SPEECH FOR PANDORA'S BREAKFAST WITH THE QUEENSLAND LEGAL PROFESSION, UNIVERSITY OF QUEENSLAND'S WOMEN AND THE LAW PROFESSIONAL BREAKFAST, 15 OCTOBER 2004, CUSTOMS HOUSE.

It's delightful to be breakfasting with you this morning for the launch of this year's WATL academic journal, *Pandora's Box*. My delight is in spite of the uncivilised hour which, for me and I suspect for most of you, is not conducive to sparkling wit and intellectual conversation. But, in recognition of your valiant effort in making it here, I shall give it my best shot.

I have always been intrigued as to why WATL's journal is named *Pandora's Box*. To open Pandora's box means "to do or start something which will cause a lot of other problems". Despite the Courier-Mail's perspective, I like to think we lawyers are into solving, not causing, problems! This is a breakfast show and so it is appropriate I quote from the Classic FM Breakfast Show and Kel Richards' Word of the Day,[1] when, earlier this year, he explained the origin of the term "Pandora's Box". In Greek mythology Pandora was the first mortal woman. Jupiter gave her the gift of a box containing all human woes which would remain shut in the box unless it was opened. There are three versions as to the opening of the box. The first is the misogynistic version and the one taught to me in this State's primary education system in the 1960s. It is that Pandora, a curious, lively, meddling, foolish and disobedient young woman opened the box, thus unleashing on humanity all plethora of ills and burdens: shades of the more familiar creation story of troublesome Eve, who disobediently ate the forbidden fruit and messed up perfect Adam's idyllic life in the Garden of Eden. I prefer Kel Richards' second version which has a bloke, Epimetheus, opening Pandora's Box, despite the obvious sexual connotation. Epimetheus was Prometheus's not too bright brother, one of the mighty Titans, (the mythological Greek Titans known for their brawn, not their brain, rather than the US baseball team of the 1960s which featured in a recent movie – although there are some obvious similarities). As an experienced fact-finding judge, I must say this version has "the ring of truth about it". After all, Epimetheus means "he who acts first and thinks after". It sounds pretty plausible that a big strong, handsome, stupid jock comes along, takes Pandora's property, uses it as he shouldn't, wreaks eternal havoc and the woman gets the blame!

Does this mean WATL's journal is named *Pandora's Box* because women wreak havoc on humanity? Or is it because men take advantage of women before men wreak havoc on humanity? I do not find either option attractive and will revisit this question later in this address when I discuss Kel Richards' third version of the myth.

Radha Ivory, WATL's President, asked me to speak today about my career. Talking about yourself is problematic. In relating to an audience something of interest, or even relevance on the topic of yourself, it is difficult to avoid overusing the personal pronouns, egocentricity and what in the latest *Griffith*

---

[1] Wednesday 10 March 2004.

Review is called "selfebrity".[2] Forgive me if I am unsuccessful in avoiding these pitfalls.

I have been President of the Court of Appeal of the Queensland Supreme Court for over six years. Happily, I regard it as one of the best jobs in the legal profession: intellectually challenging, infinitely variable, onerously responsible, but providing a wonderful opportunity to serve the Queensland public by deciding the cases before me according to law.

In the year to June last, the Court of Appeal heard 560 matters, 230 civil and 330 criminal. There were 68 applications for special leave to the High Court of Australia. Special leave was granted in only 11 cases and only three of these were successful.[3] These statistics demonstrate that for most purposes the Court of Appeal is Queensland's final court. I joined a hardworking, talented bench of fine jurists. Justices Pincus and Thomas, who were especially helpful and supportive in my early days, generously sharing with me their wealth of experience, legal learning and wisdom, have now retired. Justices Davies, McPherson and I have been joined by two further fine jurists, Justices Williams and Jerrard, who have each brought their own, but different, depth of worldly experience and legal knowledge to the Court.

