



Auckland Women
Lawyers' Association Inc.

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This issue's editors:
Avy Judelson and Sharyn Larkin

NEWSLETTER

APRIL 2007

From the President...

Dear Members,

Well, we are nearly 1/3 of the way through 2007 and already I am wondering where the time is going to! AWLA has certainly had an exciting first third with fantastic membership numbers, two well attended and inspiring functions and many more planned for the coming months.

About 50 of our membership attended a function at the end of March, kindly sponsored by Chapman Tripp, on flexible workplace practices. There is a summary of the event later on in the newsletter, but as well as thanking the inspiring speakers, I would also like to thank those that attended as it was a dreadful stormy night, and to be honest I am sure that most of us would have been keen to go straight home! However, it was well worth it for those who made the effort, to hear how Maria Dew, Kim Burkhart and Shan Wilson juggle high profile careers with demanding home lives. We look forward to hearing more inspiring women lawyers speak as the year progresses.

A very exciting announcement is that we have a date for the inaugural Dame Silvia Cartwright address – mark your diaries for Thursday June 14. Details are in the process of being finalised by our hard working sub-committee and you will be receiving more details as they come to hand. But, please keep that date free as it will be an event not to miss. We are delighted that Dame Silvia has agreed to lend her name to the address and also to deliver the first lecture.

We are also in the process of arranging another function on 31 May 2007. Doctor Jackie Blue, who is the

National Party Women's Affairs spokesperson has approached us to see if she is able to address our membership on the initiatives the National Party would put in place if elected. While the AWLA has no particular political leaning or association, we do welcome speakers from any political party to share their views and policies that will affect women. We look forward to hearing what Dr Blue has to say and hope that she will also give some comments on the proposed anti smacking legislation!

While membership numbers are greater than those this time last year, we do encourage you to encourage your colleagues to join AWLA. Many women have made the comment to me that the support and camaraderie they receive from being AWLA members is very important to them. I must say that I have met many fantastic women through AWLA that I would otherwise not have had the chance to meet – it is a great forum for meeting new people, gaining friends and sharing experiences.

In closing I must also give thanks to Deborah Hollings who wrote the fantastic article in the last newsletter relating to changing your name upon marriage. The feedback in respect of the article was fantastic and I encourage any others of you to provide us with articles and items of interest that could be included in the newsletter.

I look forward to seeing as many of you as possible at the Dr Jackie Blue function on 31 May!

Tammy McLeod
President

Executive Profiles



Avy Judelson Avy Judelson is pleased to be in her second year as a member of the executive, being one of three in-house solicitors. She is Assistant Corporate Counsel at TOWER New Zealand (including TOWER Insurance Ltd, TOWER Health & Life Ltd and TOWER Managed Funds Ltd). For many years prior she was a senior litigator at specialist insurance litigation firm McElroys. Upon taking her law degree in the USA after another degree, she started practice by conducting civil jury trials. Moving to New Zealand, she practiced for 4 years in the commercial litigation department of Gifford Devine & Partners in Hastings, before relocating to Auckland. In her spare time she enjoys competing in Masters Swimming events, going to the gym, travelling and going for walks with her husband.

Lucy Riddiford This is Lucy's third year on the AWLA committee. She is a senior member of Telecom's legal team, responsible for litigation and dispute management. Lucy feels strongly about representing the interests of in-house lawyers, as part of the AWLA. This year Lucy is convening the sub-committee responsible for establishing the Dame Silvia Cartwright Lecture Series and organising the inaugural lecture. Outside work, Lucy is a keen reader of novels, enjoys entertaining (sporadically) and likes exercising – outside if possible (even more sporadically). Last year she participated in the Oxfam Trailwalker (100km non-stop) which spoiled her for walking for life!



Sharyn Larkin Sharyn has joined the AWLA Executive in 2007 after serving the AWLA as its Administrative Assistant from 2004 to 2005. Sharyn recently joined the legal profession after working at PricewaterhouseCoopers as a personal assistant. She works for Presland & Co in West Auckland practicing family law, civil, trusts and conveyancing. Sharyn enjoys golfing, travelling and reading in her spare time.

AWLA President's Function Review

Sarah Carstens, Executive Member

The Auckland Women Lawyers' Association held its first function of 2007 in February, the "President's Function" which our President, Tammy McLeod, hosted at the ADLS' roof top garden. The function was very successful and we had a record number of members attend – 117 RSVP'd and just shy of that number attended.

The function was both an opportunity for our members to interact and network with each other over a glass of wine in the sun, and for us to launch our theme and agenda for the year. Tammy addressed our members and introduced our theme of the year – **career development** and outlined a number of initiatives and events that the AWLA is planning which focus on this theme, including a suite of proposed workshops on career development for practitioners in different realms of the profession – we are considering focusing on pathways such as promotion to partnership, working as in-house counsel, working for the government and the judiciary. The AWLA also intends to launch a new lecture series to be named after (and with the inaugural lecture to be given by) Dame Silvia Cartwright. In addition, Tammy introduced our first speaker for the year, Miriam Dean QC.

Miriam Dean QC gave an excellent speech on mentoring and how useful it can be for career development. Miriam is a passionate supporter of mentoring and is herself a mentor. She spoke of her experiences both as a mentor and as a mentee. In particular, she described the benefits that she had personally experienced from mentoring including when she made the decision to apply for partnership at Russell McVeagh to be their first female partner, and later in respect of her decisions to leave Russell McVeagh to join the Bar, the subsequently to apply to apply for Silk. She encouraged our members to make the most of formal mentoring programmes available both through the AWLA (Seshani Bali is our mentoring programme manager) and through workplace mentoring schemes. She also spoke of the benefits of initiating informal mentoring relationships and gave helpful tips of the types of people who could be useful mentors, how to approach someone to be a mentor, and the sort of arrangements that she has with her own informal mentees.

In all we felt the function went very well and was a great start to the year for us.

"Tammy addressed our members and introduced our theme of the year – career development and outlined a number of initiatives and events that the AWLA is planning..."

