

# **GENDER EQUALITY IN THE WORKFORCE: A WORK IN PROGRESS**

By

**Justice Susan Glazebrook<sup>1</sup>**

The broad topic of the place of New Zealand women in society and, in particular, the place of New Zealand women in the workforce, the subject about which I have been asked to speak, seems particularly apt for a Canterbury audience in light of the pivotal role that this region has played in facilitating women's empowerment in New Zealand. In 1893, James Reeve Wilkinson, a prominent member of the dress reform movement in Christchurch,<sup>2</sup> remarked upon "the power and ability and duty of this city to lead the world in the cause of women" and I am sure that one hundred and sixteen years later this association still believes in the inherent worthiness of such a goal.

Of course, what prompted these remarks about the garden city was the key role that it played in New Zealand's suffrage movement at the end of the nineteenth century. That New Zealand granted to women the right to vote<sup>3</sup> as early as 1893, being the first currently existing independent nation to do so,<sup>4</sup> was attributable in large part to one of Canterbury's most celebrated figures, Kate Sheppard. Kate Sheppard's tireless struggles in the women's suffrage movement cemented New Zealand's position as a world leader in gender equality and she is a figure whom I am sure many Cantabrians are proud to claim as one of their own.

Kate Sheppard was a ferocious advocate for women's rights and held a deep-seated belief that women were deserving of equal treatment in society. Indeed, her avowed belief in the need to obtain gender equality extended beyond the confines of the suffrage movement. Kate

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<sup>1</sup> This talk was given to the Annual Professional Women's dinner organised by the Canterbury Women's Legal Association on 22 October 2009. I am very grateful for the assistance of my clerk, Natasha Caldwell, in the research for and writing of this paper.

<sup>2</sup> James Reeve Wilkinson jointly wrote a pamphlet with his wife Katrine Walker, "Notes on Dress Reform and what it implies", which used feminist argument to recommend change in women's garments. Their wedding caused some controversy in Christchurch because the female members of the bridal party wore trousers.

<sup>3</sup> This was universal suffrage as the need for a property qualification had been removed by Parliament in 1879.

<sup>4</sup> According to Wikipedia, however, Sweden granted conditional female suffrage during the age of liberty (1718 – 1771) but this did not apply to women in general. There were also some small countries where women were given the vote before 1893. For example, in 1889 Franceville (now part of Vanuatu) granted men and women the right to vote.

Sheppard campaigned against all forms of inequality, and strongly advocated that “all that separates, whether of race, class, creed, or sex, is inhuman, and must be overcome.”<sup>5</sup> A telling indication of the strength of Kate Sheppard’s convictions is demonstrated by her less well-known honour of being one of Canterbury’s first female cyclists at a time when it was believed by many that such physical exertion was ill-suited for a female disposition.

It is salutary to reflect on the pamphlet published by Kate Sheppard in 1888, “Ten Reasons Why the Women of New Zealand Should Vote.” This provides a stark reminder about the truly remarkable nature of her achievements. In that pamphlet she said that “it has not yet been proved that the intelligence of women is only equal to that of children, nor that their intelligence is on a par with lunatics and criminals.” That she felt the need to make such remarks illustrates the deeply ingrained ideologies she and the other suffragettes had to counter. It cannot be denied that their success in achieving their goal was quite simply remarkable.

However, it also cannot be forgotten that, while Kate Sheppard did hold progressive views, she was one of the founding members of the New Zealand Women’s Christian Temperance Union<sup>6</sup> and in 1887, when franchises of the Union were set up around the country, Sheppard was elected the national superintendent of the franchise. Interestingly, the Christian Temperance Union was a supporter of the eugenics movement<sup>7</sup> which she also apparently supported.<sup>8</sup> Thus, while Kate Sheppard did pave the way for women’s advancement in New Zealand, she was also a woman of her times in that she held beliefs that may be regarded as problematical in today’s society.

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<sup>5</sup> Dictionary of New Zealand Biography, [www.dnzb.govt.nz](http://www.dnzb.govt.nz)

<sup>6</sup> The New Zealand Women’s Christian Temperance Union was founded in 1886. One of the main aims of the organisation was to support the control, and sometimes prohibition, of alcohol.

