

## LAW SOCIETY

### ADVANCEMENT OF WOMEN - Progress report

First, I think it is fitting on an occasion on which we meet to consider issues relevant to the advancement of women in the solicitors' branch of the profession to pay tribute to an inspirational woman – Kathryn Everett. Kathryn was a highly respected intellectual property lawyer and a partner of Herbert Smith Freehills and its predecessor firm in Sydney for over 15 years. For much of that time, often unbeknownst to many of those in the profession, she battled cancer. She died the week before last. It is a tragedy for her husband and daughter, and the rest of her family. It is a huge loss for her colleagues and the profession as a whole. She is certainly one who gave up her practising certificate not from choice but from the cruel hand fate dealt her. It was an honour and privilege to know her.

Turning then to the reason for today's gathering, I am delighted to have been invited to speak today on the occasion of the publication of the Law Society's report on the progress of its thought leadership programme focussing on the advancement of women in the legal profession.

As you know, the programme was launched under the leadership of Stuart Westgarth in 2011, was continued with the support of Justin Dowd in 2012 and has been pursued by John Dobson this year. It is a mark of the importance of this project that it has been championed by three such men.

I spoke at the launch of the programme in 2011 and so it was with great interest that I read in advance the report being published today, which records the progress made in implementing the 12 recommendations endorsed by the Law Society Council back in 2011.

I will say something shortly about the key messages that can be gleaned from the report. At the outset, however, can I say that it was with unexpected concern that I read the updated statistics on retention of women practitioners in private practice.

The report notes that, in comparison with the retention of women in the profession overall, there is a discernible decrease between the proportion of women making up the 1-5 year category and the

proportion still present in the 6-10 year category. That, however, was not the cause of my initial alarm at the statistics.

Rather, my concern was that the statistics analysed for women solicitors in private practice covered the period 1984-2012. So what, you may say. A broad and very respectable period over which to carry out such an analysis.

However, to someone admitted to practice as a solicitor in 1982, and therefore not falling within the statistical cohort, it raised some immediate questions - am I now part of a statistically irrelevant group (by the way that is a rhetorical question, I think I would prefer you not to answer that!); is this a subtle hint that retirement is around the corner (if so, rest assured that when I started in my current role the first communication I received was that confirming my retirement date – in 2031).

More relevantly, what it is that women of my generation can (and should) do to assist in the advancement of women in the solicitors' branch of the profession, keeping in mind that the young women of today will not necessarily have the same priorities as we dinosaurs of the profession had 30 years or so ago.

I pondered that question first from the perspective of what it is that I experienced as a solicitor joining the profession in 1982 and that is almost if not wholly irrelevant to those solicitors in the bracket referred to earlier.

First, it will surely not be necessary for me to give you tips on how to answer interview questions as to how you will manage your career and then non-existent children or family commitments (as I was asked in a summer clerkship interview). You are more likely to be asked to do a personality test or to enlighten the interviewer as to what fruit you would be if were a fruit. (My current answer to that question would be pomegranate but only because I am regularly covered in pomegranate seeds courtesy of my new baby parrot! A legally acquired parrot I hasten to add!!)

Second, it is unlikely whether anyone would be brave enough to ask if you were the token female (as I was asked when accompanying Sir Nigel Bowen, the judge I then worked for, to a function with members of the judiciary in my first year after leaving university and again as a solicitor when interviewing others for positions at my then firm). You are more likely to be asked for

opinions on how you can add to the fabric of the firm or complete the aforesaid personality test.

Third, you have next to no likelihood of having to master the intricacies of sending telex messages late at night – you probably wouldn't recognise such a machine at all. Rather, you are more likely to be so technologically advanced that the firm's IT will be passé. (Any technology you use you will certainly be far superior to that I struggle with in the court!)

And you will not have the same dilemmas in ensuring you adapt to the requisite dress code (monochromatic and no trousers for women), although I have no doubt there will be challenges facing you in the sartorial sense (casual Friday is an invention perhaps best left to the stockbrokers!)

By the same token, there will be all sorts of modern challenges about which women of my generation may be unlikely to be able to speak with any personal knowledge (and I hasten to add that I accept I may be the only post 30 years experience Luddite in the profession but I somehow doubt that!)

So, for example, the advantages and disadvantages of using social media in the workplace. We read about it all the time. Just last week a District Court judge was speaking of the need for the judiciary to “get with it” in this regard. Certainly, the issue of social media in the courtroom is one that looms large – raising issues as to the integrity of criminal trials; the efficacy of service of documents over Facebook and the like. In a practical context for young solicitors, the endurance of Facebook images and email messages is perhaps something to be kept in mind!!

