

INTERNATIONAL ASSOCIATION OF WOMEN JUDGES' CONFERENCE

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“Changing our World”

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Tena koutou, nga wahine toa o te ao. Kei te mihi atu ahau ki a koutou katoa kua tae mai I nga hau e wha.

Tena koutou, tena koutou, tena koutou katoa.

Greetings to you chiefly women of the world. I have greeted you who have come from the 4 winds. Greetings to all of you.

It is a very great honour for me to speak at this opening session of the biennial conference of the International Association of Women Judges. In this part of the world, it is the women judges of Australia who have showed us what could be done by women and encouraged us to believe we could do it too. At the outset I want to express the gratitude, admiration and affection we all feel for Roma Mitchell, Elizabeth Evatt, and Mary Gaudron. If it had not been for the IAWJ I might never have met Roma Mitchell as I did on her visit to the conference held in Wellington. I was not a judge. I was a lawyer who was pulled in to talk to the conference about the work I was doing. I will never forget her warmth, generosity and encouragement. No one had ever spoken to me like that before. I wished she was a New Zealander. As, reading the work of Elizabeth Evatt and Mary Gaudron, I wished on our side of the Tasman we had such women leading us. I count it a privilege indeed to express appreciation for their example on this occasion. They showed us the way.

Why an International Association of Women Judges? As we embark upon the 8th Biennial Conference of the Association, we need to ask this question. Our colleagues at home are asking it – and not only our male colleagues. After seven biennial conferences what remains to be said about the role and perspective of the women judge? Such questioning is not new. Twenty-one years ago, Suzanna Sherry asked the American National Association of Women Judges “is there any longer a need for an association of *women* judges?”² She pointed to the breadth of the papers presented at the convention she was addressing. Most did not centre on what might be thought to be

¹ The Rt Hon Dame Sian Elias, Chief Justice of New Zealand

² Sherry “*The Gender of Judges*” (1986) 4 *Law & Ineq.J.* 159.

“women’s issues” at all. At this conference, under the loose theme of judicial independence, we too are to consider issues that exercise all who hold judicial office. We are to consider the challenges of judging today.

Some of us come from countries with special challenges for the judges - countries in conflict or transition, or which face direct threat to judicial authority and independence. Even in countries where there is no direct threat to judicial independence in judging, such independence can be undermined by lack of institutional support or by ignorance and laziness of mind so that we do not recognise when judicial function is being compromised. All of us come from countries with diverse communities in which we are asked to resolve, through law, claims of right that may conflict with other claims of right and between people who are not alike and whose values may be very different. All of us struggle with questions of the legitimacy of our role and the need to maintain public confidence in us. We are acutely conscious of the fact that we can forfeit public confidence through incompetence and insensitivity as well as through naked partiality or abdication of responsibility. Judicial authority always has to be justified. That is why close attention to method and to the reasons by which we justify what we do is essential to the maintenance of public confidence. These themes prompt the topics we are to discuss at this conference. So why are we discussing them as an association of *women* judges?

The answer given to this question in 1985 by Suzanna Sherry lay principally in the distinct perspective brought to judging by women. She was less concerned then with the need for support, believing that concern with women’s minority status was “diminishing” through their successful integration into the judiciary which, though recent, had largely been achieved. Twenty years on, I am not so sure. Other women judges have expressed reservations. So, Patricia Wald in a 1992 article³ referred to the “peer deprivation” of being a woman judge. Most of the rest of us would recognise the same phenomenon in our own lives as women judges. Even where peer deprivation has receded as dramatically as in the Supreme Court of Canada, Justice Claire L’Heureux-Dubé in 2001, speaking of the continuing struggle for equality, thought women judges remained “outsiders” at least in public perception.⁴

I want to suggest that both peer and social deficit and the distinct perspective women bring to judging are important reasons for being here in association with other women judges. The participation of women on a basis of equality with men continues to challenge our societies. It is not surprising that women who exercise judicial authority

³ Wald “*Some Real-Life Observations About Judging*” (1992) 26 *Ind.L.Rev.* 173.

