

# Her “brilliant career”

At the inaugural Dame Silvia Cartwright Lecture, held by the Auckland Women Lawyers Association in June, Dame Silvia gifted the women present with the story of her career. **Darise Ogden** reports on the speech she presented that night

**D**ame Silvia began the evening by saying that when she thinks of her career, she is inclined to see her progression from one phase of her career to the next as almost “accidental”.

At the start of her career, Dame Silvia practised family law under the blame-filled adversarial system, where adultery loomed large in many cases. “There was even a provision whereby a ‘wronged’ spouse could obtain damages for adultery.” Dame Silvia commented to the audience of women, who had braved the vile, winter night to make their way to the main hall of the Royal New Zealand Yacht Squadron in Auckland’s Westhaven, that she had acted for a husband, and “co-respondent”, his new partner, in one of the last cases in which damages were required to be paid under this rule of law.

In order to gain the high moral ground, and to ensure a speedy divorce at a time when it was important to be married, she says many would hire a private detective to gain the necessary evidence or would be creative with their evidence of adultery against a consenting spouse. According to Dame Silvia, the fact both might want a divorce was often hidden from the judge by litigants: “Collusion and condonation of adultery were rulings to be avoided at all costs.”

Adding to the misery created by the fault-based system was a matrimonial property regime that was extremely unfair, she explains. “Although the legislation permitted equal division, it almost never happened, and women who had raised children and been primarily assigned to home-based activities could be left in a parlous financial situation.” However, 1976 was a year for change, what with *Haldane v Haldane* [1976] 2 NZLR 715 going to the Privy Council and the new *Matrimonial Property Act* being furiously debated. “It was a time of passion on all sides,” she says. “I can recall taking part in a debate at which a man of the cloth said women shouldn’t receive an equal division of family property, or indeed equal pay, because they would only spend it. This raised the surreal image of men thriftily saving their money, devoting themselves to the benefit of their wives and families, and taking an unselfish, benevolent approach to financial management. As this did not seem to be the reality of most in the audience, he was virtually drummed out of the church hall.”

The changes brought about during that “passionate” time also led to the opening of the Family Court, with the High Court being divested of its role in hearing and determining divorce and property matters. Something, she admits, that was met “with some trepidation”.

## Working within the Family Court

Dame Silvia says that while there had been a legal revolution, the procedural aspects of the Family Court were somewhat sketchy. “Judges were to become mediators and step back into their judicial role only where a dispute was unable to be resolved after counselling and then mediation.” However, she says no one had given any thought to how mediations might be conducted, nor had anyone given any thought to actually training judges for their new role. As a result, Dame Silvia and author, educator, and counsellor Rhonda Pritchard devised norms and practices which, she says, “given the vacuum in which the Court was about to operate, the judges discussed and adopted”.

Her pride in the Family Court is obvious. “I loved being a judge of the Family Court,” she says. “It had a variety of work unsurpassed by any other judicial role I have filled, and we had the sense of being at the beginning of major legal and social change in which the rights and interests of both women and children were being taken more seriously.”

She is also proud of the groundbreaking work the Court and its lawyers have undertaken since its inception: “Many of the judges of the Family Court were and remain good lawyers committed to ensuring the protection of the human rights of the vulnerable in our community. It was in this Court that the first legal issues surrounding violence and sexual assaults on women and children were determined.” And in response to those colleagues who may have dismissed the work as trivial or the judges as less able, she says, “in my experience, the quiet work of many of the judges in the 1980s and 1990s was seminal, laying the intellectual foundation for many changes both in the law and in social attitudes”.

## The Cartwright Inquiry

Dame Silvia says that during this time she was happily engaged in the work of the Family Court and had given no thought to career change. However, she says, it was thrust upon her one day in June 1987 when the Minister of Justice and Attorney-General Geoffrey Palmer decided she was the right candidate to conduct a Commission of Inquiry that, in his view, would take at most six weeks.

