

**Celebrating Women in the Law**

**Foley's List**

**22 November 2011**

**The Honourable Diana Bryant**

**Chief Justice**

**Family Court of Australia**

Members of the judiciary, ladies and gentlemen, and particularly women who are here tonight to celebrate women in the law. It is very pleasant to see so many solicitors here as well as those members of Foley's List, and it is obviously a very opportune time for networking which is extremely important for women at the Bar.

I thought I might subtitle my presentation *Celebrating Women in the law (Where to from here?)*

I am honoured to be asked to speak tonight and I want to pursue two themes:

1. Celebrating women in the law;
2. What does the future hold for real advancement and real equality? By equality I mean equality of choice not just equality with traditional male values which may not suit women in 2011.

First the celebration part.

I want to discuss some of the early women at the Bar and to do so it is probably necessary to put into context the establishment of the Victorian Bar itself. The Victorian Bar was established on 10<sup>th</sup> July 1884 and in 1900 the Bar Roll was established. Since that date every Victorian Barrister has signed the Bar Roll. On 2<sup>nd</sup> September 1923 some 23 years after the Bar Roll was established and nearly 40 years after the establishment of the Bar, the first woman, Joan Rosenove signed the Bar Roll. However it was not until the late 1970s and into the 1980s that women barristers became a visible presence at the Bar.

Before touching on some of the earlier women barristers let me add a personal note in this. My grandfather was a solicitor and my mother was admitted as a practitioner at the end of the war and practised in fifties, sixties and seventies. She was a member of the Legal Women's Association of Victoria (as it was then called) and was its President for a while. She knew all of the pioneering women barristers and my formative years were thus infused with:

- Knowledge of the pioneering women at the Bar;
- Enthusiasm for their breaking down barriers; and most importantly,
- A belief that all this was available to me and any young woman who wished it.

Looking back at some of the earlier women at the Bar who I knew, especially those on Foley's List, we have come an enormous way in such a short time. The first female did not graduate from law in Victoria until 1905. Victoria's first female QC in 1965 was Joan

Rosanove. Mollie Kingston was on Foley's List and I knew her both as a lecturer in what was then perhaps presciently called "Domestic Relations", and as quite a good friend of my mother. She was the seventh woman to sign the Victorian Bar Roll and Lyn Shiftan (Opas) who I knew well as a friend, was only the ninth woman to sign the Victorian Bar Roll and the second female QC in 1984. I recall being at a family law conference in 1984 when her appointment as silk was announced and the excitement with which that was met. Joan Rosenove's path is interesting to ponder. She signed the Bar Roll in 1923 but obviously had trouble succeeding at the Bar and left in 1926. She then built up a thriving practice as "an amalgam" specialising in matrimonial law and became known as one of Melbourne's best divorce practitioners and ablest advocates. She returned to the Bar in 1949 and was made a Queen's Counsel in 1965. She was described as "a striking, confident woman". She was very conscious of the difficulties that women then encountered and on one occasion when obviously asked who she was appearing with said "I am appearing with myself. I am the leader of the female bar".

Another indication of the qualities needed survive at the Bar was Norma O'Connor who was the fourth woman to sign the Victorian Bar Roll and the first woman to win the Supreme Court prize. Allayne Kiddle signed the Bar Roll in 1959 (the sixth woman to do so) and read with Bill Kaye (formerly Justice Kaye). A note about her on the website says that "she had hoped for a broad practice, but specialised in divorce". Some might say not a lot has changed.

For me at least the modern history of women at the Bar really started with Lyn Shifton, and I remember her saying quite strongly at that time that equality would have been achieved when the mediocre woman as well as the mediocre man was eligible for appointment to the bench.

I have never been entirely comfortable with Lyn's use of the term "mediocre" because one likes to think that appointees to the bench are all of high standard but perhaps that reflects a certain acerbity to her male colleagues. What she really meant was not mediocrity as such but simply that she hoped there would come a time when you didn't have to be outstanding above and beyond everyone else to be appointed and that it was enough that you were as good as the men or at least no worse than them.

Today it is a very different picture in many ways. Nevertheless issues remain, but are different.

