

# **Writing women into the law in Queensland**

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**Profiles of seven significant women in the law in Queensland  
and an exegesis submitted for the requirements for the award,  
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# **Keywords**

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## **Abstract**

*Writing Women into the Law in Queensland* consists, as well as an exegesis, of profiles of seven significant women in the law in Queensland which have been published in *A Woman's Place: 100 years of women lawyers* edited by Susan Purdon and Aladin Rahemtula and published by the Supreme Court of Queensland Library in November 2005. Those women are Leneen Forde, Chancellor of Griffith University and former Governor of Queensland; Kate Holmes, Justice of the Supreme Court and now of the Court of Appeal; Leanne Clare, the first female Director of Public Prosecutions; Barbara Newton, the first female Public Defender; Carmel MacDonald, President of the Aboriginal Land Tribunals and the first female law lecturer in Queensland; Fleur Kingham, formerly Deputy President of the land and Resources Tribunal and now Judge of the District Court and Catherine Pirie, the first Magistrate of Torres Strait descent. The accompanying exegesis investigates the development of the creative work out of the tensions between the aims of the work, its political context, the multiple positions of the biographer, and the collaborative and collective nature of the enterprise.

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## **Statement of Original Authorship**

The work contained in this thesis has not been previously submitted for a degree or diploma at any other higher education institution. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made.

Signature : \_\_\_\_\_

Date : \_\_\_\_\_

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**Profiles of seven significant women in the law in  
Queensland:**

Leneen Forde, Kate Holmes, Leanne Clare, Barbara Newton,  
Carmel MacDonald, Fleur Kingham and Catherine Pirie.

## **Chancellor Leneen Forde AM: Queensland's first female Governor**

Leneen Forde's life has been one of extraordinary professional achievement and community service. It is not possible here to do justice to the huge list of boards and committees she has served on; the voluntary positions she has held; the awards she has received. Nor would Leneen want that. She is an unpretentious woman with a self-deprecating sense of humour. No doubt it has helped her deal with the hardship and adversity she has faced in her personal life. Leneen has consistently demonstrated a commitment to the public good, especially to improving the status of women in society. When confronted with hurdles based on gender, she saw the importance of women banding together for a common purpose. "Without a doubt, the greatest source of inspiration and support I've received in my professional life has been networking with other women." When International President of Zonta, she was to learn an old Ethiopian proverb which resonated with her: When spider webs unite, they can tie up a lion.

Leneen was born in Ottawa in 1935. Her father, John Alfred Kavanagh, came from a poor Catholic family in the backblocks of Gaspe, Quebec. He was educated on scholarships from the age of 12 to the age of 27. There were no scholarships to study his first choice of medicine but he obtained undergraduate degrees in Arts, Science, Agriculture and Fisheries, and a Masters degree in Arts. He worked his way up through the Canadian public service to become Director-General of Agriculture. Leneen's mother, Evlyn Philomena Bujold, had gone to school with John's sisters. There was 12 years' difference between them. She had no education beyond Grade 6, but as Leneen explains: "My mother had her letters in piano; my mother could sew; my mother's always been a flirt." Evlyn Kavanagh is now in her nineties, loves to travel the world in ocean liners, winning gold medals for dancing and is still flirting.

John Kavanagh is remembered by his daughter as a generous and very fair man who had many friends. He always found time to check his daughters' homework, to teach them to play tennis and to ski, to play cards or take them for walks. Education had been very important to his parents and he continued that tradition. Leneen attended St Joseph's Girls Primary School and then Lisgar Collegiate, Ottawa. In days when it was usual for girls to leave school at Grade 10, he insisted that Leneen and her older sister, Doris,

obtain their Senior Matriculation. A strict father whom she always referred to as Sir, he was very involved with the church, and insisted that they maintain high moral standards. “You never broke your word. That was sacrosanct.”

As a young girl, Leneen never considered the possibility of being a lawyer. Three of her father’s sisters were Mothers Superior of Catholic convents. Ironically, given her later work on the Forde Inquiry into Abuse of Children in Queensland Institutions, Leneen considered becoming a nun herself and working in an orphanage. However, she was clear that she wanted to have a good time before entering the convent. She also considered being a doctor which was her father’s unfulfilled ambition, and what Doris ultimately chose to do. It would not be Leneen, though, but her own daughter, Caron, who was to become a medical specialist.

Leneen met Gerry Forde skiing when she was thirteen, and they fell in love. His father was the Australian High Commissioner to Canada (previously Prime Minister of Australia for a week.) It was her relationship with Gerry that was to determine her future. “In those days, your future was as Mrs Somebody. You married Prince Charming and he was going to look after you forever.” Her school friends in Canada married at 16, 17 or 18. She and Gerry wanted to get married, but the Forde family was returning to Australia. Leneen gave her word that she would come to Australia. The plan was to get married in Australia when they were older, and then return to Canada.

While she was waiting to come to Australia, Leneen trained as a medical laboratory technician, and when she arrived in Brisbane in 1954, secured work as a haematologist at the then General Hospital. Gerry had applied to Toronto University to study law on a military scholarship and they became engaged on Valentine’s Day, 1955. However, changes to military scholarships restricting them to medical students, forced a rethink of plans. Gerry would have to pursue his law studies in Australia. Leneen had never contemplated that they might stay on in Australia. Like her father, she had a lot of friends and she was missing them. On the other hand, “I was in a hurry to get married. I didn’t want to turn twenty and still be single...twenty was an old maid.” They married on 2 May 1955 just before her twentieth birthday.

Michael, their first child was born in October 1956, followed by Caron in 1958. They obtained a Housing Commission loan and moved into a house at St Lucia close to

the University of Queensland where Gerry was studying. He would come home and talk to her about the cases he was studying. Wanting to be better informed on the issues he was raising, she approached the Dean of the Law School, Professor Harrison about enrolling.

In the late 1950s it was necessary to study a number of Arts subjects as part of a Law degree. Latin was compulsory, and Leneen chose Philosophy and Child Development. By the time her third child, John was born in 1960, she had also completed Introduction to Law, Criminal Law and Legal History, the only female in the class. "John was expected during exam period so I put off studying in anticipation of getting posts. But he came early, so I was sitting up in hospital reading law books. I thought, this is ridiculous." She did not re-enrol the next year. Gerry went on to set up his own legal practice and Leneen settled into suburban life. She became friendly with other women in the area married to professional men. None of them had a university education (although some were to remedy that situation in the seventies), and only one had her Senior Matriculation.

Although Gerry was definitely the head of the household and made all the decisions, as was the norm in those days, he was a good and generous husband. When she was carrying her fourth child, Gerard (born in 1962) Leneen was physically unwell. After the birth when she was still feeling run down, he suggested that she go home to Canada for a visit. His practice was beginning to go well. He wanted her to have a good time and see the world while she was at it, so he bought her a round the world plane ticket with 33 stops. She was very anxious about travelling by herself at first, but Gerry imbued her with confidence. She was soon to appreciate the value of his literally thrusting her out into the world.