<sup>7</sup> The theory of eugenics was first introduced by Sir Francis Galton in his publication *Inquiries into Human Faculty and Its Development* in 1883. Galton stated that the eugenic question dealt “with questions bearing on what is termed in Greek, *eugenes* namely, good in stock, hereditary endowed with noble qualities. This, and the allied words, *eugeneia*, etc., are equally applicable to men, brutes, and plants. We greatly want a brief word to express the science of improving stock, which is by no means confined to questions of judicious mating, but which, especially in the case of man, takes cognizance of all influences that tend in however remote a degree to give to the more suitable races or strains of blood a better chance of prevailing speedily over the less suitable than they otherwise would have had”: *Inquiries into Human Faculty and Its Development* at 17.

<sup>8</sup> Kate Sheppard edited a publication entitled “The White Ribbon” in which articles about eugenics were published. Kate Sheppard told the National Council of Women in 1898 that “good morals and good health went together”, an assumption underlying the eugenics movement for many women: see Hilary Stace “Gene-Dreaming: New Zealanders and Eugenics” Professional Historians’ Association of New Zealand, Aotearoa, [www.phanza.org.nz](http://www.phanza.org.nz).

The concept that it could ever be thought that a woman's intelligence was equal to that of a child appears equally foreign in modern society. This leads one to wonder how a figure such as Kate Sheppard would view New Zealand's progress in achieving gender equality, an ideal which would have appeared to be fundamentally unobtainable during her own lifetime. Could she have imagined a future where there has already been two female Prime Ministers,<sup>9</sup> two female Governors-General,<sup>10</sup> a female Chief Justice<sup>11</sup> and a female Speaker of the House?<sup>12</sup>

I'd like to take a few moments now to reflect on some of the other milestones for women since Kate Sheppard's day. In 1942, the Juries Act was amended to allow willing women to serve on juries, such service being made compulsory in 1963.<sup>13</sup> After the enactment of the Equal Pay Act 1972, New Zealand women have been guaranteed the right to equal pay for equal work in all sectors of the workforce. While in Kate Sheppard's day a husband had the right to the income and use of his wife's property, such a state of affairs now appears utterly incomprehensible.<sup>14</sup> The enactment of the Matrimonial Property Acts of 1963 and 1976 gave recognition to the concept of the equal sharing of property amongst spouses. Moreover, since 2001, all women in de facto relationships have been provided with property protection. Finally, all New Zealand women are guaranteed the right to paid parental leave under the Parental Leave and Employment Act 1987.<sup>15</sup>

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<sup>9</sup> Dame Jenny Shipley was New Zealand's first female Prime Minister and was in office from 1997 to 1999. Helen Clark was New Zealand's first elected female Prime Minister and was in office from 1999 to 2008.

<sup>10</sup> Dame Catherine Tizard served as New Zealand's first female Governor-General from 20 November 1990 to 21 March 1996. Dame Catherine was also the first female Mayor of Auckland, being elected as Mayor in 1983. Dame Silvia Cartwright served as New Zealand's Governor-General from 4 April 2001 to 23 August 2006. Prior to her appointment as Governor-General, Dame Silvia was the first woman to be appointed to the High Court bench in 1993. Dame Silvia has now been appointed to sit as one of two international judges in the Trial Chamber of the Cambodia Tribunal.

<sup>11</sup> Dame Sian Elias was sworn in as the first female Chief Justice of New Zealand on 17 May 1999.

<sup>12</sup> Margaret Wilson served as the first female Speaker of the House of Representatives from 2005 to 2008.

<sup>13</sup> However, it was not until 1976 that the provision allowing women to exempt themselves from jury service was repealed.

<sup>14</sup> Kate Sheppard herself sought to promote the economic independence of women. In her view there was 'no greater anomaly than the exaltation by men of the vocation of wife and mother on the one hand, while, on the other, the position is by law stripped of all its attractiveness and dignity, and a wife and mother is regarded not only as a "dependent" on her husband's bounty, but even the children of her own body are regarded as his legal property.' The practical means of ending a wife's economic and legal dependence on her husband was given in the National Council of Women proposal that there should be a law 'attaching a certain just share of the husband's earnings or income' for the wife's separate use, 'payable if she so desires it, into her own account': Dictionary of New Zealand Biography, [www.dnzb.co.nz](http://www.dnzb.co.nz).

