

Women in the Public Sector – a question of equality

By Justice Susan Glazebrook¹

Introduction

Thank you for inviting me to speak here today. It is great to see so many of you giving up your time to discuss and debate such a significant and pressing issue.

I have been asked to discuss gender equality in the public sector but I want to stress that the issues outlined in this paper affect all women in the workforce and addressing them should be a priority for those working in both the public and private sectors.

Women in the Public Sector

My talk will be framed around the three questions that I have been asked to cover. The first is whether there is a gender bias or accessibility problem in the public sector workplace. I was tempted just to say “of course” and “let's move onto the next question” but thought it was worth pausing to give you some recent figures.

A 2012 Human Rights Commission survey shows that women account for only 24 per cent of chief executives of government departments.² This is despite the overall percentage of women in the public service being 59 per cent.³ These figures are, however, up from 2010 when the proportion of female chief executives was only 17.6 per cent⁴ (down from 23 per

¹ Judge of the Supreme Court. This paper elaborates on a speech prepared for a panel discussion on gender inequality in the public sector hosted by the Institute of Public Administration New Zealand in Wellington on 16 September 2013. These issues are also discussed in three other papers I have written on similar subjects: “Looking Through the Glass: Gender Inequality at the Senior Levels of New Zealand’s Legal Profession”, “Gender Inequality in the Workforce: A Work in Progress” and “It’s Just a Matter of Time and Other Myths” all available at <www.courtsofnz.govt.nz>. I am grateful to my clerk, Claire Brighton, for her invaluable assistance with this paper.

² Human Rights Commission *New Zealand Census of Women’s Participation 2012* (Wellington, November 2012) [Women’s Participation Census 2012] at 97.

³ In 2004 the figure was 59.0 per cent. It rose to 59.1 per cent in 2005 before returning to 59.0 per cent in 2006 and rising to 59.2 per cent in 2007. In 2008, the exact figure was 59.2 per cent. In both 2010 and 2012 it was 59 per cent exactly: Women’s Participation Census 2012, above n 2, at 96; Women’s Participation Census 2010, above n 2, at 13; Women’s Participation Census 2008, above n 2, at 42; State Services Commission *Human Resource Capability Survey of Public Service Departments* (Wellington, November 2005) at 12, read with State Services Commission *Human Resource Capability Survey of Public Service Departments* (Wellington, June 2008) at 16.

⁴ Human Rights Commission *New Zealand Census of Women’s Participation 2010* (Wellington, November 2010) [Women’s Participation Census 2010] at 56.

cent in 2008⁵). The Human Rights Commission's Survey noted that none of the women who were chief executives at the time of the 2010 survey still held that position when the 2012 survey was carried out.⁶ It is at least encouraging that the recent increase in female chief executive representation can be attributed to new appointments.

The figures for senior management and state sector boards are more encouraging. Women currently account for 42 per cent of senior management in the public sector⁷ and state sector boards currently have 41.1 per cent female representation.⁸ Vigilance is needed, however, to ensure these percentages are maintained and the hope is that they will improve to reflect overall gender balance in society.

But it is not just a lack of women at the top which is the issue. It appears that there are clear financial disadvantages to being a woman in the public service. Legislation requiring pay equality in the public sector in New Zealand has been in force since 1960.⁹ Despite this, the gender pay gap in the public service varies in size from 3 per cent to 35 per cent.¹⁰ The Human Rights Commission report recorded that, on average, women in the public service are paid 14.3 per cent less than men. Twenty-two government departments have greater gender pay gaps than the market average, with nine government departments having a greater than 20 per cent gender pay gap.¹¹

In 2012, the Human Rights Commission wrote to all government departments regarding this gender pay gap. The responses received demonstrate a number of issues in the public sector perception of gender inequality.¹² Many departments argued that the gender pay gap is overestimated because women are clustered in administrative or support roles. Some

⁵ Human Rights Commission *New Zealand Census of Women's Participation 2008* (Wellington, 2008) [Women's Participation Census 2008] at 42.

⁶ Women's Participation Census 2012, above n 2, at 94.

