

WOMEN IN LAW: PAST ACHIEVEMENTS AND FUTURE DIRECTIONS

SIR RICHARD BLACKBURN LECTURE
Johnson Auditorium, Pilgrim House, Canberra City
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The Hon. Chief Justice Terence Higgins*
Supreme Court of the Australian Capital Territory

Good afternoon and welcome to you all.

This lecture was inaugurated in 1986 to mark the great contribution to the law and to Australia of the Honourable Sir Richard Blackburn OBE.

Born in 1918, Sir Richard grew up in South Australia where he was educated at St Peter's College and later at the University of Adelaide where he completed a Bachelor of Arts Degree. He continued his studies in England as a Rhodes Scholar, undertaking a Civil Law Degree at Magdalen College, Oxford.

From 1940 to 1945 Sir Richard served with the Australian Imperial Forces. His service to the defence forces continued in peacetime, commanding the Adelaide University Regiment and the First Battalion of the Royal South Australian Regiment.

Sir Richard's legal career began in 1949, when he was called to the Bar at Inner Temple and was later admitted to practice in South Australia in 1951. After 15 years in practice, Sir Richard was appointed a judge of the Supreme Court of the Northern Territory and in 1977, he was appointed a judge of the Federal Court on its establishment. That same year, Sir Richard relocated to Canberra, taking up an appointment as a judge of the ACT Supreme Court, where he was to become the first Chief Justice in 1982.

It is with great pleasure that I present the 2006 Blackburn Lecture and in particular, address the topic of Women in Law - the theme of Law Week for 2006.

* I would like to acknowledge the research and drafting assistance provided by my Associate, Ms Anna Haynes.

There are a number of firsts for women in the law, due squarely to the fact that women were once excluded from legal practice. Today I will speak of the first Australian woman to study law; the first Australian woman admitted to practice; and the first female Justice of the High Court.

These firsts stand as a mark of achievement for the many courageous women who challenged the status quo and pursued their passion for the law with such determination that the status quo was re-aligned. These firsts also serve as a reminder that the status quo, much like the law, requires constant revision.

It is a result of the tenacity and determination of women that the theme of Law Week is 'Women in Law'. But for women, women would not be studying law in Australian universities, let alone working as solicitors, appearing in court or presiding over cases.

Women were met with a closed door when they first sought entrance to the exclusively male domain of the legal profession.

Instead of waiting in hope outside the door, women adopted a two-pronged approach - firstly, to knock more loudly - and secondly, (perhaps the more feminine of the two approaches by virtue of its creativity and lack of brute force) - to go around the door.

Women of such vision included Dame Roma Mitchell, who when excluded from the Law Student's Society by virtue of her gender, contributed to the establishment of the Women Law Student's Society.¹

Equally resourceful was the first female Justice of the High Court, Mary Gaudron, who faced difficulty in establishing chambers in Sydney in 1968.² The less than warm welcome the future Justice of the High Court received was not due to a shabby academic transcript, she having

¹ *Dame Roma Flinders Mitchell*, Flinders Ranges Research
<<http://www.southaustralianhistory.com.au/mitchell.htm>> at 27 April 2006.

recently graduated from the University of Sydney with first class Honours and the University Medal. Rather it was due to the fact that this brilliant graduate was a woman. Unperturbed by this discrimination, Mary Gaudron established successful chambers with a colleague Janet Coombes.

I have called this lecture *Women in Law: past achievements and future directions* and intend to start at the beginning, with the first women in law – and from that point, track the developments and changes which have laid the foundations upon which women contribute to the legal profession today.

The first woman to study law at an Australian university was Ada Evans who commenced law at the University of Sydney at the age of 27 in 1899. It is said that her enrolment was only successful because the Dean of the Faculty of Law, Professor Pitt Cobbett was on leave and hence not around to veto her application.³ However, this initial success did not go unchallenged and the Professor, upon his return, worked hard but unsuccessfully to persuade Ada to change to a different course.