<sup>15</sup> Under the Parental Leave and Employment Act 1987, the maximum entitlement to parental leave is as follows: if a mother in employment has worked for the same employer for 12 months for an average of 10 hours a week and no less than one hour in every week or 40 hours in every month, and her partner has worked the same hours, the mother is entitled to 10 days of special leave, 14 weeks of paid parental leave and 52 weeks of

In 2008, the Ministry for Women's Affairs reported on progress towards their 2004 Action Plan for New Zealand women<sup>16</sup> and it is apparent that in the last twenty years the participation of New Zealand women in the workforce has steadily increased. While in 1990, the labour force participation rate for women was 54.4 percent, compared with 74.7 percent for men, in 2009 this figure has increased to a 61.9 percent labour force participation rate for women, compared with 74.8 percent for men.<sup>17</sup> Indeed, there are more women in the paid labour force than ever before and unemployment rates are low by historical standards.

As was noted by the Ministry in its report, the long-term economic outcomes for women have improved considerably since the 1980s. In large part, this can be attributed to the increase in women's participation in higher education.<sup>18</sup> Over the last ten years there has been a significant increase in women's participation in tertiary education and younger women are now more likely to hold a tertiary qualification than young men.

In my own legal field this change has been marked. For example, New Zealand's first female Speaker of the House, Margaret Wilson, noted in an address to the Women in Law Committee that, when she commenced law school in 1966, she was one of six female law students at Auckland University in a class of around 200 students.<sup>19</sup> In the 1960s, the idea that women could practice law was met with disbelief. For example, Margaret Wilson was informed that, on the proviso that she would be lucky enough to get a job, it would be a pity that it would have to be in a government department.<sup>20</sup>

New Zealand's Chief Justice, Dame Sian Elias, was confronted with similar attitudes when she first embarked upon her career in law in 1969. In an address to the WISE Women Network, she recounted the fact that she is still waiting for the phone call to tell her whether she got the first job she was interviewed for. The fact that it was revealed, many years later, that the male partners at the said firm had expressed much consternation at the thought of

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unpaid parental leave. A mother is entitled to transfer up to 14 weeks of paid parental leave to her partner and the partner is entitled to share the remaining unpaid leave up to a total of 52 weeks.

<sup>16</sup> Ministry of Women's Affairs, *Indicators for Change: Tracking the Progress of New Zealand Women* (2008).

<sup>17</sup> Figures obtained from Statistics New Zealand, [www.stats.govt.nz](http://www.stats.govt.nz).

<sup>18</sup> *Indicators for Change* above n 16 at 13.

<sup>19</sup> Hon Margaret Wilson, Speaker of the House of Representatives (Inaugural Shirley Smith Lecture to the Women in Law Committee, Wellington District Law Society, 18 September 2008).

<sup>20</sup> *Ibid.*

having to partake in morning tea with a woman,<sup>21</sup> clearly demonstrates that the progress that has been made is indeed significant.

When I was at Law School in the 1970s, there were reasonable numbers of women but male dominated attitudes still persisted. I remember at one stage I was one of a group of female students who complained about the type of social events that were organised by and for law students. From memory there was a ball but that was very expensive. The cheaper functions were held in insalubrious drinking establishments where it was commonly said by many students that attendance by women amounted to consent to rape. Our complaints were heeded, and a cheap and cheerful dinner was arranged with a speaker. We all felt obliged to go, as we thought that at the very least they were trying. Well, we were mistaken. The speaker was male and he spoke, among other things, about (you guessed it) rape. He regaled us with a story of how he had got a group of clients off a charge of rape, despite their use of a crowbar. This was supposedly a funny story.

