

CHALLENGES TO WOMEN IN THE NEW MILLENNIUM CONFERENCE

**hosted by the Consulate-General of Japan, Parliament House,
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The Glass Ceiling Exists Only in Women's Minds

Justice M.A. McMurdo

At first I thought whoever said "the glass ceiling exists only in women's minds" must have been a man, but as I thought more about the phrase I saw that if the glass ceiling exists in women's minds, it then becomes a reality. To achieve a just and equitable society we need to remove both the physical glass ceiling and the glass ceiling in the minds of women, men and, importantly, children, that is, we must remove stereotypical images of women and men.

I can speak only of what I know – the glass ceiling as it affects Australian women lawyers, especially in Queensland. The glass ceiling in the legal profession was very real and very low in 1896 when Edith Haynes sought admission as a solicitor in Western Australia. Haynes was allowed by the Barristers and Solicitors Admission Board to have her articles registered and took the preliminary examinations, but was warned that the Board could not guarantee her admission. In time the court refused her right to sit for the final examination because the statute allowed a "person" to be admitted but "person" did not

include women; admission as a solicitor was a privilege which had not been conferred on women, here, in England, the US or anywhere in the English speaking world. If the legislature decides to confer that right on women, then they may be admitted.

Of course, there were no women members of the legislature at that time; women received the right to vote in South Australia in 1894, Western Australia in 1896 and here in Queensland in 1905.

In 1911 in South Australia the *Female Law Practitioners Act* was passed to allow women to practise law but ironically the court used the passing of that Act to refuse Mary Kitson's application to become a Public Notary: under the *Public Notaries Act* which again referred to "any person". The Supreme Court held that no woman however well qualified could be a public notary under that Act.

Queensland's first female solicitor, Agnes McWhinney, was admitted in December 1915, interestingly at a time when huge numbers of men were away at war. She was, as you would expect, a remarkable, strong minded young woman with confidence in her own ability and determined to succeed. The Northern Supreme Court judge, Justice Pope Cooper, was not impressed with the idea of a woman entering his legal profession and became distinctly choleric at the very mention

of her name. He was however unable to fault her or to prevent her admission. She practised as a solicitor in Townsville until 1919 when she left to marry. She did not work as a lawyer again, but was active in community service and eventually became a judge – of cookery! Her salary whilst working as a solicitor was paid entirely to her elder brother Joseph who was a partner in the law firm where she worked but was away serving with the armed forces.¹ Interestingly, the firm which had such foresight and courage to employ Agnes McWhinney did not employ another female articled clerk for over 50 years until 1971. Agnes broke through but the ceiling was quickly repaired and lowered.

Joan Rosanove signed the Roll of Counsel of the Victorian Bar in September 1923. She became a very successful barrister, specialising in family law and was also married and had children. Despite her remarkable career she was unsuccessful in many attempts to gain silk (the appointment as Queen's Counsel is a recognition of excellence as a barrister and the QC or silk is entitled to wear a silk robe). With the retirement of the then Victorian Chief Justice in 1964, in whose hands the gift of silk lay, she finally became a Queen's Counsel, the first Victorian woman QC and only the second

¹ Wilson Ryan and Grose, *a Vintage Century in Townsville* – Dorothy M Gibson-Wilde, Golden Land, Townsville, 1995, 24-27, 40-41.

woman QC in Australia. Joan Rosanove battled prejudice, not only as a woman, but also as a woman of Jewish background. Her comments that to be a successful female lawyer, "You must have the stamina of an ox and a hide like a rhinoceros. And when they kick you in the teeth you must look as if you hadn't noticed." helped me get through difficult moments as a woman barrister and beyond.

Roma Mitchell, now Dame Roma Mitchell, who was admitted to the Bar in South Australia in 1936 ran up a string of firsts. She was Australia's first woman QC, first woman Supreme Court judge, Vice-Chancellor of the University of Adelaide and first woman Governor of South Australia, indeed the first woman to hold Vice-Regal office in Australia. I remember meeting her at a Women Lawyer's function when I was on maternity leave with my first child. My confidence as a lawyer had wavered as I contemplated whether I could continue my career and motherhood. Although she had never had children, she persuaded me with a few words that the new skills I was developing at home would be of great benefit to me as a lawyer. Dame Roma also broke through the ceiling; but such exceptional women did not destroy it or the perception of it in people's minds.