In 1902, Ada was the first woman to graduate with a Bachelor of Laws degree. Yet despite her best efforts to persuade the New South Wales Supreme Court otherwise, she was informed that the rule precluding women from practice was to remain firmly in place. It was not until 1921 that Ada was admitted to practice by virtue of the *Women's Legal Status Act 1918*.

One positive that emerges from this story is that Ada Evan's successful enrolment at law school was due, not only to the fact that the Dean was on leave, but that, in his absence, there *was* a member of staff who saw fit to enrol a woman. And it has been the collective force of such people, questioning the tradition of a male dominated profession that has assisted women to enter the law.

2 The Hon. Justice MA McMurdo, President of the Court of Appeal, Supreme Court of Queensland, 'Speech Proposing a Toast to Retiring Justice Mary Gaudron' (Speech delivered at the Australian Women Judges Dinner, Sydney, 22 February 2003).

3 Gloria Rolton, *Outstanding Women in Australia: Women in Politics and Law* (1997), 39.

Over 100 years since the first female law student began her studies, there is now a majority of women enrolled in the study of law at Australian universities.⁴ It is also safe to say that aspiring female solicitors and barristers need not surrender their aspirations to timing and apply only when certain members of academic staff are on leave. However, we have not arrived at this point in history, where admission ceremonies at the ACT Supreme Court regularly reflect a 2/3rds majority of women, on the back of any single victory.

The battle to see women in law was to be fought in every jurisdiction. Such was the determination of women, or perhaps the stubbornness of men, that the victory of Ada Evans' enrolment to study law had to be relived in each state. And it was not before a further quarter of a century had passed that women were admitted to practice as solicitors or barristers Australia wide.

The first woman admitted to practice in Australia was Grata Flos Matilda Greig in 1905 in Victoria. Flos Greig was the first female law student at the University of Melbourne, enrolling in 1897. The commencement of Flos Greig's legal career was delayed a year, until the Victorian Government passed the *Women's Disabilities Removal Act*⁵ enabling women to practice. And no, Victoria was not the only jurisdiction to use the term 'disability' in this context.

Victoria was in fact at the forefront of championing women in law, running second only to New Zealand, where women had been practicing since 1896. Tasmania, Queensland and South Australia followed in 1904, 1905 and 1911, leaving New South Wales in fifth place (that is, amongst the Australian states) in 1918. It was not until 1923 that women were admitted to practice in Western Australia.⁶ However, this was not due to any lack of consideration of the issue - given the efforts of one Edith Haynes twenty odd years before.

⁴ See for example: The Law Society of New South Wales, 'After Ada: A New Precedent for Women in Law' (29 October 2002), 7 - wherein women are reported as constituting 57% of the undergraduate law population in 1999.

⁵ (Vic) No 1873 of 1903. See: Pamela Tate SC, Solicitor General for Victoria, 'Keynote Speech to the Women Lawyers Achievement Awards' (Melbourne, 2 June 2005).

⁶ The Hon. Justice Mary Gaudron, Justice of the High Court of Australia, 'Speech to launch Australian Women Lawyers' (Melbourne, 19 Sept 1997).

The *Legal Practitioners Act 1893 (WA)* required the completion of articles and prescribed examinations before a candidate could be considered for admission.⁷ Edith Haynes was approved by the Barristers Board to complete her articles with the family firm Haynes & Purkiss, which was later known as RS Haynes & Co.⁸ However, it was Edith's eligibility to sit the prescribed examinations, which became the subject of proceedings in the Supreme Court of Western Australia in the matter of *Re Edith Haynes*.⁹ Edith obtained an order nisi requiring the Barristers Board to show cause why an order of mandamus should not be issued directing the Board to allow her to sit the examinations.

