

Gender in the profession:

There is currently a high level of public debate about the role of legislators, judges and legal practitioners in ensuring the just treatment of women before the law.

The purpose of this note is to briefly describe the employment patterns of women lawyers in the Northern Territory.

The description is followed by a short discussion of relevant issues.

1. NTU Faculty of Law

Students

There are 371 students enrolled in the faculty. Forty-seven per cent of the students are women ⁽¹⁾. Fifty nine per cent of the students who received a prize (based on academic performance) in 1992 were women ⁽²⁾. Research in relation to women students in legal education in Australia has disclosed the following:

* a dramatic increase since the early 1970s in the proportion of law students who are women -- women comprised 12.4 per cent of students in 1968 and 41 per cent in 1984 ⁽³⁾;

* throughout Australia there are almost equal numbers of women and men enrolled in law ⁽⁴⁾;

* a larger proportion of women than men do not complete legal studies ⁽⁵⁾.

Staff

There are 16 full-time staff in the faculty; seven are women. The distribution is as follows: two of the four associate lecturers are women; three of the five lecturers are women; two of the five senior lecturers are women; no women hold positions as an Associate Professor or Professor.

A national study of the proportion of women in law schools concluded that "women are considerably under-represented in the senior ranks of academic lawyers, even accounting for the late entry of women into the field."

⁽⁶⁾.

2. Lawyers in Government ⁽⁷⁾

There are 65 practising lawyers (ie holders of practising certificates) employed by government ("government lawyers") in the Northern Territory.

Thirty-eight per cent of government lawyers are women ⁽⁸⁾.

In 1988 in New South Wales the proportion of government lawyers who were women was 33.3 per cent ⁽⁹⁾.

3. Lawyers in Private Practice ⁽¹⁰⁾

There are 172 practising lawyers in the Northern Territory who are not government lawyers. This group comprises holders of unrestricted and restricted practising certificates who are barristers, partners and employed solicitors in firms, sole practitioners and solicitors in legal aid bodies and Land Councils (together called "private lawyers").

Twenty-six per cent of private lawyers are women ⁽¹¹⁾.

There are 95 private lawyers with an unrestricted practising certificate in the NT. Unrestricted practising certificates are held by barristers, partners in firms and sole practitioners. Eleven per cent of those with an unrestricted practising certificate are women ⁽¹²⁾. There are 77 private lawyers with a restricted practising certificate in the NT. Forty-five per cent of those with a restricted practising certificate are women ⁽¹³⁾.

The figures in the previous paragraph can be expressed differently ⁽¹⁴⁾ to reveal that, even after taking into account the low proportion of female private lawyers, women are much less likely than men to be barristers, partners and sole practitioners: 67 per cent of the male private lawyers in the NT are barristers, partners or sole practitioners and 33 per cent are employees ⁽¹⁵⁾ while 22 per cent of female private lawyers are barristers, partners or sole practitioners and 78 per cent are employees ⁽¹⁶⁾.

Research in relation to the propor-

tion and distribution of women in private practice has disclosed:

* "The proportion of women in the profession (in Australia) has increased rapidly, from 3.9% in 1961 to 11.4% in 1981 to 25% in 1991." ⁽¹⁷⁾

* "Women are less likely than their male colleagues to be barristers or partners in law firms, less likely to practise in commercial rather than family or welfare law, and more likely to be grouped at the lower earning end of the profession." ⁽¹⁸⁾

4. The Judiciary

There are nine magistrates in the Northern Territory; one is a woman. The NT and two other states each have one woman on the Supreme Court ⁽¹⁹⁾. There are no other women supreme court judges in Australia ⁽²⁰⁾.

5. The Legal Profession as a Whole

The sum total of staff at NTU, government lawyers, private lawyers, magistrates and judges in the Northern Territory is 267 ⁽²¹⁾.

Thirty per cent of this number are women ⁽²²⁾.

6. Discussion

How does the NT compare with other jurisdictions?

The figures above suggest that the proportion and distribution of women in the legal profession in the NT is broadly similar to that of other jurisdictions ⁽²³⁾:

(1) Women comprise one quarter to one third (30 per cent in the NT) of the legal profession as a whole;

(2) The proportion of government lawyers who are women (38 per cent in the NT) is significantly greater than the proportion of private lawyers who are women (26 per cent in the NT).

(3) Even after taking into account the lower proportion of women in private practice, women in private practice are much less likely than men to be barristers, partners and sole prac-

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tioners (24).

One reason frequently offered to support the fact that women in private practice are much less likely than men to be barristers, partners and sole practitioners is to point to the fact that, overall, women in private practice have much less experience than men.

It is true that, overall, women lawyers have less experience than male lawyers. For example, in New South Wales in 1991, of the solicitors in private practice for up to five years, 63.9 per cent were men and 36.1 per cent were women. The figures for 10 years were 74.4 per cent men and 25.6 per cent women and for more than 10 years were 92.3 per cent men and 7.7 per cent women (25).