REPRESENTATION OF WOMEN LAWYERS IN LEGAL DIRECTORIES

Sabrina Muck¹

Introduction

The AWLA congratulates the women listed as "leading lawyers" in their area of practice in the 2007 versions of the Chambers Global and Asia Pacific Legal 500 legal directories. It is a significant achievement and indicates that these practitioners are well-regarded in their field.

However, there appear to be a proportionately low number of women named as "leading lawyers" across practice areas in New Zealand's large firms. This article will examine the number of women named, the process for the directories to determine listings, and the possible reasons for this disparity.²

Statistics

For the purposes of this article, I reviewed the Chambers Global listings³ for firms ranked in Bands 1 to 3 for each practice area considered by the directory,⁴ together with the "Other Notable Firms" section and the lawyers named in this section per practice area. The Asia Pacific Legal 500 directory is in a slightly different format.⁵ For that directory I considered the listings for "leading individuals" in each practice area considered by the directory.⁶

On this analysis, the results are as follows:

CHAMBERS GLOBAL (Listings for New Zealand)

Practice Area	Number of male "leading lawyers"	Number of female "leading lawyers"
Banking and Finance	22	2
Corporate Commercial ⁷	46	5
Dispute Resolution	25	2
Employment Law	5	1
Intellectual Property	15	2
Tax	13	1

ASIA PACIFIC LEGAL 500 (Listings for New Zealand)

Practice Area	Number of male "leading individuals"	Number of female "leading individuals"
Banking and Finance	14	2
Capital Markets	3	0
Corporate and M&A	12	2
Dispute Resolution	7	0
Employment Law	5	1
Intellectual Property	6	0
IT/Telecommunications	8	0
Projects and Natural Resources	4	3
Real estate and construction	5	0
Restructuring and Insolvency	7	0
Tax	5	1

It is difficult to know what the figures are for male and female solicitors specialising in each practice area, and whether this has an influence on the number of female practitioners listed. Possibly the listings are influenced by the gender make-up at a senior level of the legal profession, as discussed overleaf.

1 I wish to thank the following people for their assistance with this article: Colleen Cavanagh, Josephine Gallagher, Deborah Hollings, Helen Melrose and Mary Peters. Any errors or omissions are my own and I am happy to correct these.

2 I note also that there are very few non-NZ European practitioners listed. Although this issue is outside the scope of this article, it is possible that this is for similar reasons as discussed, especially in terms of practitioners at partnership level.

3 <http://www.chambersandpartners.co.uk/global/search.aspx>.

4 These usually included Bell Gully, Russell McVeagh, Chapman Tripp, Simpson Grierson, Buddle Findlay and Minter Ellison Rudd Watts, depending on the practice area, and also included boutique firms in certain practice areas.

5 http://www.legal500.com/index.php?option=com_content&task=view&id=1136&I5country_code=nz&I5directory=as500&Itemid=382#legal500_html/as500/edit/nzli.htm.

6 Neither directory considers barristers.

7 This includes practitioners in the following areas: Competition, Energy, Insolvency, and Public Law.

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Representation of Women Lawyers in Legal Directories

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Process for directories to determine listings

The Chambers Global researcher for New Zealand advised that the process involved in compiling the directory is as follows:

1. Pre-research into the relevant market;
2. Firms prepare submissions on between three and five significant transactions per practice area (including relevant client contact details). Firms are also invited to provide feedback on the previous year's directory;
3. Researchers interview clients for external feedback about the firms and individuals they have dealt with;
4. Researchers interview practitioners about their work and obtain peer feedback about other practitioners;
5. Researchers compile data, discuss preliminary rankings and identification of "leading lawyers" at editorial meeting;
6. Final rankings and "leading lawyers" determined for publication.

I was not able to contact the Asia Pacific Legal 500 researcher for New Zealand, but their submission guidelines⁸ also invite firms to provide submissions on up to five transactions per practice area, including relevant client contact details. The researchers will then contact the clients for feedback, and contact firms to arrange interviews to be held in person or over the telephone. Firms are also invited to provide feedback on the previous year's directory. Each directory's website states that interviews are confidential and unattributed.

Why are so few women named as "leading lawyers" in legal directories?

Having considered the above information, and discussed this question with other practitioners, I have identified some possible reasons for the low number of women practitioners named as "leading lawyers" in these legal directories, as follows:

Low number of female partners

Chambers Global suggests the following criteria as examples of a legal matter's significance or importance: setting legal precedent, seminal nature of the work, complexity, money involved.⁹ It is mostly practitioners at partnership level that head these types of matters.

A review of the websites for each firm confirmed that most of the lawyers named in the directories are partners, although a few consultants and senior associates are also named. In gender terms, the partnership statistics for the "top 6" firms are as follows:¹⁰

Name of firm	Number of female partners	Total number of partners
Bell Gully	4	46
Russell McVeagh	4	37
Chapman Tripp	5	50
Simpson Grierson	10	48
Buddle Findlay	6	38
Minter Ellison Rudd Watts	10	34

As there are fewer female partners than male partners in these firms, there are fewer women who will be involved at a senior level in the types of work that are recognised as significant by the directories. It is possible that this in turn translates into the low number of women identified as "leading lawyers" in their area of practice.

Chambers Global also states that:

*"the qualities on which rankings are assessed include technical legal ability, professional conduct, client service, commercial awareness/astuteness, diligence, commitment, and other qualities most valued by the client."*¹¹

It cannot be said that female practitioners do not possess these skills, but it is possible that they do not have sufficient opportunity to demonstrate them in the types of work they are exposed to, or that their skills are readily demonstrated in the course of their work but are not readily acknowledged by their firm or their peers.

⁸ http://www.legal500.com/legal500_html/as500/research/submissions_asia07.pdf

⁹ <http://www.chambersandpartners.com/global/submission-guidelines.aspx>.

¹⁰ Information compiled from partnership listings on each firm's website as at 3 April 2007.

¹¹ <http://www.chambersandpartners.com/global/research-ranking.aspx>.