This type of thing certainly would not occur now at a law student function. In New Zealand, we have a larger percentage of female law graduates than male. The most recent statistics show that approximately 62 percent of the law graduates in New Zealand are female.<sup>22</sup>

The increase in women's participation in education and the workforce would indicate at first sight that the future of New Zealand women appears to be increasingly bright and I am sure that is right. The advances that have been made in New Zealand towards ensuring gender equality in all areas of life have been reflected in New Zealand's high rankings in international measurements of gender parity. For example, the *Global Gender Gap Report 2008* (produced by the World Economic Forum) which measures indicators such as economic participation and opportunity, educational attainment, health and survival and political empowerment, ranks New Zealand as fifth place in the world with regard to the percentage of the gaps between men and women that have been closed.<sup>23</sup> In the 2007/8 Human Development Report, published by the United Nations Development Programme, New

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<sup>21</sup> Dame Sian Elias, Chief Justice of New Zealand "Women in the Justice System" (Address to the WISE Women Network, Pukekohe, 8 March 2000).

<sup>22</sup> Equal Opportunities Trust *Workplace Age and Gender: Trends and Implications* (2009) at 11.

<sup>23</sup> Norway, Finland, Sweden and Iceland are above New Zealand in their rankings.

Zealand was ranked 18<sup>th</sup> in the Gender-related Development Index<sup>24</sup> and 11<sup>th</sup> in the Gender Empowerment Measure.<sup>25</sup>

Moreover, progress continues to be made. For example, earlier this year the New Zealand Global Women network was founded. This is a not for profit organisation whose members are accomplished senior women leaders from a wide range of disciplines and industries.<sup>26</sup> The organisation aims to expand the national and international impact of women leaders, develop and assure leadership opportunities for qualified women, and mentor and shape emerging leaders. It would not have been possible to envisage the existence of such an organisation even ten years ago.

However, while such achievements are undeniably laudable, there remains no doubt that the goal of gender equality is far from achieved in New Zealand and by no means should New Zealand rest on its laurels. While the labour force participation rate of New Zealand women may be high, it is also strikingly apparent that pay equity for females in the workforce has yet to be achieved. When one looks closely at the pay discrepancies that still persist in New Zealand's labour force, the figures give significant cause for concern. In 2008, the average weekly income for New Zealand men was \$976, while for New Zealand women it was \$657.<sup>27</sup> While such differences in income may in some part be due to the difference in full and part time work between men and women, it must be emphasised that the pay gap between

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<sup>24</sup> The Gender-related Development Index is an indication of the standard of living in a country. It aims to show the inequalities between men and women in the following areas: long and healthy life, knowledge, and a decent standard of living. The top three ranked countries are, respectively, Iceland, Australia and Norway. The United States is ranked 15<sup>th</sup> and the United Kingdom is ranked 14<sup>th</sup>. Australia is ranked 8<sup>th</sup>, the United Kingdom 14<sup>th</sup>, and United States 15<sup>th</sup>.

<sup>25</sup> The Gender Empowerment Measure is a measure of inequalities between men's and women's opportunities in a country. It combines inequalities in three areas: political participation and decision making, economic participation and decision making, and power over economic resources. The top three ranked countries are, respectively, Norway, Sweden and Finland.

<sup>26</sup> See generally, [www.globalwomen.org.nz](http://www.globalwomen.org.nz). The Global Women Board consists of: Mai Chen (chairperson, founding partner of Chen Palmer, Australasia's first specialist public law firm), Annah Stretton (operates Stretton Clothing and Stretton Publishing), Bridget Liddell (managing principal of New York based company Fahrenheit Ventures, and chairperson of the New Zealand / US Beachhead Program (a NZ Government program which offers strategic advice and mentoring to small New Zealand businesses seeking access to the US market), Jane Diplock (chairperson of the Securities Commission (NZ)), Jenny Morel (managing partner of No 8 Ventures, and chairperson of Martin Aircraft Company, Vertical Composting and Smart Orthotics, a director of Open Cloud and Surveylab), Rt Hon Dame Jenny Shipley (former Prime Minister of New Zealand who is now an independent director of China Construction Bank, and chairperson of Senior Money International and Mainzeal Construction. She is also a director of its parent, Richina Pacific and the HR company, Momentum), Katrina Troughton (director of WebSphere Software Group for IBM's Growth Markets Unit, based in Shanghai, China), Patsy Reddy (director of Active Equities Limited), Sarah Kennedy (managing director of Healtheries of New Zealand Limited) and Wendy Pye (owner and managing director of the Wendy Pye Group, publishers of educational products).

