

EDITORIAL NOTE

The Faculty of Law is grateful to the Wellington Women Lawyers Association (WWLA) for marking the centennial of Harriette Vine's graduation in 2013, which also presented an opportunity for a Special Issue of the *Victoria University of Wellington Law Review* (VUWLR), with contributions from those with a connection to the Faculty or the University. This is the second issue to acknowledge the role of women in the law since the 1993 issue to mark the Suffrage Centennial. That collection was jointly published by Victoria University Press with the title *Claiming the Law*¹ and edited by Elisabeth McDonald and Graeme Austin – who is now back at the Faculty as a Professor after a career in practice and academia in Auckland and Arizona. A further Special Issue concerning gender issues in the law was published in December of 1997, with a foreword written by Rebecca Kitteridge, the Convenor of WWLA at that time.²

The 1993 Suffrage Issue contained articles by a number of high profile women lawyers and academics including Mai Chen, Professor Jane Kelsey and Shirley Smith – who passed away in December 2006, aged 90. Shirley's exceptional life as a woman in the law is now annually recognised by the Shirley Smith Address hosted by the Women in Law Committee of the Wellington Branch of the New Zealand Law Society (NZLS) and held at Victoria University. Professor Margaret Wilson, then-Speaker of the House of Representatives, gave the inaugural address on 18 September 2008. This year the Honourable Justice Susan Glazebrook of the Supreme Court will give the address on 17 September, preceded by the launch of this Special Issue. The Editorial Committee of the VUWLR thought it fitting that Shirley's own (modest) words about her career be reproduced as the Preface to this issue in recognition of both her and Harriette's lives as "the first women to", as well as being a point of connection between this issue and the first women's issue 21 years ago.

Another segue is provided by the first article of this Special Issue in which Elizabeth (Lizzie) Chan draws on the early work undertaken as part of the Women Judges Oral History project – a project led by Dame Susan Glazebrook. In this piece Lizzie, previously a clerk at the Supreme Court, a tutor and research assistant at Victoria University of Wellington Law School, and soon to be an LLM candidate at Yale, focuses on what challenges, based on their gender, nine women judges reported facing as they began their careers on the bench. It is her hope that her piece will be a source of wisdom and understanding for young women lawyers, who strive to be successful in a (still) male-dominated profession.

This year marks the first time all four Heads of Bench are women (the Chief Justice, Dame Sian Elias; the President of the Court of Appeal, the Honourable Justice Ellen France; the Chief High

1 Elisabeth McDonald and Graham Austin *Claiming the Law: Essays By New Zealand Women in Celebration of the 1993 Suffrage Centennial* (Victoria University Press and Victoria University of Wellington Law Review, Wellington, 1993).

2 *Special Issue: Gender Issues and the Law* (1997) 27 VUWLR.

Court Judge, the Honourable Justice Helen Winkelmann; and, the Chief District Court Judge, Her Honour Jan Doogue). However, as the recent Auckland Women Lawyers' Association funded research demonstrated, women are not reaching the top of the legal profession in the same proportion as they are as law school graduates (60 per cent) or as those admitted to the Bar (56 per cent). What challenges are faced by women lawyers now, in comparison to those faced by Harriette Vine, was the topic of the essay competition run by the WWLA in 2013. The two winners were announced on Suffrage Day (19 September) in Wellington last year, following a panel discussion at the Law School. Their essays appear as the next two pieces in this Special Issue. Monique van Alphen Fyfe and Amelia Guy-Meakin, although both law students at Victoria University at the time, write with thoughtful insight about the difficulties of being a woman lawyer in 2013 – their comments matching many of those made in the research published after their work: *Women's career progression in Auckland Law Firms: Views from the top, views from below*.³

After reading that publication, Christine Grice, now the Executive Director of the NZLS but previously a partner in Harkness Henry and the President of the NZLS, looked specifically at the current situation of women QCs – noting that men (85 per cent of current QCs) still outnumber women when looking at this measure of success and seniority. She talked about her findings and her concerns with Kathryn Ryan on Nine to Noon in March 2014. A lightly edited transcript of this interview is reproduced with Christine's permission and that of National Radio.

