of work practices required to facilitate movement in and out of practice, particularly for women lawyers during their child-bearing and rearing years.

¹ *Victorian Women Lawyers' Association v Federal Commissioner of Taxation* (2008) 170 FCR 318.

There was discussion about the need to involve women lawyers in recruitment and performance assessment in order to avoid entrenchment of male values, perspectives, priorities and culture. This was seen as particularly relevant to the allocation of solicitors to practice areas traditionally viewed as male domains such as commercial law, taxation, corporations law and litigation. There were also said to be entrenched views held among male lawyers that women lawyers would inevitably put family before career and so preclude themselves from effective and committed long term participation in mainstream legal practice with the result that time, opportunities and resources should not be bestowed on them. There was the perception that an effective and successful lawyer must be fulltime without personal or family obligations or interruptions.

The Victorian Women Lawyers' Association was formed to confront those issues and over a number of years promoted a variety of activities designed to change attitudes generally within the profession and to improve opportunities and mutual support among women lawyers.

The principal purpose of the Victorian Women Lawyers was to remove barriers and increase opportunities for participation by and advancement of women in the legal profession in Victoria. It was established to overcome the under-representation of women in the legal profession, in its upper reaches, and in the judiciary. This was able to be characterised as a purpose 'beneficial to the community' within the spirit and intendment of the Statute of Elizabeth. On that basis the organisation was categorised as a charitable institution.

There is a lot of history attached to women lawyers. The Women Lawyers' Association of NSW goes back to 1952. The Victorian Women Lawyers' Association to 1996, and the Australian Women Lawyers to 1997. Professor Kim Rubinstein will be making a presentation later today about the Oral History Project concerning trail blazing women lawyers. It is a good thing to know of the experiences of others who have followed the call to law.

Professor Cynthia Bowman, a Professor of Law at Cornell University, wrote in 1999 about the hunger of contemporary women lawyers in the United States to know about the lives and struggles of those who went before them.²

A book published in the late 1990s by Professor Virginia Drachman collected the correspondence of an organisation known as the Equity Club.³ The Equity Club was an association of women lawyers in the United States who corresponded with each other between 1887 and 1890. It was a kind of 19th century chat room. Women lawyers wrote to each other to discuss their difficulties finding acceptance in the profession and strategies for dealing with professional and personal problems. As Professor Bowman commented in her paper, '[t]heir letters sometimes resound with complaints all too familiar to women lawyers today.'⁴

The following excerpt from a letter contributed by Catharine Waugh, an attorney practising in Rockford, Illinois in 1889 is illustrative:

Speaking of the courtesy of attorneys, there is only one here whom I have ever heard of saying anything but kind words and he remarked with the refinement which characterizes all of his utterances, "Let me once meet Miss Waugh in a case and I will wipe the floor with her." We met and he didn't and we met again and still he didn't either literally or figuratively. Then he became kindly and to my disgust referred to me in open court several times as "Kitty" so that an outsider would have thought us great friends. I told him with intense coldness that when he found it necessary to address me, he should call me Miss Waugh, as only my family and *friends* were privileged to call me by my home name.⁵

That incident was said to be similar to dozens reported to state gender bias task forces in the United States more than 100 years later.⁶

Today, with chat rooms, skyping and other developments in electronic communications it is possible for women lawyers to exchange experiences with each other

² Cynthia Bowman, 'Bibliographical Essay: Women and the Legal Profession' (1998-1999) 7 *Journal of Gender, Social Policy & The Law* 149.

³ Virginia Drachman, *Women Lawyers and the Origins of Professional Identity in America: The Letters of the Equity Club 1887-1890* (University of Michigan Press, 1993).

⁴ Bowman, above n 2, 150.

⁵ Drachman, above n 3, 175-176 quoting Bowman, above n 2, 150-151.

⁶ Bowman, above n 2, 151.

and seek support across State and Territory boundaries, and between the central business districts of our capital cities, and regional, rural and remote areas. The history of the Equity Club and long-standing concerns about the issues confronting women lawyers illustrate the need for mutual support in relation to entrenched problems and structural biases with which they have had to deal.

Nothing in what I have just said should be taken to indicate that there has not been progress. There is an increasing percentage of the legal profession that are women and an increasing number of women with senior roles in law firms and occupying senior positions in the judiciary. Between 1911 and 2009 the percentage of women lawyers making up the legal profession in Australia increased from 0.2% to 41.6%.⁷ Since the late 1980s, the percentage of all lawyers in Australia who are women has more than doubled.

In 1995, women comprised 9% of members of Magistrates Courts and 6% of judges on Supreme Courts. By 2009, they represented 32% of Magistrates Courts and 20% of Supreme Courts.⁸ Three out of 7 members of the High Court are women. Despite a stated focus on diversity in appointments in the United Kingdom only one member of the United Kingdom Supreme Court is a woman.

It is perhaps a mark of change that your program includes a number of sessions on important areas of substantive law relating to intellectual property, construction and resource management law, workplace bullying and social media. The session about female lawyers in rural, regional and remote areas is linked to a large and critical issue concerning the future of legal services in those areas generally, a matter which is very much on the agenda of the Law Council of Australia.

Your concerns as women lawyers cannot, and should not, be divorced from wider societal concerns. Wider societal concerns were reflected in the objectives of the Victorian Women Lawyers' Association which were 'beneficial to the community' within the spirit and intent of the Statute of Elizabeth.⁹

⁷ Ainslie Lamb & John Littrich, *Lawyers in Australia* (Federation Press, 2nd ed, 2011) 75.

⁸ Kathy Mack and Sharyn Anleu, 'Women in the Australian Judiciary' in Patricia Eastal (ed) *Women and the Law in Australia* (LexisNexis, 2010) 370, 374.

⁹ (2008) 170 FCR 318, 352 [148].

I thank you for the opportunity to speak to you today and wish you well with your conference over the next two days.