When Leneen was pregnant with her second daughter, also to be named Leneen (born in 1964), her secure world came to an end. Gerry had a big fall at home. The house was being extended: the floorboards in the bathroom had been pulled up, but the builders had not locked the door. He never fully recovered from the fall, and on medical investigation it was discovered that he had cancer. Leneen believes the two were connected in some way. In January 1966, an exploratory operation revealed that the cancer had spread, and he was given 2 weeks to live. Gerry was in fact to live until

Christmas Eve 1966. During that year, he made audiotapes for the children to encourage them in life. And he encouraged Leneen to take over his practice. The Law Society had a rule whereby, in the event of a serious illness/death a practice could be kept going by a family member who was studying law (hiring a locum until they were admitted). Gerry had the idea that Leneen could qualify and pay someone to keep the practice going for Michael. At this point, Michael was nine years old.

Leneen wanted to oblige her husband, but she was not sure she wanted to continue her law studies. Gerry had taken out a large insurance policy which should be enough to keep the family going. One day the Parish Priest came to ask what she intended to do with her future. "Oh, I think I'll paint and...I'll play the piano, Father." He obviously knew her better than she did herself, because he gave her such a meaningful look that she went to the University that afternoon and enrolled.

It was to prove a prudent move. The male friend to whom Gerry had entrusted the investment of the insurance monies managed to lose the lot in a short space of time. Leneen nearly lost the family home because she had still to pay death duties. All of a sudden, she was faced with the fact that she was going to have to practise law to afford to bring up her children. "Practice of law wasn't so bad but the guilt of not being at home with my children was just awful because that was what I was brought up to do. I'm sure that mothers today still feel torn between the two decisions."

By now there were other female students in her law classes, but we<sup>1</sup> were fresh from school. Because we had no idea how difficult things were for Leneen, we just treated her as one of us. "It was good for me because you couldn't have cared less that I was a widow with a lot of kids." Leneen had difficulty obtaining articles of clerkship because of her gender. Ultimately, she and fellow student, Anne McMillan secured articles with the same firm, and Leneen was very grateful to be paid the same as the male articulated clerks were paid. (Females who were able to secure articles often found they were being paid one-quarter of the male wage.) She was also allowed to go home early to be with the children.

Admitted as a solicitor in 1970, Leneen answered an ad for a solicitor in the Men and Boys section of the paper which merely gave a GPO box number. It turned out to be

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<sup>1</sup> I was one of those students fresh from school.

Cannan & Petersen, Solicitors, and she got the job which involved doing estate work. Given her own experiences, she brought great empathy to the position. And because she was a widow, she was a role model for female clients, most of whom were not used to making decisions about their lives.

Some male clients were not impressed to find that their lawyer was a woman. Fortunately, the Senior Partner, Tony Petersen, would convey to new clients his confidence in Leneen's expertise. She also found him a good mentor. The work itself, involving large country estate,s was challenging, and she enjoyed the contact with clients. Alayne Petersen, Tony's sister was a partner in the firm. "I think it was because she was such a good lawyer that they were prepared to give another woman a chance. " The question of partnership had not crossed Leneen's mind until a male employee of the firm who had joined after she had, was promoted to partner. The injustice of the situation hit home. She started to consider the need for women lawyers to band together to give each other confidence and support, and work out ways of dealing with situations like this. (Later, she was to insist on being promoted to partner, and she was.)

Eighty women turned up to a meeting she arranged at the Staff Club at the University of Queensland in 1978. Some women lawyers who came from legal families viewed the move as divisive, retrograde or unnecessary. Notwithstanding their objections, the Women Lawyers Association of Queensland (WLAQ) was formed with Leneen as the inaugural President. The members were interested in gaining equal employment opportunities and fostering career development for women. Subsequent meetings were held at the Law Society rooms with the assistance of Beryl Donkin, who was not a lawyer but a much-valued Secretary to the Society. At one WLAQ function, the speakers were Justice Peg Lusinck and Justice Elizabeth Evatt. "They encouraged us to go into politics saying that things would only change for women when there were more female politicians." However, the women lawyers present did not like the way the game of politics was played, and in any event had enough struggles on their hands.

Premiums for indemnity insurance for women lawyers, for instance, were twice the amount paid by the men. WLAQ and especially Margaret McMurdo, now President of the Court of Appeal, took that issue on and won. Letters were sent to the newspapers complaining about the advertising of employment opportunities in separate Men and

Boys and Women and Girls columns. They wrote to practitioners about gender bias issues, undeterred by the sometimes scathing replies.

The WLAQ was not just concerned with equity=[ for women lawyers. The members supported Anne McMillan and Father Wally Dethlefs in their work for Justice for Juveniles and the establishment of the Youth Advocacy Centre. They lobbied politicians for changes to inheritance laws for de facto partners. They made representations to the government about removing women victims of domestic violence from the bottom of the emergency housing list. (The government did not want to appear to be encouraging women to leave their husbands.) They complained when one Member of Parliament announced that there was no need in Queensland for women's shelters, denouncing the "communist lesbians" who ran the Brisbane Shelter.

The latter issue was also taken up by Zonta, the international professional women's service organisation which Leneen had joined in 1971. "The only women I knew were the Mums from the school or my women lawyer friends. When I went along to Zonta, there was a history professor, a tax accountant, a doctor, an actress...it was a network." Appointed to the Status of Women committee of Zonta, she attended the 1985 World Conference on Women in Nairobi. "That was an eye-opener for me and really made me realise how lucky I was to have been raised in a developed nation."

In 1983, Leneen married Detective Superintendent Angus McDonald. They met in sad circumstances while he was investigating the murder of her niece. Angus was supportive of her work and her commitments. She felt unconstrained in taking on extra roles such as Chair of the Social Security Appeals Tribunal and Convenor of the Queensland Womens Consultative Council. And, notwithstanding Angus' raised eyebrow, membership of the Council for Civil Liberties at the instigation of Dr Janet Irwin.

Elected International President of Zonta in 1990, Leneen had to manage an international board with members from Belgium, Switzerland, India, the USA, New Zealand, China and Hong Kong. Her strategy was to discover what each member had best to offer and to encourage it. She had been on Boards where the Chairman came in with an agenda that was never deviated from, and where there was no encouragement to participate. Leneen was prepared to concede that she did not have all the answers herself.

She was never averse to the expression of opinions contrary to her own, and indeed has a distinct dislike of what she calls 'yes- men'.

The Indian woman engineer on the Board had set up a shelter for women from the streets and taught them to lay bricks. Women carrying bricks got 30c per day, but the men laying them got \$2. Leneen realised how different their worlds were, even as professional women, when the engineer's husband died: "She said that she could no longer come to meetings. When I asked why, she said that she would have to ask her son if she could go and doubted he would let her."

When Leneen was offered an appointment as Governor of Queensland in 1992, Angus assisted her in redefining that role. "It was a big honour...Angus and I liked to open up the place to people who had never been there before...ordinary people...different ethnic groups..." She travelled the state, realising that she could use her role as a conduit between communities and the government. Appointed by a Labor premier, Wayne Goss, who always impressed her with his grasp of what was going on throughout Queensland, she also found a willing ear in his successor, Rob Borbidge.

