

WOMEN'S LEADERSHIP – KEYNOTE ADDRESS

The Hon Justice JK Ward

Chief Judge in Equity, Supreme Court of New South Wales

- 1 I would like to begin by acknowledging the traditional custodians of this land, the Gadigal people of the Eora nation. I would also like to pay respect to their Elders both past and present, and extend that respect to other indigenous people who are here today. Indigenous women have been leaders in Australia for tens of thousands of years, and continue to enrich and make significant contributions to Australian public and private life. No doubt some of the next generation of indigenous women leaders are in the audience today.

- 2 I confess that it was not a little daunting to be asked to speak amongst such an impressive array as speakers and I did feel a bit of a fraud having regard to the credentials of all those other such well qualified women leaders. And it became even more of a problem when I came to consider what I would say to you this morning, bearing in mind that the whole of my working career has been in the law and I am only too well aware that legal anecdotes can be boring to the more sensible members of society who have chosen different careers!

- 3 But I thought I would start by sharing the following experience with you. I have been asked from time to time to adjudicate moots, mock arbitrations and miscellaneous debating competitions. And I vividly recall last year's annual Women in Insolvency Networking Debate. For any of you who have attended those debates, they are hugely entertaining (not least because there is usually only lip-service paid to the topic for debate!). And usually everyone forgets the topic in an instant – whether that is because of the champagne or not who can say? But the topic of last year's debate remains firmly etched in my mind

– because the debate was held on the evening following the American Presidential election result became known and, as fate or happenstance would have it, the topic was along the lines “In Insolvency I’d rather be Trump than Clinton”. Now the topic itself did not disappoint – there were many jokes at the expense mainly of the newly elected President, as I recall. But what struck me – and what I wanted to raise at the outset of this speech – was the palpable sense of loss amongst the women in the room. One would assume on the law of averages that there would have been people across the political spectrum at the event (those leaning to the Republican side of politics and those to the Democrat side of politics and various shades – surely not of grey – in between). But there was universal (or so it seemed to me) dismay at the loss of an opportunity to see a woman in the Oval Office. What’s more I had arrived at the debate fresh from a gender equality briefing session at one of the floors of barristers in Phillip St and there too there was a collective wailing and gnashing of teeth.

- 4 So why is it that politics in the US should have inspired such a reaction, even accepting that that nation’s role in world politics? Admittedly, there has not been a woman elected yet as President, but I do not recall such a reaction when Hillary Clinton lost the Democratic candidacy to Barack Obama. And it is not as if there have not been and are not now other world powers with women as their leaders – one need only think of the Iron Lady in the UK or the Iron Chancellor in Germany. We had even by that stage had our own (albeit short-lived) woman in the Prime Minister’s Lodge. And if we went back through history there have been other notable female political leaders. So what was it about this particular election result that provoked such anguish? Had I been an astute political observer I might be able to tell you – but I am not and since I see that Annabel Crabb is on the programme this afternoon I will leave that kind of observation to her (just as I will leave the cooking tips to her – those desserts of hers must never come near my hips!)
- 5 What, as a non-accredited lay observer, I concluded was that what was really being mourned amongst the young professional women of Sydney last year

was not so much the politics of the vote, but its social impact – the loss of an opportunity to reach a significant milestone in gender equality (just as the election of President Obama had been a significant milestone in racial equality) – and that means the loss of a female role model in such an important global position.