Twenty one years ago I was a foundation member of the Women Lawyers Association of Queensland. We were confident that in time,

perhaps in 20 years, there would be no need for a Women Lawyers Association because women would have full equality within the legal profession; the glass ceiling would be forever shattered. This has not happened despite the fact that for many years at least 50 per cent of law graduates have been women, and women have the best academic results. Why then have women remained under-represented in the higher levels of the legal profession. The reasons are complex. Direct discrimination is rare, but indirect discrimination is endemic. There is an inherent male culture within the legal profession which makes the women who are working as lawyers within it feel different, unusual, outsiders or, as Justice Catherine Branson of the Federal Court of Australia says, they are "running on the edge" of their profession. Largely for these and related reasons, the numbers of women at the Bar have remained proportionately small as have the numbers of women partners in the big and powerful solicitors firms; of the 541 members of the Queensland Bar Association 61 or 11.3 per cent are women and of the 4,525 Queensland solicitors with a practising certificate 1,224 or 27 per cent are women. The proportion of women partners in the big commercial firms is much smaller. In 1998, 55.97 per cent of Queensland law graduates were women and similar statistics have been achieved for many years. The glass ceiling is not just in the mind because when it exists in women's minds it becomes a reality for women, for the legal profession and for the community.

There are always the remarkable exceptions, such as Elizabeth Nosworthy, who been a trail blazing partner in major Brisbane legal firms, a director on important company boards, and the first woman president of the Queensland Law Society. But the exceptions do not remove the glass ceiling.

The number of women members of the judiciary remain disappointingly low. In the Commonwealth jurisdiction, of 7 High Court judges, only one is female; of 48 Federal Court judges only 4 are female, and of 53 Family Court judges, an area traditionally thought to fit the stereotype of a "woman's field", only 12 are female. In Queensland, 4 out of 24 Supreme Court judges; 4 out of 35 District Court judges and 8 out of 73 magistrates are women. The Queensland position has improved dramatically in the last ten years. Until 1991, there were no female judges; now we have women at the head of three important jurisdictions: the Chief Stipendiary Magistrate, the Chief Judge of the District Court and the President of the Court of Appeal are all women.

Things are changing fast in the legal profession in Queensland, individuals are breaking through the glass ceiling, sometimes being pushed through, but the glass ceiling has not yet been removed in

reality or perceptually. Most feminists would argue things are still not changing fast enough.

One of the difficulties for women is that they do not necessarily want to become men; for many women and for some men balance must be reached between professional and home life. In a recent article in The Courier-Mail (16 October 1999), Legal Affairs Reporter, Sue Monk, noted that "lawyers who are working up to 16 hours a day are being encouraged 'to get a life' ... The emphasis on long hours was likely to change with the increasing number of women, who are more attuned to family commitments – and generation Xers, who give a high priority to quality of life." More women in the legal profession should bring recognition that ridiculously long working hours do not necessarily correlate with efficiency; although as in any profession or business there are times when things must get done.

We need more experienced women barristers and solicitors in positions of power and influence and those already there must do all they can to encourage, nurture and mentor other women within the profession. As the number of experienced women in the profession increases, so too will the number of women judges who are usually chosen from this pool of experienced lawyers; it is being recognised that the pool from which judges are chosen need not be limited to

successful male commercial law QCs; as women form a greater proportion of the profession and become more influential there will be a corresponding change in the culture of the legal profession so that it is a friendlier place for young women practitioners. As the culture in the legal profession changes, the profession will be better placed to serve all the public; to understand issues of concern to women and the reasons why so many women who use the justice system have felt alienated from it.

The glass ceiling has been pushed a great deal upwards since Edith Haynes unsuccessfully sought admission as a solicitor in 1896. It has been smashed by a number of talented and strong minded individual women since that time, then repaired, only to be smashed again. This cycle will be broken along with the glass ceiling;- but there is still much work to be done with sledgehammers, lap tops, frying pans, woks and even nail files. Women must work together, not against each other, and must recognise the power of their vote in democracies like Japan and Australia and use that power. The glass ceiling will only cease to exist in reality and in the minds of women and men when the mediocre and the lacklustre female lawyer is able to achieve the same degree of success as the mediocre and lacklustre male lawyer; when lawyers who happen to be women are not referred to as "lady lawyers" or "woman lawyers" or "female lawyers"; when those lawyers who

happen to be women are appointed judges without comment on their gender and when young female lawyers feel just at home in their profession as their young male counterparts. Although we have made "smashing" progress, we must remain vigilant to ensure the holes that have been made in the glass ceiling are never repaired and the remnants are irrevocably removed, both in reality and in people's minds.