

## **Women Barristers - Justice in Limbo<sup>1</sup>**

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The classical symbol of justice is a blindfolded woman holding a set of balancing scales in one hand and a double edged sword, representing both reason and justice, in the other.

‘Justice as fairness’ (Rawls & Kelly 2001) entails a the promise that equal treatment will be given to all regardless of gender, race, identity, wealth, or any other attribute. For the legal system to deliver on this promise, both the processes of the law and the culture of the profession itself are expected to be exemplary reflections of justice.

This article reports on a recent study, undertaken specifically to follow up on the findings of a report written by Rosemary Hunter and Helen McKelvie, which the Victorian Bar Council commissioned in 1998. Victoria University researchers undertook this study, called Working Life at the Bar, in 2009. They used a survey of barristers and ex-barristers in Victoria to collect the experiences of both women and men at the Bar, in part to explore the reasons why many had decided to leave the profession. The research involved semi-structured interviews with a cross section of practicing and non-practicing barristers. As well as drawing out a range of themes, the study provided a unique opportunity to consider how individual

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barristers reflect on the culture and the demands of life at the Bar. The picture that emerged was not one of equality, but of a struggle to meet the demands and expectations of an unyielding workplace culture. The challenges and the conflicts of interest that women (and many men) face in sustaining their working lives in the service of justice were often tied to traditional notions of gender roles.

As this article shows, in the state of Victoria, work at the Bar still reflects continuing gender discrimination and disparities, as well as a culture that is slow to change in response to the more varied needs of its current workforce. There is a subtle and continuing uncertainty about the ability of women with children to reliably fulfil their work as well as their care responsibilities. This impedes women's progress within the profession as all women are subject to such questioning of their ability, doubly so for mothers of young children. Also, many barristers find working life is not compatible with care responsibilities. Although the study included both male and female interviewees, the responses of male barristers lent even more weight to the existence of unequal gender relations at the Victorian Bar. Some spoke of the difficulty of achieving work-life balance to meet caring responsibilities, while others reinforced the view that female barristers worked twice as hard to achieve the same status as their male colleagues.

Viewed overall, working life at the Victorian Bar has been subject to significant change during the last decade. This has been driven, in part, by changes in the wider economy, such as the rapid feminisation of professions in Australia and elsewhere. Meanwhile, policy shifts at a state government level have seen an increasing emphasis on out-of-court settlement for many areas of the law, meaning barristers need to diversify their modes of practice at the same time as their numbers are growing. Also, the families and homes that barristers support through their work changed along with social expectations.

Yet paradoxically, just as Hunter and McKelvie reported in 1998 that the acceptance of women at the Bar had not yet translated into equal opportunities, this study confirms that the situation they described had not changed significantly by 2009. These patterns of reduced participation and slow advancement for women have been partially obscured by the impact of appointments of capable women to serve as judges, one area where there has been a significant improvement in gender equality. While the elevation of women to the Victorian Bench is to be applauded, female barristers who remain at the Bar often struggle to succeed financially and professionally within a conservative, macho and male dominated culture. The current loss of senior women to judicial preferment may also compound the difficulties of junior women in advancing their careers at the Bar.

This study demonstrates that, although women have retained their hard-earned access to a locus of masculine power, 'the jury is out' on whether the culture of justice within the Bar is more than just a performance. It presents findings on three aspects of work culture at the Bar that all our respondents expressed animated concern about, which have specific consequences for the experiences of women barristers: (i) the highly pressurised environment of work at the Bar; (ii) the particular mixture of change and lack-of-change in the Bar's working culture; and (iii) the balance between a self-consciously collegial profession and its less recognised problems with isolation and loneliness. If the profession is truly to change and benefit from women's participation, new kinds of collegiality, networks and court logistics clearly need to emerge. Change is needed in order for more women to have long, professionally rewarding careers at the Bar alongside a family life, and in order for caring work to have a place in the lives of those who wear the wig and gown.

Barristers characterise their work as a combination of pressure, hard work and intellectual rigour. Many participants in our study referred to such pressure with thermotropic metaphors such as 'the pressure cooker.' It is well documented that such pressures often take a toll on

individuals, most particularly when they have a family. Justice Michael Kirby commented in 2002 on the urgent need to humanise the legal profession so that practitioners could lead rounded, fully human lives. Our study participants highlighted these tensions. While life at the Bar seems to offer flexibility with a high degree of autonomy and satisfaction, several respondents commented on the illusion of freedom created by self-employment, sub-contract work and 'piece work'.