Premiers were the only regulars at Government House. The net was cast wide for dinners and receptions. "At one reception, a group of indigenous people were sitting on the carpet in a ring. When the butler raised the issue with me, I said 'Well, they are not doing any harm, are they?'" She was later advised that her indigenous guests had drunk less alcohol than any other groups. (The retired police drank the most.) Leneen has an ongoing desire to help improve conditions in indigenous communities. She was greatly honoured when the Napranum community in Cape York bestowed upon her the tribal name, Atakani (waterlily). And when the Kombumerri people from the Gold Coast paid her a similar gesture.

There were light moments. Angus treasured a letter addressed to His Honour the Governor Angus McDonald. And on one occasion, they attended a church ceremony where they were introduced to the visiting Bishop from the Pacific Islands as "The Governor and His Missus." There were historic moments. One significant Government House luncheon during Leneen's term as Governor was for 24 church leaders from a diverse range of denominations. They had never met before as a group. Leneen went around the table asking them what they were doing in their work with young people.

“There is no such thing as a free lunch.” She was delighted to hear the group decide to go on meeting on a regular basis. On another occasion she invited representatives of the media to discuss the responsibilities of their role in forming public opinion.

However, when Premier Borbidge asked her to continue as Governor at the expiration of 5 years, Leneen declined. “I was really looking forward to getting back to being ordinary.” She is a great believer that one person can only achieve so much in a position and that it is important to move on to let someone else come in with new ideas.

When asked what she considers the most significant thing she has done in her professional life, she nominates the 1998 Forde Commission of Inquiry into Abuse of Children in Queensland Institutions. Having gained the trust of those who came forward to tell their stories, Leneen was profoundly affected by what she heard. She is pleased that having to confront the terrible things that happened to them as children has enabled some of them to move forward with their lives, but sad that others were too badly damaged to do so. Her recommendations included not only compensation, but systems and processes to ensure such abuse never goes unchecked again.

The time of the Forde Inquiry was one of the toughest of Leneen’s life. She and Angus had bought a hobby farm and planned to retire to the beach after the Inquiry. It was not to be. Angus died before it finished. To cope with her grief, Leneen threw herself into even more work. She joined the Board of the Queensland Ballet, became President of the Scouts and Chair of the Defence Force Reserve Council. In 2000 she was appointed Chancellor of Griffith University. One of the most rewarding things for her in that ongoing position was witnessing the first graduating class from the Logan campus: “to see so many single mothers graduating, and realise that Griffith gave them the opportunity to change their lives and that of their children.”

The Forde Enquiry brought home to Leneen the importance of not valuing institutions above the people they serve. She has not lost her faith in God and still goes to Mass every Sunday. But she sees the institution of the Church as fallible. “Half the population don’t have a role in it and that is just not right in my opinion.”

Following in their parent’s footsteps, her three sons, Michael, John and Gerry are all lawyers. As is young Leneen, who showed the makings of a lawyer from a very early age. When she was in Grade One, she made a “wonderful will on Snoopy letterhead that

left each member of the family a share of her cat.” Leneen is pleased her daughter has greater flexibility in her work choices and working conditions than existed in her mother’s time.

With a 70<sup>th</sup> birthday looming, Leneen is easing out of some of her commitments. She is enjoying being a grandmother, and she wants to spend more time with family and friends. She doesn’t like it that Angus is not here to share the rest of her life, but she accepts it. It is one of things she can’t change. It will not be surprising if she still finds some injustices that she can. And her female friends will get a phone call.

## **Legitimate Expectation: Justice Kate Holmes, Supreme Court of Queensland**

Justice Kate Holmes is a paradox: a student who loved reading, but studied statistics; a feminist with a soft spot for some sexist men; a big-picture person who relishes the intricacies of procedural issues; a compassionate woman prone to the use of the word “tough”; a civil libertarian who is a conservative jurist. Her defining feature is a failure to fit any stereotype and indeed, she has spent much of her life challenging stereotypical ways of thinking. It is probably not surprising that her favourite novel is George Eliot’s Middlemarch with its message that we are all human beings and should judge others as we judge ourselves.

Born in Brisbane in 1956, Catherine Ena Holmes was the sixth and youngest child in a close-knit family who shared a love of reading. She attended Darra Catholic Primary School where she was one of the few children who spoke English as their first language. Her family were not well off and some of the nuns insensitive to their circumstances. Even though the Holmes’ children were very bright, some left school early, returning later in life to complete tertiary education. Her older brother, John, decided in mid-life to study law too and is now a barrister in New Zealand.

Kate completed her Junior Certificate at Our Lady of the Sacred Heart School, Corinda. The nuns encouraged them to achieve academically so long as this did not conflict with their prospective roles as wives and mothers. Because OLSH was in the process of closing down and could not offer Years 11 and 12, Kate was enrolled at Oxley State High School to complete her Senior Certificate. It was a relatively new school with some young, enthusiastic teachers and Kate loved “a bit of free thinking at last.” She found it a good place to express her views.

Kate had purchased a copy of The Female Eunuch from a second-hand bookshop when she was in Grade 9. She was interested in the biological determinism/environment debate. Were women inherently unsuited to doing some things? Or was Germaine Greer right in arguing that sex roles are learned not ‘natural’? Kate had been led to believe in primary school that girls had no aptitude for mathematics, particularly if they were good at English as she was. Kate did very well in her Senior Certificate but was unsure what

she wanted to do. Perhaps to prove a point, she decided to enrol in a combined Bachelor of Economics/Bachelor of Laws course, majoring in statistics.

An older sister had gone to Australian National University on a scholarship and Kate decided she would too. The Whitlam Government had introduced the Tertiary Education Allowance Scheme and there were no university fees in those days. Kate lived in a college for two years and waitressed to support herself.

It was at an ANU Cricket Club dinner that Kate met Arthur Preston. In 1976, when Kate was 19 and Arthur 24, they got married in the Registry office. “That was brought about by a combination of youthful enthusiasm, the fact that it was worth an extra \$25 per week to the two of us as students, and a vague awareness that the Family Law Act was now in place and at a pinch, the whole thing could be easily unravelled.<sup>2</sup>” The marriage has stood the test of time.

Arthur enrolled in a PhD in Ethology at the University of Queensland. Having by then completed her Economics Degree at ANU, Kate obtained a part-time position as a research assistant in the Psychology Department at UQ and enrolled in the Law School to complete her degree. The standard of lecturing was well below what she was used to, so she became an unofficial external student. Finding it hard to make ends meet, she applied to join the Queensland State public service in 1977. To her amazement, she was told that as a married woman, she could not expect employment, which might be at the expense of a male applicant who had a family to support. She took a second job waitressing. She did not consider articles of clerkship a possibility because she didn’t know anybody in the profession “and I had a strong impression, things like articles were genetically determined.<sup>3</sup>” When she graduated in 1980, she obtained a position as a clerk within the office of the Official Receiver in Bankruptcy in the Commonwealth public service.

She describes her work there as “mildly legal” and not very stimulating. Most of her work colleagues were older men who had come back from World War Two and sought the security of the public service. Notwithstanding their sexist attitudes (one who

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<sup>2</sup> “Judge, have you ever been discriminated against?” as delivered by Justice Holmes to attendees at the Una Prentice Dinner 2000.

<sup>3</sup> Op.cit.

saw her drinking at the Grosvenor, told her that the only place for women in a public bar was behind it <sup>4</sup>) Kate liked them and got on well with them.