<sup>27</sup> Above n 17.

men and women has remained more or less stable at around 12 percent since 2001.<sup>28</sup> That is, on an hourly basis, women, on average, earn 12 percent less than men. It must also be noted that Māori and Pacific women experience poorer economic outcomes on average than European women.<sup>29</sup>

Moreover, while the level of female participation in tertiary education has steadily increased, a study carried out by Statistics New Zealand in 2005,<sup>30</sup> found that males' incomes were consistently higher than those of females five years after finishing their studies.<sup>31</sup> This applied across every field of study and indicates that equality in education does not guarantee pay equity. Such discrepancies are perpetuated in both the public and private sectors. Over the last four years, 67 pay and employment equity reviews have been completed in the public sector. All of the reviews, except one, found gender pay gaps that varied in size from 3 percent to 35 percent.<sup>32</sup> Common findings from the reviews were that women and men had unequal starting salaries for the same job and that there were persistent gender inequalities in pay progression and performance pay.

It is not only the lack of gender parity in pay which gives cause for concern. The latest *New Zealand Census of Women's Participation*, released in 2008 and published by the Human Rights Commission, provides some sobering figures indicating that significant barriers still exist for women in their ability to obtain senior positions in New Zealand's workforce. A brief look at some statistics illustrates that the goal of equality is far from achieved. For example, in the academic arena, 19.19 percent of university professors and associate professors are female, while in the legal profession only 16.8 percent of partners in large law firms are female.<sup>33</sup> Of the New Zealand judiciary 25.76 percent are women, but there are higher percentages in some of the lower courts.<sup>34</sup> Moreover, as was noted by Dr Judy McGregor, the Equal Employment Opportunities Commissioner, it is quite apparent that

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<sup>28</sup> *Indicators for Change* above n 16 at 13.

<sup>29</sup> Median hourly earnings vary significantly according to ethnicity. In 2007, European women earned more (\$17.22) than both Māori and Pacific women (\$14.80 and \$15.00 respectively). However, it must be noted that the median hourly earnings for European women were higher than that of Māori men (\$17.22 compared with \$16.00). The variance in earnings according to ethnicity is concerning. *Ibid* at 52.

<sup>30</sup> Integrated Dataset on Student Loans and Allowances.

<sup>31</sup> "Male's Income 20 Percent Higher than Females' Five Years After Leaving Study" [www.stats.govt.nz](http://www.stats.govt.nz).

<sup>32</sup> "Legal opinion firm on state sector chief execs equal employment role" [www.hrc.co.nz](http://www.hrc.co.nz).

<sup>33</sup> Human Rights Commission, *New Zealand Census of Women's Participation* (2008) at 14.

<sup>34</sup> *Ibid* at 71. Some of the current percentages are as follows: Family Court 37.78 percent, District Court 27.41 percent, Maori Land Court 37.50 percent, Associate Judges of the High Court 14.3 percent, High Court 25 percent, Court of Appeal 22.22 percent, Supreme Court 20 percent.

gender equality is still far from realised in New Zealand's boardrooms.<sup>35</sup> The fact that only 8.65 percent of women are company directors in New Zealand indicates that the struggle to obtain gender parity continues.

Such figures raise the inevitable question as to what underlying barriers are restricting the advancement of New Zealand women towards positions of seniority in the workforce. It is perhaps instructive first to turn towards the area of corporate governance in which the discrepancy in gender participation is the most pronounced. It must be emphasised that New Zealand is not alone in its failure to have achieved gender equality among boards in the private sector. The figures in Australia, the United Kingdom and the United States are all dismally low.<sup>36</sup> In fact, the lack of women in the City, London's financial district, is currently the subject of an inquiry by the House of Commons Treasury select committee. The inquiry, *Women in the City*, will likely focus on sexism and pay inequalities faced by women who currently work in the City. It is thus quite clear that the struggles women face in climbing to the top of the corporate ladder are not unique to New Zealand.<sup>37</sup>

Some light can be shed on why women are struggling to make their presence felt in boardrooms from the comments made by Ansgar Gabrielsen. Gabrielsen is a Conservative Trade and Industry Secretary in Norway and was the driving force behind the introduction of legislation in Norway mandating a compulsory rate of 40 percent of women on boards on all publicly listed companies. Gabrielsen noted that he was driven to engineer the legislation because he "could not see why after 25 to 30 years of having an equal ration of women and men in universities and with having so many educated women with experience, there were so few of them on boards... From my time in the business world, I saw how board members were picked, they come from the same small circle of people. They go hunting and fishing together. They're buddies."<sup>38</sup>

Similar findings have recently been published by the Australian Centre for Leadership for Women, which conducted a survey about the difficulties that women face getting on to boards.<sup>39</sup> One of the key barriers identified as preventing women from obtaining board

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<sup>35</sup> Ibid at 5.