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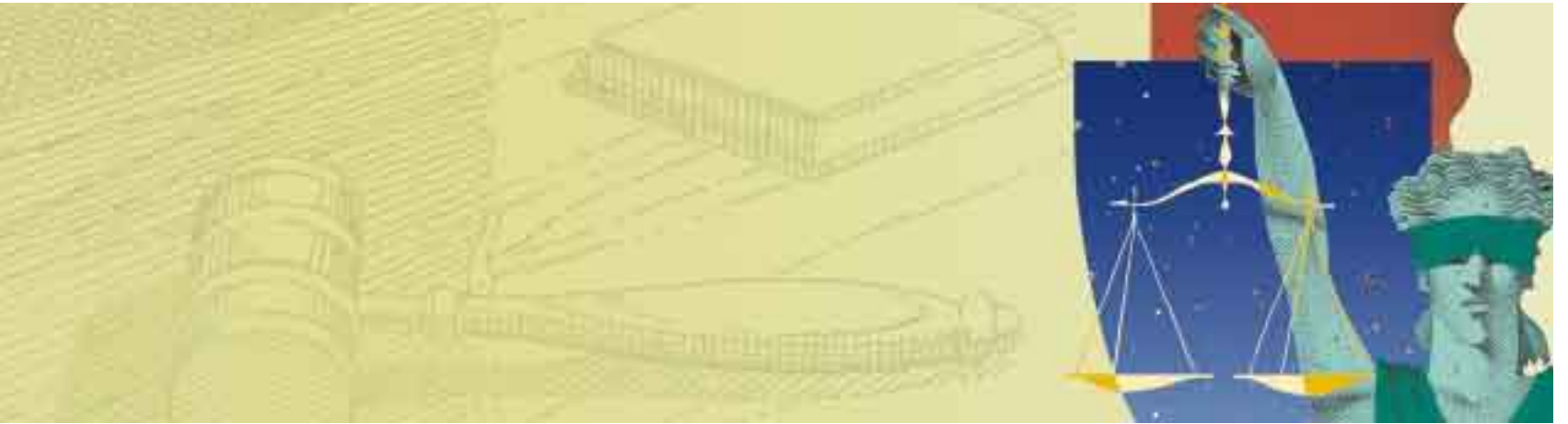
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As we all know, this was a serious underestimation, and Dame Silvia found herself embroiled in an extremely stressful and challenging period of some 14 months during which she heard evidence and submissions from the many parties and lawyers involved. “The issues, legal and technical, were difficult, and the hearing rapidly developed into an adversarial one,” she says, but she was not alone, being supported by a “wonderful team” led by Lowell Goddard, who was shortly to take silk, with Philippa Cunningham as her junior, and with medical advisers Professor Eric MacKay, an Australian academic and clinician in the area of Obstetrics and Gynaecology, Dr Charlotte Paul, an academic epidemiologist from Otago University, and Dr Linda Holloway, an academic pathologist. Their task was enormous, she says. “[They had] to review over 3000 medical files and to advise me on the adequacy of the treatment those women had received.”

Given Palmer’s assessment of the time needed for this Inquiry, and her assumption that the events “would prove to be a storm in a teacup”, she says she became seriously alarmed when she heard Professor MacKay, file open in front of him, saying loudly in his broad Australian accent, “It’s unanswerable”.

As they began hearing the evidence, the picture described in the June 1987 *Metro* magazine article, ‘An Unfortunate Experiment at National Women’s Hospital’ (Sandra Coney and Phillida Bunkle), became grimmer and grimmer, she says. “We found innumerable instances of women having their pre-cancerous condition studied over many years without treatment and certainly with no advice given to them on available treatment. I do not recall one woman being told directly that she suffered from a condition that conventional medical opinion believed could lead to full-blown cancer. Some guessed. One woman managed to look at her file – a forbidden act – and saw the word cancer for the first time, although she had endured many years of attendance at the clinic. But the worst experiences were taking the evidence of women our medical advisers considered were at risk of serious disease, were already suffering from cervical cancer and did not know it, or were dying.”

In spite of the horrors that were uncovered, she says, they had to act judicially and fairly to all involved. “I learned a great deal from this experience, but the real lesson was that there are more important things in life than many of the trivial disputes that often occupy the time of lawyers and judges.”

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# Her “brilliant career”

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## Lessons learned

Dame Silvia says that it is often assumed that being a woman will have an impact on the manner in which you conduct your judicial responsibilities: “If this means a woman judge will favour other women, then this flies in the face of our judicial oath.” However, one’s gender will of course have some impact. “We are all conditioned differently; no judge can escape that and be completely neutral. In my view, a woman will rarely see things differently, legally speaking, from a male judge. But our experiences have given us a depth of knowledge or understanding of the people walking through our courtrooms that men do not always have. We are not better; we are simply different.”

As a young lawyer, she says, she came to admire some judges. “It was not only the erudition that dazzled me, it was the way in which judges spoke to witnesses and counsel. I formed a clear view that those who were courteous and firm were far more effective in the elusive search for the truth or for the answer to a legal problem.”

“We who practice law forget very easily how arcane and obscure many topics can be, how terrifying it is to a witness to be shouted at for not speaking loudly enough or for giving hearsay evidence – something that little in their everyday lives prepares them for.”

Gazing out at the women who represent the future of women in the legal profession, Dame Silvia had the following piece of advice: “Life is exciting. Life deals you all sorts of experiences. If others value you more than you do personally, accept that assessment gracefully. Often others see qualities you cannot, and will ask you to accept responsibilities you would not have volunteered for. Never pass up an opportunity that interests you.”

Dame Silvia Cartwright’s speech was the inaugural speech of an ongoing lecture series, named after Dame Silvia, that will celebrate the success of women. The lecture series is organised by the Auckland Women Lawyers Association and sponsored by ASB.



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