In 1982, it was Arthur's turn to secure employment so Kate could enrol in the Legal Practice course at QUT to obtain admission as a solicitor. During the course, she found she particularly enjoyed trying out her cross-examining skills. Not only did she really enjoy the task, she found she was good at it. Another large advantage of the course was the contact with graduates from a range of background: "I'd kept out of the student body at UQ Law School, and still felt rather a misfit in law, but at the Legal Practice course I made a group of friends (possibly with some maverick qualities themselves) whom I continue to see and value to this day."

In late 1982, Kate was duly admitted as a solicitor. But the legal practice course did not prove the bridge to practice she had planned. Anti-discrimination legislation was yet to be. Not taking too kindly to questions about her marital status and when she would be starting a family, she was unsuccessful in her applications to private firms. She returned to the Commonwealth public service, this time to the Prosecutions office of the Deputy Crown Solicitor. All but one of her colleagues, Jean Dobson, were men. She was to learn from a male friend who went for a job interview there a couple of days after she started, that he'd been told: "If only you'd come two days ago. We gave it to a woman."

She was pleased to find herself instructing QC, James Crowley on a case, but it did not get off to an auspicious start. He asked her to make tea. "I don't make tea thank you very much and I don't type": she set the terms of their professional relationship from the start. He was to become one of her ideologically unsound affections. She began prosecuting summary hearing and committal trials, and wanting to fry bigger fish: "I really liked going to court, and I loved preparing a good cross-examination: really working on it, figuring it out." So in 1984, she obtained admission as a barrister. James Crowley QC moved her admission.

At this time she had no intention of leaving the Commonwealth public service. When a separate Director of Public Prosecutions office was established, Kate joined it and was soon handling the prosecution of large drug importation cases. Some defence Counsel were unpleasant; it was a "toughening experience". After losing a promotion on

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<sup>4</sup> Op.cit.

appeal, she was sufficiently stirred to consider setting up in private practice as a barrister. It was Arthur who convinced her to do so. "I don't think I would ever have had the confidence if he hadn't been there saying, 'You can do it'."

It was 1986, the year the new Inns of Court was built. Crowley invited her to join his chambers, and she accepted. She was the only female barrister on the floor. To her surprise, she got on well with the conservative politician, Jim Killen, and with Ross Bourke, Kerry and Brian Boulton; the chambers was known because of their shared religious background, as the "Vatican Vault." She could anticipate being briefed by the Commonwealth, but she did not have an old-school-tie network to rely on for briefs. Support came from unexpected sources. Des Draydon who had the room next to her might have been "old-fashioned, superficially sexist. But he was terrific to me. He got me a lot of personal injuries work. Kerry Boulton too was unstinting with his help. He listened mildly to my outbursts of indignation about obdurate judicial officers, and was an example of equanimity and good humour I never managed to emulate." And she developed a great deal of respect for older criminal barristers, Leon Taeffe and Bill Cuthbert.

When I ask her to explain how as a founding member of the Womens Legal Service in 1984, well aware of the disadvantages women faced under the law, she could thrive in such unlikely circumstances, she replies: "I think it was because I never took offence much. I also knew some really rude jokes." She goes on to talk about stereotypes: "Ideologically you could say those blokes were a bit wanting, but in practical terms, they were really helpful. It worries me that people are so easily stereotyped."

The bulk of briefs that Kate received were in crime, personal injuries and administrative law. She liked the last because it was "like solving crossword puzzles". A testament to her ability was the fact that some of her briefs came from solicitors who had witnessed her courtroom skills while instructing her opposing Counsel. Like other female barristers doing criminal work, she was disappointed never to be briefed by the better-known private firms specialising in criminal work. Andrew Boe was an exception. She was instructed by him in some significant criminal cases, and they also did a lot of pro bono work. "We were both a bit obsessive about things we thought weren't right."

Kate had been at the bar five years, and married fifteen years before she and Arthur felt in a position to think about having children. She and Arthur now have two daughters and a son. “I did, in each case, work up to the day before [the birth] and I did come back within a week or so, and I don’t recommend it.”<sup>5</sup> Once when she was in Boothville Hospital after giving birth, a solicitor tried to schedule a conference with her at the hospital. She talks of working for years in a fugue of exhaustion, of the competing demands at night of storybook reading and preparing the cross-examination for the next day.

Increasingly, Kate found herself being briefed in administrative law matters. She was Counsel in a number of cases before the Anti-Discrimination Tribunal and in 1994 was appointed a part-time member of that tribunal. In that capacity, she heard two cases<sup>6</sup> in which it was argued that children with disabilities were being discriminated against by the failure of educational institutions to accommodate their specific needs. Kate herself was pregnant during one of the cases, and realised for the first time that it was possible to have developmental disorders for which there was, as yet, no diagnosis. She found the cases intellectually challenging, and the human dynamics involved fascinating. In the end she found against the applicants. The cases were described in Proctor<sup>7</sup> as signifying a greater readiness by the tribunal “to take into account the collateral effects on the majority when considering the interests of a minority, and to ensure that ‘liberality’ towards the minority does not result in the unintended consequence of gross ‘illiberality’ towards the majority.”

In 1997 she was appointed Deputy President of the Queensland Community Corrections Board by the Borbidge government. Three months later, all members of the Board were dismissed by the government after a prisoner on a work to release scheme, absconded and raped two women. When the Board responded by criticising the government’s action, the Premier retaliated: “I expect pathetic and pitiful excuses from pathetic and pitiful people...I have no intention of responding to people who had the

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<sup>5</sup> Holmes op.cit.

<sup>6</sup> “L” v *The Minister of Education for Queensland*, January 18, 1996, Member Holmes, No H39 of 1995.  
“K” v “N” *School*, January 7, 1997, Member Holmes, No H54 of 1996.

<sup>7</sup> Dr K Tronc, *Minorities matter, but let’s hear it for the majority*. Proctor Oct 1998 at22.

opportunity, didn't do the job, and now want to play politics.<sup>8</sup>” Kate sought an apology through her solicitors and when one was not forthcoming, commenced an action for defamation. She remains indignant about the dismissal. “That was a terrific Board. There were excellent people on it...When I was first appointed, I thought it was going to be difficult, not being used to working with lay people...but they were fantastic.”

In 1998-1999, Kate was appointed Counsel Assisting the Forde Commission of Inquiry into abuse of children in Queensland Institutions. Again she was working with lay people, this time social workers and historians. Again she went into it with trepidation; again she came away with respect and affection for her non-legal colleagues. Her legal colleagues on the Inquiry speak highly of her work and the assistance she afforded them. Young barrister, Kerri Mellifont, who has also worked with Kate on criminal trials, says, “she is proactive in mentoring young lawyers, especially women, but not limited to them. She really goes out of her way in that respect. I, for one, have been a lucky beneficiary of that.”

The biggest challenge of the Inquiry for Kate was trying to find a way of working which did no more harm to people already hurt by their experiences, while maintaining fairness to the institutional groups involved, all within the pressure of an extremely tight time line. “As you can imagine, it was a bonding experience and I made some lasting friendships from it.” Notwithstanding what she calls the “scar tissue” she acquired working in crime, some of the victims’ stories have stayed with her. “That’s where I really learned how your upbringing can preclude you from getting your life together.”