- 6 There are plenty of people who can enlighten us as to what makes a good leader, and you have no doubt heard from them yesterday and will have the opportunity again to do so today. But I think what is even more important is to have people who can, perhaps just by occupying a particular position in our society, inspire others to achieve similar or more heady heights. In other words, the value of a role model cannot be underestimated (whether it be a role model as a politician or as an economist, scientist, teacher, artist, or dare I say a judge). And the most visible role model will be someone who has achieved a particular goal that has previously eluded others.
- 7 With that in mind, I thought I would speak about the challenges and opportunities facing women in the legal profession.
- 8 Notably, in January this year The Honourable Susan Kiefel AC was sworn in as the first female Chief Justice of the High Court of Australia, our country's foremost judicial officer. Her appointment was universally applauded – unsurprisingly having regard to her stellar legal career. But even more remarkable was the path she trod to that position – having studied the law while working as a legal secretary and having risen through the ranks of the bar and the judiciary, achieving numerous firsts, to her present position, where she is a staunch advocate for collegiality on the bench.
- 9 She is not alone in the highest ranks of judicial office. She is one of 3 women out of the 7 judges on the High Court. Women hold (albeit in some cases now nearing retirement) office as Chief Justice in the Supreme Court of Victoria, the Supreme Court of Queensland, the Family Court of Australia and the Supreme Court of the Australian Capital Territory. In New South Wales our

first woman president of the Court of Appeal (The Hon Margaret Beazley AO) was appointed in 2013 (and had I been speaking earlier in the year I could also have noted the then presence of a female President of the Court of Appeal also in Queensland, The Hon Margaret McMurdo AO). And across the Tasman, Dame Sian Elias has occupied the highest judicial office for some years.

- 10 The progression of women to high judicial office might therefore be thought to be now becoming almost unremarkable. It was not always so.
- 11 The lawyers in the room will be familiar with the story of Ada Evans, Australia's first female law graduate.¹ She graduated from the University of Sydney Law School in 1902. When Ada Evans enrolled four years earlier, the Dean of the Law School would never have accepted a woman as a student. However, at the time the law school received Evans' application, the Dean was overseas. (The Chief Justice of NSW, The Hon Tom Bathurst AC, often recounts this story to newly admitted lawyers of the Supreme Court as an example of how different things might have been had air travel been common in those days.) In the Dean's absence, the law school accepted her enrolment. Reportedly, when the Dean returned to Australia and learnt that a woman had been accepted into the law school, he summoned Evans to his office and told her that her frame was too light for law and that she would find medicine more suitable. (What that says about doctors I do not know.) Fortunately for the generations of women lawyers who came after her, Evans stuck with the law.
- 12 However, the story does not end there. When she graduated, Evans was barred from practising as a solicitor on account of her gender. She lobbied successive NSW governments for changes to the law to allow women to practise. In that time she watched the governments in Victoria, Tasmania, Queensland and South Australia pass legislation enabling women to be

¹ See Nicola Silbert, "Evans, Ada", *Australian Women's Register*, Australian Women's Archives Project, February 2017 (<http://www.womenaustralia.info/biogs/AWE5543b.htm>).

admitted to legal practice.² Eventually, 16 years after Evan's graduation, the *Women's Legal Status Act 1918* (NSW) was passed in NSW. The Act was not limited to admission to the legal profession; it also provided that women could be elected to Parliament, could hold office in Local Government and could be appointed to judicial office. So, in 1921, Evans became the first woman to be admitted as a lawyer in New South Wales. She did not, however, ever practise as a barrister or solicitor. Her reason (with modesty and self-deprecation) was the time that had passed since her graduation – she did not want women's standing in the profession to be undermined by any show of incompetence (see "A Women's Pioneer (1948) 22 ALJ 1 at 2). So the first woman who actually practised as a solicitor in this state was Marie Byles, who was admitted to practice in 1824.

- 13 It was in 1987, 66 years after Ada Evans was admitted to practice, that The Hon Jane Mathews became the first female judge of the Supreme Court of New South Wales.³ South Australia beat us to it, I should add – by many years – Same Roma Mitchell became the first female judge of an Australian Supreme Court when she was appointed to the Supreme Court of South Australia in 1965. In that same year, the Hon Mary Gaudron became the first woman to be appointed as a justice of the High Court of Australia.
- 14 So in many respects we have come a long way in a relatively short time. Since the trailblazing efforts of Ada Evans, the number of female law students, graduates and solicitors has grown immensely. The majority of law graduates are now female,⁴ and in 2014, nearly 49% of Australian solicitors

² *Women's Disabilities Removal Act 1903* (Vic); *Legal Practitioners Act 1904* (Tas); *Legal Practitioners Act 1905* (Qld); *Female Law Practitioners Act 1911* (SA).