⁷ State Services Commission *Human Resource Capability Survey of Public Service Departments* (Wellington, October 2012) at 25. There remains the issue of whether the percentage of senior management roles held by women is the same in the more influential government departments. The pay/equity issue discussed next is also an issue.

⁸ Women's Participation Census 2012, above n 2, at 119.

⁹ Government Service Equal Pay Act 1960.

¹⁰ Helen Aikman *Legal Opinion Firm on State Sector Chief Execs Equal Employment Role* (legal opinion to the Human Rights Commission, 17 August 2009) <www.hrc.co.nz>.

¹¹ Women's Participation Census 2012, above n 2, at 96 and 4. The Commission obtained these figures by writing to each department and requesting their overall mean or average pay-gap. Figures based on equivalent jobs were, however, not included in the information collated.

¹² The questions asked by the Commission and the comments made in response are discussed in Women's Participation Census 2012, above n 2, at 100–105.

included acknowledgment that women were underrepresented at the top in justification of the pay disparity.¹³

Their argument therefore was that the pay gap can be attributed at least in part to the failure to advance women to senior positions and the fact that women are in positions which, rightly or wrongly, are less valued in terms of pay. What those departments need to examine is why women are clustered in such positions and think about ways to achieve gender balance at all levels of the organisation. They also need to consider whether in fact the salary structure for the administrative and support roles in which women are clustered is really comparable to similar jobs undertaken by men – that is, they need to ask themselves whether those women are being fairly paid for the jobs they do. True gender balance would of course ensure that women have the opportunity to do the top ranked jobs too and that there is balance throughout the organisation.¹⁴

In any event, a 2012 study by the State Sector Commission shows that the gender pay gap in the public service is largest at the management level¹⁵ and this appears to have been the case since at least 2002.¹⁶ This means that the departments' explanation as to why there is a gender pay gap may be misconceived or at least not give the full story.

A number of departments did admit that there is a gender pay gap even where only similar roles are included. An encouraging sign was that a number of those departments are making a concerted effort (through gender neutral job sizing for example) to pay people the same rate for the job.¹⁷

Other departments denied having a different pay rate for men and women and claimed that pay is determined on the basis of other factors such as qualifications and previous work experience. Such responses seemingly failed to recognise that, where there is a significant

¹³ Women's Participation Census 2012, above n 2, at 100.

¹⁴ Avivah Wittenburg-Cox "Three Diversity "Best Practices" that Hurt Women" (12 November 2012) Harvard Business Review Blog Network <blogs.hbr.org>.

¹⁵ This included all levels of management in the public sector: common management positions included Chief Executive, Office Manager, Policy and Planning Manager, Corporate Services manager, Finance Manager and ICT Manager.

¹⁶ Michelle Gosse *The Gender Pay Gap in the New Zealand Public Service* (State Service Commission, Working Paper No. 15, Wellington, July 2002) at 11. See also State Services Commission *Human Resource Capability Survey of Public Service Departments* (Wellington, October 2012) at 29.

¹⁷ Women's Participation Census 2012, above n 2, at 101–102.

gender pay gap in salaries, this tends to suggest that unconscious bias may be at work, and that there has not in fact been an objective assessment of qualifications and experience.¹⁸

There have been a number of studies showing the role unconscious bias plays in hiring decisions. For example, in a study conducted in 2012, science faculty members from top universities in the United States were asked to rate applications for a laboratory manager position. Identical applications were randomly assigned either a male or female name. The male applicant was rated as significantly more competent and hireable than the (identical) female applicant. And, even where they decided to hire the woman, there were differences in pay and support offered to the male and female applicants. Participant faculty members selected a higher starting salary and would have offered more career mentoring to the male applicant.¹⁹ Remember again, these are identical CVs, apart from the name of the applicant. There is no reason to think the New Zealand public service is any different from the universities in this study.

Gender differences?

The second question I was asked to address is whether there are gender differences in public sector workplace behaviour, and, if so, what the consequences are.

Over the years it has been argued that the workplace gender imbalance can be attributed to differences between the genders and how they engage in the workplace. I assume this question is directed to such arguments. It has been suggested, for example, that women do not seek advancement because of family responsibilities, that they do not employ the right strategies to succeed and that women, when they get into senior positions, pull up the drawbridge behind them and prevent other women from smashing the glass ceiling (excuse the mixed metaphor).