The Forde Inquiry was followed in 1999 by three months as an Acting District Court Judge. Kate appreciated the change of pace from life at the Bar. Whilst she missed being an advocate, she was happy to have her evenings and her weekends back, and to be able to spend more time with her children. On 2 December 1999, she took silk. And on 16 March 2000, Kate Holmes was appointed a judge of the Supreme Court of Queensland.

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<sup>8</sup> “Borbidge given indemnity against writ” Courier-Mail, 24 August 1998.

In her speech on that occasion<sup>9</sup>, Kate announced “I want to take this opportunity—perhaps unfashionably—to speak in praise of men. It goes almost without saying that one doesn’t easily manage a career and a family without the help of a loyal and selfless partner. I’ve had that good fortune for 25 years. But I’ve had support from another group too.” She went on to thank the male barristers she worked with in chambers for their solidarity and support. She concluded: “Now I come to the Bench, still in a minority as a woman with a working class background but I look forward again to support and friendship. I have no desire to be representative of any particular group. On the contrary, I hope that my background and experience has served to make my perspective all the wider, not narrower. I aspire only to fairness, reasonableness and some compassion and I don’t think those qualities are gender-linked.”

I ask whether this speech was strategic. Kate responds that she’s not very strategic and that she just wanted to give thanks where it was due. I ask about her not wanting to be seen as representing women. She acknowledges that women have been ‘irrationally oppressed’ and talks of her mother working as a bookkeeper to support the family and earning only two-thirds of the male wage. But she says that she’s a ‘black letter lawyer not a feminist warrior.’”

When I ask if she has a philosophy as a judge, Kate says that she thinks she is pretty conservative. ‘I actually like Law. I like the intellectual underpinnings for it. I think it works rather well.’ She is a fan of the common law approach, building up the law on a case by case basis. She doesn’t approve of legislation being passed as a response to populism. “I stick to established principles. I’m not an adventurous judge and I’m not an activist judge.” She does not think that judges should speak out on legal or social issues, believing that they can lose credibility in that way. She is appalled by a great many things that happen in society such as the treatment of refugees and conditions in prisons, but she believes that in her position, her obligation is to apply the law. She is reassured by the belief that social attitudes are cyclical. I ask whether because of her own ability to cope with difficult situations, she expects others to be robust. She explains that she is reasonably sympathetic to fragile or inadequate personalities, determined as they are by genes and environment. But she is not sure about where they fit into the system. “I puzzle

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<sup>9</sup> Holmes J, swearing-in.

about the compensability of an inadequate personality. I puzzle about whether it's appropriate to be punitive to somebody who has an inadequate personality.”

Kate has a great intellectual curiosity. Before her children came along, she had returned to further study, this time indulging her love of literature. Undertaking a Bachelor of Arts (Hons) at UQ which she completed in 1989, she developed an enthusiasm for West African and Caribbean writing, and “read James Joyce’s Ulysses from cover to cover which wouldn’t have happened otherwise.” Her thesis was on the Canterbury Tales and explored a Chaucerian theme about faithful servants going unrewarded. Somehow, whilst working as a barrister and bringing up children, Kate managed to also fit in a Masters Degree in Law (Advanced) from the same university. Her dissertation was on a theme not dissimilar to that in her Arts degree: the High Court’s treatment of legitimate expectation in administrative law.

There is no doubt that appointment to the Supreme Court bench was a legitimate expectation for Kate Holmes. She had clearly demonstrated her talents and suitability for appointment. There is also no doubt that she will not rest on her laurels. From managing the court’s criminal list, she has recently moved to the challenges of the Mental Health Court. Again she will be working with non-lawyers, this time psychiatrists. No doubt there will again be trepidation, followed by mutual respect. And the casting out of stereotypes.

## **Leanne Clare: Australia's first female Director of Public Prosecutions**

There is a reticence about Leanne Clare. No doubt it is partly due to the fact that since her appointment as Queensland's Director of Public Prosecutions in July 2000, she has been constantly under the microscope of the press. Anything she says about her work might be taken out of context, or used against her. But the reticence extends beyond the cases she has been involved in, the prosecutorial decisions she has made, the sensitivities of her position. She is clearly uncomfortable with talking about her achievements or even acknowledging accomplishments. Not only does she not like to 'blow her own trumpet', she is not too keen on having it blown for her. Whilst the role of Director is a public one, Leanne has no desire to be in the limelight. "It is the office that is important, not the person sitting in the chair."

My sense is that the reticence is born of a genuine humility and modesty. Unaffected by the importance and status of the position she holds, Leanne Clare sees herself as an ordinary person. She describes the right to stand up in court and speak on behalf of the community as "an awesome responsibility and an amazing privilege." And she makes sure she keeps her feet on the ground. There is a telling anecdote about her swearing-in as an acting Judge of the District Court in 1999. "My daughter aged eight, sat between her father and grandfather to watch. Because she had the day off school, she had to write a report about what had happened. I have kept it because it gives some perspective to the world: "exciting—for Mum, boring—for me. Pop kept giving me the evil eye."

Born in 1962 in Ipswich, to Frank Hurley and Pat nee Hartley, Leanne is the eldest of three children. Frank Hurley was a carriage builder at the Ipswich railway workshops, and for a time, President of the Ironworkers Union. When the workshops started to close, he obtained employment as a bailiff at the Law Courts in Brisbane. Like many women of her generation, Pat Hurley gave up paid employment to be a full-time housewife and mother. "She was very clear about the importance of being there for us in the morning before school and again after school." Apart from that message, Pat did not impose any constraints on Leanne in terms of envisaging her future. "She is a wonderful mother. The idea that being a girl limited your options in life never entered my head."

Leanne recalls a childhood, “full of fun. Dad was a great storyteller. We were never allowed to take ourselves too seriously.” The Hurley children loved climbing the giant mango tree in the backyard, and a “fantastic old fig that groaned with fruit in summer.” There was a vegetable garden to raid, and “I always had a new outfit to wear to any party, with Mum finishing off the last stitch as I went out the door.” Frank Hurley was a home handyman with an inventive bent. He modelled independence, industry and excellence.

Pat and Frank Hurley took a keen interest in the affairs of the day. “Current affairs were always a robust topic at the dinner table.” Both strong characters, they acted according to conscience rather than convenience. Leanne recalls the Silkstone State School annual walkathon to raise funds for school amenities. Her parents viewed fundraising as a means for the State to abrogate its responsibility to provide all children with free and equal education. “Every year for seven years, I returned an empty donor card together with a lengthy protest letter from my father. I sat at my desk while my classmates escaped schoolwork on the oval and celebrated with free iceblocks.” It was a formative experience for her.

She chose her vocation at age 10. Having completed Grade 12 with distinction at Bremer State High School, she nominated only one course on her Queensland Tertiary Admissions Centre application form: Bachelor of Laws at QUT. She supported her studies by working as a boarding mistress at Somerville House, while doing casual paralegal work at Lang, Hemming & Hall, and volunteering at the Youth Advocacy Centre. A casual job at the Public Defender’s Office seized her imagination. In these pre-Fitzgerald Inquiry times, she listened to allegations of police corruption and “heard depressingly similar stories of childhood deprivation and neglect, few opportunities and ingrained hopelessness.”