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Representation of Women Lawyers in Legal Directories

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Lack of professional networks

Researchers for the directories review submissions from firms and obtain peer feedback about other practitioners. It is possible that women's lack of access to professional networks may affect their chances of being put forward for consideration by the directories. This was recognised by Karen Mathias, President Elect of the American Bar Association, in her speech at the third World Women Lawyers Conference (London, June 2006), when she stated that it is a myth that if you are good you will receive the appropriate reward. Her view was that informal networks still lead to promotion (or, in this case, recognition), and that women often lack access to these informal channels.

Skills for self-promotion are also an important factor. Certain practitioners I interviewed indicated that it can be difficult to "break into" the listings, as often it is the same high-level practitioners who are consistently named. It seems others often "fly under the radar", because they lack the confidence to put themselves forward and are not involved in the "big deals". This can of course apply to men as well as women.

The general consensus was that male practitioners have very peer-orientated networks, and that the directories can only work with the information they receive. It is therefore possible that male practitioners will recommend mainly other male practitioners for listing in the directories (although this is not always the case), if only because they are not as aware of the involvement of women lawyers in the same practice area.

Consistency and profile

This can be summarised very simply: in order to be named, you have to be known. In order to be recognised by clients and colleagues, lawyers need a high profile in their area of practice, which is often built and maintained through continuity in their careers. This aspect may prove more difficult for women if they choose to take time out, or work part-time, in order to raise children or care for elderly family members, thereby "interrupting" their career path. They may then not be as well known or have maintained the same client and professional contacts if they have returned to practice after being away from the profession, or if they are working part-time and refuse to be available at all times.

However, this is not always the case. Some of the senior women practitioners listed in the directories work either 4 days a week, or 5 days a week from 9:00 am to 3:00 pm, and it is encouraging to see that they have been able to balance this with their high-profile career path.

Conclusion

The under-representation of women lawyers in legal directories is not only an issue in itself, in terms of marketing and recognition, but is indicative of other factors affecting women in the legal profession, and perhaps especially women practising in large firms, as discussed above. We therefore raise this issue as a matter for interest and discussion among our members and the wider legal profession.

PERSPECTIVES ON FLEXIBLE WORKING PRACTICES FOR WOMEN LAWYERS

On a cold, stormy night in March, 60 women lawyers gathered to hear from a panel of 3 women talking about their perspectives on flexible working practices for women. Chapman Tripp kindly provided us with full sponsorship for the event, which enabled us to charge a reduced ticket price.

Chaired by executive member Lucy Riddiford, our 3 speakers led an interesting discussion on how to combine a challenging legal career with Motherhood, although their perspectives also applied to women choosing flexible working practices for other reasons.

The first speaker was Maria Dew, commercial barrister and mother of two young children. Maria works four days a week, taking Wednesday as her "day on" with her children. Maria's husband also works 4 days a week and she did say that having a supportive partner makes combining a career and a family much more feasible. Maria described being at the bar as the best kept secret for women, saying that she felt being self-employed gave her much more scope for working when and how she needs to.

Maria made submissions last year on AWLA's behalf on the Flexible Working Hours Bill and she also spoke about this. This has gone back to the drawing board following the select committee process, but it's likely to return in another form. Although limited to those wanting to work part time due to child care responsibilities for under fives or disabled children, Maria indicated that this was likely to ensure that the framework was passed and ultimately it could be broadened to those wishing to work part time for other reasons (as in the UK).

Maria was followed by Shan Wilson, employment partner at Simpson Grierson who also has two young boys. Shan works full time, but is very strict about getting home at 6pm each day. She echoed Maria's comments about the need to have a supportive partner. Shan gave some interesting views on Simpson Grierson's approach to people working part time. Simpson Grierson does have scope for part time partners and has a number of staff members who do not work full time. In terms of making it happen, she emphasised that communication with your supervising partner and human resources team are critical. Combining equity partnership with working part-time will be challenging

in view of the fact that entry into partnership will be based on a business case, but it's not impossible.

Our third speaker was Kim Burkhart, litigation partner at Shieff Angland. Kim joined the partnership of Shieff Angland 9 years ago. Her son was less than a year old and she was pretty honest with the partners that she intended to have another child, which she did a couple of years later. Kim joined the partnership as a three day a week partner and has remained working on that basis, even though both of her children are now at school. Shieff Angland has a number of staff members who work less than 5 days a week, for a range of reasons, including one who has a passion for horse riding and another with a passion for writing.

A number of themes emerged from the 3 speakers:

- If you're going to combine a career and a family, it is crucial to have good back up support, whether from a partner, or family and friends.
- All of our speakers had nannies and felt that this was the right choice for their families, but they recognised that this is a more expensive option.
- It can be easier to ensure that you have regular hours when you are a partner or senior staff member, because that way you can delegate to a team, rather than being delegated to. Both Shan and Kim emphasised that the support of a good team is key.
- All recognised that working less than 5 days a week in the office is likely to mean more evening and weekend work.
- Blackberry – friend or foe? Shan was the only panellist with a Blackberry, but all had email capability at home. Both Maria and Kim had used their mobile phones to good effect, dialling into judicial conferences with children in the background (although they neither wanted to make that a habit!) All felt that email at home and mobile phones were necessary, but they were adamant that we should not let technology rule our lives.

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Perspectives on Flexible Working Practices for Women Lawyers

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- Be honest with yourself about what you want to do and can achieve. Partnership in a big firm is becoming more difficult to attain, even if you plan to work full time. Law firms are businesses and as such entry to partnership will need to be justified by a business case. If partnership is your goal, then you may need to wait until you are in a position to work full time, or perhaps go to a smaller firm, which may not have such a fixed partnership deed. However, many partnerships do now allow part time partners and if you are in a specific niche, or have a team that is willing to support your partnership aspirations, then it can be possible.
 - If you want to work part time, communicate with your supervising partner and human resources team, so that they can help you achieve what you need. You'll need to have a compelling case, so think carefully about the reasons for wanting flexible hours and how you can make it work, both for you, but also for your employer.
 - Don't overthink it! There's no point worrying about how you are going to combine partnership with a family until you are confronted with that situation – when you are you'll be able to work it out. That said, making strategic decisions about your area of practice at an early stage of your career is smart.
 - All agreed that moving forward, with partnership (in the big firms at least) becoming harder to achieve, alternative career paths, including part time work, will become more common for both men and women. Sadly, it's likely that when more men want to work part time, it will become more acceptable for all.
- One of the guests was from the EEO Trust and she made some interesting comments about the fact that there remain many challenges for women wishing to combine partnership with families.
- AWLA would like to thank all the speakers, who generously gave up evening time with their families to come and talk to us.