Taking the first argument, that women do not wish to advance because of child rearing responsibilities, in a recent study of the public sector in Australia it was found that, while men overwhelmingly considered commitments to family responsibilities to be the most important factor hindering women's career prospects, women were of a different view. Interestingly, women at the senior executive level viewed it to be the most salient factor,

¹⁸ At 102.

¹⁹ Corinne A Moss-Racusin and others "Science Faculty's Subtle Gender Biases Favour Male Students" (2012) 109 PNAS 16474.

although not to the exclusion of others, while women at the executive level considered it less significant than other factors such as lack of visibility.²⁰

A US study examined this issue by looking at the position of women who do not have children and who do aspire to advancement. They found that, even from the start of their careers, those women still lagged behind men. Furthermore, the gender gap increased as their careers progressed.²¹ The problem may be that it is just assumed that women do not want to advance and no one bothers to check what the actual position might be.

Moving to the argument that women do not employ the right strategies to succeed, a recent US study found that, in fact, high potential women and men employed very similar tactics to get ahead. The strategies just paid off for men more than they did for women in terms of pay and advancement.²²

One of the more cynical explanations that has been offered for the prevalence of inequality is that women do not help each other. It is been suggested that some women will even actively keep others down to ensure that their own position is not challenged.²³ Certainly there are instances where this occurs. However, a recent study of MBA graduates worldwide suggests that women are actually more likely than their male counterparts to assist the development of others, especially other women.²⁴

It may be that the perception that women do not help other women stems from unrealistic expectations of how much women, even those in senior positions, can do to close the gender gap. The problem is more deep seated. Psychological studies have shown that people more

²⁰ Meredith Edwards and others *Not Yet 50/50: Barriers to the Progress of Senior Women in the Australian Public Service* (ANZOG institute for Governance, Australian National University, Canberra, 2013) at 17.

²¹ Nancy M. Carter, Anna Beninger and Christine Silva *Global Research on High-Potential Employees: Summary of Findings* (Catalyst, 2013) <www.catalyst.org> [Catalyst High-Potential Employees study].

²² Catalyst High-Potential Employees study, above n 21 at 2.

²³ See for example Holly Ranson “The Young and the Restless: Gen Y and the 21st Century Barriers to Women in Leadership” in Committee for Economic Development of Australia *Women in Leadership: Understanding the Gender Gap* (Melbourne, June 2013) [CEDA report] 65, at 72–74. Ranson cites a study by the Workplace Bullying Institute that found that women were more likely to bully other women (71 per cent) than men were to bully other men (54 per cent). The methodology of the Workplace Bullying Institute study is not discussed, however, and I have not had access to the study to be able to opine on how its results might compare to the Catalyst research. For example, the following questions might arise: What was the definition of bullying? Was it self-reported? Were young women more likely to admit to being bullied than young men? Was the same behaviour perceived as bullying when done by women but not by men? Did men in positions of authority bully or harass young women (and men) at similar rates?

²⁴ Catalyst High-Potential Employees study, above n 21, at 3.

often link men with qualities like assertion and control and thus with the old-fashioned notions of what leadership involves.²⁵

Women are more commonly associated with communal qualities which have been traditionally less valued traits.²⁶ However, women cannot win. When women show more aggressive traits, they can suffer prejudice because they are acting outside the traditional role.²⁷

One study undertaken at Columbia Business School had students scrutinise two CVs: one for Howard Roizen and one for Heidi Roizen. The CVs were exactly the same apart from the name. The CV said that Howard/Heidi had worked for Apple and then launched his or her own software company and been a partner in a venture capital firm. He or she was said to be outgoing, an incredible networker and described by colleagues as a “catalyst” and “captain of industry”. Bill Gates was said to be a personal friend. When asked to judge Howard, the students judged him to be effective and likeable. When it came to Heidi, although they also judged her competent, the students thought her aggressive and would not want to work with her.²⁸ Similar responses were received from both female and male student participants, showing that gender stereotypes are internalized by both sexes.²⁹

The irony is that the so called ‘female characteristics’ that have often been viewed in a negative light are now understood to be highly beneficial in leadership roles. It has even been suggested that women are more likely than men to bring a more complete range of the

²⁵ Alice Eagly and Linda Carlii “Women and the Labyrinth of Leadership” (September 2007) Harvard Business Review <hbr.org> at 4–5. The full research is published in Alice Eagly and Linda Carlii *Through the Labyrinth: The Truth About How Women Become Leaders* (Harvard Business Press Books, Boston, 2007).