Impatient to be involved in the law in a practical way, she applied to the State Public Service. When she was appointed to a full-time position in the Office of Parliamentary Counsel, she changed her university enrolment to part-time. It was not what she had expected. Her new job was “production line and not particularly rewarding, but it was a small tightly-knit office where people looked after one another.” She completed her degree and gained admission as a barrister in 1985. Outside court one day,

she was approached by Des Sturgess, then Director of Public Prosecutions, to join a new specialist unit prosecuting sexual offences against children. Prosecuting meant experience in advocacy. She saw it as a stepping stone rather than a permanent career choice. “Like many young lawyers I had my sights set on a human rights practice. I wanted to act for the vulnerable and unfairly treated. I quickly came to understand that this was the role of a crown prosecutor.”

At that time, child sexual abuse had barely touched the public consciousness. Sturgess had just released his report on the subject, but ordinary, decent people were simply unable to accept that the descriptions of abuse were true. Jurors were reluctant to convict. Leanne recalls the experience of prosecuting ‘a pillar of the local community’ in his hometown. “People lined up to jostle and spit as we walked into the old courthouse.” The children who testified against him were vilified. He pleaded guilty on the fourth day of the trial.

The legal profession was likewise still to come to terms with the issue. A father charged with abusing his own child would be released on bail without any restrictions on contact, and it was not uncommon for the accused and the complainant to arrive at court together. There was enormous pressure on such children to recant or stay silent. And without their evidence there was no case, and no prospect of protecting them. Should a child, notwithstanding the disincentives, find the stamina to proceed to giving evidence in court, there was always the risk of a further form of abuse. In those days, defence counsel had virtual carte blanche. “Some of the things that were put to children were just outrageous, and one could object, but it made little difference. Getting to the truth and getting reliable, good quality, accurate evidence is quite different from outsmarting or intimidating the witness.”

As shocking as it was for Leanne to hear these children speak of the abuse they had endured, working with them and helping them through the minefields they faced in speaking out, ignited her enduring passion for prosecuting. In 1989, when the Evidence Act was amended in line with some of the recommendations of the Sturgess Report, Leanne prosecuted the first trials where child witnesses gave evidence on videotape. She also argued the first applications for court procedures to be modified, and for the court to

admit statements made by children outside the courtroom as evidence. Procedures we now take for granted, these were highly controversial within the profession at the time.

Having learned that relating to people is at the heart of the job, Leanne moved to mainstream prosecuting in 1989. She says that preparation for trials is an exercise in logic and psychology. One has to know the facts: the measure of the truth is often in the detail and the way the pieces fit together. She talks of the importance of always being ready to listen to what a witness has to say. Whether gaining the trust of a witness through the process or in building up a picture for a jury, empathy and the ability to communicate simply and clearly are essential. “Trial advocacy is the art of story-telling.”

There are those victims who stay in touch and continue to send news many years later. There are witnesses who have left lasting impressions. In one murder trial, Leanne called an elder from a remote aboriginal community to testify against his son. His evidence would transform the death from accidental to deliberate. “He knew this, yet despite the personal cost, his commitment to justice was absolute.”

Leanne was the first mother to prosecute in Queensland. And when she returned to trial work and circuits, her mother travelled with her and the baby. At the end of a trial in Cairns, she had gone back to the baby when she was recalled to court for an urgent application. On her arrival, the judge looked rather fearful. He had been told she had gone to have a baby.

Leanne moved into the Appeals section of the office after the birth of her second child. It held the promise of definite hearing dates, no circuit travel and no late night juries. She was to find part time work held its own trap. “The dining room table was permanently covered with outlines of argument and cases.” The challenge in appellate work, she found, lay in stripping complex matters down to their bare essentials to crystallise the issues. And there was the further challenge of interrogation by three appellate judges. She laughingly quotes from former US Solicitor-General, Justice Robert Jackson to describe the three stages of argument: ‘First came the one that I had planned—logical, coherent, complete. Second came the one that I had actually presented—interrupted, incoherent, disjointed, disappointing. The third was the utterly devastating

argument that I thought of after going to bed that night.<sup>10</sup>” Nonetheless she persevered in search of “those precious moments when an argument actually changes the direction of the cyclone. It is a great adrenaline rush.” From 1996 to 1999, as Special Counsel, Appeals, she argued nearly half of all criminal appeals in the Court of Appeal. She is one of only a handful of female Counsel throughout Australia who argue cases before the High Court. In the past five years, she has argued all but two of the substantive criminal appeals from Queensland to the High Court.

In 1999, the Attorney-General of Queensland, Matt Foley, offered Leanne a temporary appointment as a District Court Judge. She went to her boss, Royce Miller QC with all the reasons why she should decline. “If it were not for his firm confidence and support, I would never have taken the leap.” Her grandmother proudly organised a special dress for the occasion but, sadly, died before it eventuated. “I was sworn in on 4 April 1999, and two hours later we had my grandmother’s funeral.”

Having acted as Deputy Director and Director on a number of occasions, Leanne was appointed Director of Public Prosecutions in 2000. One of the challenges facing her was to build the collegiate strength of the office and overcome regional isolation. She is firmly committed to supporting her staff. “People need to know that they are valued ...that there is reward for effort and application, but the office should not squeeze their life blood.” She has established a scheme of annual Director’s Service Excellence Awards, and the office newsletter has human interest stories about staff as well as professional news. “We are getting better at recognising and celebrating our own achievements”. She visits each of the 8 regional offices at least once a year. “It is one of my favourite parts of the job. It means that I know the people in my office. That makes the professional support across distance much easier and more effective.”

Recently the office has moved to a chambers model of case management whereby self-contained teams of prosecutors, legal officers and administrative staff including victim liaison officers, work on a case from beginning to end. The objective is two-fold. Victims benefit from greater continuity in decision-making and in personnel. For staff, there is greater job satisfaction and a more defined career structure. Leanne recognises

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<sup>10</sup> ‘Advocacy before the United States Supreme Court’ (2003)5 The Journal of Appellate Practice and Process 219 at 224

that the transition has been difficult for staff, but she is proud of their “energy, commitment and good will.”

We talk about the extensive press criticism of some of her prosecutorial decisions. “The very nature of such work attracts controversy and is properly the subject of close attention by the media.” For the criminal justice system to work effectively, however, the public must have confidence in it, and it is here that sensationalised reporting can cause problems. Leanne says it is a challenge to respond in particular cases without breaching the duty of confidentiality. She says that she has been overwhelmed by the extent of support from the judiciary, the profession and members of the public. “My own staff have been extraordinary. There is a sense of unity here.”

I ask whether part of the problem is a public expectation that prosecutors act as victim advocates. Leanne suggests that our legal system has come a long way in understanding and respecting the rights and feelings of victims. “There will always be room to improve, but the law has been responsive.” She has, in fact, spearheaded some of the reforms that have occurred. She led the committee that drafted protocols and guidelines for prosecution staff dealing with victims of sexual assault, and oversaw their implementation. She was a committee member of the Taskforce on Women and the Criminal Code and volunteered at the Women’s Legal Service for 5 years. As the supervisor of Victim Support Services, she conceptualised and developed the Community Outreach Project aimed at improving access to justice for victims of crime in indigenous communities. And she is a member of the National Committee for Reform of Child Sexual Offence Laws.