The proportion of the Bar that is female has slowly but steadily increased, over the last decade particularly. In the year 2000 there were 1160 men, now 1399, that is an increase of 239 men at the Bar. In the same period, there were 242 women and there are now 475, an increase of 233. So the number of women has almost doubled in that period.

In 2000 women represented 17% of those at the Bar and now represent 25%, so there is much encouragement there.

Reader's Courses provide an even more encouraging picture. Since 2008 numbers of men and women undertaking the Reader's Course have been almost equal and in 2010 they were equal. When you look at the numbers of women at the Bar overall the same picture does not emerge. However I accept that this may even out over time.

On Foley's List in particular there are in excess of 275 barristers. There are 80 female barristers on Foley's List which is approximately 17% of the practising female barristers in Victoria and as I indicated 6 of the first 10 women at the Bar were Foley's List members. Foley's List has a higher percentage of women amongst its active practising members than has the Victorian Bar overall with 29%.

Foley's List has the highest number of women on any List by quite an amount. In 2010/11 Foley's List had 75 compared to the next list with 58. We can definitely celebrate the fact that Foley's are genuinely supporting women barristers and demonstrably doing it very well.

Nevertheless I think there are some issues that face women today at the Bar that we need to consider. Unsurprisingly the membership of the Victorian practising counsel and the current age break down interestingly between male and females. The

majority of women at the bar are between 40 - 44 years of age. The majority of men at the Bar are between 55 - 59 years of age. The number of women at the bar drops away quite slowly but when it gets to the 60s there are very few women remaining at the Bar. In the 60 – 64 age group there are only 23 and in the 65 – 69 age group there are only 13.

When women first join the Bar is interesting as well. There are very few women who join between the ages of 18 – 24 compared to men. Between the ages of 25 – 34 there are the highest numbers of women joining the Bar but less and less joining in later years.

Finally, unsurprisingly, for years of membership at the Bar the highest number of women have been at the bar for less than 10 years with the greater number being between 0 – 5. It drops away significantly after 15 years and there are very few women who have been at the Bar for more than 30 years.

These statistics probably suggest not only those women are leaving the Bar for family reasons but also more importantly those women are being appointed in large numbers as judicial officers. This means there are less and less senior women at the bar to act as mentors.

The advent of women's organisations around the country has given added impetus to the need to have policies to support women at the Bar. In 1997 the Australian Legal Convention in

Melbourne was the venue for the official launch of Australian Women Lawyers. Over the years there have been many women as well as men who have opposed the establishment of such organisations but I would hope that in 2011 those concerns may have passed.

It must be obvious these days that there is a need for women to be supported at the Bar. Mostly this is because it is women who leave to have children and then have to work in different ways from their male counterparts where they are primarily responsible for child care. The Bar's parental leave policy acknowledges this need. But there remains more to do. It is not just that there is lack of opportunity through leaving the Bar to have children and be responsible for their primary care. There remain other areas of discrimination.

The publication of the *Equality of Opportunity for Women of the Victorian Bar* report produced in 1998 by Rosemary Hunter and Helen McKelvie showed the marked disparity between male and female barristers and made a number recommendations relating to fees and briefing practises.

An important outcome of the Hunter-McKelvie report was the recommendation of an equality of opportunity and model briefing policy endorsed by the Victorian Attorney-General. Following from the report the Victorian Bar Council adopted the *Equal Opportunity Briefing Policy* and has an *Equality and Diversity Policy*. In mid

2004 the Law Council adopted a national model briefing policy for female barristers and advocates.

All of these are important initiatives but it is important to be vigilant. It seem to be that inevitably when there is less work to go about women are likely to receive even less, although one might think that if they were being paid less perhaps that would not necessarily be the case.

It remains important for senior women to mentor those at the Bar, and if there are not senior women at the Bar because they have been appointed to judicial positions, then it is the responsibility of those in judicial positions to provide support for those at the Bar.

### *The Future*

Obviously enormous changes have occurred when I look back to Lyn Shiftan taking silk, and being only the ninth woman at the Bar compared to the numbers we have today. But it seems to me that the Bar is always a difficult life and the nature of the work is unpredictable. Some people find it manageable with a family because they can work late at night, others find that difficult. Competition for law graduates will increasingly come from firms in my view which can offer family friendly terms. There are increasing numbers of firms which enable women to work part time, something which is very difficult at the Bar. There is also the emergence of Gen Y.