<sup>36</sup> Ibid at 8.

<sup>37</sup> "Women helping men to see work from another viewpoint" *The New Zealand Herald* [www.nzherald.co.nz](http://www.nzherald.co.nz).

<sup>38</sup> *New Zealand Census of Women's Participation* above n 33 at 10.

<sup>39</sup> Australian Centre for Leadership for Women *Women Getting into Boards* (2009).

positions was their lack of access to male dominated networks.<sup>40</sup> Ingrained gender ideologies were also identified as significant barriers towards enabling women to obtain positions on boards.<sup>41</sup> The survey identified a closed shop mentality of boards in the hiring process and it was also stated that discriminatory perceptions of women and their caring responsibilities were perpetuated in boardrooms across the country.<sup>42</sup> The Final Report proposed that a viable solution to overcome these obstacles would be for the Australian Government to introduce gender quotas for board membership in order to ensure the achievement of gender equality.<sup>43</sup> I am not to be taken as advocating quotas but there should be a commitment on the part of everyone to try and increase participation. It is no longer possible to use the excuse that there is a lack of qualified women. That is simply no longer the case.

Another area in which it is widely acknowledged that there remains a dearth of female participation at a senior level is in my own area, the legal profession. Interestingly, a recent analysis of Census data undertaken by the Equal Employment Opportunities Trust found that the percentage of women lawyers in New Zealand has substantially increased in the last twenty years.<sup>44</sup> In 1991, 24 percent of lawyers were women, while by 2006 they totalled 42 percent.<sup>45</sup> However, while a greater number of females are now entering the profession, at the more senior levels the profession remains dominated by males. In New Zealand, of the 90 practising Queens Counsel, only 11 are women. Moreover, as noted above, only 16.8 per cent of females are partners in the larger law firms.<sup>46</sup> While there is currently a female Chief Justice, two females on the Court of Appeal bench (one of whom is, of course, myself), one woman Associate Judge and nine female Judges on the High Court, one of whom has recently been appointed as Chief High Court Judge, the percentage of female judges at all levels of the judiciary does still leave much to be desired. It can also be noted that there remains a real lack of ethnic diversity at all levels of the legal profession.

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<sup>40</sup> Ibid at 8.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid at 9.

<sup>44</sup> *Workplace Age and Gender: Trends and Implications* above n 22.

<sup>45</sup> Ibid at 9.

<sup>46</sup> In "Lawyer to be Robbed," Letter to the Editor, *New Zealand Lawyer* (16 October 2009), a final year female law student expressed concern that after summer clerking in a top tier law firm, which had employed an equal ratio of male to female summer clerks, only 46 percent of female summer clerks were offered a graduate position compared to 85 percent of the male summer clerks. This percentage discrepancy, if correct, may indicate that in an economic downturn there is a return to traditional patterns of male dominance in the legal profession.

Once again, the question arises as to what barriers are preventing female progression in the legal profession. In 2005, the New Zealand Law Society Women's Consultative Group embarked on a survey to identify matters which were of key concern to women practitioners. The most pressing concerns for women practitioners were identified as being: professional support; advancement; salary; and hours of work.<sup>47</sup>

In light of my time in practice I am able to understand that such concerns, particularly those regarding hours of work, are indeed valid. Before my appointment to the High Court bench in 2000, I was a partner at the law firm Simpson Grierson. Balance was definitely not part of my life at that time. I remember one of my sons once saying to my husband who, with some justification, thinks I don't know where the vacuum cleaner is kept: "Don't be silly Daddy. Mummies don't do housework. They go to meetings and to the gym". My family still bring up the time we went to Movie World or some such and I spent the first two hours sitting outside in the car on a conference call with clients on my mobile phone (actually cursing the long life batteries of mobile phones) and then wondering how I was going to find my family again in all the crush. Although I have a very tolerant family, none of them were speaking to me by this stage! I can therefore indeed see why the hours of work involved in law practice are viewed as a pressing concern for many female practitioners (and indeed for any sane person).

