

## Women on Statutory Boards

### WOMEN ON STATUTORY BOARDS

**Speech delivered by Justice P.A. Bergin on 29 October 1999 at the Seminar "Smashing Glass Ceilings: How do you Plead?" organized by the Department for Women, the Law Society of New South Wales and the Women Lawyers Association of NSW.**

The topic for this address is "the advantages of women nominating themselves for statutory board positions within a context of considering what the future holds for women."

The title which I understand has been recently given to this seminar **Smashing Glass Ceilings: How do you plead?** would no doubt convey to an audience such as this that there is an expectation of a plea of guilty or not guilty; or should that really be a plea of successful or unsuccessful?

What will be the reaction of the business or commercial community to your plea ? To assist with that analysis I thought a good starting point would be to assess some interesting views expressed by an influential judicial officer.

For the latter part of the 19th Century and for at least the first half of this Century His Honour Judge Pitt Taylor's opinions were read for guidance on a variety of topics. Those opinions were contained in his work entitled **Treatise on the Law of Evidence as administered in England and Ireland**. The last edition (12th) was produced in 1931. The editors (one of whom was a Queen's Counsel of the Inner Temple (RP Croom-Johnson) and the other a barrister of the Middle Temple (GFL Bridgman) advised the readers that the first edition of the work had been published in 1848 and subsequent editions had been brought out by the author Judge Pitt Taylor until 1885. The 1931 edition was said to be "based on the author's final edition and that the author's 'own words' had been retained wherever possible" His Honour had this to say:

"..the chief motive for exaggeration springs from innate, vain love of the marvellous, and as this love, like all other, is most remarkable in the softer sex, a prudent man will, in general, do well to weigh with some caution the testimony of *female witnesses* [Page 56 par 54](#)..

After further elucidation on the topic His Honour went on to say:

Having pointed out this proneness to exaggerate as a feminine weakness, it is only just to add, that in other respects, the testimony of women is at least deserving of equal credit to that of men.

In fact, they are in some respects far superior witnesses; for first, they are, in general, closer observers of events than men; next, their memories, being less loaded with matters of business, are usually more tenacious; and lastly, they often possess unrivalled powers of simple and unaffected narration [Page 57 par 54](#)..

What a shame His Honour is no longer with us for us to have the benefit of some ever so gentle questioning of his views.

There is some support in the literature for His Honour's views that women are closer observers of events than men; so too there is support for the view that in certain respects womens memories are more retentive than those of their male colleagues; womens capacity for superior communication skills is also well documented. [Brainsex. Ch 1 The Differences.\(1991\) Anne Moir & David Jessel](#). However these claims may be vulnerable to the charge of exaggeration.

Judge Pitt Taylor's conclusion that womens minds were not cluttered with "matters of business" was perhaps based on his perception that business was not a place for the "softer sex". Indeed in his day the reality was that women were not well represented in the commercial community. However his suggestion that womens retentive memories are facilitated by an absence of the burdens of business is such a sad indictment not only

on His Honour but on the editors who so carefully preserved and promoted this very silly view for close on 100 years.

We know that our genes, carrying the coded blueprint of our unique characteristics, make us either male or female. After the pairing off of the 44 chromosomes the final “xy” or “xx” pairing determines our gender.

This does not categorise us as board member or non board member. Differences in character and personality of individual board members in corporations has been tolerated for centuries. But that final xx pairing - a different gender - the female gender- has not been tolerated. Indeed it is still not well tolerated. Why is this so?

## Canada

This has been a question on others minds and in particular on that of Ronald J Burke of York University, Canada who conducted some research into the matter 4 years ago. [“Why are there so few Corporate Directors? Women and Men see it differently” Ronald J Burke, York University, Canada, International Review of Women & Leadership \(1995\) 1, \(2\), 55.](#)

There was empirical data in Canada to demonstrate that gender bias was widespread in organizations in recruitment, selection, task assignment, performance appraisal and salary allocation.

