

# The Hon Justice Michelle Gordon AC KC

Justice of the High Court of Australia

**Eli Fisher**, co-editor, sits down with **the Hon Justice Michelle Gordon AC KC**, Justice of High Court of Australia, to discuss her Honour's career and thoughts on International Women's Day in 2023.

**ELI FISHER:** Justice Gordon, thank you so much for sharing your insights on International Women's Day in 2023. But before we get to that, can you tell us please about your career path?

**JUSTICE GORDON:** Thanks Eli, it is a pleasure to speak to you today for International Women's Day.

Throughout my career, I have been privileged to be a solicitor, a barrister, a law teacher, a trial judge and an appellate judge, and for the last nearly 8 years, a justice of the High Court of Australia.

I was admitted to practice in Western Australia in 1987 and began my legal career at what is now known as Clayton Utz. In 1988, I decided to make the move to Melbourne and I practised as a lawyer and Senior Associate at what is now Allens. In 1992, I joined the Victorian Bar and practised in commercial, taxation and public law matters. I was honoured to be appointed Senior Counsel in 2003, a judge of the Federal Court in 2007, and a justice of the High Court in 2015. Throughout my career I have taught on a regular basis, which I have found both rewarding in itself and beneficial to my legal practice. In 2015 I was delighted to be appointed a Professorial Fellow of the Melbourne Law School, having taught in the Masters' program since 1999.

**ELI:** You have been described as a prodigious worker, and possessing of an ability to turn complex and unfathomable problems into manageable and short fundamental problems. What skills do you consider have been the most essential to you on your journey?

**GORDON J:** I am pleased to hear that – I certainly try to cut through to the core of a dispute. When I work on a new case, I always ask myself: What is this case about? The old

adage that facts win cases remains important. Next, you need to identify the determinative issue or issues. Why? Because it is essential to frame the right question or questions at the outset. Fail to ask yourself what the case is about and you will miss the forest for the trees. Ask the wrong question and you will focus on irrelevant matters or be unable to draw the necessary connection between the problem and the solution. Ask the right question and there is some hope you might come to the right answer.

But there must be balance. It can be challenging but I think knowing when to "switch off" is a skill that has been essential during my career. As far as possible, I try to keep to the same routine so that I can focus effectively when I am at work, but also ensure I have time to pursue other interests outside the law, be physically active, be a partner and a parent, relax with friends and family, and contribute to the various communities where I live and work.

**ELI:** What energises you about your work?

**GORDON J:** I feel so privileged to be a judge – it is such an interesting and challenging job. I am constantly learning. The law is fascinating and every case is different. That is because law is a human endeavour involving humans. I love seeing and reading about people and I love the intellectual challenge of solving their problems. But, of course, the legal system's aims are wider, and more important, than the concerns of the particular parties to the controversy in question. The proper functioning of the legal system is essential to our democracy. It is an honour to be entrusted with that responsibility.



**ELI:** What things do you celebrate about International Women's Day? How far has the profession, and how far has society, come?

**GORDON J:** It was not that long ago that women were excluded from the legal profession and from public life in Australia. My mother was sacked by the public service when she married my father in the early 1960s. A few years later they pleaded with her to return because they needed her skills. Women now have equal legal rights and protection from discrimination, but social and political change is taking longer. I am heartened because I see so many women achieving great things in many areas, including politics, the law, the arts, media, business, education and the community sector. There is also growing recognition of the unpaid work that women do, and the need for such work to be valued and shared more equitably. But there is much more that can be done and should be done.

**ELI:** What do you lament most on International Women's Day? What are your most urgent concerns?

**GORDON J:** While we have come a long way, there is still significant work to do on issues such as sexual harassment and abuse, family

violence, women's economic security, and ensuring social inclusion of all women from all backgrounds and of all abilities. We have a wonderful multicultural society in Australia but that is not often reflected in who we see in positions of power in public life.

I think it is so important to recognise and celebrate the many and varied achievements of women. While imposter syndrome by no means only affects women or affects all women, I have found that women are often hesitant or reluctant to take credit for their achievements.

