

WOMEN LAWYERS AWARD SPEECH

**The Honourable Justice Jane Mathews AO
NSW Women Lawyers Achievement Awards Gala Dinner
19 October 2007**

Distinguished guests, friends, ladies and gentlemen

I think it commonly happens that we stumble unknowingly into the things which end up shaping our lives. I by and large stumbled into law, all those decades ago. I did want to study law, but I had not the faintest clue what the practice of the law really involved. I had no idea that being a lawyer would entirely shape my life. And I certainly had no idea that being a woman would make a profound difference to my experiences in the law.

For a woman's life in the law is still quite different from that of her male colleagues. We all like to think that our professional achievements are the result of our own personal attributes, skills and endeavours. And of course they are. But gender – being a woman – is still a pivotal attribute which in most cases – not all, but most - has served to hinder women in the profession. I'd like to think otherwise, but all the evidence points in that direction. In my own case, I know that my life in the law would have been completely different had I not been a woman. I might well be an exception to the normal rule, and be one of the few who has actually benefited from being a woman. I've certainly been extremely fortunate to have been in the right place at the right time...and the privilege of being the first person of your gender to hold a particular office in the law is I suspect the only privilege left which we women have been able to enjoy over recent years, to the complete exclusion of men.

I want to say something tonight about the differences between the life experiences of men and women lawyers, and about how we can go about breaking the vicious circles which so often impede the professional progress of talented women. Not that the differences are always negative: far from it. They can on occasions be very positive. Indeed it is the positive differences which we are celebrating tonight by recognising the great achievements of these award recipients.

I'd like to start by reading you something that was written a quarter of a century ago now, in 1982, I'm afraid by me. At the end of a lengthy survey on women in the law at that time, I said these words:

“Women lawyers are growing both in numbers and in reputation, and if the present trend continues, the image of the law as a male-dominated profession cannot last much beyond the 1980s.”

What blind, naïve optimism! It was a perfect illustration of the observation made by that wise woman, Mary Gaudron, when she said: “The trouble with women of my generation is that we thought that if we knocked the doors down, success would be inevitable.”

And it’s true: I did think that. I think we all did in those days. At that stage – 1982 – women were starting to go into law schools in equal numbers, and were generally doing better at University than their male counterparts. I was supremely confident that once they started entering the profession in those numbers, the push from the bottom would result in an inexorable upward thrust and that we would end up with a profession which, at all levels, approximately reflected the gender balance in the community and the law schools.

25 years later, and we’re still a long way off!

Women within all parts of the profession still fall within that pyramid structure. Certainly it has changed its shape over the years. At least now it reaches to the top, and it even flattens out a bit; but a pyramid it remain, with the women concentrated at the lower levels.

Why is it, after all these years of women graduating from law school in more than equal numbers, that women still number well under 20% of all barristers in NSW? Why is it that there is such a paucity of women partners in the city law firms, particularly the larger ones? Why is it that, in general, the higher you go in the judicial hierarchy, the smaller the percentage of women?

These are questions which, as many people have acknowledged, are not just of concern to women, but to the community at large. Justice Michael McHugh (as he then was) went so far as to say that unless the gender imbalance in the judiciary is redressed, there is an ever-increasing risk that the public support on which the legitimacy of the judiciary rests will be eroded. And although he was talking about the judiciary in particular, similar principles must apply to the profession in general.

Not long ago I had the pleasure of presiding over a criminal trial in which all the principal participants were women. It was an extremely well-run trial: the Crown Prosecutor was a woman who has recently taken silk; the defence counsel is now a District Court judge. Even the foreperson of the jury was a woman. The court officer (who was also a woman) told me on two separate occasions of participants in the trial – men, of course – who were extremely disconcerted by this array of women in authority. It never occurred to them, of course, that the type of alienation which they were experiencing was precisely the alienation which women have experienced for centuries when entering all-male courts, and which they still experience to this day on a routine basis.

This is one of the vicious circles impeding the progress of women in the law: women are not perceived as leaders because too few of them have been in that position. Even now, many people react with amazement when they ask what I do, and I tell them that I am a judge. It's not being a judge which surprises them, but being a woman and a judge. We have to break down the stereotypes, so that the community – both lawyers and non-lawyers – become accustomed to seeing women in senior decision-making roles, whether in court or in other aspects of the legal profession. But without the women there in sufficient numbers, how are we going to do this?

The answers to all these questions are so complex that I think they defy any single attempt to rationalise them.

Mary Gaudron has said that we must finally acknowledge that we are different, and in effect use our differences to our and the community's advantage. Indeed, she goes so far as to say that the future of the law as an instrument of justice and fairness lies to a large extent with women. I wouldn't argue with any of this. Who would dare to argue with an intellect as powerful as Mary's?