At the time of the research women comprised less than 5% of corporate directors and senior corporate managers in Canadian corporations. Mr Burke asked the question “Why are so Few Women Corporate Directors?” of serving male and female corporate directors. He provided 8 reasons to which the participants in the research responded as follows:

Reasons	Male Directors	Female Directors
Companies do not think that women are qualified for board service.	6 (23.9%)	3 (45%)
There are not enough qualified women for board service.	1 (44.5%)	7 (25.2%)
Companies are afraid to take on women who are not already on boards.	5 (26.9%)	4 (44%)
Companies did not know where to look for qualified women.	2 (40.3%)	1 (51%)
Companies are concerned that women will have a “womens issues” agenda.	7 (23.9%)	6 (35%)
Qualified women are not making it known that they are interested in board service.	3 (40.3%)	5 (35%)
Qualified women are not interested in board service.	8 (6.0%)	8 (10.4%)
Companies are not looking to put more women on boards.	4 (32.5%)	2 (48%)

The irresistible conclusion reached by Mr Burke was that “much more needs to happen if the picture is going to change even modestly.” [“Why are there so few Women Corporate Directors? Women and Men see it differently” Ronald J Burke, York University, Canada, International Review of Women & Leadership \(1995\) 1, \(2\), p 55 at p 58.](#) You may think on an analysis of these responses it is a conclusion with which it is difficult to disagree.

## Australia

### (a) The Private Sector

Let us move a little closer to the topic for today and to the position in our country.

The Australian Financial Review of October 9 - 10 reported that:

“Women are not getting the chances to move into senior executive positions in Australia despite having the capabilities.” [“View from the top; no room for women” Alan Deans from New York p.4.](#)

The Chief Executive of the Fund Manager Deutsche Asset Management, Elizabeth Bryan is reported to have said that the problem of women not achieving top positions of public companies is traditional. Her stated view was that it will happen but the question is how long it would take and “how hard we push” observing that women were being appointed to Boards but it was “slow”.

Ms Bryan was spoken to in New York after chairing a panel discussion on business globalisation at the Annual Women on Wall Street Conference. This conference attracted about 2000 delegates and it was reported that Ms Bryan was the only Australian woman attending the event. Ms Bryan expressed the view that we have some way to go in Australia to get diversity at our top management levels.

Ms Bryan also made what you may regard as a very powerful point when she said that until women were commonly accepted into "power groups" and "decision making groups" they would not advance. [It is noted that after delivery of this speech The Australian Financial Review of 6-7 Nov. 1999 reported upon Ms Bryan's departure from Deutsche in an article entitled "Bryan's brilliant career - What went wrong?" at p 24-25.](#)

Thirteen years after the Affirmative Action (Equal Employment Opportunity for Women) Act 1986 was enacted women make up 42% of the Australian workforce but hold only 3% of the top management positions. ["Avoid Corporate Rot With More Women At The Top". David Uren. The Australian. Opinion. October 7 1999 p 13.](#)

An International Labor Organization study in 1995 demonstrated that Australia has the lowest percentage of female managers in the industrial world. [As reported in "Karpin Criticisms add weight to affirmative action push". Business Review Weekly 15 May 1995. Adele Ferguson.](#)

In the United States of America a recent survey found that women held 11% of management positions of Fortune 500 companies and 2.7% of the top five paid positions.

One of the reasons proffered for the higher representation of women on boards in the United States was that it has a much stronger legislative base with companies that fail to implement affirmative action facing potential exclusion from government work.

American companies are apparently taking more seriously the literature emerging from the management schools about the value of diversity and are taking what they regard as "more risks" with "hirings, going beyond the safe bounds of the "boys' network". There was evidence that male stereotyping and womens exclusion from informal communication networks had a role to play in the poor outcomes. It is also been claimed that the important role of mentoring in the progress of a career is not as easily available to women as they do not "get the mentors and they do not get the plum assignments". ["Avoid Corporate Rot with More Women At the Top". The Australian. Opinion. October 7 1999 p.13.](#)

During the 1980s and 1990s the international search firm, Korn Ferry, conducted Reviews of Boards of Directors in Australia/Australasia. The results of these reviews set out below may be viewed as quite alarming:-

