Ceremonial Sittings: Centenary of "*Legal Practitioners Act* 1905"

Banco Court
Wednesday, 9 November 2005, 9:15am

I acknowledge the presence of Her Excellency the Governor of Queensland, Ms Quentin Bryce AC. Her Excellency's presence adds great lustre to an otherwise important occasion in the legal history of the State, and I thank Her Excellency for honouring us in this way.

We also particularly welcome this morning the Attorney-General, the Hon Linda Lavarch MP, Judges of the Federal and Family Courts and the District Court, including the Chief Judge, the Chief Magistrate and Magistrates, Tribunal members, retired Judges, the Director-General, Ms Rachel Hunter, University Deans, the Presidents of the Bar and the Law Society, and Ms Kylie Torlach, President of the Women Lawyers Association, seated at the bar table together with Ms Naida Haxton who, admitted in 1966, is the female barrister from this jurisdiction longest in practice. I also especially welcome students from Somerville House and Brisbane Boys College. We warmly welcome all present this morning, and are grateful for your presence.

Justice Fryberg regrets his inability to be present: he is conducting a criminal trial in Cairns.

We gather to celebrate the centenary of landmark Queensland legislation, the *Legal Practitioners Act* 1905.

This legislation allowed, for the first time, the admission of women to the practice of the law in Queensland. It was enacted a century ago, but after as long as almost half a century for which women had been denied that right – that is, from the establishment of the Supreme Court in 1861. And so at last a proper measure was in 1905 secured: half the population was at last accorded a right previously unjustly denied them; and the whole population was accorded at last the right to retain a lawyer of choice, not limited to those of one gender.

This overdue advance was of monumental significance: the public, the profession and the courts have been and remain the beneficiaries. We gather because we Judges consider this historically significant event worthy not only of distinctive acknowledgement, but also celebration: its beneficial significance extends to all judges, the entire profession, all Queenslanders.

How was the advance effected?

Section 2 of the Act is in these terms:

> "In like manner and subject to the same conditions as in the case of a man, a woman shall be entitled to admission as a barrister, solicitor, or conveyancer, as the case may be, and shall be entitled to practise as a barrister, solicitor, or conveyancer, as the case may be."

Section 3 of the Act goes on to provide:

> "Every such woman shall be entitled to same rights and privileges, and shall be subject to the same liabilities and obligations, as a male barrister, solicitor, or conveyancer."

The Victorian Parliament had taken the step in 1903, and Tasmania the following year. South Australia followed Queensland by six years in 1911, New South Wales in 1918 and Western Australia in 1923. New Zealand had established the right substantially earlier, in 1896.

The position previously taken had been that legislation conferring rights on a "person", for example in relation to legal practice, was ordinarily to be taken to refer to a man only, an aspect interestingly discussed by Dr Jocelynne Scutt in an article, "Sexism in Legal Language", published in The Australian Law Journal in 1985 (59 ALJ 163). The case law shows the reluctance of courts even to utilize interpretive provisions, including the feminine within the masculine, to liberalize the application of these provisions in the context of legal practice.

The English Court of Appeal rather doggedly drew a high watermark in *Bebb v Law Society* ((1914) 1 Ch 286), and the South Australian Full Court in 1920 in *re Kitson* ((1920) SALR 230), determining that notwithstanding a South Australian woman was statutorily entitled to admission as a solicitor, she was not entitled to be made a notary public: reminiscent, perhaps, of the episcopal challenge currently facing the Anglican Church.

Those old cases abound with comforting – some would say unctuous acknowledgements that the intelligence and wisdom of women is at least equal, very often exceeds, those capacities in men; but the ultimate sheltering behind limits in the power of the court: "it is a matter for the parliament", suggests ultra conservative masculinity may have reigned just a tad.

The second reading of the Queensland bill was moved in the Legislative Assembly by Mr Kenna, the Member for Bowen, on 28 September 1905. Unsurprisingly some of the language now grates, although we should not judge too harshly from the contemporary perspective.

Mr Kenna spoke well, ending with reference to the admission of women to the Bar of the Supreme Court of the United States. He did however refer to that "experiment" as having proved "eminently successful", adding that "women have been able to conduct themselves with professional decorum, and have shown just as much skill and assiduity, and mental acumen in this profession as men".

The Attorney-General, in offering "no objection" to the passage of the bill, as he put it, rather missed the point in then saying: "There is no reason on earth why (women) should not be allowed to enter into competition with men in the legal profession".

Overall the debate in the house was dignified, until a Mr Rankin yielded to temptation, and while, as he said, favouring the bill "very heartily", felt constrained to add: "I do not know

that the admission of women will conduce to the despatch of business in court, especially if we get good looking barristers."

When the bill reached the Legislative Council, its consideration was deferred for a time on the request of one McPherson, who described it as "rather a revolutionary bill in its way". During debate on 18 October, while not opposing the bill, that member felt it necessary to say this:

> "I yield to no man in my respect for woman, whether young or old, or rich or poor; and I honour every woman in her endeavours to participate in the world's work. But the practice of the law is not very ennobling in itself; in fact it is sometimes rather sordid. It will not elevate the mind of any woman to engage in its pursuit…But if the House, in its motherly or grandmotherly wisdom, considers that this bill is a reasonable one, and that woman, under certain conditions, should be compelled to cut her hair and wear a wig, I do not object to it."

Read through contemporary eyes, those sentiments appal. If uttered now, they would rightly be condemned.

Now of course we look back, from the sophisticated 21st century, with bemusement these developments should have taken so long, or that their being decreed should ever have been necessary. But they were, and they have been – though without immediate practical consequence.

The first Queensland woman solicitor, Agnes McWhinney, was not admitted until a decade later, in 1915, and Katherine McGregor became Queensland's first woman barrister in 1926. The advent of our first actively practising woman barrister had to wait five more decades, until we saw Naida Haxton develop a busy, successful practice in the late 1960's. The first woman Queen's Counsel was not appointed until 1987 – Susan Kiefel.

Judicial appointment depends on admission to practice. At the beginning of the last decade of the last century, the ranks of our judiciary and magistracy were stocked exclusively by men. Now, of a Supreme Court of 24 Judges, 7 are women, including the President of the Court of Appeal; of a District Court of 36, 6 Judges are women, including the Chief Judge; and of a Magistracy of 85, just short of one-quarter, 21, are women.

This last year has witnessed a welter of commemorations of the 60th anniversary of the conclusion of World War 2, and related events. It is refreshing to be able to celebrate, today, an event of utterly positive complexion. There are underlying comparisons: the legislation we recall today should not have been necessary; it was the culmination of a prolonged campaign; and it followed a lengthy period in which the community was denied a benefit it should have been enjoying. But it was progressive legislation for all that, to be celebrated then, and now.

As we approach the sesquicentenary of this court, it is a matter at least for remark that for its first hundred years, no female counsel actively appeared before the court; and that it was not until after 132 years that a woman Judge was first appointed to its ranks. Yet it may be noted ours has for some years now been the superior court in Australia, save for the Family Court, with the highest proportion of women Judges.

Our focus today is not so much on the courts, as on the profession. While the passing of this legislation may be, for many contemporary practitioners – female or male, no more than a piece of old history, a few moments' reflection confirms it as an extremely important, a most significant piece of Queensland history. It is an unfortunate aspect of busy lives that once battles are won, the victories are often soon taken for granted. Hence today's sittings, itself a noteworthy event in the life of the courts and the State.