³ Larissa Halonkin, "Mathews, Jane", *Australian Women's Register*, Australian Women's Archives Project, February 2017 (<http://www.womenaustralia.info/biogs/AWE5722b.htm>). The first female judge of an Australian Supreme Court was Dame Roma Mitchell, who was appointed a judge of the Supreme Court of South Australia in 1965: Anne Heywood, "Mitchell, Roma Flinders", *Australian Women's Register*, Australian Women's Archives Project, February 2017 (<http://www.womenaustralia.info/biogs/IMP0002b.htm>).

⁴ Brian Opeskin, "The State of the Judicature: A Statistical Profile of Australian courts and Judges" (2013) 35 *Sydney Law Review* 490 at 510.

were female, up 3% from 2011.⁵ But that, of course, hardly tells the whole story. Women are under-represented at the partnership level in law firms, accounting for approximately 23% of all private practice principals.⁶ Relatively few women elect to become barristers, and of those, even fewer are appointed senior counsel. As at March 2015, women made up only 21% of barristers in New South Wales, and only 10% of senior counsel.⁷ At present, women account for about a third of all Australian judges.⁸

15 If I reflect on the discourse around women's leadership over the course of my own career (26 years as a lawyer and now nearly 9 years as a judge), it is perhaps surprising that we continue to discuss many of the same topics – how to advance the progress of women at senior levels in the legal profession. The Law Society has run a thought leadership programme on this very topic over the last few years. The large law firms have grappled with it for much longer. And the Law Council of Australia has recently launched an updated Gender Equitable Briefing Policy, which aims to address the challenges that female barristers face in receiving briefs – including the more complex and lucrative commercial briefs; which policy has been endorsed and adopted by the major commercial law firms across the country.

16 So what is the problem? What needs to change for women to be represented at the senior level across the legal profession in broadly equal numbers? These questions have been asked and answered countless times and no doubt in varying ways. Why then have we been unable to achieve broad, systemic progress on the issue of women's leadership in the private and public sectors? There does not appear to be any lack of consensus on the

⁵ Urbis, *2014 Law Society National Profile: Final Report* (April 2015, <https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/1005660.pdf>).

⁶ The Law Society of New South Wales, *Thought Leadership: Advancement of Women in the Profession, Progress Report* (June 2013, <http://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/752919.pdf>).

⁷ Equitable Briefing Working Group, *Review of the Application in New South Wales of the Equitable Briefing Policy of the Law Council of Australia*, (August 2015, http://www.nswbar.asn.au/docs/webdocs/eb_report_01092015.pdf).

⁸ Brian Opeskin, "The State of the Judicature: A Statistical Profile of Australian courts and Judges" (2013) 35 *Sydney Law Review* 490 at 510.

need for such progress (I discount the odd bleat from time to time about secret women's business and the like). For that reason, it is important that we continue to have conversations such as those on the agenda for this conference in order to explore the "how" in respect of the case for progress on the issue of women's leadership: how do we find solutions to the problem of underrepresentation of women in leadership positions?

- 17 CEDA, the Committee for Economic Development of Australia, has identified, through its research projects, some significant barriers to women assuming leadership roles across society.⁹ Some of those that may particularly resonate with the experience of women in the legal profession are the following: the insidious effect of unconscious bias; the "boys club" culture in some workplaces and often at senior levels; a lack of workplace flexibility; and, perhaps an aspect of the last, the lack of compatibility between school and business hours.
- 18 So, for example, I started work as a solicitor in Sydney largely because there was no place for me as a woman in the then top law firm in Newcastle. Instead I accepted an offer from a law firm whose partners did not (unlike others I could name) ask how I would manage a career and a family when I, as a single woman, applied for a position only six months ahead. There were at that stage relatively few role models in the profession for women. Only one of the large law firms had a female partner. And there were not many firms with female senior associates as I recall.
- 19 But the really hard work – acceptance of the notion that women with law degrees might actually want, and be able, to practise in the male legal world – was undertaken by a generation of women ahead of me. My cohort was fortunate to be able to capitalise on the achievements of those women. And I was fortunate not to have encountered (or perhaps I just turned a blind eye to) endemic discrimination or substantial obstacles in the profession.