She says that is hard, however, to convey the message that the role of the office is to represent the community rather than the victim. “It is important to consult with complainants in relation to matters, but at the end of the day the decision for the independent prosecutor must always be the public interest. The two interests do not always coincide.” She warns that prosecuting is not a job for the faint-hearted. “Whether the decision is to prosecute or not prosecute, there will be people who are disappointed, distressed, or even devastated by the result.”

When I ask if there have been any mentors in her professional life, she immediately talks of the debt she owes Des Sturgess: how he gave her “an incredible

opportunity” at the very beginning, and how he inspired her as “a man of commitment and passion who just gave everything to what he believed in.” Sturgess, in turn, has said that she was probably the hardest worker in his office, and that “she is a completely honourable and thoroughly competent person.”<sup>11</sup> Leanne speaks of the impressive lineup of leading criminal advocates in the ODPP but makes special mention of prosecutor Peter Feeney for whom she worked as a clerk: “a counsel of great skill and integrity, an incredible performer in court, but also self-effacing and generous with his time and experience.”

For Leanne Clare, her work as Director of Public Prosecutions is relentless. The workload is heavy, important and satisfying. “I lecture young lawyers against giving up life outside of the office, knowing all the while that the nature of the work casts its own net.” She says that her own unreliability for social commitments is a sore point for her husband. When Leanne and Gary first married, they maintained traditional household roles. Since she has assumed the role of Director, Gary has taken over responsibility for cooking and looking after the house. He respects the demands placed on their lives by Leanne’s job. Fortunately his own job allows him to collect the children from school, and take them to extra-curricular activities. It is Gary, Leanne says, who provides stability and constancy for the family. She also credits him with helping her keep things in proportion. “We are complete opposites in many ways but we share the same fundamental values. And he makes me laugh.”

Leanne is quite happy for her life to revolve around work and family. She loves her work and the people she works with. “Prosecuting gets in your blood.” And she values being able to lead an “ordinary” life at home. Here she puts the ‘home handyman’ skills inherited from her father to good use. Their backyard bears more than a passing resemblance to that of her childhood. Amongst the trees is an organic garden with pumpkins, herbs, grapes, pawpaws and strawberries. When the going gets rough at work, she gets “stuck into the compost.” You can’t get more down-to-earth than that.

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<sup>11</sup> *Courier-Mail*, April 5, 2003.

## **Barbara Newton: Australia's first female Public Defender**

When, on 20 August 1987, Barbara Newton was appointed Queensland's Public Defender, she was the first female to be appointed to such a position in Australia; at the age of thirty-nine, the youngest; and at 5ft "and a bit", the shortest. As Barbara loves to tell, when she was a new advocate appearing in court, she was told by the presiding judge one day to stand up when making submissions. "I am standing up, Your Honour" she replied. Anyone who viewed her height, her gender, her age, or the combination of the three, as a disadvantage was likely to be in for a shock. This was a Public Defender to be reckoned with.

Barbara had never been averse to a challenge, and a challenge it was to assume the role of Public Defender in Bjelke Petersen's Queensland. Less than a month earlier, hearings had commenced in the watershed Fitzgerald Inquiry which was to expose systemic police corruption. Unfortunately the stress of the job and the times took its toll on her physical health, and Barbara had to retire in 1992 when she was only forty-three. Nonetheless, her contribution to the practice of criminal law in Queensland has been significant, as we shall see.

Interviewing Barbara for this profile, I am struck by her prodigious memory, not only for her own life but for that of her parents and grandparents. I start to appreciate that, in her family, there is a great sense of continuity. Family history has been ever-present in the retelling of tales of adventure involving her larger-than-life ancestors. This memory is not restricted to family matters. Amongst her women lawyer friends<sup>12</sup>, she is the archive of our common experience. It is Barbara who is called upon to retrieve dates and people and who said what to whom. We have learnt not to challenge her evidence.

Her childhood was exotic. Most Queensland lawyers her age grew up in Brisbane or in rural areas with little sense of history, or the idea that history happened somewhere else. Barbara's maternal grandmother's family came from the Shetland Islands, the most northerly point of Scotland with its strong Viking influence. Bronze Age settlements peppered the English countryside where Barbara attended pre-school. And her Council

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<sup>12</sup> I was a fellow student with Barbara at the University of Queensland in the late 1960s. We all still meet regularly for lunch.

primary school was in the village of Thornton Hough, so old it is mentioned in the Domesday Book. Whereas we have memories of crates of school milk heating up in the summer sun, Barbara's are of lunches of frogspawn (clear tapioca pudding with fruit) in the school dining room.

Tom Sale, Barbara's father, grew up in Liverpool where his house painter father (demonstrating a resourcefulness he would pass on in the genes) established a fish and chip shop during the Depression. Tom, who was the first member of his family to go to university, alternately peeled potatoes and read his medical textbooks out the back of the shop. He had been motivated to study medicine by the lingering death of a younger brother of bone cancer at the age of only thirteen.

After he qualified, Dr Sale joined the navy and went straight to sea. It was a challenge as the only doctor on board ship, with the sick and injured transferred from other ships as well. Barbara has photos of him performing surgery in the mid-Atlantic in the Second World War, and his ship, *Magic*, was off the coast during the D-Day landings in Normandy.<sup>13</sup>

Barbara's mother, Vicki Tomlinson, had also grown up in Liverpool. As she would later describe to her wide-eyed children, she was in the centre of the Blitz there and hit by shrapnel. She went on to join the WRNS in the tradition of her mother (also a "Wren") and father who had been a sniper in the British army in Gallipoli in the First World War.

Barbara's parents met, fell in love, and married when they were both in Plymouth during the war. Barbara was born in Liverpool in 1948. In 1954, Dr Sale decided to move his family to Singapore. Practising medicine in the tropics was not completely out of left field. His Alma Mater, Liverpool University had the first School of Tropical Medicine in the world, and he had found a job doing surgery which was his first love.

Barbara was only five when the family set sail, but she has memories of travelling through the Suez Canal. In Singapore, Barbara was enrolled at Raeburn Park, the Harbour Board School with the children of shipping families. Younger students attended school

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<sup>13</sup> By the Normandy invasions, he was married, and the ship's cartographer was his mother-in-law, Victoria Tomlinson, after whom her daughter was named. The ship, *Magic* sank.

only in the morning: it was too hot in the afternoon. Later, she attended on Monday and Wednesday afternoons as well, to study French.

In 1957, when Barbara was eight, the family took a holiday back to the UK, and on to America, Canada and Australia to visit relatives. Barbara's shock at the racism of New York informed her later concern with social justice. "Singapore was a place where people went anywhere. There were all different races mixed together. Whereas in New York there was segregation. I remember the signs up in the trains keeping the blacks out." When she came to practice as a solicitor in outback Queensland, she was similarly shocked by the racist attitudes to Aboriginal members of the community.

Asia too was not without ethnic and cultural conflict. In Indonesia, their plane was grounded. The passengers were detained in a hut next to the terminal building surrounded by guards with guns. Her parents explained that the plane was being filled with Dutch colonials who were being 'kicked out'. Barbara was later exposed to dangers uncommon for a child her age: riots in Singapore, and travel through Malaya during the Emergency.