The Full Court, comprising Acting Chief Justice Parker and Justices McMillan and Burnside presided over the matter. Mr Pilkinton for the Board submitted that '[s]ection 16 of the Legal Practitioners Act shews clearly that the Court may refuse to admit practitioners on any ground it thinks proper', wherein he noted gender as a 'disability' warranting exclusion of a person from admission. Furthermore, the Board argued that 'the fact that no woman has been admitted before raises the very strong presumption that they have no right to be admitted.'¹⁰

It was submitted on Edith's behalf, not unreasonably, that the legislation allowing the admission of 'persons', was by virtue of the *Interpretation Act 1898* to be construed as to include women.¹¹

The Court in consideration of this submission, went beyond Edith's request for a mandamus allowing her to sit the examinations and considered her eligibility for admission generally – noting the futility of the order sought if she were nevertheless ineligible for admission.

The Court was of the opinion that the legislation enabling the admission of a person, did not 'contemplate that women should be admitted as legal practitioners of the Court.' Furthermore, the Acting Chief Justice Parker clearly indicated that the Court was not going to adopt an activist approach on the subject, commenting:

⁷ Margaret Thornton, *Dissonance and Distrust: Women in the Legal Profession* (1996), 57.

⁸ The Hon Chief Justice David K Malcolm AC, Chief Justice of the Supreme Court of Western Australia, 'Centenary of *Re Edith Haynes* (1904) 6 WAR 20' (Speech delivered at the Supreme Court of Western Australia, Perth, 9 August 2004) 4, 6.

⁹ (1904) 6 WAR 20.

¹⁰ *Ibid* 209-210.

‘[t]he idea of women practicing in the Supreme Court seems to me quite foreign to the legislation which has prevailed for years past, not only here but in the mother country... I am not prepared myself to create a precedent.’¹²

Justice Burnside noted that women were not eligible for admission in England, Scotland, Ireland, the United States or ‘any British-speaking Colony’¹³ – and that indeed, the notion had yet to be suggested in those jurisdictions.

Therefore, rather than depart with the tradition set since ‘time immemorial’ – the Court waived the opportunity to change the course of history, commenting:

‘When the Legislature in its wisdom confers the right on women, then we shall be pleased to admit them. But we must leave it to the Legislature to decide on the desirability or otherwise of such legislation.’¹⁴

The Western Australian Parliament acknowledged the desirability of such a course in 1923, some 19 years later – and were surpassed in their efforts by the mother country herself, which first admitted women to practice in 1921.¹⁵

However, it is of significance that the *Legal Status of Women Act 1923* was introduced to the State Parliament as a private member’s bill, by a woman, namely Edith Cowan, Western Australia’s first female MP. The first female admitted in that State was Alice Cummins in 1930. Edith Haynes, on the other hand, was never admitted to practice.¹⁶

¹¹ See submissions of Haynes KC in *Re Edith Haynes* ibid at 210.

¹² Ibid at 211 per Parker ACJ.

¹³ Ibid at 213 per Burnside J.

¹⁴ Ibid at 214 per Burnside J.

¹⁵ The Hon. Justice Mary Gaudron, Justice of the High Court of Australia, ‘Speech to launch Australian Women Lawyers’ (Melbourne, 19 Sept 1997).

¹⁶ The Hon Chief Justice David K Malcolm AC, Chief Justice of the Supreme Court of Western Australia, ‘Centenary of *Re Edith Haynes* (1904) 6 WAR 20’ (Speech delivered at the Supreme Court of Western Australia, Perth, 9 August 2004), 11.

Arriving at the present, I am pleased to be able to say that women are a vital presence in the legal profession. Today, there is the one and the same door for aspiring male and female law students.

In the last 50 years, the proportion of female students in higher education has increased from 20% to just over 56% in 2001.¹⁷ The same figure represents the number of women in the Australian workforce in 2001.¹⁸

Women, in swelling numbers, are pursuing education and are entering the workforce as never before.