UPCOMING EVENTS

Thursday 31 May

Dr Jackie Blue

*National List MP for Mt Roskill
& Women's Affairs Spokeswoman*

Dr Jackie Blue is NZ's first breast physician and a mother of two school-aged children.

She will talk to AWLA on the National Party's policies if they are elected to government.

Thursday 14 June

Inaugural Dame Silvia Cartwright Lecture

First Lecture in this Series to be presented by Dame Silvia Cartwright.

Time and venue to be advised.

X V X: REASONS PARTNERS DIVIDE FUNCTIONS NOT RELEVANT TO LUMP SUM AWARDS WHEN POST SEPARATION ECONOMIC DISPARITY EXISTS

“...reasons underpinning the division of functions in a relationship, when deciding whether the presumption of 50/50 split of relationship property should be adjusted due to unequal income and living standards post separation (“the s15 issue”).”

“He also held the Family Court had used the wrong point of reference for measuring any disparity. Measurement is as at the time of separation, not at the time of the Family Court hearing...”

Members will recall that in 2006 AWLA had sought leave to intervene in an appeal from the Family Court to the High Court (leave being refused). The appeal has now been determined.

The decision in *X v X* is the first time the Court has been squarely faced with determining an important point of law under new relationship property legislation (enacted in 2002 but amending the Property (Relationships) Act 1976).

Briefly AWLA's interest in the dispute arose as follows. While the case concerned a range of issues, the issue of interest to AWLA was whether the Family Court was correct when it took account of the **reasons** underpinning the division of functions in a relationship, when deciding whether the presumption of 50/50 split of relationship property should be adjusted due to unequal income and living standards post separation (“*the s15 issue*”). After robust debate at AWLA Executive level (and within the membership) AWLA decided that its constitutional mandate of working for “*the reform of the law and the administration of the law as it affects women and children*” warranted intervention. The objective was to represent an interest in the outcome that was wider than the direct interests of the parties. The Court of Appeal had previously accepted that AWLA was a suitable intervener (with others) in a case involving a similar legal point, but in relation to legislation that predated the pre 2002 changes to relationship property law. Ultimately Justice Heath refused leave to intervene in the circumstances of *X v X* (refer AWLA newsletter of August 2006 explaining the reasons for that outcome).

The appeal from the Family Court decision was determined by Justice Hansen on 8 March 2007. His judgment sets out the background facts and concludes with some important guiding principles in relation to the s15 issue.

Factual background

Mr and Mrs X had been married for 21 years when they separated. Mr X was a high-earning business executive, while Mrs X had stopped paid employment after their two children were born, about 7 years into the marriage.

Mrs X sought an award under s15 of the Property (Relationships) Act 1976. As above, that section was enacted as part of 2002 revision to the legislation. The provision was designed to address the adverse effects of post separation economic disparity. That section requires four things to be established:

- First, disparity of income and living standards must be established
- Second, that disparity must be because of the effects of the division of functions in the relationship (i.e. a causation test applied)
- Third, the Court must be satisfied that an award that displaced the usual 50/50 division of assets was “just”
- Finally, the Court must determine the value of any lump sum payment to the disadvantaged partner or decide what asset should be transferred from one partner to the other.

Mrs X contended that she had stopped work and devoted herself to the raising of her two children of the marriage and supporting her husband in his career. Had she not done so, she argued she would have achieved similar earnings to those of her husband. Mr X maintained that Mrs X had **chosen** to forego her career, his higher earnings enabling her to choose between paying for childcare or remaining out of the workforce.

In the Family Court, Judge Clarkson decided that Mrs X was not entitled to an award under s15. A significant factor in that that outcome was that the Family Court viewed any disparity as a result of a **choice** Mrs X had made (to stay home with the children), and was not a result of the division of functions in the relationship.

The High Court decision

Justice Hansen concluded that there would be disparity of living standards (reversing the Family Court on this point). He also held the Family Court had used the wrong point of reference for measuring any disparity. Measurement is as at the time of separation, not at the time of the Family Court hearing (the measure the lower Court had adopted).

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X v Y: Reasons Partners Divide Functions Not Relevant to Lump Sum Awards When Post Separation Economic Disparity Exists

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Justice Hansen addressed the issue of whether the Court should inquire into the reasons for the division of functions within the relationship. He concluded:

"it is not for the Court to suggest that at some point in the marriage a different choice could or should have been made, even if greater opportunities then existed. That is... to substitute a retrospective judgment of when it is reasonable for a person to re-enter the workforce for the joint decision of the parties."

Significantly, Justice Hansen concluded that the division of functions need not be the *only* cause of the disparity, as long as it is a substantial or more than minor contributing cause, an award under s15 was a potential option.

Applying that approach to the facts before him, Hansen J ruled that the element of choice of role within the family did not preclude an award under s 15. On the facts Hansen J determined that the division of roles in the marriage had resulted in economic disparity and *"the causal link between the economic disparity and the division of roles in the marriage could not be clearer."*

In relation to whether the Court should exercise its discretion (the *"is it just to do so"* inquiry) Justice Hansen disagreed with the Family Court. Where

the lower Court saw that there would be an apparent injustice in compensating Mrs X when she had already had the "advantage" of staying out of the paid workforce, and Mr X had had the "disadvantage" of "irrecoverable lost time with his children", the High Court took a different view. Justice Hansen stated:

"[i]t is no part of the Court's role under the Act to place a value of the respective roles of husband and wife. ...The object of s 15 would be frustrated if an award could be declined because of the perceived non-economic benefits and disadvantages associated with the division of roles in the marriage."

That approach was seen to accord with the purpose of the Act, namely that the Act recognised that all forms of contribution to the marriage partnership are to be treated as equal. Justice Hansen found that an error in the Family Court was that the disparity of earning capacity, which had justified an award under s 15, was then used as a basis to refuse to exercise the discretion in favour of a remedy. In his view, a remedy should be granted. However he reverted the matter to the Family Court to determine the value of any lump sum payment to Mrs X.