²⁶ Eagly and Carlii “Women and the Labyrinth of Leadership”, above n 25, at 4–5.

²⁷ See Jennifer Whelan “The Barriers to Equality of Opportunity in the Workforce: the Role of Unconscious Bias” in CEDA report, above n 23, at 96.

²⁸ Cited in Hannah Piterman “Diversity and Gender: Realities for Growth in the Global Economy” in CEDA report, above n 23, 99 at 105. See also the discussion and assessment of the study in Sheryl Sandberg *Lean In: Women, Work, and the Will to Lead* (Knopf, New York, 2013) at 39–42.

²⁹ Research has shown that both men and women internalise gender bias: B A Nosek and others “National Differences in Gender-Science Stereotypes Predict National Sex Differences in Science and Math Achievement” (2009) Project Implicit < www.projectimplicit.net>; M Heilman, R Martell and M Simon “The Vagaries of Sex Bias; Conditions Regulating the Undervaluation, Equivaluation, and Overvaluation of Female Job Applicants” (1998) 41 Organisational Behaviour and Human Processes 98.

qualities needed by modern leaders, including self-awareness, emotional attainment, humility and authenticity.³⁰

Personal initiative or institutional change?

The third question I was asked to address is whether personal initiative or institutional change is most effective in solving gender equality inadequacies in the public sector.

There are of course things that women can do individually. We can work to overcome our hesitations, do more self promotion and be strategic about our career decisions. But these individual actions can only take us so far. The real change will only come when structural change occurs. In 2013, Australian Sex Discrimination Commissioner Elizabeth Broderick brought together some of Australia's most influential male CEOs and chairpersons to form the Male Champions of Change. This collaboration between public and private sector leaders includes members representing Qantas, Treasury, IBM, Citi, the Australian Public Service Commission, Telstra, and KPMG among others. The Male Champions of Change propose a four-part strategy.³¹

The first part, "stepping up as leaders",³² encourages male leaders to reflect on their own leadership, reassess the gender balance of leaders in their own organisation and take steps to promote and advance inclusiveness across the organisation. One initiative that they suggest could be taken is undertaking a gender audit to analyse where an institution stands in relation to gender diversity and pay inequality.³³

The second part of the strategy is "creating accountability".³⁴ This requires an organisation to address the potential for unconscious prejudice to affect decision-making as to hiring, pay and promotion. Some of the steps that have been suggested include:

³⁰ Tony Schwartz "What Women Know about Leadership and Men Don't" (20 October 2012) Harvard Business Review Blog Network <blogs.hbr.org>. See also Paul Taylor and others *A Paradox in Public Attitudes: Men or Women: Who's the Better Leader?* (Pew Research Centre, 25 August 2008) <www.pewsocialtrends.org>.

³¹ *Accelerating the Advancement of Women in Leadership: Listening, Learning, Leading* (Male Champions of Change, November 2013 <www.humanrights.gov.au> [Male Champions of Change report].

³² At 7–13.

³³ Avivah Wittenburg-Cox *How Women Mean Business* (John Wiley & Sons Ltd, West Sussex, 2010) at 8–14.

³⁴ Male Champions of Change report, above n 31, at 15–19.

- Identifying specific recruitment criteria based on merit and experience to reduce the potential for unconscious bias;³⁵
- Adopting a framework for reporting women’s advancement into senior leadership positions;³⁶ and
- Adopting a diversity plan³⁷ or diversity targets.³⁸

The third part of the strategy, “disrupting the status quo”,³⁹ focuses on identifying and targeting practices that foster gender inequality. Steps that can be taken include:

- Establishing family friendly human resource practices. Challenge traditional work place assumptions: ask what cannot be done flexibly rather than what can be done flexibly;⁴⁰
- Setting pay rates based on job sizing; and
- Seeking out and considering new ways of operating. For example, the Department of Conservation targets people who are “not the usual suspects” for inclusion in team projects and programmes in an “effort to strengthen capability and provide

³⁵ Eagly and Carlii “Women and the Labyrinth of Leadership”, above n 25, at 8–9.