And this is very much the case in the field of law. In 1950, the gender profile of the profession in NSW was stark – 99% male. From that point forward, the proportion of women in the law has increased, reaching 36% in 2002 – with an annual growth rate 4 times the growth rate of male lawyers.¹⁹

Locally, the ANU recorded a 60% majority of female law students studying a Bachelor degree in 2005.²⁰ The University of Canberra recorded a very similar figure for 2006.²¹

However, despite the overwhelming presence of women studying law, there is a clear majority of men in the upper tiers of the profession.

Currently there are 26 female judges of the State Supreme Courts, including two appellate Judges, one President of the Court of Appeal and one Chief Justice, namely Chief Justice Marilyn Warren of the Victorian Supreme Court. At the Federal level, there are 6 female judges of the Federal Court and 17 female judges of the Family Court, which is led by Chief Justice Diana Bryant.

¹⁷ Australian Bureau of Statistics, *Topic 23, Higher Education Students (1951 to 2001)* (Cat No 4230.0 Education and Training Indicators) Australia, 2002.

¹⁸ The Law Society of New South Wales, 'After Ada: A New Precedent for Women in Law' (29 October 2002), 17.

¹⁹ *Ibid* 34.

²⁰ Statistics obtained courtesy of the Australian National University, College of Law (9 May 2006).

Most significantly, the legal community welcomed her Honour, Justice Susan Crennan, to the High Court in November last year – the second woman to sit on the court, since the appointment of Mary Gaudron in 1987.

These figures equate to an approximate 20% representation of women on the bench and confirm the well-recognised gender imbalance in the higher ranks of the profession.

Of note is that this statistic does not include the local, county, district and magistrates courts in each jurisdiction where women *are* represented as judges, masters, magistrates and registrars. However, it also fails to reflect the complete absence of women in the superior courts of some jurisdictions, including the ACT - although two of the additional judges of the ACT Supreme Court are women.

Perhaps with time we will see a correction of this imbalance – however, as it is 101 years since women were first admitted to practice – it is necessary to investigate the opaque factors which contribute to this phenomenon.

Undoubtedly, the status of women in the legal profession is linked to the historical, social and cultural perceptions of women in society generally. Women in decades past were viewed primarily as mothers and wives, managing the home and raising the children. Today, many women remain in both those roles but are also in the workforce, pursuing careers of their own and contributing to the household economy. Therefore, despite the fact that each generation of women entering the Australian workforce enjoys greater career opportunities – the question of combining career and family looms large. In the context of the legal profession, this quandary is most prevalent. The working life of a solicitor - be they in a regional practice or a national firm - is demanding. A career at the Bar is benefited by a degree of autonomy and a lack of 6-minute time sheets, however it often requires long hours, extending beyond any 9 to 5, Monday to Friday parameters and as such, can hinder family life.

²¹ Specifically, 58.6%. Statistics obtained courtesy of the University of Canberra, Planning and Resource Development (10 May 2006).

I am informed that one of the current buzzwords at Law Career Fairs is ‘work / life balance’ which boasts various self-enhancing activities such as lunchtime yoga and gym memberships. I am also assured that the concept of flexible work practices has entered the vocabulary of legal recruitment – and no, this is not a euphemism for coming in to work on the weekends. Such initiatives stem from a recognition that lawyers work long hours, often accompanied by significant stress and, after 5 years of university study, law graduates are increasingly skeptical of the allure of a career as a lawyer. For those sufficiently tempted to join the ranks of dark suits and wheely suitcases, I am further informed that the turnover of young lawyers in private practice is significantly high. As such, it seems less likely that tomorrow’s graduates will follow the same trajectory of lawyers who upon graduation, entered a firm; undertook articles; and became a partner through to retirement or perhaps to a career at the Bar.

This phenomenon may be attributable to the unique characteristics of Generation X and Y, as they are readily termed in the media.

Although, it must also be a reflection of the incredibly competitive job market, which has led one of my colleagues to comment, that had he applied for the position of judge’s associate upon graduation, he would certainly not have made the grade. Firms are in fierce competition for the top recruits – who, once equipped with a few years experience, are all the more employable abroad.