⁴ L’Heureux-Dubé “*Outsiders on the Bench: The Continuing Struggle for Equality*” (2001) 16 *Wis.Women’s L.J.* 15.

continue to be “outsiders” who are watched more critically and who need constantly to justify their appointments and their work. Those challenges themselves justify a special interest group to provide the opportunity to pool experiences which will help us in our work. Close attention to method and understanding of the nature of the legal process is the best answer to those who are sceptical. That is why it is not surprising that the topics at a conference such as this are ones of interest to all judges and are not gender-dominated. We want to be the best judges we can be so that we can answer such doubts. Few of us would be judges if we did not think the work worthwhile. If it is worth doing, as our mothers always told us, it is worth doing well. So we want to talk law and judicial method and about the wider issues affecting the judiciary. All of us look forward to the day when gender does not have to be on the agenda - but that day is not this day. So we also have common interest in explaining why it is that women judges benefit our legal systems and the communities they serve.

Being female is not a sufficient qualification for being a judge, but it is an important additional qualification for at least three reasons. All arise from the circumstances of women in our societies.

First, the exclusion of women from the judiciary, as from other positions of authority in our legal systems, is a denial of the equality of men and women under international law and under the principle of equality which underlies the rule of law in our domestic jurisdictions. Diversity in those who exercise authority is based on fundamental principles of law.

The second reason why being female is an important qualification for judicial appointment is that our judiciaries lack democratic legitimacy if they are comprised of white middle class men. Sandra Day O’Connor said that the fact that she was a woman who gets to decide cases was more important than the fact that she would decide cases as a woman.⁵ The visibility of women judges is critical in breaking down stereotypes and is important for that reason alone. It is not clear from the quote whether Justice O’Connor was suggesting however that her perspective as a woman was not important. I think it is, for reasons I want to expand on. The point I want to make is that equality and its demonstration are necessary for the legitimacy of the judiciary in a democracy in which all individuals are valued.

The third reason for women judges is, in my view, that the experiences and perspectives of women are distinct and are essential for judging in modern conditions. The days when the law reports in common law jurisdictions were filled with cases about sale of goods or charter parties are past. Litigation today is in part a forum for advancing social

⁵ Quoted by Kathryn Mickle Werdegar of the Californian Supreme Court in “*Why a Women on the Bench?*” (2001) 16 *Wis.Women’s L.J.* 31, 40.

ends through deliberative public process under claim of right. Indeed, for those of my generation, that was part of the attraction of legal practice. What was wrong, it seemed to us, could be confronted systematically and exposed as out of touch with modern realities and aspirations. In litigation today, the judge may be called upon to identify and apply sometimes-conflicting fundamental values of the legal order to the circumstances of individual cases. Modern litigation throws up some of the more intractable moral problems of the times. In most of our jurisdictions, they are decided under the umbrella of general statements of human rights or from principles identified by the judges as inherent in our legal systems. I agree with Suzanna Sherry that it is critical that judges are able to bring the experiences of women to these cases. It is the nature of judging in modern conditions which provides the best reason for acknowledgment of diversity within the judiciary. It is a topic I will come back to.

First, I want to deal with claim of right. As my former colleague and distinguished international lawyer, Sir Kenneth Keith, would insist, I begin with international law. The circumstances of women in all our societies do not conform to international obligations.

It is more than 25 years since the inception of CEDAW, the principal international convention relating to discrimination against women. Most of the jurisdictions represented at this conference have committed to that international vision of the equal rights of women. The fact that a specific Convention was thought necessary at all should however give us some pause. After all, equality of men and women was a basic principle of the United Nations, as the preamble to the Charter affirms by expressing faith in:

.....fundamental human rights, in the dignity and worth of a human person, in the equal rights of men and women.

The Charter was followed by similar provisions in the Universal Declaration of Human Rights and the great Covenants of 1966 (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights). They confirmed that gender is an impermissible distinction in the enjoyment of equality and fundamental freedoms. They bound acceding states to undertake to ensure that men and women were equally entitled to the enjoyment of all established rights. That these statements and their affirmation of the humanity and dignity of women proved inadequate indicates the intractability of the problem of gender equality.

CEDAW is a popular Convention, acceded to by 180 states, but it is the Convention with the greatest number of reservations by acceding

states.⁶ Many reservations to key articles are made in the name of religious or traditional practices, even though on occasions these reservations do not comply with the provisions in the reserving states own constitutions.⁷ Although CEDAW requires states to take measures to modify legislation, customs, practices and social and cultural patterns that discriminate against women, 20 years since most of our jurisdictions ratified it there is a gap between the ideals expressed and what it is to be female. The reality of women's lives still lags behind the expectations of the Convention in important respects.