If this was the explanation for the small proportion of women in positions as partners in private practice then one would expect that the gender breakdown of "partners with similar levels of experience" would reflect the gender breakdown of "all solicitors with similar levels of experience".

One would expect the gender breakdown of the 400 partners in the private sector with up to five years experience to be similar to the 1991 63.9:36.1 male/female ratio of NSW private practitioners with up to five years experience.

In fact 88 per cent of the partners were men and 12 per cent were women (26). In short, the "lack of experience" explanation for the small proportion of women in positions as partners in legal firms is flatly contradicted by two studies (one in NSW (27) and one in Victoria (28)) which suggest that after allowing for "level of experience in private practice" men are more likely to be appointed partners than women.

The Australian Law Reform Commission's recently released discussion paper *Equality before the law* (29) has summarised the reasons that have been offered for the employment patterns described in the previous paragraphs:

* discrimination against women (30);

* sexual harassment in the workplace (31);

* women in private practice being "channelled" into the less financially rewarding areas of legal practice such as Family law (32);

* criteria for partnership such as continuous billable hours (or executive positions in any organisation) being inconsistent with child care demands (33);

* a lack of flexibility in the workplace, particularly in relation to maternity leave (where it exists in private practice) and arrangements for child care (34);

* the criteria and method of selection of judges (35).

It is particularly relevant to note the view expressed in the Australian Law Reform Commission discussion paper concerning the role of professional associations such as Law Societies:

"Professional associations could take the lead in promoting women's participation in the legal profession by ensuring women's full and equal participation in their councils and committees. ... The report on the English Bar recommended reforms in many areas: including equal opportunity policies in the profession's code of conduct, publishing guidelines on equal opportunity, assisting the profession to adopt a systematic approach to selecting new practitioners, training in equal opportunities for key groups and mentoring schemes for women. Similar approaches could be successful in Australia. Professional associations could work closely with women's professional bodies in developing initiatives. They could adopt a code of conduct addressing gender bias and establishing procedures for its elimination. Maintaining stereotypes or permitting hostile work environments could be considered professional misconduct, because it vio-

lates the right of each person to equal opportunity. The associations could educate their members about issues of gender bias, access and equity. They could develop workplace sexual harassment policies and procedures for their members. They could also establish confidential procedures to deal with complaints of sexual harassment, sex discrimination and sexual orientation discrimination in the profession." (36)

Notes:

* Martin Flynn, Lecturer, Faculty of Law, NTU. I am grateful to the Law Society for extracting the data concerning practising certificate holders in the NT. (1) Total students: 371. Female students: 174. Male students: 197; (2) Total: 32. Female: 19. Male: 13; (3) D Weisbrot *Australian Lawyers* Longman Cheshire (1990) at 86; (4) ALRC Discussion Paper 54 *Equality before the law* (1993) at 69; (5) D Weisbrot (supra) at 86; (6) D Weisbrot (supra) at 88; (7) This section is based on information supplied by the Law Society of the NT relating to the holders of practising certificates; (8) Total: 65. Female: 25. Male: 40; (9) D Weisbrot (supra) at 87; (10) This section is based on information supplied by the Law Society of the NT relating to the holders of practising certificates; (11) Total: 172. Female: 45. Male: 127; (12) Total: 95. Female: 10. Male: 85; (13) Total: 77. Female: 35. Male: 42; (14) This approach was taken in D Weisbrot (supra) at 87 in relation to NSW; (15) Total male practising lawyers: 127. Unrestricted: 85; Restricted: 42; (16) Total female practising lawyers: 45. Unrestricted: 10. Restricted: 35; (17) ALRC Paper 54 (supra) at 68; (18) *ibid*; (19) Qld and NSW; (20) ALRC Paper 54 (supra) at 81; (21) staff at NTU: 16, practising lawyers in government: 65, other practising lawyers: 172, magistrates: 9, judges: 5, Total: 267; (22) Total lawyers: 267, Women staff at NTU: 7, women practising lawyers in government: 25, women practising lawyers: 45, magistrates: 1, judges: 1, total women lawyers: 79; (23) The small number of legal academics and judicial officers in the NT make comparisons with other jurisdictions difficult; (24) (25) (26) and (27) NSW figures for 1991 are set out in 1992 Law Society Journal 56 (March); (28) "Of solicitors admitted to practice in 1981 in Victoria, within the same period 55% of the men became partners but only 22% of the women." ALRC Paper 54 (supra) at 70; (29) *ibid*; (30) In interviews: ALRC Paper 54 (supra) at 69. In partnership decision: ALRC Paper 54 (supra) at 71; (31) *ibid* at 74; (32) *ibid* at 71; (33) *ibid* at 71; (34) *ibid* at 73; (35) *ibid* at 78-84; (36) *ibid* at 76.