One further reason for this change in career progression must also be due to the fact that women, today more than ever, form a significant proportion of the new generation of lawyers. And, in my experience at least, it was usually men who followed the tried and true path to partnership and enjoyed such predictable career progression.

Therefore, the legal profession is grappling with a new era, where women are an essential element in the equation but the mechanics are yet to be fine-tuned. Again, statistics paint the picture.

The Law Society of New South Wales released a report in October 2002 entitled ‘After Ada: a new precedent for women in law’. Therein the status of women in the profession was laid bare: 83.2% of female solicitors were employed full-time, with the vast majority working in the private sector, namely 66.3%. Nevertheless, women only constituted 11% of partners in private practice.²²

The report does indicate a continued increase in the number of female partners; however not only are there vastly more male partners; male lawyers are more likely than female lawyers to aspire to partnership.²³ This is a key point – and I hasten to comment that this phenomenon is not due to a lack of drive or ambition on the part of women, rather it is due to what I interpret as a belief that partnership is either unattainable or attained at too great a price. For women who seek to balance a career and a family – it is no mean feat. Equal access to a career in the law does not equate to equal opportunity – gender is a very real determinate in salary; work hours and progression in the legal profession.

The Australian Bureau of Statistics surveyed the average weekly earnings of male and female graduates over a 10-year period and found that women were consistently paid less than men.²⁴ Looking specifically at law, the inequality was no different.²⁵ The Law Society of New South Wales reported a gap ranging between \$4,000 and \$8,000 per annum for solicitors admitted for 10 years or less; increasing to a gap of almost \$20,000 per annum for those admitted for more than 30 years.²⁶

I believe the confidence of women, who up to graduation have competed on an equal playing field with men, is shaken by the prospect of balancing a career and a family.

²² The Law Society of New South Wales, ‘After Ada: A New Precedent for Women in Law’ (29 October 2002), 32.

²³ Ibid 6.

²⁴ For example in 2001 the average weekly earnings of a male graduate were \$809 compared with that of a female graduate at \$699. See Australian Bureau of Statistics, *Topic 36, Higher Education Students Average weekly earnings of recent university graduates employed full-time – by sex (1991-2001)* (Cat No 4230.0 Education and Training Indicators) Australia, 2002.

²⁵ Australian Bureau of Statistics, *Topic 36, Higher Education Students Average weekly earnings of recent university graduates employed full-time – by field of study and sex (2001)* (Cat No 4230.0 Education and Training Indicators) Australia, 2002.

²⁶ The Law Society of New South Wales, ‘After Ada: A New Precedent for Women in Law’ (29 October 2002), 8.

The workplace and specifically, the legal profession have adopted, to varying degrees, initiatives aimed at facilitating work and family, including:

- paid or unpaid maternity and paternity schemes; and
- flexible work practices such as part-time hours; job sharing; working from home; and flexible hours.

Such practices demonstrate significant progress that is of equal benefit to women and men in the context of fathers who want to utilise such practices; or who benefit indirectly from them, as their partner makes use of them.

However, a report of Victorian Women Lawyers released in 2005 indicates that 2/3rds of those women who use flexible work practices, identified a negative impact on their career progression.²⁷ And it is not difficult to see why – employees on flexible work practices work less hours and are less visible – therefore, in a profession which measures merit on hours, they are effectively clocked out of the promotion stakes.

A pertinent observation of Victorian Women Lawyers is that the profession needs to adopt policies that are flexible and responsive to *all* employees' private needs and demands, so that it retains and develops its valuable human resources.²⁸ After all, the expectation upon law graduates today is to be well-rounded individuals with strong academic results; co-curricular pursuits; and practical experience. Once in the profession however, young solicitors are expected to work long hours and put their legal career squarely in their scope.