This flexibility brings with it a high level of insecurity and risk. The work requires a high level of personal investment and commitment, with an older barrister reflecting:

the people who are really busy I don't know how they do it. They must make sure that the family understands that dad has got work to do. And if it's mum, I don't know how they make that work at all

A successful barrister requires tenacity as well as sustained financial, social and personal support, and excellent professional advice and networks. However success often comes at a cost. Work-life balance is the concept commonly used to express the processes of weighing up the demands of both work and life. Arguably this balance is shown to be most problematic in regard to jobs that are considered high status and high stress, with long working hours attached. Also, such work often represents a high level of intellectual satisfaction and is considered among the highest forms of human endeavour. Work as a barrister is one of these professions, along with doctors and scientists.

Often, work-life balance is characterised as a women's problem, with the much publicised issues of the double shift and disparities in housework and caring work leading to unmanageable burdens for working women. This is often cited as the reason behind the so-called "mummy track", two tiered working situations in which women take on the lower prestige, more flexible work and men are more concentrated in higher paid, less flexible,

more prestigious areas. The participants in the research often viewed the critical measure of work-life balance as having time to be able to be spent on other things. The legal profession often continues to demand that family is sacrificed for work and both men and women barristers experienced this tension. This was captured in the following comment made by one female interviewee

When I was interviewing for articles, [a law firm] was very interested in me until I made a joke about work-life balance....I wasn't invited back. Partly because the fellow who was interviewing me had just had his first child and was desperately sleepless and still trying to work a hundred hours a week.

Barristers must be ready to appear in court at short notice and are often at the mercy of schedules set by judges. Sometimes, the pressure to do evening and weekend work is generated by the arrival of late or unexpected briefs, or exacerbated by poor preparation of briefs by solicitors. Participants commented on this in various ways:

The load is massive, I work nights and weekends. Judges expect you to work weekends and they expect you to be ready.

If I am doing a trial, it tends to take over my life. Sometimes I long for a 9-5 job. Sometimes I take a day off in between trials. Sometimes I think the Bar is completely incompatible with having a family.

There is a lack of structure – you are on call 24/7. Lots of night time and weekend work. It is punishing.

At junior levels, barristers are under particular pressure to appear available. As participants acquired seniority, the opportunity to balance work with other commitments came under increasing challenge. Some senior practitioners reflected on their involvement in long

demanding trials, the many hours spent in preparation and the experience of being totally beholden to the court during the trial. For them, work was all consuming. The relentless pressure to be available illustrates the illusory nature of flexibility at the Bar. High levels of commitment to work were associated with relationship and marriage breakdown:

It just about takes over your life and it can have a really significant effect on your home life.

Older male barristers who had maintained long marriages sometimes reflected that they had done so at the expense of more financially successful careers. One reflects that his marriage still ‘works’:

possibly because I’m not financially successful and I haven’t had the work.

In 1905, Grata Matilda Flos Greig was the first woman admitted to the Bar in Australia. Since then, the increase in the numbers of women within the legal profession has been an important marker of institutional progress. In part, the moral authority of the law itself is derived from an impression of gender equality, particularly as over the last 50 years most Australians have come to view this as an important norm. However, while the symbol of justice may have a woman’s face, the brokers of justice in a courtroom are still significantly less likely to be women. One of the original three professions (besides medicine and theology), the norms and culture of the legal profession continue to marginalise women in ways which have not truly shifted since they were allowed into this bastion of power over a century ago.

In Australia women now make up an estimated 60 percent of all law students, but only 19 percent of practicing barristers (Castan & Paterson 2010). This is a worrying statistic. The

reasons behind it have been the subject of a range of studies, including Hunter and McKelvie's (1998) report.

Although several women in the study had found ways to balance success as a barrister with life outside of work, it was evident that the demands of court are acutely unsympathetic to caring work. Both men and women commented on the difficulty of combining working life at the Bar with the day-to-day care of children. Several women commented that the management of their professional and family lives required dedication, commitment and a steely self-organisation. For these women, the daily prioritising of competing responsibilities rested on rigour and a deep sense of value. However a common theme across the narratives of women (and men in different ways) was their utter reliance upon partner and wider family networks in maintaining their career. One woman noted that most of the male barristers had very 'traditional arrangements' with their partners, and that the women who survived were lucky enough to have a supportive partner. She said:

They've all got partners who pitch in and way more than men would usually pitch in to their family obligations...the husbands are a lot more hands on...

Paradoxically, engaging in the juggle of professional and family life usually involves an effort to present an image of uninterrupted and undivided dedication. Women felt the need to be discreet about their pregnancies or their time away from chambers. Once women returned to work, one of the biggest difficulties was anticipating child care needs. There is a common expectation that counsel will stay late in court if requested to do. However the unforgiving closing times of crèches or other child care arrangements make this kind of *ad hoc* availability virtually impossible for women and men with children in childcare. This reveals something central to the culture of the Bar. Whilst barristers must be unequivocal in their

commitment to the ethos and values of the profession, the profession demands that care work in the family is routinely performed by others. The barrister is not supposed to have conflicting demands on his or her time. One participant unwittingly summed up this view in the following way:

I think being a barrister is such a unique profession, that it has become genderless.