⁹ See CEDA, *CEDA's Top 10 Speeches: Women in Leadership 2010-2015* (2015).

20 The Hon Mary Gaudron AC, who as I have mentioned was the first woman appointed as a judge of the High Court of Australia, once lamented that many women of her generation did not dare to be different from their male colleagues but instead “became honorary men who neither questioned the way in which legal practice was organised nor articulated the possibility of the law’s bias”.¹⁰ Indeed, as she said, when speaking at the launch of the Australian Women Lawyers in September 1997, the advice she was given as a student by the NSW Women Lawyers Association in 1964 when she and another pioneering woman (and later academic, Daphne Kok) were told by city firms that it was not their policy to employ women as articled clerks, was to learn to touch type, forgo her university studies, undertake the admission board course and use annual holidays to sit the exams. I love her recollection of her reaction to that advice:

I left that meeting much encouraged. I knew, before the meeting, that for a woman to succeed, she had to be better than her male counterpart. I knew, after the meeting, that that was as simple as learning to touch type – hardly an insuperable task.

21 My lamentable typing skills will attest to the fact that I was not given the same advice but my penchant for Christian Louboutin stilettos is testimony to the fact that I never thought it necessary to become an honorary man (at least in sartorial terms) in order to succeed.

22 In this regard, it is sometimes said that women exhibit different traits and approaches to men, and that this can be a barrier to their attaining leadership positions. For example, it is suggested that women are more likely to credit success to those around them, while men are more likely to talk up their own role.¹¹ Now, no doubt women need to own their successes and not shy away

¹⁰ The Honourable Justice Mary Gaudron, *Australian Women Lawyers* (19 September 1997, http://www.hcourt.gov.au/assets/publications/speeches/former-justices/gaudronj/gaudronj_wlasp.htm).

¹¹ Kay Steiger, “When Women Don’t Take Credit for Their Own Good Work”, *The Atlantic* (5 June 2013).

from making the case for their value in an organisation, but in any event it seems to me that the attitude of what we associate with successful leadership is changing and that being seen to give credit to those with whom one works is now being seen as a very important leadership trait.¹²

23 CEDA also included the “lack of role models” as a barrier to women's leadership – the importance of which I referred to at the start of my speech and which is really my message for today. The lack of role models is, of course, something of a circular problem but it does highlight the responsibility that female leaders have to act not only as a coach and mentor to those starting out in their respective professions but to step up and be seen at events like this.

24 When I joined the legal profession it was as someone with no family background in the law. I had no “old school tie” to assist in the transition to legal practice. And, at the risk of sounding very old, “in my day” there were no formal mentoring programmes in place. It was a case of developing one's own informal networks. In the past, I suspect that the men were far more efficient at mentoring because they were able to do so in a social setting. Now mentoring is much more structured, and this offers valuable support for the next generation of women leaders. But, when speaking of mentoring, my firm view is that it is not and should not always be about agonising over career options in a formal context. It seems to me it is also about sharing experiences, testing ideas and developing genuine bonds and friendships (something that may happen on golf days or watching rugby games, the traditional male bonding haunts, but equally can happen at Jimmy Choo themed events, as one city law firm used to organise for its women clients). However, there is often a tension in achieving work/life balance in this respect. There can be an understandable tendency for women (particularly those with young children) to spend their time actually getting the work done and then going home to spend time with their families and missing out on

¹² See Julie Bishop, “The Role of Female Leaders in the 21st Century” in CEDA, *CEDA's Top 10 Speeches: Women in Leadership 2010-2015* (2015).

social networking events. Even so, I think it is a positive step, when looking at the advancement of women, that we are seeing the benefits of social networks in contexts that are more familiar to many women. We do not have to become honorary men (unless we want to, of course).