The Court of Appeal receives regular assistance from the Chief Justice and from the Trial Division judges, most of whom sit for some weeks each year in the Court of Appeal. Like the Chief Justice and the Judges of Appeal, each Trial Division judge brings her or his unique life experience and legal learning to the Court of Appeal bench and is, in her or his own way, pre-eminent in the law. Included in this number are the Northern, Far Northern and Central Judges. The Court of Appeal additionally sits with the Northern and Far Northern Judges once a year in North Queensland. To its credit, the Court of Appeal has for some years consistently achieved Australia's best practice in the timely disposition of cases and the delivery of reasons. This is because of the collective hard work and talent of the Chief Justice, the Judges of Appeal, the judges of the Trial Division and of the Senior Deputy Registrar (Appeals), Mr Neville Greig and his equally dedicated and capable staff. Of course, the legislature's continued adequate resourcing is an essential pre-requisite for the efficient operation of any court.

Criminal and civil cases at trial level are also heard quickly and judges aim to and generally do deliver judgments within three months of hearing. Urgent and commercial cases at trial and appellate level can be, and often are, further expedited. The Queensland legal profession and public are well served by their courts but, despite this, mediation has steadily increased in popularity as an alternative dispute resolution mechanism. Whilst mediation frequently brings benefits to parties in dispute, practitioners should remember that in some cases legal rights are best enforced in the law courts. In encouraging clients to embrace mediation by pointing out its benefits as against the court system,

---

2 Griffith Review, 5 Addicted to Celebrity, Cherry M and Wajnryb R, Celebrating 'Selfebrity', 29-35.

3 Matters heard in the High Court of Australia in one reporting year are often heard by the Court of Appeal in an earlier reporting year and delivered by the High Court in a later reporting year.

practitioners should consider whether mediation is truly in their client's interests or whether they may be unfairly and unwisely underestimating the value of resolution by a court, especially as the lengthy delays common in the courts a decade ago have been removed by reforms in court practice and efficient case management.

I recently attained a milestone birthday (or perhaps that should be millstone birthday!). One of the few advantages in turning 50 is that I am now old enough to reminisce. When I was a law student at UQ in the 70s, I did not contemplate that I would one day be President of the Court of Appeal addressing students at this breakfast on feminist issues. Women law students were a small minority. There was no Women and the Law Society. A big concession to the presence of women law students and tutors was the dedication of the first female toilet in the law building. It took me some time, as a naïve 17 year old, to realise the peculiar contraption on the toilet wall as you entered was a decommissioned male urinal. Contrary to the jibes of the boys, to my knowledge it was not used by even the most assertive of the women law students! Some male colleagues treated their female colleagues as freaks and in a way which would nowadays be branded sexual harassment, a then unknown concept or term. There were no women judges, very few women working in the profession as solicitors or barristers and no women law lecturers. At least the women students had outstanding role models in the form of law tutors, Quentin Bryce, now Governor of Queensland, and Margaret White, now Justice White of the Trial Division of my court. They showed that it was possible for a woman to obtain a law degree, be admitted to the profession, obtain valued work, at least in academia, and have a partner, babies and a life. We did have the sense to realise that looking as drop dead gorgeous as Quentin and Margaret, after producing several babies, would, however, be an altogether more difficult task!

In the third year of my law degree I had doubts as to whether a legal career was for me. Serendipitously, the University of Queensland Union organised a visit from consumer law activist, Ralph Nader. Nader's address to the students was impressive. He convinced me, and no doubt many others, of the power of the law to render positive social change. Lawyers could use their knowledge to open boxes locked off to others. Despite my misgivings, I persevered with my law degree. I did some part-time volunteer court work with the newly formed Aboriginal Legal Service and realised I wanted to become an advocate. It did not occur to me that being female was any problem in achieving that goal. My first paid job in the law was as clerk to Judge Alan Demack, then in the District Court. This was an excellent training ground for a wannabe barrister. The judge once introduced me to two male barristers appearing in a case before him, explaining, "Margaret wants to be a barrister." Whilst one was politely encouraging, I was genuinely and deeply shocked when the other pompously responded, "I don't approve of women in the law." That was 1975. I had to wait 16 years for sweet revenge: I was able to recount that story to the court in my address when I was sworn in as Queensland's first woman judge in the District Court in January 1991.