So what are the differences between us and our male colleagues? The most obvious, of course, is the physical one, that we are the child bearers. But this hasn't done women in the law any good over the years. Quite to the contrary, as all the statistics show. The law is by and large extremely family unfriendly. The cruel hours that ambitious young solicitors are forced to work; and the complete inflexibility of court timetables make it extremely difficult to balance life in the law with domestic commitments. Certainly some of the most successful

women in the profession have managed it, including Mary herself. But I don't know of any woman who has done so without difficulty. Almost all of them, when they are working, feel guilty about neglecting their families; and when they are with their families they worry about their work.

I used to postulate, as a solution to all this, that we should alter the community expectation that women be the child rearers as well as the child bearers; and that we should expect men to take an equal role in caring for the kids. But I now realise how naïve and unrealistic this was: the more entrenched the role expectations, and the larger the group which holds those expectations, the longer it will take and the more difficult it will be to modify them. So we have to look to the smaller group, the lawyers, and start demanding more flexibility in work practices in order to accommodate to the needs of women who want to keep working after having their children. Some employers already do it: there are some spectacular success stories about job sharing and flexible working hours. And I am delighted to see that two of this evening's nominees have made major contributions in this field. But it still remains the exception rather than the rule. And until we get more women into positions of authority in the law, where they can direct the nature of the working environment, how are we going to make it the rule rather than the exception?

This is yet another of the vicious circles impeding the progress of women in the profession.

Clearly there are other differences between the genders. These days we tend to think of women as being more sensitive and receptive to emotional needs; less adversarial, less aggressive, less authoritarian, and more inclusive. Having said that, we must be careful not to fall into the trap of creating stereotypes... we who have been the victims of stereotyping for so long. There are undoubtedly authoritarian and aggressive women, just as there are nurturing, sensitive and inclusive men. Nevertheless, I do believe that women, in general, tend towards the nurturing and sensitive side of the spectrum. As far as I'm concerned, these are extremely positive qualities, but then of course I'm a woman. And it seems to me that one of the problems within the legal profession is that these qualities have not been given the value which they deserve. Indeed in the old days they were perceived, professionally, as negative factors. This attitude is breaking down; but as with all attitude changes, it is taking much too long. In the meantime, women's contributions continue to be under-valued.

I cannot let this occasion go by without saying something about the judiciary.

Without doubt the position of women on the Bench has improved hugely over the many, many years since I went on the Bench. But it took a long time before it started. As you have heard, I was first appointed in 1980, and I then spent 14 years as the only woman on my Court: 7 years on the District Court, followed by 7 years on the Supreme Court, until the appointment of Carolyn Simpson in February 1994. Since then things have moved much more quickly. But we still have a long way to go. In the international sphere, we fare very poorly in terms of female representation on our judiciary, particularly at the higher levels.

One obvious reason for this is the paucity of women at the Bar. I have been agitating for years for someone to undertake a proper study of why female law graduates make their career choices, so that we can start to understand why it is that so many of them are rejecting the Bar. Moreover, this problem is compounded by the fact that many women who do go to the Bar leave it after only a few years. As to what happens to the women who remain at the Bar, the picture is a very contradictory one. On the one hand, as Justices Kirby and McHugh have observed, there is a striking paucity of women with “speaking roles” in the High Court. This can only mean that they are not getting the top appellate briefs. On the other hand, just look at the present composition of the NSW Bar Council, which is elected each year by the strongly male-dominated Bar. Of the 21 barristers on that Council, 9 are currently women.

So what is happening? There are clearly strong, competing forces at play, and it is very difficult to understand what they are.

To return to the judiciary: it is still pretty much the norm that judges, particularly in the higher courts, will be appointed from the ranks of the Bar. But why should this be so? I think the idea that good barristers will make good judges has now been exposed as the myth that it is. Sometimes they do, but there have been some pretty spectacular exceptions. Obviously, judicial officers should have some familiarity with courtroom procedures and the laws of evidence, particularly if they are dealing with criminal cases. But why is this only to be gained at the Bar? And when you think of it, the higher you go in the judicial echelon, the less important it is that judges have this practical knowledge.

I must finally say something about the concept of merit. As one commentator has observed, discussions about merit almost invariably arise in the context of a debate about the appointment or non-appointment of women. It is, at best, a nebulous concept. Any attempt to define it results in criteria that are so broad as to be almost meaningless. Almost always there will be a strong subjective component in this supposedly objective yardstick. I think it is almost human nature that whoever is making appointments will incline towards someone with whom he or she feels comfortable ...the “someone like us” syndrome. And as it is virtually invariably the “he’s” who are making the judicial appointments, we all know where their comfort zones are likely to lie.

There are no clear answers to all this. The obstacles to the progress of women in the law have variously been described as “glass ceilings”, “sticky chairs” and “slippery ladders”. I see a number of vicious circles. The circles can only be broken by us women getting into positions of authority, and putting our own stamp onto the future of this wonderful profession. And this brings me very much to tonight’s ceremony. All the nominees for tonight’s awards have provided inspirational service both to the law and to the wider community. I congratulate the Women Lawyers Association for recognising and honouring their service; and I particularly congratulate the nominees themselves for their significant contributions in their various fields.