Work practices and expectations, in both a full-time and flexible capacity have the potential to accommodate balanced lifestyles for male *and* female employees; singles *and* parents alike. As the Law Society of New South Wales observes, some employees may wish to undertake further study, participate in sport or community activities or perhaps just arrive home in daylight hours.²⁹ A reassessment of work practices is required to make this achievable. And as flexible

²⁷ Victorian Women Lawyers, 'A 360' Review: Flexible Work Practices' (November 2005), 7.

²⁸ Victorian Women Lawyers, 'Submission to the Human Rights and Equal Opportunities Commission on its discussion paper: *Striking the balance – women, men, work and family*' (2004), 4.

²⁹ The Law Society of New South Wales, 'After Ada: A New Precedent for Women in Law' (29 October 2002), 10.

work practices and more balanced full-time work practices are more widely accepted – the less prevalent the old school ways will become. This can only assist the advancement of women in law – something that the profession should have at the top of its agenda.

An oft quoted Keys Young Report on Gender Bias and Women Working in the Legal System, prepared for the NSW Department of Women in 1995 identified a series of consequences for clients, women lawyers and the profession that stem from the status of women in law.³⁰ The report highlights issues that would be of concern to any partner or firm, even if their primary focus were fiscal. Consequences include -

- Lack of vigor and diversity in the profession;
- Lack of alternative models of service delivery;
- Rigidity of structure in management;
- Loss of talent; and
- Wasted time and resources in legal training.³¹

The final two relate to the higher attrition rate of female lawyers to male lawyers.³² Despite studying law in vast numbers³³, it appears that women are entering the profession and are having a less satisfactory experience than their male colleagues.

The Keys Young Report identifies relevant contributing factors to include:

- A lack of role models and mentors for women lawyers;³⁴
- A lack of established networks for women lawyers;³⁵ and
- A disproportionate representation of women in the lower ranks of the profession.³⁶

³⁰ Ibid 6.

³¹ Ibid.

³² See for example: Patricia Easteal, *Less than Equal – Woman and the Australian Legal System* (2001), 208; Ruth McColl SC, President NSW Bar Association (2000-2001), ‘Ally McBeal, ‘A Reflection of the Paradigm Lawyer and Law Firm?’ (Speech delivered at the NSW Women Lawyers’ Association Breakfast, Sydney, 17 May 2000).

³³ For example in 1999 57% of undergraduate law students were female. See: The Law Society of New South Wales, ‘After Ada: A New Precedent for Women in Law’ (29 October 2002), 7.

³⁴ The Law Society of New South Wales, ‘After Ada: A New Precedent for Women in Law’ (29 October 2002), 6.

³⁵ Ibid.

³⁶ Ruth McColl SC, President NSW Bar Association (2000-2001), ‘Ally McBeal, ‘A Reflection of the Paradigm Lawyer and Law Firm?’ (Speech delivered at the NSW Women Lawyers’ Association Breakfast, Sydney, 17 May 2000).

Why is it that women are not duly represented in the higher ranks of the law?

In addition to the factors I have already touched upon: namely disparities in salary and promotion; and the challenge of balancing a career and family – the culture of the legal profession has been identified as a contributing factor.

Patricia Easteal suggests that the law is even more an exclusive ‘boys’ club’ than the police force or the military – where the proportion of female recruits are far below 50% - ‘because its bases of exclusivity are less overt and hence even more difficult to confront or overcome.’³⁷

This observation is bolstered by a conclusion of the Keys Young Report, which states:

‘It seems unlikely that such large disparities could be explained by career interruptions due say to family responsibilities. It is clear that marked gender differences commence as early as the first three to five years in practice, at a time when it seems that many women lawyers are more likely to be concentrating on career rather than on family.’³⁸

Instinctively, I identify the somewhat predictable reason of history; tradition; and the legacy of a once male-only profession. The profession is slow to evolve, much like law reform itself. In fact, the law has been compared to walking through life backwards – as the reliance on *stare decisis* or precedent requires lawyers to look to the past as opposed to the future.³⁹ A further criticism of the profession is that it is innately conservative and resistant to change, so that there is a preference for doing things as they have always been done.