This topic produces uneasiness in all societies. It strains relations between nations, particularly between developed and less developed countries. Yet none of us can feel complacent. The manifestations of inequality may be different in my society, but they are real enough. Indeed, the extent and effect of violations of women's rights continue to be staggering.⁸ In employment, education and in income in all societies, women come in well behind men. No country is immune from the problems of domestic violence against women. As the CEDAW Committee has recognised, violence against women is "a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men". Under-reporting of such violence means that we see only the tip of the iceberg. In the Pacific region, of which my country is part, there is increasing recognition that domestic violence is a main inhibitor to social development, but our laws and enforcement agencies have been slow to respond. What is clear is that there are cultural inhibitors to the achievement of equal protection of the law for women.

That is borne out in our domestic legal systems. Most of us live in legal systems where constitutions or statutes prohibit direct and indirect discrimination on the basis of sex.⁹ The proscription of indirect discrimination addresses the unequal effect of the apparently equal laws (what Stephen Sedley has described as "the snake in the legal grass").¹⁰ It was to redress that effect that the Supreme Court of the United States expanded the concept of discrimination to include what Chief Justice Burger writing for the court, referred to as "practices that

⁶ Stopla "Countenancing the Oppression of Women" (2003) 12 Colum. J. Gender & L. 154, 168; Cartwright "Rights and Remedies: The drafting of an optional protocol to the Convention on the Elimination of all Forms of Discrimination Against Women" (1998) 9 Otago L. Rev. 239.

⁷ Cartwright, above n6, 240.

⁸ Female genital mutilation, dowry violence and honour killings, the use of rape as a systematic tool of destruction of societies in Rwanda, the Democratic Republic of Congo, Liberia and the former Yugoslavia. The appalling statistics about relative neglect, malnutrition and illiteracy of women and girl children are well documented.

⁹ In New Zealand, s65 of the Human Rights Act 1993 forbids indirect discrimination.

¹⁰ Sedley "The Lion and the Ox" in *Freedom, Law and Justice* (1999) 41.

are fair in form, but discriminatory in operation,” in the manner of the milk offered to the stork and the fox in the Aesop’s fable.¹¹ Similar acknowledgement of the effects of indirect discrimination led the High Court of Australia in 1989 to hold that a “last on, first off” retrenchment of employment indirectly discriminated against women employees whose entry into employment had been delayed because of historic discrimination.¹² Weight and height requirements for employment have also been held to discriminate indirectly against women.¹³ As these cases illustrate, what we see as discrimination has always depended upon social context. The context changes with altered social conditions and insights. Richard Posner has made the point well that the Supreme Court’s about-face in *Brown v Board of Education*¹⁴ from the separate but equal doctrine accepted in *Plessy v Ferguson*¹⁵ did not arise from re-examination of the text of the 14th Amendment, but from the changed social conditions in which *Brown* came to be determined.¹⁶ It was not brooding over the words “equal protection of the laws” but a change in the nation’s ethical and political climate that resulted in the decision in *Brown*.

Similar ethical insight in 1971 led the Supreme Court in *Reed v Reed*¹⁷ to hold that a policy of preference for men who applied for Letters of Administration was a violation of the Equal Protection Clause of the 14th Amendment because it was a difference not rationally related to any objective of the statute. Similar shifts in insight led to the recognition of indirect discrimination in the cases I have already mentioned.

A substantial impediment to the necessary development of ethical insight is the baggage judges inevitably carry. Felix Frankfurter identified the critical quality of the judge as the “power to discover and suppress his prejudices”.¹⁸ That is easier said than done, particularly if judges come from narrow and privileged sections of society. This is what Oliver Wendell-Holmes referred to as the “unexpressed major premise” in judging. It is the unconscious worldview of the secure and complacent. There is nothing new in it. Lord Devlin pointed to the English judges who applied a “Victorian bill of rights” when interpreting legislation which they thought interfered with freedom of contract and the sacredness of property.¹⁹ Similar worldviews led to the hostility of the US Supreme Court to the Roosevelt reforms.

¹¹ *Griggs v Duke Power Co* 401 US 424 (1971).