Some people hang a lot on gender. A lot of people they don't. They just see you as a colleague... Basically it's unisex.

A number of authors (Campbell, Charlesworth & Malone 2011; Castan & Paterson 2010) have pointed out that this approach simply recreates the idea of the ideal legal professional as someone who, while no longer explicitly gendered, conforms to the traditional male model as a full-time worker who is always available to the employer. Campbell, Charlesworth and Malone (2011) suggest that due to the problem that women often have fewer options to pass their caring responsibilities on to others, such unrealistic expectations often set them up for indirect discrimination. They also note that direct discrimination can result if the inability of women with children to conform to these expectations is used as the basis for judging the performance of all women.

In part, this was reflected in the attitudes of the respondents. Significant doubts were expressed about the work commitment of female barristers who are mothers. Several questioned whether a female barrister who combined motherhood and work at the Bar could achieve excellence in either endeavour. The attitude shows a type of circular thinking. Some female barristers who were also mothers wondered aloud whether they were 'less than excellent' in either or both roles. By fostering such attitudes, Bar culture shows a worrying



tendency to undermine a significant proportion of its workforce. At the same time, several illusions are laid bare; that the work is flexible, that the profession is equitable and more profoundly, that all barristers hold high status within the legal community and that work as a barrister not only supports justice, but also exemplifies it.

The professional culture of the Bar has not changed very much in the last century. At the heart of a barrister's life is the performance at court. Performance oriented work is public, and high pressure by nature. It is critical for barristers to be completely prepared for court appearances whenever they arise. They must also be prepared to engage in very tough verbal and intellectual battles in the contest of the case. One male barrister describes the pressure in the following way.

I've really felt threatened, felt intellectually challenged and constantly belittled as well

Despite this the same barrister describes the performance as 'good fun' because 'I'm not playing very seriously'. A barrister must be prepared for an aggressive and somewhat ruthless culture in court.

Particularly among those who had retired there was a prevailing view that the influx of female barristers to The Victorian Bar over the last 30 years had been a positive change.

(The Bar) is a great body of men – and women – these days. Women have been good for the Bar. It has softened.

However, most describe the difficulties women faced when they were a significant minority at the Bar. Women had to deal with misogyny, and struggled to get briefs and to advance through the ranks. While some changes have occurred in Bar culture since women have

joined the profession, many aspects have been resistant to change, creating exclusion of women, whether directly or indirectly.

Harassment from senior barristers appears to be a common experience amongst junior barristers, although sexism can be an additional component in the mix. One junior female barrister described how exclusion was used to reinforce power dynamics and hierarchies:

In my old chambers the awful bastards would have Christmas parties and not invite me...I don't know if it was because I was a girl or young or both

One woman, who thrived in a competitive and often aggressive culture, describes the 'enormous number of arrogant men' at Court. This created a machismo culture which favoured those with a very tough skin. She says:

I've been really humiliated by a few magistrates but it doesn't matter really... You can find it a bit of a macho culture... But I like it... I don't really care if I get beaten up.

One male respondent highlighted the additional demands placed on women barristers to be seen as tough, saying:

Look, if you go in as a man you're probably accepted until you're shown to be... that you're not really on top of what you're doing ... Whereas a woman perhaps has to go in and prove she is on top of her game. When it's appreciated that she is on top of her game there's general acceptance.

From this study it was clear that conventional notions of gender difference underpin the perceptions of women and men at the Bar. Some men spoke of women being more communicative and less confrontational; more sensitive and gentle; 'natural' mothers. Others perceived women as more confrontational over-compensating for their gender, particularly in the courtroom, due to operating in a male-dominated environment.

Despite the rising numbers of women joining the Bar, many respondents, both male and female, believed that the Bar is still a male bastion, although some claimed that it is changing. Although some made reference to ‘brilliant’ female barristers, the overall view was that the Bar is a masculinised environment (in the courtroom and in chambers) that has not altered dramatically over the years, One male respondent said:

Obviously it’s a very male dominated environment and the senior Bar is very male, there’s very few QCs who are women.... There’s almost a presumption that a bloke’s OK until he proves otherwise, whereas perhaps a woman has to prove herself.

While there have been positive changes for women, there are still barriers and discrimination. While the relevance of gender was often questioned by the respondents and sometimes seen as a non-issue, women were still seen as having to prove themselves in ways that men were not. This problem is illustrated elsewhere in the literature (Ragusa & Groves 2012) which discusses, among other things, gendered perceptions of legal competence and masculinised stereotypes of what sort of barrister would ‘win’ the case. Also, according to statistics from Australian Women Lawyers, while the number of women barristers’ court appearances is statistically in line with their proportion of the overall makeup of the Bar, women appear for significantly shorter periods. Fifty years since Dame Roma Mitchell was the first woman in Australia to be appointed to Senior Council, only 7.92% of silks practicing at the Australian Bar are women (Australian Women Lawyers 2012).