Case comment by AWLA Executive member Katherine Anderson and AWLA member Sunita Patel.

2007 Auckland Writers & Readers Festival 24–27 May 2007

Writers featured include Rachel Seiffert, Lionel Shriver, Tim Winton, Richard E. Grant, Richard Ford, Vikram Chandra, Paul Broks, Pico Iyer, Kate Grenville, Joanne Harris, Will Hutton, Xinran and Don Winslow.

You can see more about the festival at www.writersfestival.co.nz

International Women's Day

Sabrina Muck

International Women's Day is an occasion marked by groups and individuals around the world on 8 March each year. This date is also commemorated at the United Nations and is designated as a national holiday in many countries. This article will briefly discuss the meaning and intent of International Women's Day, and how the day was marked in New Zealand this year.

International Women's Day was created in the early 1900s as part of socialist movements in the United States and Europe. It is rooted in the centuries-old struggle of women to participate in society on an equal footing with men. Since then, International Women's Day has assumed a global dimension for women in developed and developing countries alike.

International Women's Day is a day to inspire women and celebrate their achievements. It is a time to reflect on progress made, to call for change and to celebrate acts of courage and determination by ordinary women who have played a role in the history of women's rights.

The theme for International Women's Day 2007 was "Ending Impunity for Violence against Women". In New Zealand, the day was officially marked by the UNIFEM breakfast at Ellerslie Racecourse in Auckland, and a breakfast at the Grand Hall, Parliament Buildings, Wellington. International Women's Day was also marked by protests in Auckland and Wellington in response to the recent police rape trials.

Winnie Laban gave the speech at the Wellington breakfast. She said:

"Violence in the home and other forms of violence against women is a national disgrace. It happens because as a society we continue to tolerate it – to allow the perpetrators of that violence to avoid accepting the full consequences of their actions. This is why the theme is 'ending impunity'. It means holding people to account for their action or inaction. It also means that we as a society have to stop ignoring violence or pretending that it is someone else's problem."

The full text of Winnie's speech is available at www.winnie.org.nz/speeches/international_womens_day_brea.

The speaker at the Auckland breakfast was Shamima Ali, the Fijian Women's Crisis Centre Co-ordinator. Her candid and uncompromising speech addressed the problem of violence against women and children in the Pacific, and cultural and

institutional responses to the issue. Her comments seem just as relevant to New Zealand. She said:

"There have been many achievements in terms of legislative reform, harsher penalties, increased services for women escaping violence, etc. However, these achievements have been marred by reactionary policies, political conflict and engrained attitudes which hinder the true empowerment of women who seek recourse or justice through the systems available to them."

She went on to say:

"On the surface, attitudes have changed – people will say that violence against women is wrong, but when it comes to how they respond to individual cases, culture-bound attitudes and traditions propel people to judge women and support perpetrators therefore shifting the blame from the perpetrator to the victim/survivor. This fosters an environment where perpetrators know they can thrive. At an institutional level, the unfriendly environment, slow responses and inefficiency combined with entrenched attitudes actually encourage impunity for violence against women."

Shamima discussed specific examples of female complainants within the Fijian justice system, and the initiatives of the Fijian Women's Crisis Centre in their work on violence against women in Fiji and the Pacific. The full text of her speech is available at <http://www.unifem.org.nz/Shamima%20Ali%20%20IWD-2007.pdf>.

The United Nations also commemorates International Women's Day. Over the years, United Nations action for the advancement of women has taken four directions: promotion of legal measures; mobilisation of public opinion and international action; training and research; and direct assistance to disadvantaged groups. Today a central organising principle of the work of the United Nations is that no enduring solution to society's most threatening social, economic and political problems can be found without the full participation, and the full empowerment, of the world's women.

International Women's Day encourages us all to do our bit to ensure that the future for girls is bright, equal, safe and rewarding – to make every day International Women's Day.

Further information about International Women's Day is available at www.internationalwomensday.com

THE PROSTITUTION REFORM ACT 2003:¹ Social enlightenment or Pandora's Box?

A Synopsis of the Essay of the AWLA Writing Prize Winner – Bridgette White

Prostitution is not only the world's oldest profession, it is also one of the most controversial and socially complex industries in our society. This article is based upon 10,000 word paper written in 2005, which provides an indepth analysis of the prostitution industry in New Zealand and the effects that the Prostitution Reform Act 2003 has had on the industry.

In examining whether the PRA protects women from harm or in fact fosters the very afflictions that it purports to destroy the three questions most frequently asked in relation to this topic are:

- 1) Has decriminalisation taken workers off the streets?
- 2) Has there been an increase in prostitution?
- 3) Has the PRA reduced illegal prostitution?

These three areas have been summarised for this article.²

Has decriminalisation taken workers off the streets?

Advocates for decriminalisation said that the numbers of sex workers soliciting on the street would decrease as there would be "safer" options available.³ However as evidence suggests, brothels neither take girls off the streets nor necessarily provide a safer option. In 2001 only 3% of prostitutes worked the streets but in 2003 this had risen to 11%.⁴ The numbers of workers in parlours had actually decreased by 1% from 45% to 44%.⁵

One explanation for this is that respectable brothels will not employ street girls because more often than not, the reason they are on the streets is because they are on drugs.⁶ A sex worker interviewed in Christchurch by the Maxim Institute said another reason women stay out of parlours is that "half the appeal is that prostitution is underground, there's no tax and no-one knows how much you're making. Solo mums wouldn't be able to be paid under the table."⁷ One study of sex workers' lives conducted by Libby Plumridge showed that workers in massage parlours initially "stressed two major attractions: more money, and more freedom."⁸ Repeat interviews conducted over time with these women however, showed this line of reasoning "to be matched more by rhetoric than reality."⁹