- 25 Coming back to the statistics, there has been some excellent research as to the challenges facing women at the bar. You may be interested to know that on average, male barristers appear in court for 3.8 hours.¹³ Female barristers appear for 2.8 hours. The significance of the difference between a 3.8 hour and a 2.8 hour appearance is that it may reflect a tendency for women to be briefed on less complex and challenging matters than those given to their male counterparts (alternatively it may simply mean that the women are just more efficient). However it does point to the concern that barriers to economic equality may reinforce the under-representation of senior women at the bar.
- 26 One part of the work-life balance equation for all lawyers is the culture of working outside and beyond business hours. This is also a constant complaint in the legal profession. The modern workplace makes it more difficult to leave work at work. Gone are the days where lawyers would communicate in writing, with a carbon copy retained for the file. Now, of course, everything is online – even the NSW Supreme Court has a twitter account, which I imagine all of you follow avidly and if not our handle is @nswSupCT. In the modern world, lawyers are expected to be contactable 24 hours a day. Everything is due yesterday. Most of the commercial world operates on a world clock. This can feed into a culture that pushes women away from careers in the law. I found it particularly confronting several years ago when, having pursued a career in a manner that I had believed was not detrimental to my then young children, I was told by a senior associate that she was not pursuing a partnership and was looking at options outside the

¹³ The Law Society of New South Wales, *Thought Leadership 2011: Advancement of Women in the Profession, Report and Recommendations* (December 2011, <https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/579007.pdf>) at p. 31.

firm because she did not want to make the sacrifices that she had seen me make. That brought me up short. A bit like the non-working mothers who would ask me at Saturday morning sport if I thought my children would grow up to be juvenile delinquents because I was working full time (they haven't!). And yet, would you believe it, I was once criticised by another (female) judge for referring to “working mother guilt syndrome”. A tricky line to toe there – and in high heels too!

27 All of this may shed some light on the complexity of the challenge of shaping the modern workplace to reduce female attrition and, indeed, to promote female leadership in the legal profession.

28 On 21 December next year, it will be 100 years since women were permitted to practise as lawyers in New South Wales. 100 years is a long time. We have made considerable progress. Women in the law have come a long way. However, we should be wary of arguments about the inevitability of women's equal representation in leadership roles. We cannot assume that it is all a matter of time for women to “trickle up” to leadership positions. Nor should we forget the dangers of tokenism. Again it is a tricky balance.

29 We certainly cannot assume that in all contexts the metaphorical glass ceiling has been thoroughly smashed. One would only have to have witnessed the sad sight of the very intact glass ceiling above that glittering ballroom in New York last year to realise that it has not.

30 So here's to increasing the number of inspirational role models at all levels of society. And thank you for your time this morning. I should confess that part of my trepidation at speaking at events such as this is that it has been recognised for years that as long as a judge stays silent his or her reputation for wisdom is unassailable but that any public utterance he or she makes will expose the judge to criticism and ridicule. I have not the aplomb to say, as did one of the judges in the UK (not without criticism) when appearing on Masterchef as a judge, that a passionfruit and mango brulee had undetectable

mango and not enough passion. So I will leave commentary of that kind to others and draw upon the wisdom of another inspirational woman leader and role model - our first female Governor-General of Australia, The Hon Dame Quentin Bryce AD CVO on the role each of us plays in advancing women's participation in society, namely that:¹⁴

It is what we each do in our own lives and families and workplaces that ultimately determines the critical mass that moves us towards or away from change.

31 I wish you all the best in your conversations today (and ongoing) about women in leadership. I would like to be able to join you – but now it is off to Court for me.

¹⁴ The Hon. Dame Quentin Bryce AD CVO, "Women in Leadership: Progress and Challenges" (30 March 2010) in CEDA, *CEDA's Top 10 Speeches: Women in Leadership 2010-2015* (2015).