## Gen Y

### Gen Y defined

The definition of Generation Y (“Gen Y”) can vary depending on who you talk to but Bruce Tulgan, author of *Not Everyone gets a Trophy* defines Gen Y as consisting of those born between 1978 and 1990. That means the oldest Gen Y’s are in their early 30’s, while the youngest have just entered early adulthood and are celebrating their 21<sup>st</sup> birthdays.

From an organisational perspective, Gen Y ranges from employees with up to ten years experience in the workforce, down to university students in the process of completing their degrees.

### Gen Y: a little background

Gen Y are predominantly the children of the baby boomers. Gen Y grew up mostly in the 1990’s and came of age in the 2000’s. Often referred to as the great “oversupervised generation”, Gen Y grew up in an era where the dominant theme in parenting was making children feel great about themselves and building up their positive self-esteem. The notion that “Everyone got a trophy” where children were constantly rewarded merely for participating was a common reinforcement technique.

Gen Y has come of age in an era where advances in communication methods mean they have grown to expect an instantaneous response. For Gen Y uncertainty is their natural habitat; globalisation does not make them feel small it makes them

feel worldly; technology does not make them feel like they are racing, it makes them feel connected and powerful; institutions may be in a state of constant flux but this does not trouble Gen Y as they are merely passing through trying to squeeze out as much experience and as many resources as they can.

### **Who Gen Y is - and is not - at work**

Gen Y also brings with them the defining characteristics unique to their generation. Gen Y has particular work expectations and career aspirations that go beyond a salary.

Gen Y are employees who will not be content to labour quietly in a sink or swim environment. Their career path will be shaped by a long series of short-term transactional employment relationships.

The ideal workplace for a typical Gen Y offers “flexibility, workplace culture, training, variety, in job opportunities and a management style they can connect with”.

And so, will there be changes in the way in which the bar operates when we see the Gen Y workforce fully fledged and making their mark? There are some unusual characteristics but in the end will the demands of the bar continue unchanged or will we see less people wanting to remain at the bar. I think these things remain to be seen but there are some interesting thoughts to ponder.

The electronic age and capacity to use iPads, iPhones and other devices for research purposes is already changing the landscape. There will be technology available in five or ten year's time which we cannot even contemplate yet. Being contactable 24/7 has disadvantages but it certainly makes communication much more possible and perhaps we will see paperless courts and offices. e-Filing is in its relative infancy but in the next decade there will be significant changes in the way in which courts accept documents and this too may have effect on practice. Virtual courts, which the Federal Court has used to some degree with mentions being conducted electronically, will also make a difference to practice. All this remains to be seen but presents quite an exciting picture. A little different from the days when my grandfather practised in Equity Chambers and they all went to the coffee shop next door for morning tea. You have to remember of course that was also an era when if you wanted to communicate with another solicitor you posted a letter and when they received it they posted it to their client who posted back their instructions or perhaps came in to see them and then they posted back their response. It might take 2 or 3 weeks to conduct communication, a different world from the one we live in today. The exciting part is that I think there are many more changes to come.

The purpose of this evening is to celebrate Women in the Law and to acknowledge the undoubted successes that have occurred. Women, in my view, do make a difference to the work force. They do make a difference in courts. They do make a difference as advocates. It is important that those solicitors who are here this evening and, who by their presence I think indicate their support,

continue to be supportive of women at the Bar. If women cannot support women how can we expect that men will do so? So use this night as you should for the purpose of networking and celebrate women in law. I congratulate Foley's List on being at the forefront of support of women at the Bar.

I add a final word in favour of women accepting appointments. I appreciate that often they come at the wrong time and there are women who would prefer to stay on at the Bar and as I said we do suffer from a lack of senior women but on the other hand the bench needs you as well. Can I therefore finish by simply wishing everyone the compliments of the season.

*The Honourable Diana Bryant, Chief Justice of the Family Court of Australia.*