Jocelyn Scutt identifies this characteristic in the context of mentoring. In the legal profession, mentoring for women by women has been identified as relevant to the advancement of women in law.⁴⁰ However, Scutt identifies mentoring as associated traditionally with men; and with a ‘cloning effect’ - where those at the top of the tree lend a hand to the up and coming employee

³⁷ Patricia Easteal, *Less than Equal – Woman and the Australian Legal System* (2001), 208.

³⁸ *Ibid* 209.

³⁹ Charles F Robinson, *Stampede to Extinction* (1999)

<http://www.charlierobinsonfuturist.com/article_stampede.htm> at 11 May 2006.

⁴⁰ For example the Keys Young Report as detailed in The Law Society of New South Wales, ‘After Ada: A New Precedent for Women in Law’ (29 October 2002), 6.

who is the closest reflection of themselves. This practice not only influences the promotion of staff but also the earlier recruitment process.⁴¹

Such a tendency jeopardises the advancement of women in law on two fronts: firstly, the lack of women high up the legal tree creates a lack of female mentors; and accordingly, the hiring and the promotion of women is threatened by an inherent resistance to change. Those at the top envisage the workplace continuing as it is; and those entering the lower ranks are less likely to, or perhaps not inspired to see their potential to progress to the top.

The experience of women at the Bar is no different. The New South Wales Bar Association reported that women made up 16% of the total membership in October 2005.⁴² Where private practice has been likened to a ‘boys club’, the Bar has been described as the ‘country club’⁴³ for men, where women are a minority and mothers are scarce. Even if this reality is not bolstered by overt discrimination – it is important to recognise the culture of the once all-male profession, which potentially thwarts the advancement of women in law. What is required has been aptly described as ‘a change in attitudes, not simply a change in chromosomes’.⁴⁴

The relevance of this cultural change is highlighted by the observation of a member of the Sydney Bar, Dominique Hogan-Doran, that ‘the Bar is the best breeding ground for the Bench’⁴⁵ and that the credibility of the judiciary is linked to the ‘diversity and representativeness’⁴⁶ of the bench.

Upon the occasion of her swearing in to the Supreme Court of South Australia in 1965, Dame Roma Mitchell is said to have commented that ‘she hoped in her lifetime appointments such as

⁴¹ Jocelyn Scutt, *Living Generously: Women Mentoring Women* (1996), 2-3.

⁴² The New South Wales Bar Association, Statistical Profile of the NSW Bar, Volume 6, October 2005
<<http://www.nswbar.asn.au>>

⁴³ Patricia Easteal, *Less than Equal – Woman and the Australian Legal System* (2001), 221.

⁴⁴ The Hon. Justice Claire L’Heureux-Dube, Canadian Supreme Court quoted by the Hon. Justice Michael McHugh, Justice of the High Court of Australia, ‘Women Justices for the High Court’ (Speech delivered at the High Court Dinner, Perth, 27 October 2004).

⁴⁵ Dominique Hogan-Doran, ‘In Liberty’s Defense? Women in the Law’ (Speech delivered as part of the Lunchtime Lecture Series, Sydney, 16 March 2004).

⁴⁶ *Ibid.*

these would not excite comments as they did at the time.⁴⁷ Her appointment was inevitably accompanied by great excitement, and rightly so. However, one might have thought that with the first woman installed to the court, with time, women would be represented at all levels of the profession in every jurisdiction.

An extract of a speech delivered in 1997 by the then Justice Mary Gaudron demonstrates the tardiness of such progress:

‘It has been said for many, many years that it is only a matter of time until women are properly represented in the various fields of legal endeavour. Well, how much time? It is close on 100 years since we’ve had women lawyers, since the doors have been formally open.’⁴⁸

Her Honour went on to indicate the 45 years since the NSW Women Lawyers’ Association was established; the 30 years since the first female silk; and the 20 years since at least three states have had anti-discrimination legislation.