This, however, brings me to the issue of whether greater difficulties face female lawyers who aspire to join the judiciary. As the figures would indicate, female members of the judiciary are still very much in the minority in New Zealand. However, once again, this is not a phenomenon unique to New Zealand. Interestingly, in the United Kingdom the disparity in gender representation on the bench was such that legislation was passed in 2005 to create a Judicial Appointments Commission.<sup>48</sup> The Commission has the statutory responsibility to appoint people to the lower courts of the United Kingdom solely on merit, to select people only of good character and to have regard to increasing the diversity of people available for judicial selection.<sup>49</sup> The Commission has transformed the judicial appointment process in the United Kingdom. A potential applicant for the bench now has to sit an anonymous qualifying test, as well as having to engage in an interview and role-play situations at the next stage of

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<sup>47</sup> New Zealand Law Society Women's Consultative Group, *Women Lawyers' Survey* (2005).

<sup>48</sup> Constitutional Reform Act 2005.

<sup>49</sup> Sections 63 and 64 of the Constitutional Reform Act.

the recruitment process.<sup>50</sup> Such steps have been implemented with the aim of introducing a greater level of transparency to the appointment process and to ensure that the practice of shoulder tapping barristers who fall within approved social networks is relegated to the past.<sup>51</sup>

However, the notion that appointments should involve anonymous assessments of merit has not been greeted with overwhelming enthusiasm. Dame Hazel Genn, an original member of the Commission, in a recent trip to New Zealand, said that a number of judicial review actions have been taken claiming that such assessments should be ruled invalid. This may indicate a wish to return to a system which has been criticised as having operated for a long time on the basis that it is not what you know but whom you know. On the other hand, while the Commission has revolutionised the appointment process in the United Kingdom, at the same time, it has also received criticism for failing exponentially to increase diversity on the Bench. This indicates that the path towards achieving gender parity on the Bench is by no means an easy one.

There are certainly very good arguments for gender (and indeed ethnic) diversity on the bench.<sup>52</sup> As has been outlined by our Chief Justice, judiciaries can be seen to lack democratic legitimacy if they are comprised of solely white middle class men, visibility of women on the Bench can play a critical role in breaking down gender stereotypes and the experiences and perspectives of women are distinct and useful for judging in modern conditions.<sup>53</sup>

Change certainly cannot happen overnight, however. It must be said that all successive Attorneys-General in New Zealand (including the current Attorney) have been very conscious of the need to work towards more diversity in the judiciary – hence the current percentage of women judges, which is certainly better than the percentage of female partners in the large legal firms and the figures of board membership.

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<sup>50</sup> See generally, <http://www.judicialappointments.gov.uk/>.

<sup>51</sup> As an aside I have the impression (possibly jingoistic) that the phenomenon of approved social networks is much more prevalent in the UK than in New Zealand.

<sup>52</sup> It must be noted that such reasoning can be applied to all areas of the workforce and is particularly pertinent in the political spectrum. For example, the “50/50 Campaign for Democracy” led by the European Women’s Lobby aimed to ensure the equal representation of women and men in the European Parliament in the June 2009 elections and in the European Commission. The underlying impetus for the Campaign was the belief that a just democracy in Europe required the representation of both women and men in the making of decisions that affect the lives of all Europeans. The argument was made that the under-representation of women in EU decision-making bodies contributed to the lack of democratic legitimacy of the European Union. See generally, [www.womenlobby.org](http://www.womenlobby.org) and [www.5050democracy.eu](http://www.5050democracy.eu).

<sup>53</sup> Dame Sian Elias, “Changing Our World” (Speech to International Association of Women Judges’ Conference, Sydney, 4 May 2006).