	1996 Australia	1997 Australasia	1998 Aust NZ	1999 Aust NZ
Women as a percentage of all board members.	4%	6%	7.6% 10.1%	8.3% 13.5%
Women executive directors.	1%	1%	1.3% 7%	1.3% 5.7%
Women non-executive directors.	4%	7.3%	9.7% 10.7%	10.3% 17.4%
Percentage of companies with at least 1 woman on board.	26%	28%	34% 46%	42% 66%
Goal to appoint a woman to the board in the next year should a vacancy occur.	21%	16% 21%	16% 31%	17% 20%

There is no doubt that from these figures (particularly those relating to executive directors and goals to appoint more women) that increasing the representation of women in management or on boards in the private sector is not a high priority for either leading companies or their business organisations.

#### **(b) The Public Sector**

In 1996-1997 the then newly formed New South Wales Department for Women conducted comprehensive research with the Premier's Council for Women to investigate possible strategies to meet the State Government's commitment to increasing women's participation in the very thing of which Ms Bryant spoke - involvement in decision making. It used this research to develop an initiative to improve the representation of women on boards and committees.

The Premier requested all Ministers to prepare strategic plans to address this matter and required written quarterly reports on the achievement of this goal.

The Department for Women and the Premier's Department has also developed "an early warning system" whereby the Premier's Department advises all Ministers of imminent vacancies on boards and committees with an aim to providing names of women with appropriate skills and experience to fill those vacancies.

This combined with the development of the Womens Register are very welcome and positive steps which in my view should be applauded and supported by the women in the community. The system and the initiatives of the government will only achieve change if women have the courage and commitment to participate.

That means a willingness to compete for such positions with the consequence of possible rejection. Without such willingness it is but wasted energy of a supportive government.

### **What the future holds for Women**

The broader context of the topic takes me back to the question of the plea. I want to demur to the indictment because I am of the view that the focus is skewed.

The experience in North America is that change is not happening quickly enough to be meaningful. I predict the same outcome for this country unless the focus is adjusted.

It is beyond doubt that the Boards of our corporations are not gender balanced. It is also beyond doubt that this is recognised by both the State and Federal governments. The private sector must see it and notwithstanding the legislative coaxing the problem remains.

People with common goals and aspirations promote each other to groups, employment, clubs and boards. People with the same interests, who find each others company enjoyable, keep in contact. Human nature is such that when one knows that there is a community of attitudes comfortable lines of communication are open.

This brings me to the topic of the "network". Networks are very important in and to the business community. If the network consists only of males it will never have the healthy diversity of attitudes which result from the presence and contribution of both genders.

One aspect of the commercial/business network is of course membership of clubs. Certain clubs have reputations for attracting "power groups" or put differently the "decision making groups" to which reference has already been made.

The club is a comfortable environment in which the network can develop and thrive. The club environment is important to the business community and is perceived as an influential environment.

At least one such influential club in Sydney will not allow women to be members. This has been a position expressly adopted as a result of a plebiscite directed to members only in the last two or three years. You may feel that His Honour Judge Pitt Taylor would be comfortable in such a club.

It is the glass door not the glass ceiling that is relevant here. It is also the glass wall to the entree to the networks.

The sad debate as to why the simple presence of the xx final pairing, the female gender, should be intolerable for members of exclusive clubs need not be detailed. It is the fact that whilst ever such clubs are supported in such an attitude - by influential membership and recognition - the statistics that you have seen this morning will not change. The hard work of this government in the public sector needs to be matched in the private sector. A first step is to change the thinking and the culture.

In addition to a willingness on the part of women to take a firm position it will require fair minded men to advocate for the cessation of the exclusion of women simply on the basis of their gender.

This is not simply about women - it is about diversity and the engendering of a healthy attitude at the top of our corporations.

If you are willing to compete - to put yourselves forward and convince those fair minded men to support you - you will turn glass ceilings/doors and walls into mere wisps of gossamer.

I wish you every success.

\* \* \*