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Women Lawyers in 2003 - A View from the Top

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The topic Clare Thompson asked me to address: "Women Lawyers in 2003 - A View from the Top", is one which invites broad discussion. It raises many questions.

I was interested to read a speech Senator Coonan gave at the Women Lawyers Association of New South Wales breakfast a few weeks ago in Sydney. When dealing with the fact that, as yet, it might be said women haven't achieved "real leadership" within the profession, she looked at where we had to start. I take a somewhat more positive view than Senator Coonan in the sense that I think we are a long way down the path towards achieving what we might call "real leadership" within the profession. You only have to look at the profile of the profession today and see the depth of women's representation to make good that proposition. We have come a long way. To a certain extent, I don't say to a large extent because I think that would be unrealistic, but to a certain extent we have achieved "real leadership" within the profession. The number of women coming through the ranks, in my view, inspires optimism for the future.

We have to look, however, at what we really want to achieve in the profession. When we say "real leadership", yes, we will achieve power and we will achieve equal power. My view, however, of women in the legal profession, is that we want to share that power with those who are the traditional power holders. That is, the men of the profession. We want to be accepted equally and we want to work with them in the profession. At the end of the day, I think we share the view that gender should be an irrelevant issue and all we want to be are lawyers. That is certainly how I started my career and that is how I have continued it. As far as I was concerned, to the greatest possible extent, gender was irrelevant. I recognised, at the same time, that there were many issues which had to be dealt with in fact, to ensure that the statement "gender is irrelevant" became a truism rather than just a faint hope.

Let us look at where women lie in the profession in 2003 to demonstrate that we have come a long way. You won't be surprised if I start with New South Wales. It is certainly not a bad start because at least, and I don't mean to be at all territorial when I say this, it has produced the only woman Judge on the High Court so far. So we start with Mary Gaudron who has only just retired and regrettably was not replaced by a woman. In saying that, I am not criticising Justice Heydon's appointment. I just make the factual observation that many hoped that she would be replaced by a woman. It was a short-lived hope.

In the New South Wales Supreme Court there are 2 women Judges on the Court of Appeal. I am one, Justice Beazley has been on the Court of Appeal now for I think some 6 or 7 years, and there are 3 other women judges: Justices Bergin, Bell and Simpson, as well as Master Joanne Harrison who is also a judicial officer. In the New South Wales District Court where there are 50 or more Judges, I tried to do a count on the plane and I got up to about 10 women. There are too many women magistrates to count. As well there was the recently retired Chief Judge of the Land and Environment Court, Mahla Pearlman and there is still Justice Nicola Pain on the Land and Environment Court and 3 women on the Industrial Relations Commission. That is by no means equality. However, personally I don't think the figures are too bad, particularly when you look at the Bar in New South Wales and recognise that the percentage of women barristers is not high. This comment may be to the chagrin of solicitors, but it is the reality that most Judges are appointed from the Bar. In the Federal Court in Sydney there are 3 women Judges, Justices Branson, Bennett and Stone.

Justice Bennett was appointed this year, as was I. That deprived the New South Wales Bar of 2 of its women silk. This highlights one problem, the traditional balancing exercise: usually when you appoint a woman to the Bench, the number of women silk are depleted. Journalists run around saying "Heaven above it's a disgrace, there aren't enough women silk". It is necessary to recognise, however, that some of those women silk have made that difficult decision about whether to stay at the Bar and pursue what I think is an important exercise there of being role models or whether they go to the Bench and continue that exercise in a slightly different way.

Clare Thompson tells me that this year in Western Australia 1 woman Supreme Court Judge has been appointed, Justice Johnson, and of course Justice Wheeler has been here for some time. 3 or 4 women Magistrates have also been appointed. These figures are also encouraging.

At the moment we are going through a healthy period because all of the State Attorneys General are Labor. For whatever reason they seem to be a bit more disposed to appointing women to the Bench than their Liberal colleagues. It may, however, just be a sign of the times that they have turned up at a time when women suitable for appointment have come to the fore.

These figures underline the first point I want to make. That is that politicians, government leaders have for some time recognised the need to encourage women. In 1995, the New South Wales Premier's Department and the Department of Women conducted a study - the Keys Young Study - in which I participated on behalf of the Bar Association. The object of that study was to see how the New South Wales government could encourage woman across the board, not just in the law, but of course that was the particular area with which the Bar Association was concerned. As a result of that study a number of strategies were implemented, not least of which was that of which Senator Coonan spoke about recently which, for want of a better term, is affirmative action within the profession. Within the New South Wales Government, for many years, the Crown Solicitor's Office has undertaken a positive exercise of identifying women to brief and has carried that through. This policy has been reflected through many government departments.

So that is at the government level. The more difficult issue, in my view, is getting the commercial firms on side or the briefing firms on side. I am speaking slightly from a Bar perspective. Please forgive me for that "bias" - however that is where I have been for the last 23 years until April.

My second point is it is all very well for governments to recognise that there is a need for affirmative action and to engage in that process but there is another level. It is about acceptance within the community as a whole. Private enterprise has to recognise and embrace the notion of equal briefing, equal employment and accepting people as lawyers because of who they are, as opposed to what their gender is. That is now being sought to be achieved, certainly in Victoria, which is more advanced as far as I can tell than any other State in Australia. The government there is trying to spread the process of positive briefing into the firms. I also know that Chief Justice Black has addressed the legal firms in Melbourne through an initiative implemented through the Victorian Women Lawyers Association and the Victorian Women Bar Association to reinforce the importance in the Federal Court's view of briefing women. Attorney General Hull too is trying to get a measure of affirmative action going through the firms themselves. That is a process which Senator Coonan is trying, regrettably with some resistance from the Federal Attorney General, to get going in her department in the Australian Government.

I don't pretend that affirmative policies, even if they're embraced within private firms, are a complete solution. At the end of the day, much comes down to each of us seizing the opportunities which the law presents. We need to make sure that we take advantage as far as possible of our legal training, the fact that there is a much more positive community for women in the law and that we live up to the opportunities to the greatest extent possible.

There are so many levels, it seems to me, at which the issue of women in the law in 2003 needs to be addressed. Many of the issues have been addressed to a certain extent. There is a long way to go. Newspapers constantly quote figures, which are always small, about the number of women judges, the number of women barristers, the number of women solicitors, and they could translate those figures into almost every other walk of Australian life. In fact I think Senator Coonan quoted some other figures from the Australia community, women on boards and things like that, which demonstrated their diminutive representation. And that is true. But staying within the legal profession, the complaint that these figures are so small and do not represent the fact that 50% of graduates from law school are women and so on ignores the reality that it is going to take time. The sort of profile that I gave you at the start from the courts in New South Wales is a good indication that we are making

progress. It can't happen overnight, but it is happening.

The only way we will ensure that we are accepted within the profession, that gender becomes an irrelevancy, and that it is just one profession where everybody is getting on with practising law, is to make sure that the culture changes. That is what governments have been doing. It is essential to ensure that what governments have been trying to lead through their affirmative action programs percolates down through the whole community of the law. We should not be put off by the fact that it is going to take some time. The fact there are so many women here today is a very good illustration of the fact that the strength of numbers in the profession will help advance the issue, as will working successfully within the profession.