³⁶ Male Champions of Change report, above n 31, at 15–17.

³⁷ In 2010, the United Kingdom enacted a Public Sector Equality Duty (PSED), which came into force in April 2011. This requires all public authorities to have due regard to the need to eliminate discrimination; advance equality of opportunity and foster good relations between women in the civil service. It requires authorities to remove or minimise disadvantages faced by women and take steps to meet the specific needs of women: Equality Act 2010 (UK), s 149 (these obligations also arise in relation to other groups that face discrimination). The general duty is underpinned by a number of specific duties, set out in secondary legislation to accompany the Equality Act, which provide a framework to help public bodies meet the general duty. These require authorities to set and publish equality objectives at least every four years and publish information to show their compliance with the Equality Duty at least annually. In September 2013, in response to the Governments Red Tape Challenge, a review of how the PSED is working was released. The report noted that it was too early to make a final judgement about the impact of the PSED but found that there were issues with the implementation of the duty, especially in relation to what having “due regard” to the various goals of the PSED should entail. This led to an inefficient, overly risk averse approach being adopted by many public bodies. The report recommended that clearer technical and reporting guidelines be provided; state sector regulators integrate the PSED in their core functions and collaborate closely with the EHRC with respect to compliance action: Rob Hayward and others *Review of the Public Sector Equality Duty: Report of the Independent Steering Group* (Government Equalities Office, London, 6 September 2013); see executive summary at 8–11.

³⁸ It has been argued that imposing mandatory quotas can be viewed as harmful. They are seen as heavy handed and may result in tokenism, which would hamper progress. These concerns, however, may be overstated. Tokenism is unlikely given the sheer number of experienced and qualified women in the business sector: Catherine Fox “The Higher You Go the Wider the Gap” in CEDA report, above n 23, at 28–29.

³⁹ Male Champions of Change report, above n 31, at 20–31.

⁴⁰ At 34.

opportunities for emerging talent.”⁴¹ Indeed, the Department of Conservation may find this also leads to challenging ingrained thinking and to more innovation.⁴²

The final part of the Male Champions of Change strategy is “dismantling barriers for careers”.⁴³ This focuses on encouraging women to re-enter the workforce after taking time off to care for a family, and ensuring that they are not disadvantaged for having done so. Steps to achieve this include:

- Staying in touch with employees who have left on maternity leave and planning expected return dates prior to the start of leave;⁴⁴
- Implementing quality part-time work strategies to encourage women to re-enter the workforce after taking time off to raise a family;⁴⁵ and
- Facilitating, as far as possible, women picking up where they left off when they return.⁴⁶

Conclusion

There are an incredible number of extremely talented women out there. At present, they are a resource that is being underutilized. This wasted talent has an economic cost. Studies have shown that gender diverse workplaces perform better financially and have improved ethical practice and accountability, scrutiny and unity, and transparency. New Zealand needs a public service that reflects society.⁴⁷ A diverse public service will be better equipped to identify, understand and address the needs of the people it serves.

⁴¹ Women’s Participation Census 2012, above n 2, at 105–106.

⁴² See, for example, Georges Desvaux, Sandrine Devillard-Hoellinger and Pascal Baumgarten *Women Matter: Gender Diversity, a Corporate Performance Driver* (McKinsey & Company, 2007) <www.europeanpwn.net> at 12–13 and *Innovative Potential: Men and Women in Teams* (The Lehman Brothers Centre for Women in Business, London Business School, 2007).

⁴³ Male Champions of Change report, above n 31, at 33–37.

⁴⁴ At 34.

⁴⁵ See Jamie Atkinson “Do Women Returning to Work Following Maternity Leave have Access to Quality Part-Time Work?” (2013) 34 *Business Law Review* 130 at 132–133.

⁴⁶ Male Champions of Change report, above n 31, at 34.

⁴⁷ This applies to diversity generally. Ethnic and cultural diversity is also needed within the public sector.