Justice Demack was appointed the senior judge to the newly formed Family Court of Australia in 1976 and I assisted him as his associate in the challenging

and exciting early days of that court. I had, however, developed a passion for the criminal law and left to take up a position in the Public Defender's Office. I was the first woman to work as a para-legal in what was then a very masculine institution with girlie posters lining the office walls and a pub culture. More positively, I was quickly embraced by the great camaraderie amongst those who worked there. In December 1976 I was admitted as a barrister. I was 22 years old. Over the next 13 years it was exhilarating to prepare and conduct criminal trials, appeals and other matters for the defence in those pre-Fitzgerald inquiry days when Queensland police were almost omnipotent. The courts were then often the only hope for the powerless underclass, sometimes wrongly implicated in criminal offences by fabricated evidence, the infamous police verbal or "brick". The Public Defender's Office was reasonably independent, autonomous, small, and staffed by good-minded people; it was family-friendly and the Public Defenders with whom I worked were understanding and supportive at that difficult period when I first combined work as a criminal law barrister with motherhood.

A practising woman lawyer with young children was then a rare bird and mentors were important. I remember meeting the legendary Dame Roma Mitchell at a Women Lawyers' function when I was on maternity leave with my first child. Dame Roma was Australia's first woman QC, first woman Supreme Court judge, Chancellor of the University of Adelaide and first woman to hold Vice-Regal office in Australia. She was then head of the Commonwealth Anti-Discrimination Tribunal. My confidence as a lawyer had wavered as I contemplated whether I could successfully combine my career in the court room with motherhood. Although Dame Roma had never had children, she persuaded me, with a few well-chosen words, that the remarkable new skills and knowledge I had acquired over that past year would be of great benefit to me as a lawyer. She was right.

Other mentors included Leneen Forde, the driving force behind the formation of the Women Lawyers Association of Queensland in 1979 and later the first woman Governor of Queensland, and Barbara Newton, who was the first woman Public Defender, a feat achieved whilst producing three children and surviving a traumatic divorce.

I left the Public Defender's Office for private practice as a barrister in 1988. Because of my experience, I continued my extensive criminal law practice, appearing as defence counsel for many notorious clients. I enjoyed adapting the skills acquired as a defence lawyer to the more restrained art of prosecuting. I prosecuted scores of matters, including the infamous Mr Shelley who was charged with making threats against Mike Ahern during his period as Premier. The trial judge allowed Mr Shelley to challenge every woman on the panel for cause, the cause being that they were women, for Mr Shelley believed that passages in the Bible decreed that women could not sit in judgment on men! I hate to think what Mr Shelley would make of Carrie and her friends in Sex and the City! (who constantly make judgments on men!) Unsurprisingly, there was a public outcry and the ruling in Shelley's case was quickly set aside on appeal. I also enjoyed a developing practice in civil matters.

Eighteen months later I was appointed a District Court judge. The *Judges (Pensions and Long Leave) Act* 1957 (Qld) is something very dear to the heart of all members of the judiciary. In 1991, when I became a judge, it referred only to a judge's "wife", it never having been contemplated that a married female judge might be appointed. The Act was amended the following year to refer to a judge's "spouse" rather than "wife".

Two years later I caused yet more trouble when I became pregnant with my fourth child. The judges' entitlements booklet did not contemplate maternity leave! Now that too has been remedied. Another baby has since been born to a serving Queensland judge, Judge Richards, and the judges' entitlements booklet provides for both maternity and paternity leave.