Or what about the appropriateness of tattoos and body piercings? I confess that this is a somewhat hot topic in my household as a tattoo was the unexpected news we received from a child (well really a young adult) as the legacy of a European contiki tour! All I can say is that according to TV ads, Thin Lizzie concealer cream works fabulously!

So, there are a number of things that old fogeys like me know but which will be no use in the retention of young women in the profession and many things about which we know nothing!

What can we usefully add?

That is where the messages to be drawn from the progress report are of relevance.

Over half of the law graduates leaving our universities are women; in the two admissions ceremonies on which I sat this morning just over half of those admitted as lawyers of the Supreme Court were women; the intake of women graduates across the firms is at least 50%. How then to explain and address the gender imbalance that appears at least from senior associate level onwards and perhaps earlier? It is clearly a matter of public note – the Australian Financial Review keeps a close eye on the gender balance across the firms and the report card it publishes from time to time puts female partners in the mid to large firms generally as less than 25%. Of the 37 firms surveyed at the end of June this year, the Financial review reported that in only 8 firms was the proportion of women partners less than 2 years ago. Only recently the statistics of women in national managing partner roles in the major firms improved by 100% – Sue Kench joining Sharon Cook in that important role. Small steps perhaps but in the context of providing role models for female solicitors in the profession very important ones.

Matters such as flexible work practices and arrangements for return to practice have been highlighted in the report as areas in which improvements may assist in the retention of women in private practice. Those are matters ideally suited to assistance or guidance from the cohort of women having had to confront those difficulties in a different era. Those women partners who had to negotiate maternity leave or part-time work practices in firms which had hitherto not addressed those issues at partnership level know full well the difficulties that were encountered in so doing and the compromises that had to be made. But even with such arrangements in place, there can still be difficulties in putting them into practice – and that doesn't even begin to address the intangible but very real “working mother guilt complex”.

Similarly, the identification of mentoring and networking as instruments of improvement is important – and again this is an area where those of us who developed our own informal mentoring networks may assist, whether it be providing advice as to career paths or providing an objective sounding board!



In that regard, perhaps I can offer some tips drawn from my experience over the last 5 years on the bench!

First, don't assume that your gender is immediately apparent – I heard one case where throughout the Senior Counsel referred to me as “his Honour” (do you seriously tell his Honour that.....?). Very confusing no doubt for the witness – but it tells you that whatever criticism he had of my judgment he could not have blamed it on my gender. So don't look for prejudice or bias. It may be in your imagination.

Second, for those women juggling work/life balance – it is possible to be in two places at once. A witness once explained the discrepancy as to her whereabouts at a particular time by reference to the fact that since she was on the telephone to her husband who was overseas, she was overseas at the time. I have found that a helpful argument when being chastised for being late home – if I call from chambers to say I am on the way then by that logic I am already home.

Third, remember that there is an art to being productive in the workplace and even what might seem to be a failing may in fact be a virtue. A witness once explained it to me thus:

“I am very busy ..due to being unorganised. I keep myself very busy by being unorganised. ...I’m sharp enough not to be careless but things could slip up because I’m unorganised”

I’m sure there is a work tip somewhere in that explanation.

Giving a memorial lecture on Equality in the Judiciary in 2013, Lady Hale (the sole woman on the Supreme Court of England and Wales) made the point that race and sex are not relevant qualifications or disqualifications for any job save in very exceptional circumstances. (The examples her Ladyship gave as to some such exceptions, drawn from the literary field, were to concede that it might be a genuine occupational qualification to choose a black Othello or a female Desdemona. Other examples might spring to mind in a practical context – it is difficult to imagine a female sperm donor at least so far as I understand the limit of scientific developments in genetics at this stage.)

What is clear, however, is that gender should not be a relevant consideration in the decision whether to continue as a solicitor in private practice unless it is of personal relevance to the practitioner in question. The kinds of sub-conscious drawbacks to the progression of women in the solicitors branch of the profession, to which Sharon Cook and Liz Broderick referred on the launch of the 2011 report, and the structural or work practice changes that can overcome those obstacles, are the matters which the Law Society's initiative in facilitating roundtable discussion has been able to bring to light.

The Law Society's project has been an important and welcome initiative. To paraphrase the words of Australia's first and now former Prime Minister, unlike her experience in the role, gender is what the present debate is all about – though it is not solely the province of women to resolve. Like the former Prime Minister, the aim of all women in the profession should be that those following in their footsteps (or should I say in their stilettos) have an easier path.

I congratulate John Dobson, and his predecessors Stuart Westgarth and Justin Dowd, on focussing on this important issue and commend to you the 2013 progress report.

Justice Julie Ward

5 July 2013