¹² *Australian Iron and Steel Pty Ltd v Banovic* [1989] 168 CLR 165.

¹³ *Dothard v Rawlinson* 433 US 321 (1977).

¹⁴ 347 US 483 (1954).

¹⁵ 163 US 537 (1896).

¹⁶ Posner *The Problems of Jurisprudence* (1990) 307.

¹⁷ 404 US 71 (1971).

¹⁸ Frankfurter “*The Appointment of a Justice*” in Kurland (ed) *Felix Frankfurter on the Supreme Court* (1970) 211, 216-7.

¹⁹ Devlin *The Judge* (1981) 15.

Sexual stereotyping by judges has been well documented. Inferior treatment of women has always been justified on the grounds that they are not “like” men.²⁰ Such discrimination has often been accompanied by a show of paternalism, of the type that prevented women being admitted to the bar or practising medicine.²¹ From my time in legal practice in New Zealand from the early 1970s I could give many examples. In particular, the hostility of the then exclusively male judiciary in New Zealand to matrimonial property legislation based on presumption of equal sharing stands out. That hostility was actually voiced in extra judicial statements, which would be scandalous today. Not surprisingly, the courts largely thwarted the legislation. These were judges who would have been horrified to think they were pushing any sort of ideological barrow. They prided themselves in their scrupulous legality. They simply did not see that their construction of the legislation was heavily influenced by their own personal values. They did not appreciate the extent to which those values were out of touch with the values of the times.

So, whatever the positive law statements about equality in international law and in domestic law, the reality of women’s lives in all countries is shaped by the culture they live within. Culture shapes perceptions of the positive law and its application. The culture in which women live includes the legal culture, which determines what their civil rights are. Whether two individuals are alike and should be treated equally is not clearcut. Sandra Fredman makes the point that the arguments that allowed women to be discriminated against because they were not “like” men, also justified discrimination on the grounds of race, sexual orientation, and disability.²² As she says, “It was only when values changed that the irrelevance of these characteristics was acknowledged”.²³ It is essential in any society governed by law that the legal culture is not blinkered by assumptions derived from the limited experience of judges.

I do not mean to suggest that positive law, international and domestic, is not hugely important. It is. In the past, what we now see as injustices were countenanced in part because we lacked the tools to tackle them. Statements of positive law supply those tools and they have democratically-conferred legitimacy. The enacted law is part only

²⁰ Fredman “*From Deference to Democracy: the Role of Equality under the Human Rights Act 1998*” (2006) 122 LQR 53.

²¹ eg *Bradwell v Illinois* 83 US (16 Wall.) 130 (1872) (cited in Day O’Connor “Portia’s Progress” (1991) 66 NYU L Rev 1546, 1574) in which the US Supreme Court upheld a decision of the Illinois Supreme Court denying a Chicago woman, Myra Bradwell, admission to the bar. Justice Bradley, concurring in the Court’s opinion, cited the natural differences between men and women as the reason admission should be refused.

²² Fredman, above n20, 63.

²³ *Ibid.*

of an effective strategy to overcome inequality because ultimately what is discriminatory depends on context and is substantially a cultural construct. Positive law is value laden. Who decides, matters. This feeds in to the two further reasons why women judges matter.

Had there been women on the bench, I think it is most unlikely that the gender-stereotyping common in my youth could have been entertained. The example of women carrying out judicial duties would surely have demonstrated in action the absurdity of the cases where women were protected from jury service and other distasteful or difficult occupations. In her 2004 lecture to the Society of Legal Scholars, Baroness Hale refers to the cases which agitated many jurisdictions about women serving on juries.²⁴ In New Zealand one of our more distinguished judges, known for his advocacy of human rights, ordered trial before a judge alone because of the risk that women might be on the jury and could have trouble with technical evidence. All this is not ancient history. Doubts about the competence of women or the need to protect them run through these cases.²⁵ It is difficult to believe such reasons could have been seriously put forward had women been on the bench alongside the judges making the determinations.

More importantly, a judiciary which is unrepresentative lacks legitimacy in a democracy based on political equality. In this way Baroness Hale grounds equality squarely upon democratic values in *Ghaidan's case*.²⁶ Democracy, on this view, values everyone equally and is respectful of human dignity.