Those promoting legalized prostitution suggest that women will be safer in

indoor prostitution than on the streets. However, women often feel safer on the streets compared to brothels where they are not allowed to reject clients. Moreover brothel owners generally protect their clients' identities, making prosecution difficult. Women in Chicago reported the same frequency of rape in escort and in street prostitution.¹⁰ While there are some studies that contradict this, they must be interpreted cautiously. As one study noted they were only able to get data from 50% of the city's brothels.¹¹ In the other 50% the pimps controlling the brothels refused entry to researchers. It is in these brothels the women probably suffered the most violence.¹² Most New Zealand research: ...found more physical violence in street prostitution. However, there is no difference in the incidence of PTSD in these two types of prostitution, suggesting that the emotional experience of prostitution is intrinsically traumatizing regardless of its indoor or outdoor location.¹³

Often parlours can even be more dangerous than the streets. This is not only because brothels frequently have gang affiliations, but because the girls are not as protected from their clients as popular opinion would maintain. This is due to a premise that what goes on in the room is not the manager's business.¹⁴ The legal situation prior to the 2003 Act served to make the workers "dependent on managers who were not bound to look after their interests."¹⁵ The Law Review Committee reports that PRA has not decreased the exploitation of sex workers in parlours.

Police interviewed by the Law Review Committee expressed concern about systems where:

Workers in parlours were fined for turning up late or not doing what a client wanted them to do. Parlour owners held back credit or wages and used this to pressure workers to come in when sick. Some parlours also required a bond for the privilege of working there which was not paid back if the worker left after a short period.¹⁶

A brothel policy of fining women when they turn men down is not uncommon.¹⁷ This in clear defiance of s 17 of the PRA,

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1 The Prostitution Reform Act 2003 will hereinafter be referred to as the "PRA" in the interests of brevity.

2 Also note that given the underground and fluid nature of the industry, there is a very real difficulty in obtaining accurate statistics of the trade. All statistics should be approached with caution. As a result, much of the evidence reported in this paper is accounts of trends by those involved in the industry and anecdotal evidence.

3 Tim Barnett "Tim Barnett: Prostitution Law Reform" <<http://www.timbarnett.org.nz/prostitution.htm>> (At 08/03/2005).

4 Prostitution Law Review Committee *The Nature and Extent of the Sex Industry in New Zealand: An estimation* (2005).

5 Ibid.

6 Maxim Institute *Submission regarding the Prostitution Reform Bill to the Justice and Electoral Committee (New Zealand)* "The Prostitution Reform Bill or a better way?" (2002).

7 Ibid. p. 23.

8 Plumridge, E; G. Abel *A 'segmented' sex industry in New Zealand: sexual and personal safety of female sex workers* (2001) 25 Australian and New Zealand Journal of Public Health 78.

9 Ibid. p 79.

10 Melissa Farley, "Bad for the Body, Bad for the Heart: Prostitution Harms Women Even if Legalized or Decriminalized" *Violence Against Women*, Vol. 10 No. 10, October 2004 1087-1125, p 1099.

11 Ibid.

12 Ibid. p 1095.

13 Ibid. p 1100.

14 Ibid. p 1095.

15 Ibid. p 1096.

16 Prostitution Law Review Committee Report. See above n 4. p37.

17 Bridgette White, Interview with Debbie Baker from Streetreach (95 Mt Eden Rd, Auckland, at 10am Thursday 4th August 2005).

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which reserves the worker's right to refuse services at any time. Yet there have been no legal ramifications for brothel keepers exercising these deplorable practises.

For many, the earnings of working in a brothel were much less than expected. Some workers do not "get their fair share of money charged in some parlours – one business was known to charge the client \$145 per hour but the worker only got \$45."¹⁸ One woman, after working for a month in her parlour, said she could not afford even to go to work the next month.¹⁹ This is a situation often exacerbated by the costs of shift fees, transport to and from work, and child care expenses.²⁰ The NZPC confirms that sex workers are "often exploited in their employment conditions" despite decriminalisation.²¹

Legalised brothels in West Germany and Nevada have also "institutionalised pimping by the state, making it harder for women to keep their earnings or bargain to determine their working conditions."²²

On a more practical note, regardless of managerial attitudes there is a certain danger to prostitution that cannot be removed wherever the activity is held. A buzzer at one end of the room will not stop a client if he suddenly decides to remove the condom or have sex with her in a way that was not agreed to.²³ A study of legal reforms in Australia showed that decriminalisation of the industry does not decrease the violence experienced by prostitutes in paid sexual encounters.²⁴

Has there been an increase in prostitution?

Before the PRA a study conducted by the National Bureau of Criminal Intelligence of the New Zealand Police in 2001 which was prompted by the Prostitution Reform Bill identified a total of 306 businesses and just over 4,272 sex workers.²⁵ A similar survey conducted in two years later in June 2003 identified a total of 383 sex businesses in the areas surveyed and 5,932 sex workers.²⁶ This is a 28% increase in workers and a 21% increase in registered brothels.

Anecdotal evidence confirms this. Debbie Baker from Streetreach, often drives the streets at nights talking and offering support to the girls. She said that immediately after the Act was passed the increase of the number of sex workers on the streets was "huge... huge."²⁷

The legislative approach New Zealand has taken is similar to that in New South

Wales where there have been reports of massive increases in numbers.²⁸ The New Zealand Select Committee report in regard to the increasingly alarming situation admitted that in 1999 "a review of the law [in NSW] indicated there was community concern about the number and location of brothels and the lack of controls over them."²⁹ There have been reports of an explosion in the industry by as much as 400%.³⁰

However the Select Committee claimed that the growth in the industry is only apparent "because it becomes less hidden in nature."³¹ The committee admitted that it "would appear logical that the removal of criminal sanctions around prostitution means that some people who would not otherwise become involved in prostitution will do so."³² In any case, the committee found it "unlikely that decriminalisation in New Zealand would result in a four fold increase in the size of the industry."³³

Decriminalisation effectively sends the message that prostitution is a legitimate option for girls to take.³⁴ Obviously this will not be the effect for all women. However those involved in the industry say that often the mere fact that it is illegal is a sufficient deterrent for many younger girls.³⁵ Raymond Miller, a NZ massage parlour owner for 30 years spoke to the Maxim Institute prior to decriminalisation about the huge number of people that stay away from the industry merely because of "the fear of prosecution."³⁶

Moreover, the message that the industry is legitimate increases the demand for prostitution. The prostitution market is driven by customer demand. For example, during WWII, the Japanese military forced from 100,000 to 200,000 Korean women into prostitution to service their military.³⁷ The increase in demand in turn increases the supply.