More generally, studies have found that a significant barrier which impedes women's career advancement across all areas of employment is that of entrenched societal attitudes. A vivid illustration of such beliefs is provided by the comments famously uttered by President Richard Nixon, recorded on White House audiotapes and made public through the Freedom of Information Act. Nixon stated, when explaining why he would not appoint a woman to the U.S Supreme Court: "I don't think a woman should be in any government job whatsoever... mainly because they are erratic. And emotional. Men are erratic and emotional, too, but the point is a woman is more likely to be."<sup>54</sup>

While it would be hoped that such attitudes are no longer perpetuated in the decision-making process, it has been found that a significant impediment to the progression of women in the workforce has been the propagation of normative ideologies surrounding the apparently inherent traits of both females and males. In 2007, psychologists Alice Eagly and Linda Carli undertook research on gender discrimination and other challenges faced by professional women.<sup>55</sup> A key finding of their research was that people associate men and women with different traits and link men with more of the traits that connote leadership. In the language of psychologists, the clash is between two sets of associations: communal and agentic. Women are associated with communal qualities, which convey a concern for the compassionate treatment of others.<sup>56</sup> In contrast, men are associated with agentic qualities, which convey assertion and control.<sup>57</sup> As it is the agentic traits that are associated in most people's minds with effective leadership, it is clear that women have to surmount significant obstacles created by societal norms if they aspire to climb to the top.

As I am sure that all of you, as professional women, are aware, there is no doubt that any discrimination based on the perceived inability of women to lead is inherently invalid. Therefore, it must be asked how barriers to female participation at all levels of the workforce can be successfully broken down. However, before traversing this topic, it is perhaps pertinent to note that it is not only women, but rather society as a whole that has an immense amount to gain from the promotion of female participation in the workforce. There is now global recognition that women are the most powerful engine of global growth. As was noted

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<sup>54</sup> Cited in Eagly A.H and Carli L. "Women and the Labyrinth of Leadership" (2007) *Harvard Business Review* 2 at 3.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid at 5.

<sup>57</sup> Ibid.

in an article in *The Economist*, the increase in female employment in the rich world has been the main driving force of growth in the past couple of decades.<sup>58</sup> The surge in female employment has contributed more to global GDP growth than new technology or the new global powers, China and India. Moreover, it was suggested that increasing female participation in the workforce is part of the solution to many of the world's economic woes, including shrinking populations and poverty.

We must then ask how the inequality that still persists for women in the workforce can be successfully overcome. Although New Zealand has anti-discrimination legislation in place, it is apparent, as Eagly and Carli have noted, that gender inequality will often result from norms embedded in organisational structures and culture. It has therefore been suggested that a number of steps should be taken within organisations to facilitate more diversity at the higher levels of employment.<sup>59</sup> Some of these steps include:

- Increasing people's awareness of the psychological drivers of prejudice toward female leaders, and work to dispel those perceptions.
- Changing the long-hours norm, so that the prime indicator of someone's worth to an organisation is not seen as hours spent at work but objective measures of productivity.
- Using open-recruitment tools, such as advertising and employment agencies, rather than relying on informal social networks and referrals to fill positions.
- Establishing family-friendly human resource practices: these may include flexi-time job sharing, part time work, telecommuting and in some cases on-site child care.<sup>60</sup>

As professional women, you are all playing a vital role in ensuring that women's fight for equality in the workforce is won. Fifty years ago the notion that women could pave out successful professional careers for themselves would have been met by many with much incredulity. However, your presence here tonight thankfully indicates that society has progressed in leaps and bounds. There still remains much work to be done. Whether this means suggesting that your organisation employs transparent recruitment processes or

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<sup>58</sup> "The Importance of Sex" <http://www.economist.com>.

<sup>59</sup> Above n 52 at 8-9.

<sup>60</sup> A study of 72 large U.S firms showed that family-friendly HR practices instigated in 1994 increased the proportion of women in senior management over the subsequent five years.

through simply aiming to succeed in your career, and proving that females can do the job just as well as their male counterparts can, it needs to be emphasised that individuals can be the catalyst for systemic change. The fact that you are all able to be here tonight as professional women is thanks to the efforts of many women who have struggled to prove their worth in a male dominated world. My challenge to you tonight is to take up the task of acting as an advocate for gender equality and of actively mentoring the young women leaders of tomorrow. Progress over the next twenty years depends on the efforts of you and those like you.