

**Northern Territory Women Lawyers Association
Patron's Drinks**

Chief Justice Michael Grant

**Supreme Court Balcony
2 September 2016**

I am both honoured and flattered to be asked to address the Women Lawyers Association this evening. When your Patron and President extended the invitation to me I was at first worried that perhaps I didn't have the necessary qualifications to do so. I then realised that I was both a father and an uncle to a number of women lawyers, and qualified in that sense at least.

We are at an interesting point in history in terms of women's professional achievements – in symbolic terms at least. Inside 10 weeks it is almost certain that women will lead both the United Kingdom and the United States. It is highly likely that before the end of this year Australia will have its first female Chief Justice of the High Court.

Had it not been for the unanticipated defeat of the Member for Nhulunbuy at last week's election, the numbers of men and women in the Northern Territory Legislative Assembly would have been practically equal. Two days ago a female Attorney-General was sworn in. Two of our last three Attorneys have been female. In July this year a woman was appointed as Solicitor-General for the Northern Territory.

We do some things very well in the Territory in terms of the engagement between our institutions and our professional women. That is probably because we have always been a relatively pluralistic community.

In the 1960s we had our first Chinese Lord Mayor at a time when that would have been inconceivable in other parts of Australia. This was at a time when the major political parties were still debating the removal of the White Australia Policy from legislation and platforms.

Not long after Harry Chan, Ella Stack was elected as Darwin's mayor, and went on to become the first Lord Mayor. It was at that time unusual to have women in elected government positions, but Ella Stack's claim was irresistible. She graduated with degrees in medicine and surgery from the University of Sydney in 1956 and came to Darwin not long after that. She practised as an obstetrician GP and continued delivering babies even after she was elected as mayor. She delivered a large proportion of the babies born in the Top End from 1960 onwards – including me.

When I started practice with the Crown Solicitor's Office in Darwin it was already well advanced in terms of its engagement with professional women. Juliette Shields was in charge of the Commercial Division, and had been for longer than anybody could remember. Meredith Harrison was in charge of the Litigation Division, and went on to become the Chief Executive Officer of the Department of Justice. Leanne Robertson was in charge of the Policy Division.

I don't think I'm imagining it in recalling that their influences engendered a more reflective and less reflexive approach to the practice of law. Only Prosecutions remained an enclave of testosterone surplus; which just goes to show that the more things change the more they stay the same. Although I suspect that with the rise of prosecutors like Mary Chalmers and those following her, even that will change in the near future.

So there is no doubt that there are some things that the Territory has done very well over an extended period in terms of that engagement. But there are other areas in which we haven't done that well at all. Sally Thomas was appointed as a Magistrate in 1978, as Chief Magistrate in 1986, and then as the first female Judge of this Court in 1992. So far, so good you may think. But we need to temper our self-congratulation by reminding ourselves that the second woman appointed to this Court was Justice Judith Clair Kelly, and that was not until almost 20 years later.

I haven't conducted any sort of audit, but I also suspect that if one surveyed the ranks of the partners in the large private firms in the Territory over the last 25 years or so you would find a similar imbalance. Similarly, male practitioners have predominated in the senior ranks of the private bar. We need to remind ourselves that Sally Gearin, who is here with us tonight, was the first woman to join the Northern Territory Bar – and that was not until 1990. The first woman silk was not appointed until as recently as 2004.

The causes for those imbalances have been comprehensively analysed. It is almost trite to discuss them at this point in our evolution, but necessary nonetheless. The cause most often identified is this notion of “structures” or “cultures” which are antithetical to female advancement. They will change as more women lawyers move into those areas, and they are already changing. They will change in accordance with a broader societal transformation which accommodates diversity and despises prejudice. Like the dinosaurs, such structures or cultures will become extinct.

However I suspect that even with their extinction some things will not change. It is an uncomfortable biological and sociological truth that having children has the very real potential to retard a woman's legal career. The female partners I know in the big Sydney and Melbourne firms are frank and realistic about that. Some go so far as to say that equity partnership and motherhood are entirely incompatible. Others simply say that it will operate as a career setback for a number of years.

There are a number of responses to that truth.

As the earning potential of female legal practitioners has increased, and as the model of male parenting has changed, more men have been prepared to take on primary childcare duties. I know, for example, that Sonia Brownhill SC has only been able to practice at a high level of intensity while having two children due to the assistance of a supportive partner – who has no difficulty in adopting the role of principal carer. But not all of you will be able to find a treasure like that.

Some female practitioners move into government or in-house roles which are more compatible with their lives once children enter the equation. There is nothing wrong

with that. Those areas of practice can be very satisfying, as can academia. I recall during the course of my legal studies many very talented female practitioners with young children who found a niche in academia. As a consequence, I had the good fortune to be lectured by people such as Sue Phillip, Brenda Monaghan, Jenny Blokland and Sally Kift.

Of course, the principal reason that large commercial firms are not particularly accommodating of women with children is that they are driven almost exclusively by the profit imperative. There is almost invariably a direct correlation between the number of hours a person is willing and able to devote to the firm, and the extent to which that person advances the firm's financial position. In a different sense, the same may be said of practice at the bar. During the course of a trial there is usually a direct correlation between the effort a barrister can devote to that trial and the extent to which that barrister advances the client's prospects in it.

These are facts of both life and maths. There are possible ways around those facts. I have always admired the way that Chris Osborne and Peggy Cheong have moulded the Darwin branch of Hunt & Hunt to accommodate their lifestyles and family needs, whilst still allowing them to practice as principals in a busy general firm. But that's not for everybody, and nor should it be.

We all know that there are now many more female than male graduates coming out of our universities. The latest statistics show that approximately 65% of Associates in law firms throughout Australia are female. Despite those figures, I'm not necessarily expecting there to be a corresponding change in the composition of senior partnerships in those large commercial firms. It takes a particular sort of person to spend the best years of his or her life working 12 hours a day six days a week in pursuit of a corporate profit. That's not for a lot of women; and nor is it for a lot of men. Women in particular are less inclined to suffer from some atavistic biological imperative to relentlessly hunt the woolly mammoth. Some women think there are many far better things to do than the grind of an equity partnership. To the extent that is a choice, it is a choice to be respected. It is not dissimilar to the choice I made moving from the private bar to the Solicitor-General's role.

But questions of choice aside, to the extent that there remain structural or cultural barriers which actually prevent women from moving into the senior ranks of the large commercial firms and the bar, they must be identified and removed. That is why organisations such as this Association are crucial to the development of the legal profession.