As a busy District Court judge for seven and a half years, I exercised criminal and civil, including equitable, jurisdiction. In those days, District Court judges usually spent 10 to 12 weeks out of Brisbane on circuit. Some circuits, such as Ipswich, Southport and Maroochydore, were close to home. Others were further afield, such as Mount Isa, Bundaberg and Emerald. Circuits can be hard on a judge's family life but they do provide a great opportunity to commune with Queensland's heart and soul in regional areas. My District Court circuits not only provided the satisfaction of completing a busy, challenging and diverse work load, but also enabled me and my associate to visit mines, fossick for gem stones, meet with indigenous communities, stay at historic B & Bs, and see the miracle of turtle hatchlings scurrying for their lives into the Pacific Ocean. Circuits also provided a welcome break from the grind of running the household of a busy professional couple with four young children. I remember one particularly bleak winter's week spent on circuit at Warwick. The judge's chambers were on the western side of the old stone court complex and featured an attractive but non-operational stone fire place. The sky was overcast, the westerly wind howled and sleet dashed against the windows. I have made winter trips to ski fields and to the Northern Hemisphere, but I have never been so cold as when sitting in chambers writing judgments and preparing cases in Warwick. In desperation and in a flash of lateral thinking, I opened my judge's wig case and donned the wig. No doubt I looked fetching sitting in my Warwick chambers in a red overcoat set off by a close-fitting, white, horse hair number! The wig was particularly effective in stopping the loss of body heat through my head and I doubt whether the judge's wig has ever been so useful!

As I foreshadowed, I want to now return to Kel Richards' explanation of the Pandora myth and the third version. Pandora's Box contained all the blessings of the gods but these escaped and were all lost when it was opened, (whether by Pandora or Epimetheus), with the exception of hope which was at the bottom of the box. Eureka! Hope, then, must be the explanation for naming WATL's journal *Pandora's Box* for that is what this cutting edge academic journal offers its readers. Where would the world be without hope, optimism, the belief that things will get better for us; that we can make things better for others and, in some small way, for humanity.

My hopes are realisable and modest. I look forward to continuing to be part of an increasingly diverse and still excellent court of pre-eminent judges, served by

a capable, ethical and diverse legal profession, who have been educated and inspired by scholarly and diverse legal academics in Queensland law schools.

My hopes are shared by many others. As my predecessor, the Hon Tony Fitzgerald AC, QC said last year:

> **"Simone de Beauvoir noted that powerful men describe the world from their own perspectives, which they confuse with absolute truth, and Professor Martha Minnow pointed out that an unrepresentative judiciary imposes on the development of the law one perspective 'as if it were universal' while a broader based judiciary can utilise 'contrasting views of reality without casting off the moorings of historical experience'. One of the major advances in Queensland in the last six years has been former Attorney-General Matt Foley's appointment of a considerable number of women judges. Nonetheless, neither the judiciary nor the legal profession yet reflects the diversity of society. There is still a major imbalance in the ethnic origins of those who practice law, with only a tiny number of indigenous lawyers. Working together, universities and the profession can remedy that deficiency."[4]**

Before 1990, there were no and had never been any women judicial officers in Queensland.

Now we have seven women Supreme Court judges from a bench of 24; one Federal Court judge from a bench of four; two women Family Court judges from a bench of nine; four women District Court judges from a bench of 35 and 21 women magistrates from a bench of 80. Sadly, the only woman judge ever appointed to the High Court of Australia, the brilliant Justice Mary Gaudron, recently retired but Chief Justice Marilyn Warren has since been appointed to head the Victorian judiciary. Things have improved since 1990. They could not have worsened. But women judicial officers remain a minority.

An increasing, but still tiny, number of Queensland judicial officers now come from a non-Anglo-Saxon background, gradually reflecting the growing diversity of those now reaching pre-eminence in the law.

In 1976 when I was admitted as a barrister, the Bar Association had 350 members, four or 1.1 per cent of whom were women. The Queensland Law Society had 1,250 members, 45 or 3.6 per cent of whom were women. In 1976, the University of Queensland Law School, then the only law school in Queensland, had no women law lecturers and just two women tutors in law. It produced 76 graduates, 13 or 17 per cent of whom were women.

For many years now, over 50 per cent of the graduates from the various Queensland law schools have been female and the young women have at least held their own in achieving the glittering prizes. Despite this, women are still not equitably or even well represented at the higher echelons of the legal profession,

---

[4] From an address to a Griffith University Ceremony for the Presentation of Awards, 2pm, Friday, 4 April 2003, pp 4-5.

as judges, silks, high income earning partners in the big solicitors' firms or in senior academic positions.