Kate Malleson takes the view that although equity may be a sound principle, it is self-interest that generally drives institutional change. For that reason she considers there is "strategic strength" in highlighting the relationship between legitimacy and public confidence.²⁷ This is the argument, articulated by Gladys Kissler when President of the National Association of Women Judges that:²⁸

²⁴ Hale "The House of Lords and women's rights or Am I really a Law Lord?" (2005) 25 LS 72, 78-80.

²⁵ Baroness Hale refers to the Privy Council decision in *Poongavanam v The Queen* (6 April 2002) which deferred to the Mauritius Court of Criminal Appeal view that the social conditions prevailing in Mauritius were incompatible with jury service. Being kept away from home, sleeping in hotels, were matters likely to cause "much distress to many Mauritian women and arouse a deep resentment among many of their male relatives".

²⁶ *Ghaidan v Godin-Mendoza* [2004] 2 AC 557, 604.

²⁷ Malleson "Justifying Gender Equality on the Bench: Why Difference Won't Do" (2003) 11 Feminist Legal Studies 1, 20.

²⁸ Quoted in Malleson, *ibid*, 20.

The ultimate justification for deliberately seeking judges of both sexes and all colours and backgrounds is to keep the public's trust.

I do not disagree with this argument for a representative judiciary. It does matter to shift the stubborn view that the judge is male and white and middle-class. The shift is important to the legitimacy of judicial function. It is no more than is fair both to individuals who aspire to judicial office and to society as a whole. I think we can expect more than this from a more representative judiciary. I think however we may expect better judging. That is the final reason I address. It is more controversial.

Kate Malleson is sceptical of the emphasis on the difference women will make to judgments on the bench.²⁹ These are arguments she thinks draw directly or indirectly on the feminine "ethic of care" described by Carol Gilligan in 1982.³⁰ Empirical evidence during the 1980s and 90s cited by Malleson suggest no significant difference in the voting patterns of women attributable to gender:³¹

The best that can be said on the basis of the research to date is that there may be some differences of decision-making outcome in some areas.

Others have expressed some anxiety about compromise of judicial function. As Dame Brenda Hale put it in a speech in 2000, "our loyalty is to the law and not to our race or gender".³² Nevertheless, she ventured to hope that, if a more reflective judiciary can be achieved, it would make a difference.

I have no doubt that it would, for two main reasons. First, I doubt whether an empirical study of voting patterns is the right inquiry. What is perhaps more interesting is not the difference in opinion between contemporaries on the bench measured by their gender. Such differences may arise from time to time and may reflect the different worldviews of men and women, but I think those occasions are likely to be rare. I think it much more likely that we will see (as we have seen) shifts in the attitudes of judges, which can be attributed to working contact with people of the other sex, of different sexual orientation or of different race or culture. That is the change in legal culture that I have already referred to. Such contact I believe has already unsettled many

²⁹ Ibid, 5-9.

³⁰ Gilligan "*In a Different Voice: Psychological Theory and Women's Development*" (1982).

³¹ Malleson, above n27, 8.

³² Hale "*Equality and the Judiciary: Why Should We Want More Women Judges*" [2001] Public Law 489, 499.

of the assumptions that used to perpetuate inequality. It dispels ignorance. It encourages minorities to be viewed in their own lights.

The second reason I think we can be confident of benefits to our legal system from greater inclusiveness is because the life experiences of minority groups and women come with them. They are different. In particular, I agree with the view expressed by Elizabeth Evatt that women and minority judges are more likely to realise how often claimed objectivity is marred by unconscious biases.³³ Of course women do not think alike, but their experiences, which are different from those of men, change their view of the world. Justice Werdegar illustrates this point by quoting Justice Anthony Kennedy on the subject of Justice Thurgood Marshall:³⁴

The compassion of Thurgood Marshall is Exhibit A for the proposition that judicial reason cannot be divorced from the life experience of judges.

I agree with Patricia Wald when she says:³⁵

Is there, as we would all like to think, a secret spring of sensitivity to women's or even humanity's plight and problems that a woman judge can bring to the law? On balance, I think so. Although I am usually six leagues deep in administrative law and regulatory agency cases, there have been those rare and satisfying occasions when I do see something in a case that my male colleagues simply "don't get": intuitive negative reaction to an asserted but undocumented justification that women did not get choice assignments in an agency because they chose not to compete for them, a sensitivity to a male colleague's patronising attitude toward women lawyers or litigants, or a heightened understanding of the real but ineptly articulated reasons why women need to be represented in media power positions.