Has the PRA reduced illegal prostitution?

A decriminalised and duly regulated environment was supposed to pull the industry out of the underground and hence make it safer.³⁸ However, the Law Review Committee found that the number of illegal sex premises operating has "significantly" increased.³⁹ This finding is in line with evidence from the post-decriminalised environment overseas. In Hamburg only 12% of sex workers are estimated to work in the legalised area.⁴⁰

18 Prostitution Law Review Committee Report. See above n 4. p 37.

19 Ibid.

20 Ibid.

21 Ibid. p 52.

22 Ibid.

23 Interview with Debbie Baker. See above n 17.

24 Suzanne Hatty *Violence Against Prostitute Women: Social and Legal Dilemmas* [1989] Australian Journal of Social Issues 235.

25 However this study only canvassed the four main metropolitan areas and while these probably include the main concentrations of the sex industry – it is not an accurate representation of the number of the countries sex workers.

26 Prostitution Law Review Committee Report. See above n 4. P 24.

27 Interview with Debbie Baker. See above n 17.

28 Maxim Institute Submission. See above n 6.

29 Justice and Electoral Committee Report on the Prostitution Reform Bill (New Zealand) (2002). p. 5

30 Maxim Institute Submission. See above n 6.

31 Justice and Electoral Committee Report. See above n 29. p. 7

32 Ibid. p 5.

33 Ibid. p 5.

34 Maxim Institute Submission. See above n 6.

35 Interview with Debbie Baker. See above n 17.

36 Maxim Institute Submission. See above n 6. p.5

37 Kathleen Barry, *The Prostitution of Sexuality* (New York University Press, New York, 1995).

38 Tim Barnett "Tim Barnett: Prostitution Law Reform" <<http://www.timbarnett.org.nz/prostitution.htm>> (At 08/03/2005)

39 Prostitution Law Review Committee Report. See above n 4. p 24

40 Maxim Institute Submission. See above n 6.

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In New South Wales studies illustrate a massive increase in the numbers engaging in the sex industry and a similar pattern of increasing illegal establishments. NSW decriminalised brothel keeping in 1995. By 1999 the number of operating brothels had tripled and there was an estimated 10,000 sex workers.⁴¹ This has occurred despite some very “stringent controls supposedly introduced.”⁴² By 2000, NSW had 800 brothels, half of which were illegal.⁴³

This also occurred in Victoria where prostitution was legalised in the mid 1980’s. An Advisory Group was set up to assess the concerns of street prostitution. The current state of the law was regarded as “untenable” and in dire need of “immediate reform.”⁴⁴ Policing strategies “have not curbed street sex activity.”⁴⁵ The numbers have escalated to the point that “illegal prostitution in Victoria is now twice the size of the legal licensed trade.”⁴⁶ The Attorney-General of Australia has conceded that brothel legalisation has not prevented the growth of a substantial illegal sex industry.⁴⁷ In Queensland, the President of the Queensland Adult Business Association put the number of illegal operators to licensed premises at a ratio of 100 to 1.⁴⁸ Police attempts at enforcement are futile as “they get raided, they get closed down and they’re up and running again the next week. The police are trying but they’re terribly under-resourced.”⁴⁹

The numbers of illegal sex workers also frustrates the intended objective of allowing prostitutes to work free of a criminal record in order to help them leave the industry. Regulation merely creates a new form of criminal activity. Prostitutes are merely being furnished with a *different* criminal offence.

This indicates that the industry has not been taken out of the ‘underground’ as expected but has been further pushed there. Due to the sex industry’s inextricable ties to illegal activities such as drugs and organised crime, it will never be pulled out of the underground environment in which it operates. This further amplifies the argument that the problems with prostitution are social and therefore must be solved by society. Attempts to deal with them legislatively will not only be futile but will even worsen the situation.

Conclusion:

Prostitution is not a legal problem but a social problem. It has been argued that prostitution itself is not inherently harmful or exploitative, but it is the patriarchal context in which it currently operates that imports this violence. Decriminalisation would be appropriate if social structures were in place to combat the actual problems: drugs, violence towards women and economic inequality.⁵⁰ Women need the economic power to leave and explore other life options and the social systems must be in place to allow them to do so. Moreover, one of Western society’s greatest failures is to women in violent relationships. In looking at what we can do to help – the answer ‘changing the foundations on which the entire of western society is based’ is futile. Such a change may take centuries and law reform will do nothing until society has reformed itself. Law on its own cannot change values of society that have been entrenched by centuries of ideology and culture. Without social structures in place to battle these issues, then decriminalisation of prostitution will continue to destroy the women of the industry.

The arguments for decriminalisation seem logical and work in theory but not in practise. The reasons why prostitution should not be decriminalised are numerous, complex and perhaps harder to understand. When one reads the arguments for decriminalisation, they appear rational, logical and sound. However when one tries to marry these with what is occurring in reality, these theoretical arguments entirely lose their force. The complex reality of drugs, poverty, abuse and entrapment does not fit into hypothetical arguments about contract enforcement.

The PRA allows the industry to thrive where it should be stifled. While the past law attacked the sex worker, the new law must attack the industry. Some sponsors of the bill admitted, “it’s going to be the owners or the operators [of brothels and other sex businesses] who are going to be the long-term beneficiaries [of decriminalization.]”⁵¹ For the workers on the other hand, it will be a social disaster.

41 Ibid.

42 Ibid.

43 (2000) Hansard, South Australia House of Assembly, (Steve Conduous) pp1834–1836.

44 Maxim Institute Submission. See above n 6. p. 16.

45 Ibid. p 12.

46 Ibid. p 12.

47 Ibid. p 12.

48 Ibid.

49 Dianne Butler “Sex Trade Crisis” *The Sunday Mail* (Brisbane, Australia, 15 Sept 2002).

50 *Prostitution as violence against women: NGO Stonewalling in Beijing and elsewhere* (1998) 21 *Womens Studies International Forum* 1.