Of the 869 present members of the Bar Association, only 117 or 13 per cent are women. Of these women barristers, none is a silk. Of the 6,150 solicitors who are currently members of the Queensland Law Society, one-third are women, but the percentage of women partners in the large and prosperous firms is much less. Looking at UQ's School of Law, only 25 per cent of academic staff at the associate lecturer level or higher are women. There are no women professors, other than three of 24 adjunct professors; there are none and never has been a woman Head of School and only two of the seven readers are women. The position is quite different at the more junior levels of academia: the only associate lecturer is female; 11 of the 14 lecturers are women and four of the nine senior lecturers are women.

When there have been so many women in the legal profession and for so long, why are they still grossly under-represented in the more senior positions of power and influence?

One answer commonly given is that all this will change in time. How much time? Twenty-six years ago when I helped form the Women Lawyers Association of Queensland I was sure that in ten years or so there would be no need for the Association. We would have achieved our goals of equality and acceptance. Twenty-six years has not been enough time.

Another popular answer given is that women make lifestyle choices not to work the long hours required to make it to the top of the legal profession because working long hours in stressful positions is not conducive to child-raising. An increasing number of young women are deciding not to have children yet childless women lawyers do not seem to be significantly better represented at the top of the legal profession than women lawyers with children. Whilst respecting the individual's free choice to elect not to have children, as a community we have a social interest in encouraging our young people to produce and raise children. Young male lawyers want to be actively involved in the burdens and joys of raising their children and their partners demand that they are. The legal profession has an interest in keeping within it the skills of our young lawyers who are producing and raising children. This was finally recognised by our politicians in the recent federal election campaign; the major parties conducted an unseemly, frenetic bidding war as to which could offer more lucrative breeding incentives to Australia's young people. Young lawyers, men and women, are demanding their employers and partners recognise that long hours of work do not equate to efficient work; you can work smarter rather than longer and lawyers with balanced lives and happy partners and nurtured children will be more productive in the long term than those who feel under-appreciated, over-worked and stretched to breaking point.

My hope is for a developing culture in the solicitors' firms, at the Bar, in academia and in government and corporations, that is supportive of young men and women during the child-bearing and child-raising years and allows parents the flexibility of part-time and shared working arrangements without pushing

those who take that option into a lower, less valued professional stream. One positive encouraging sign is the pending opening of a child-care centre in the Inns of Court, although regular, long hours of child-care are alone no solution. A flexible approach to work practices will benefit not only young parents but also older professionals who want to slow down, but still have much to offer professionally. The greatest benefit will be to the employer or law firm which will have happy, healthy, dedicated and balanced workers, many of whose skills they would otherwise have lost.

The Australian and Queensland Women Lawyers Associations have recently addressed the under-representation of women at the Bar by encouraging legal firms, corporations and the public sector to adopt the Equal Opportunity Briefing Policy, already accepted by the Law Council of Australia and many leading firms. The policy does not require the briefing of anyone other than on that value-laden word, "merit". It does require the briefer to consider whether a woman barrister is the best person for the case and to regularly review the briefing policy as to how often and when women barristers are briefed. This policy, to which no right-minded person could fairly object, will, I believe, greatly encourage women to practise at the Bar for women will know that if they are capable and industrious they will not be overlooked or under-valued. The policy could be easily adopted to apply to other under-represented groups at the Bar, such as indigenous barristers and those from ethnic minorities.

Whether you prefer to think that the meddling young woman, Pandora, opened the box, or that the jock, Epimetheus, was responsible for humanity's trials and tribulations, the myth of Pandora's Box leaves us with hope. The hope of humanity is no myth. It is the reality that enables human beings to survive flood, fire, famine, war, calamities, the ignominy of wrongful conviction and imprisonment, and the worst horrors that life can deliver. At such times, it is hope that enables the greatness of the human spirit to shine through adversity and to find the resilience to survive until better times. It is hope that makes us mentor others and accept other's mentoring. I have spoken of some of my modest and realisable hopes as to the future of the courts and the profession. My hope is also that you make the most of that last blessing of the gods – hope; and that you use your intellectual ability, your youthful energy, your privileges and your hope to make the legal profession and the community a more ethical, equitable, diverse, nurturing supportive place, opening up Pandora's boxes of hope, hope and more hope. Now that sounds like a great name for a solicitors' firm!