One of the strengths that barristers often nominate in Bar culture is its emphasis on collegiality and the strong bonds created through this. While many respondents saw this as a positive aspect of their work, many found such relationships hard to maintain. Networking

was an extra time commitment on top of the long hours required. Barristers with children either choose to remain at work to socialise or they forego their networking opportunities for the sake of their families or they were selective about the social events they attend.

Most were aware of the importance of networking in order to advance their careers, and those that were less successful recognised that it was possibly due to their lack of visibility at the Bar, as in this example from a junior male barrister:

I got four different invitations within the space of two days last week and I just said no, I'm not going. Which is probably part of my failing at the Bar. But it's just something that I don't participate in.

Positive professional relationships with mentors and others in surroundings chambers were described as especially positive where colleagues were engaged in similar types of practices. Mentor relationships were often described as vital for psychological support:

you call them and you have a chat to them and it helps you to go on. Because they say things to you like: you've just got to go on... We all go to court and we all get beaten up... that's the persona you hang on the door... But that's not you

However, others described the dark side of networking culture at the Bar. One (male) participant referred to the drinking as part of this culture as the typical response to the extreme stresses associated with the work:

there is, I think a culture that these are your own private pains that you've got to deal with on your own, and indeed it's not very cool to speak about them. ... You drink when you lose and you drink when you win and you've got the time- the flexibility to do it. That culture goes back generations, it's entrenched... talking about it implies

weakness; it implies unreliability under pressure.... And so you want your colleagues to think that you're tough as nails.

Several respondents spoke of the loneliness of the Bar. For example:

There's no shortage of people that you see that you know. It's quite weird, because you can have rapport and chats with people but feel very alone, too, at the same time.

Social and professional isolation at the Bar also have a specific gender dimension. Female barristers spoke of their disinterest in participation in the social life of the Bar, their reliance on alternative networks and the avoidance of 'bitching' or 'gossip'.

Most women barristers painted a picture of quiet isolation rather than active exclusion. This suggests that women bear their burdens alone, and that the strengths of a collegiate system are wilting as the Bar grows in numbers and diversity. All the participants in our 2009 study considered the profession to have many benefits, providing intellectual stimulation, a degree of flexibility and autonomy and considerable challenges. However they also acknowledged the costs associated with the job due to the long hours, with family and recreation, community activities and the ability to address one's well-being all becoming issues of concern.

The study conducted by Victoria University researchers in 2009 demonstrates that while women barristers are often seen by the wider public as holding enormous power in their professional lives, this view is not based in the reality of working life at the Victorian Bar. Women barristers face gender discrimination in terms of their ability to get cases, particularly those that require court appearances; fit into the male dominated work culture, which inadvertently enables barristers to make the necessary networks to get cases; and to juggle caring responsibilities in a work environment that is modelled on the traditional male

breadwinner, stay-at-home wife scenario. While women are entering the legal profession in increasing numbers, they still have a long way to go before justice is done and is seen to be done in terms of gender equality.

## References

- Australian Women Lawyers 2012, *Media Release 4/11/12: Only 7.92% of Female Senior Counsel Practising at the Independent Bar Are Female, Fifty Years After Australia's First Female Silk Appointed.*, viewed 13 November 2012, <[http://www.australianwomenlawyers.com.au/uploads/publications/AWL\\_Media\\_Release\\_4\\_September\\_2012.pdf](http://www.australianwomenlawyers.com.au/uploads/publications/AWL_Media_Release_4_September_2012.pdf)>.
- Campbell, I, Charlesworth, S & Malone, J 2011, 'Part-time of what? Job quality and part-time employment in the legal profession in Australia', *Journal of Sociology*, vol. 48, no. 2.
- Castan, M & Paterson, J 2010, 'From Supergirl to Invisible Woman: The Divide between Student Perception and Professional Reality in Corporate Legal Practice', *Alternative Law Journal*, vol. 35, no. 3.
- Kirby, M 2002, 'Women in the Law – What Next', *Australian Feminist Law Journal*, vol. 16, p. 146.
- Hunter, R & Helen McKelvie 1998, *Equality of Opportunity for Women at the Victorian Bar: A report commissioned and published by the Victorian Bar Council*, Melbourne, Victoria.
- Ragusa, AT & Groves, P 2012, 'Gendered Meritocracy? Women Senior Counsels in Australia's legal profession', *Australian Journal of Gender and Law*, vol. 1.
- Rawls, J & Kelly, E 2001, *Justice as fairness: a restatement*, Harvard University Press, Cambridge (Mass).