Progress has been made and I hope that my focus on past achievements and current initiatives adequately reflects this. However, it is essential that the profession is aware of the gender inequality prevalent in the law and that it acts accordingly – that the future direction of the law envisages women in law, fulfilling their potential.

Leading the profession is the Law Council of Australia, which adopted a national Model Equal Opportunity Briefing Policy for female barristers and advocates in March 2004. The Law Council views this policy as a ‘first step’ in influencing ‘cultural and attitudinal change within the private legal profession’, which not only addresses gender inequality but facilitates access to the Bar and maximizes choice for lawyers and their clients.⁴⁹ I applaud this initiative.

⁴⁷ *Dame Roma Flinders Mitchell*, Flinders Ranges Research
<<http://www.southernhistory.com.au/mitchell.htm>> at 27 April 2006.

⁴⁸ The Hon. Justice Mary Gaudron, Justice of the High Court of Australia, ‘Speech to launch Australian Women Lawyers’ (Melbourne, 19 Sept 1997).

⁴⁹ Law Council of Australia, ‘Policy and Guideline Report: Model Equal Opportunity Briefing Policy for Female Barristers and Advocates’ (20 March 2004). See <<http://www.lawcouncil.asn.au/policy/2393225385.html>>

Furthermore, the endeavours of the various Law Societies, Law Institutes, Bar Councils and Women Lawyers Associations, in advancing women in law is to be recognised and encouraged.

Australian Women Lawyers is soon to release the results of a nation-wide survey of appearances of female barristers in superior courts. The aim of the survey is to report on data indicating the percentage of female advocates in various types of matters heard by superior courts; noting any difference between senior and junior counsel; and identifying where briefs of female counsel emanate from: be it private firms, governments agencies or Legal Aid. This survey will further advance the discussion of women in law and hopefully prompt firms and practitioners to adopt equal opportunity briefing policies.

In conclusion, I would like to reiterate to the profession, the sentiments of one of Australia's great legal figures.

Engaging in the debate of whether equality means 'sameness', her Honour Justice Gaudron, as she then was, urged women to acknowledge that they *are* different and to assert their *right* to be different – in essence, to dare to be different.⁵⁰

Now, my endorsement of this may appear to fly in the face of my observations of the last 30 minutes, wherein I described the inequality experienced by women in law.

However, given the overwhelming presence of women in law – the expectation that women who wish to succeed in the law must concede to the status quo or become 'honorary men'⁵¹ is old fashioned, to say the least. Rather, it is the legal profession that must evolve to reflect the new status quo – and reform its practices so that women can advance in law.

Current reports demonstrate the long fought battle to advance the status of women in law is far from over. So I urge the women of today to take up the flag first flown by the pioneering women

⁵⁰ The Hon. Justice Mary Gaudron, Justice of the High Court of Australia, 'Speech to launch Australian Women Lawyers' (Melbourne, 19 Sept 1997).

⁵¹ Ibid.

of the past 100 years. Inequality may present itself in many guises – however, it is only if it remains unchallenged – unquestioned – that it can be validated.

The stories of Ada Evans, Flos Greig and Edith Haynes demonstrate that determination and ingenuity ultimately triumph. Those women were met with a closed door – so they knocked more loudly and where necessary, they devised an alternate path.

Now it is my sincere hope that the figurative door of which I speak is not so much closed today, but perhaps, more aptly described as ‘stiff to open’. And if that is the case – there is by no means any reason why women must battle with it alone. Rather, I hope and I know in many instances it is true, that men will lend a helping hand. After all, statistics alone indicate that women are integral to the future of the profession.

Ultimately, a shared commitment to advancing the status of women in law would not only benefit women, but also the broader community, who will be better served by a profession that values its members and reflects the diversity of the people it serves.

Thank you for your attention.