My partner and I spend a lot of time in South Gippsland – along with Melbourne, we think of it as our home. Last year, I was invited to open a chamber music concert that was organised by Prom Recitals, a not-for-profit group with the simple aim of making classical music more accessible to South Gippslanders. It was a concert featuring a program of music composed only by women and performed by a chamber group of young musicians from Melbourne to mark International Women's Day. It made me stop and think about the women living in South Gippsland who make the most incredible and unheralded contributions to the community. I discussed this with the organisers, and together we came up with the idea of a 12-month documentary project aimed at shining a light on some of the extraordinary women who live in South Gippsland. We launched *Celebrate Her! Stories of South Gippsland 2022* at the chamber concert. The people of South Gippsland were asked to nominate a woman they wanted to see celebrated. We received many nominations of women of different ages, backgrounds and experiences – including nurses, firefighters, artists, environmentalists, carpenters, mothers and farmers. And, this International Women's Day, we are launching a book of 23 women in 2023 which will tell those women's stories and celebrate their achievements and significant contributions. So much is being done out there by women. We need to recognise and celebrate women's many contributions to our society.

**ELI: The theme of this year's International Women's Day is "Embrace Equity". What does this mean to you?**

**GORDON J:** Equity cannot be achieved through equality. But equality can be achieved through equity. Understanding that difference is critical. It recognises that treating everyone the same may not be fair – and that difference, justice, injustice and inclusion as well as other factors need to be taken into account to achieve equality. My long-held belief is that education and opportunity are essential to human flourishing. Embracing equity means accommodating people's differences, so that everyone is equally able to access the benefits of education, decide what matters to them in life, and take up one or more of the many opportunities we are lucky to have in Australia.

**ELI: I recall your insights on automation and the rule of law in a paper you delivered in 2018. With the increasing popularity of AI tools, how might our society continue to be guided by the rule of law when contemplating the value of automated decision-making tools?**

**GORDON J:** Thanks, there certainly have been further technological developments since that paper. The Australasian Institute of Judicial Administration and the UNSW Faculty of Law and Justice recently released a report on AI Decision-Making and the Courts, which presents an overview of various AI and decision-making tools and raises the possible challenges and opportunities they present for our courts and tribunals. The report examines the impact of AI tools on core judicial values, including open justice, judicial accountability, impartiality and equality before the law, procedural fairness, access to justice and efficiency.

I commend the AIJA for their report – as technology is developing so quickly, it is important that we are having these conversations now. Technology has the potential to bring enormous benefits to our legal system. We saw that over the last few years when the use of digital platforms allowed our courts to continue functioning

despite a global pandemic. And there continue to be great developments in AI-assisted legal research and document review. But the experiences of governments and societies since the industrial revolution have made clear the limitations of technology. The focus should not be only on technological capabilities. The challenge is now to continually step back and ask: Why do we want to use this technology? How should we use it, and for what purpose? We need to recognise the likelihood of system failures and unintended consequences. As I have said, law is a human endeavour involving humans. Ultimately, we need to ask: what kind of society do we want? What role does the rule of law have in that society? And what role do humans have in the rule of law? The answers to those questions will guide decisions about how we use technology in the legal system.

**ELI: What is the best professional advice you have ever received, and what advice would you give to the next generation of female leaders coming through the legal profession?**

**GORDON J:** Don't specialise too early – that is the best professional advice I have ever received. There is much to be learned in undertaking as wide a variety of work as you can, and the lessons you learn in one area of the law inform how you go about work in any other area. The law is not a series of silos. Don't let yourself be pigeon-holed. And don't discount your abilities – take any opportunity that is given to you with both hands and run with it. Another piece of advice that I have benefited from in my career is to surround yourself with superb mentors. Now I try to pay that good fortune forward by acting as a mentor. Practising law can be difficult and at times isolating – it is so important that we support each other.

**ELI: Thank you Judge. This has been so insightful. On behalf of all our readers, thank you so much for sitting down with us. Happy International Women's Day!**