51 Melissa Farley, Isin Baral, Merab Kiremire, Ufuk Sezgin, *Prostitution in Five Countries: Violence and Posttraumatic Stress Disorder* (1998) *Feminism & Psychology* 405.p 5.

THE ADLS COUNCIL WANTS YOU! Or Shall I (How do I) stand for the ADLS Council?

By Avy Judelson

“Women lawyers just need to understand the benefits and seize the opportunities. Too many women lawyers hold back. ...”

Have you ever thought about making a contribution to your fellow practitioners? Have you been at a loss as to how to take the first step towards having some input into the ADLS's governing body?

Margaret Malcolm, the Executive Director of the Auckland District Law Society and Laura O’Gorman, a partner at Buddle Findlay, and present ADLS Council member, have kindly agreed to be interviewed by AWLA. Below they share their advice and views with us.

Interview with Margaret Malcolm (MM), Executive Director, ADLS:

AWLA: *To what do you attribute the small number of women putting themselves forward for the ADLS Council in the last election?*

MM: Women lawyers just need to understand the benefits and seize the opportunities. Too many women lawyers hold back. Several years ago the ADLS assisted in setting up the AWLA and the creche. There were a number of women involved at the time, like a present High Court Justice and a prominent QC, who were Council members. They worked hard to garner the support to have these initiatives passed.

AWLA: *Are there any measures in place to encourage women to stand for office?*

MM: I’ve been at ADLS for 17 years and there have always been some women on the Council. When the numbers are down, we generally have an informal drive to encourage women to stand. While there have always been a few women on the Council, it would be nice to have a few more to give a broader female perspective.

AWLA: *How would you suggest a woman (or anyone) go about running for the Council?*

MM: A good stepping stone, but not an essential requirement, is through Council committees. Anyone can request to be on a committee. Once participating on a committee, seeing how that works and enjoying providing their input, often members make their way to the Council.

AWLA: *How do you see the new Lawyers and Conveyancers Act 2006 impacting on the ADLS Council?*

MM: As you know, there is a proposal to create a single unified structure under NZLS instead of having 14 district law societies. However, the ADLS will not disappear. If this proposal goes through, I envision it being the Auckland regional branch of NZLS. There would still be committees and a Council to look after Auckland issues. These would have direct connections into the national committees and NZLS Council. So, while it may have an impact on the committee structure, I hope it would not make ADLS obsolete. There will always be a need for the ‘Auckland’ voice.

AWLA: *You indicated that you have been asked if the Council had contemplated having a seat on the Council for an AWLA member. Would you care to comment?*

MM: At present the ADLS Council has 5 special seats:

- Northern Region
- Coromandel
- Recently Admitted members
- Corporate Lawyers
- Suburban

To date there has been no need for a special AWLA seat as there are usually 2–3 women on the Council. So it has not seemed necessary to have a special link to AWLA. It has worked well thus far and there is no need seen as yet for a special AWLA seat.

AWLA: *What is the time commitment expected of a Council member?*

MM: It is about 6–7 hours per month. There is a Council meeting once a month for 2–3 hours. Council members are on committees, so there are 2–3 lunchtime meetings per month. Our present female Council members are: Lyn Lim, who has an 8 year old child and twin boys born last year; Laura O’Gorman, who I understand you’ve spoken with and whose interview follows; Jennie Vickers, the Corporate representative; and Jacqueline Lethbridge, the Recently Admitted Member’s representative.

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The key is accepting that you can do it. Obviously, you must be organised, have support teams and the right attitude yourself and from those around you. It can be done and contributes greatly to the Council. One former female Council member, has 4 children. She was pregnant when she was in a senior role in the Council. She coped well with children and the job. Attitude is the key.

If anyone is interested they can ring me and I am happy to discuss what's involved.

Interview with Laura O'Gorman (LO), partner at Buddle Findlay:

AWLA: *It came up at an AWLA executive meeting that at the elections in February 2007 there were only 2 women standing for General Seats out of 12 available seats on the ADLS Council. We wondered if there was a drive or campaign by the ADLS to encourage more women to stand.*

LO: I have found that the ADLS actively encourages a wide range of representation on the Council so that the interests of different types of practitioners can be heard and represented. It seems nominees for the Council have tended to be mainly male barristers and litigators, with the larger firms also under-represented. The Council has tried to encourage others to put their names forward, including women. When representatives of the ADLS pointed this out to me, I decided to put my name forward to provide more balance.

AWLA: *Why do you believe that more women do not put themselves forward without being specifically shoulder tapped?*

LO: I think that many women are too modest to take the initiative themselves unless someone else promotes them. There are plenty of qualified women. They may be hesitant because they do not know where the votes will come from. I was concerned about that. But the voting papers with profiles of each candidate are sent to all practitioners.

A large number of votes are likely to come from people you don't know who assess from your profile that you have good potential as a Council member and as a representative of their particular interests. People need to put themselves forward and not be shy about it. Women have been on the Council for many years, so you are not really breaking through a barrier here. It would just be good for the Society and the Council to have more women's viewpoints in the mix.

AWLA: *How do you feel about the time commitment?*

LO: Each woman would obviously have to weigh up her own priorities, but it really does not take much time. There is one Council meeting a month from 3:30 to 6 pm, followed by a dinner with guests. The dinner attendance is not compulsory but it is very enjoyable and most Council members attend. Then there are a few 1 hour committee meetings at lunch times and some reading at home to prepare. And that's it.

Although women often have other demands on their time, over the years many female Council members have had families and busy practices and have still managed well. As Margaret Malcolm says, it's all about what you think you can do.

AWLA: *What would you say to a woman considering putting herself forward next year?*

LO: I would absolutely encourage it. She need not be concerned if she does not have committee or Council experience. ADLS is looking for a Council of people who will represent the general body of lawyers, which includes a wide range of different interest groups. The Council should reflect that diversity, to reach and be relevant to as many practitioners as possible. It is the same philosophy that applies to professional roles – the Council benefits from the different perspective that women bring. I would recommend it as a satisfying and interesting role.

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