A woman's experience does add something special to the interpretation of events, which is a critical element of judging. This need not be seen as a discrete woman's voice, which changes the outcome of cases, but rather as an additional lens through which arguments, rationales and justifications are filtered to create an accurate image of reality.

³³ Quoted in Cooney "*Gender and Judicial Selection: Should there be more women in the courts?*" (1993) 19 MULR 20, 25.

³⁴ Werdegar, above n5, 35.

³⁵ Wald, above n3, 183.

I, too, have had moments when I see something in a case that my male colleagues do not “get”. I have, I think, a heightened insight into the disadvantage of those who come before our courts. I notice and try to help when colleagues occasionally display lack of insight into the reality of the lives of those who appear before us, or when they act in a way I think may be seen as overbearing or hurtful. Their experiences in life have not generally entailed the humiliations and set backs all women who are appointed to judicial office will have experienced. Their practices have usually been less chaotic, more successful. The conditions when I entered the profession have changed. There is no point in recounting what shaped us then. In many ways, my life was immeasurably enriched by the fact that I was forced into unconventional paths. I am sure many if not most of you have had the same sort of experiences. They have shaped us and they are important contributions we bring to judging. My hope is that, like Thurgood Marshall, we will in our work be Exhibit A for the benefits of diversity in appointments.

There are I think good signs. It is for example uplifting to read the judgments of women judges in recent decisions on manifestation of religion in the House of Lords and Supreme Court of Canada: *R v Governors of Denbigh High School*³⁶ and *Multani v Commission Scolaire Marguerite-Bourgeoys*.³⁷ I do not suggest that the judgments of the male members of the court were not careful and sound, but I do not think it is fanciful to detect a difference: an emphasis on human dignity; a greater scrupulousness not to wound or slight; a refreshing willingness to express doubt; and a sense of obligation to explore underlying principle in order to lay out the full reasons for decision and clear away suggestions of an undeclared major premise. As human rights litigation pushes us to explore the substantive values of our legal systems, such candour in expression is itself essential to the legitimacy of judicial decision-making. Ronald Dworkin says that the strictures and doubts, which are now part of popular culture, add to the appeal of the deliberative forum provided by the courts.³⁸ If any adequate overall view of law must recognise that it is a “form of institutionalised discourse or practice or mode of argument” which is partially political in effect, as Neil McCormick has long argued,³⁹ then women are well suited to participate. Our experiences as women do not prompt us to complacency or certainty – and they have taught us how to listen.

To the suffragettes, getting the vote was not the end. It was a means to transform the world. Perhaps it was a naive plan, as Justice Bertha

³⁶ [2006] UKHL 15.

³⁷ [2006] SCC 6.

³⁸ Dworkin “*The Judges’ new role: Should personal convictions count?*” (2003) JICJ 4, 12.

³⁹ McCormick “*Beyond the Sovereign State*” (1993) 56 MLR 1.

Wilson suggested in a paper in 1983.⁴⁰ She thought a surer platform had been created by the social and political upheavals in the 1960s and 1970s. But perhaps that too was simply another wave in the same lengthy struggle for justice.

Dame Brenda Hale in 2000 suggested that the expectation that women judges might make a difference was “voiced by people who have no ambition to become judges themselves”.⁴¹ It is rare, she commented, to hear such views expressed by those who do. I think that impression is accurate. I wonder however whether it reflects the circumspection of outsiders who hope to gain admittance to a club which is sceptical about what they have to offer. It is an uncomfortable fact that those who confront and challenge cultures sometimes establish beachheads for others, more acceptable. The challenge for us is to keep forward momentum for all women. We need to support the women in our own communities and in our regions who suffer from discrimination because of their gender. We need to remain sensitive to all forms of discrimination and injustice. Until the legal culture changes, there is a place for this association. The legal culture will not change until our society change. An association of women judges should aspire to change our world.

Tena koutou, tena koutou, ara tena ra tatou katoa.

⁴⁰ Wilson “*Law in Society: The Principle of Sexual Equality*” (1983) 13 *Manitoba LJ* 221.

⁴¹ Hale, above n32, 496.