The radio transcript is followed by reflections on an aspect of the work of another trailblazing New Zealand woman lawyer – the first woman High Court Judge, Dame Silvia Cartwright. Anais Kedgley Laidlaw was inspired to write about Dame Silvia's role at the Khmer Rouge Tribunal as a result of observing Dame Silvia in action while she was working as a New Zealand diplomat in South East Asia. In her piece, Anais, an LLB (Hons) graduate from Victoria University, talks about her personal observations of Dame Silvia, as both a leading jurist and an inspirational woman – certainly a fitting subject for this commemorative Special Issue.

This Issue was, however, never intended to be just about women as women in law – the call for papers which was made in November 2013 also encouraged the submission of pieces that critically analysed aspects of New Zealand law from a feminist perspective – or pieces which reflected on the impact of gender in judicial decisions or legislation. The final five articles all make this kind of contribution. The first is by Victoria law graduate Holly Hill in which she develops the topic she first considered as part of an Honours seminar paper on comparative and critical criminal law. Holly focuses on the challenges of prosecuting cases involving allegations of sexual violence, especially when rape mythology can impact on the jury deliberation process. Such myths include the belief that victims of rape would complain immediately after being violated and would cease any contact with the alleged offender. Holly analyses whether, and how, rape myths can be challenged at trial, through the use of expert evidence.

3 Auckland Women Lawyers' Association *Women's career progression in Auckland law firms: Views from the top, views from below 2014* (Gender & Diversity Research Group, AUT University, Auckland, 2014).

Elisabeth McDonald also considers the need to challenge rape mythology in her piece that takes her 2012 Suffrage Lecture at the University of Otago as the starting point. Elisabeth explores the legislative history of what is now s 44 of the Evidence Act 2006 – a "rape shield" provision that controls the admissibility of evidence about a rape complainant's sexual experience with a person other than the defendant. She then critically analyses the application of the provision, exposing how admissibility decisions may reinforce rape mythology. It is not only these decisions that impact on a complainant's negative experience of the trial process. Elisabeth concludes that preventative education and changes to the attitudes of all of those working in the criminal justice system is required before there is "real" change.

Change is also under investigation by Nessa Lynch, an academic colleague of Elisabeth's at the Law Faculty. In her article, "Girls behaving badly?": Young female violence in New Zealand", Dr Lynch discusses an under-researched topic of offending by girls, and asks whether there has been a recent shift in the number of girls committing crimes – or is it just the case that such offending gets more media attention? What changes, if any, to policing practice and societal attitudes may be the explanation to changing rates of offending by young women? By examining recent statistics, Nessa makes an important contribution to this debate.

The criminal justice system is often a target for feminist critique – but women also interact with the law regularly with regard to child and family issues. In the penultimate contribution Anthea Williams, also an Honours graduate from Victoria University, with a LLM from Toronto, now a senior government lawyer, considers the Court of Appeal decision in *Cumberland v Accident Compensation Commission*. In that case the Court held that the continuing pregnancy of a woman who has been denied information which may have led her to terminate her pregnancy, can be a "personal injury" covered by ACC. Comparing the Court's approach (and language) to overseas jurisprudence dealing with "wrongful births", Anthea is of the view that the New Zealand approach is preferable in an area in which there are fiercely held competing public policy perspectives.

In the final piece LLB (Hons) graduate Susannah (Susie) Shaw comments on the recent High Court decision *Jack v Jack*, regarding the application of s 15 of the Property (Relationships) Act 1976. The purpose of an order made under s 15 is to compensate a spouse/partner whose economic position is significantly lower than their spouse's/partner's because of the effect of the division of functions within the relationship. Goddard J upheld the award of a 70 per cent of the relationship property to Mrs Jack on the basis that she assisted Mr Jack further his career while sacrificing her earning potential. Despite unhelpful statements in the media at the time of a "win" to Mrs Jack, Susie considers whether the decision in fact finally recognises that s 15 can, and should, deliver just outcomes in such situations. Susie, previously a judge's clerk and a government lawyer, completed her work on this piece as she prepared to depart for her LLM studies at Harvard Law School and her life as a woman in the law.

Elisabeth McDonald
Guest Editor
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