At home in Singapore, Dr Sale had become prominent, operating on the Prime Minister, Lee Kwan Yew, and also performing the first heart operation there. But Mrs Sale's parents had migrated to Australia, and he was encouraged by Australian colleagues to follow suit. When Dr Sale arrived in Australia, however, he found the medical profession in Sydney and Melbourne a closed shop. He took a locum in Bathurst, until taking up a position as Superintendent of the Rockhampton Base Hospital in 1959.

Barbara had been encouraged at home to be resourceful and self-reliant, so she was unfazed by the problems in Asia. Rockhampton, however was not the sort of cosmopolitan and exciting environment Barbara had become used to. She laughs, remembering: "Dad said there was a job in Rockhampton or there was a job in Sierra Leone, and my response was that there must have been somewhere else in the world." Moving to Rockhampton meant she was taken out of Melbourne Church of England Girls Grammar School to be enrolled in Grade 6 at Rockhampton Girls' Grammar School. It was difficult to cope with yet another change of curriculum and hard to make friends moving around. So she was grateful for the stability of her years in Rockhampton where she completed Senior in 1965.

For Senior she studied Maths I, Maths II, Chemistry and Physics, unusual choices for a girl in those days. However, as a child she had been encouraged to play with toys considered more appropriate for boys such as construction kits, as well as dolls. She had developed a fondness for making model planes and for doing jigsaw puzzles. Her Maths teacher, Chloe Slack, stressed upon her the importance of both thinking independently, and being prepared to argue her case. There was a problem in Solid Geometry which no student had solved. “Mrs Slack explained to us what the solution was, and she looked at me and said ‘You don’t get it, Barbara?’ and I said ‘No, the solution being offered is totally impossible’ and got out pens and rulers to create the various planes, and she said ‘You know what? You’re right’ and she wrote to the author of the book that they were wrong.” This was a formative experience.

The school motto at Rockhampton Girls Grammar School was “Non Scholae sed Vitae Discimus” (Not only for school but for life we are learning), yet there was not much encouragement at school for her to go on to further study. But when she won a Commonwealth Scholarship to the University of Queensland, her father was insistent that she take it up, not necessarily as a means to employment but as part of her education for life. She was the first person from Rockhampton Girls Grammar to complete a law degree. When at a preliminary interview, it was suggested she study engineering, she said she was not interested, and her choice of law was accepted.

Barbara is not sure exactly why she decided on law, but has a humorous take on the issue: “Dad always said you shouldn’t do medicine if you had a good sense of smell.” Her father had told her about Rose Heilbron, married to one of his colleagues in medical school, who in 1956 was appointed the first Woman Recorder (a part-time judicial position) in the United Kingdom. And in Singapore Barbara had been regularly taken by her mother to the movies where Witness for the Prosecution left an impression on her. But it may have had more to do with thinking independently and arguing her case: “I was always good at arguing. My first sentence was telling my mother that my sister thought she was the chief of police.”

Law however required a fundamental shift in thinking for the student with a talent for science and maths. She had to get used to the idea that there wasn’t always a definitive answer. Barbara enjoyed the practice moots in her first year, particularly the

pleasure of discussing legal problems with fellow students: teasing out the concepts, and arguing the toss with them. Formal classes were a 'hit and miss' affair, and not as stimulating as she had expected. Students were left to fend for themselves.

She had to get used to being picked on by one member of staff whose sport was to belittle women in tutorials. Displaying the robustness she had developed as a child, she decided that attack was the best method of defence. She always came to class prepared and "every single time, every single tutorial he asked a question, I would have my hand up. And he reached the stage where he would say eventually 'I suppose I have to ask Miss Sale again.'" Law, however, remained a male domain. There were no female lecturers and only a small number of fellow female students including Leneen Forde and Carmel MacDonald. Barbara says that she found our support invaluable. Once in practice, this group was the driving force behind the formation of the Women Lawyers Association of Queensland (WLAQ) for professional support and lobbying against discrimination.

At the end of second year, Barbara travelled to Saigon during the Vietnam War to visit her parents. Dr Sale was in charge of a surgical team in Bien Hoa. When she arrived at the airport there was no one there to meet her, so in typically robust fashion she hitchhiked to Bien Hoa in the middle of a "red alert...It was the beginning of the 1968 Tet offensive." The hospital was caught in the crossfire, and she witnessed huge numbers of civilian casualties. She returned to the quiet, country town life of Brisbane to complete her studies, feeling disoriented.

In third year at the University, her education for life morphed into education for a career when she commenced articles of clerkship. She had difficulty getting a clerkship because she was a woman. At one interview, she was asked if she was involved with any organisations. "I said 'No, is that a problem?' They said 'No, we had a female articulated clerk here who was involved with such and such organisation and she used to make calls from work about it.'" Ignoring this discouragement, Barbara not only became a founding member of the WLAQ, but later a founding member of the Quota Club in Kingaroy and an active member of Zonta, the women's service organisation.

Like articulated clerks all over Brisbane, she spent much of her time traipsing from court registry to court registry, filing documents, arriving back at the office only to be sent back again. She felt frustrated by the lack of systems in place. As a woman, she also

experienced difficulty getting her typing done. She had not been assigned a typist, presumably in the belief that she would do her own. Fortunately the solicitor to whom she was articled, Ian Stubbs, treated her in a professional way, and when he left the practice to set up on his own, she went with him.

In 1970 she was admitted as a Solicitor of the Supreme Court of Queensland, refusing to wear the hat that was de rigueur for women for such occasions. Earlier, she had balked at the dresses, stockings and high heels worn by female students to university. (Trousers were banned by by-laws.) She was always prepared to listen to an argument on this score, but was not prepared to toe the line with empty protocols. “If someone tells me a good reason for doing something, I can accept that.”

At I N Stubbs & Co she worked on town planning matters. But she and Carmel MacDonald had decided to travel overseas as soon as they could afford to do so after graduation. Barbara was first to take the plunge and board a ship destined for Europe. Unable to obtain legal work on arrival in London, she took a position in the accounts department of the Institute of Bankers. She loved it. They had a system for everything. “I’m a person who believes in systems. Not for the sake of systems but because they make things work better.” After touring around Europe with Carmel, she took a position with a firm of solicitors called Wilde, Sapte & Co. It was a well-organised office and she thrived.

Whilst overseas, she met her husband-to-be who was from Mt Isa. In 1973, she moved to Mt Isa to be married and to take up a position as a solicitor with Vic Moffatt & Associates. Her boss was a plaintiff lawyer prepared to take on cases that had no legal precedent. He was very encouraging to his new employee even when she continued to exhibit independence of thought and argue legal issues or strategy with him.

Mt Isa was a town of contradictions. There were 55 different nationalities, but social mores were homogeneous and conservative. The mix of cultures was not unusual for Barbara but, as a female solicitor, she was unusual to them. She soon learned on social occasions not to divulge that she was a solicitor, or the conversation would come to a quick end. Fortunately there was one other female solicitor in town, Pat Conroy. “Originally Pat wouldn’t discuss matters on the phone with me if I wanted to argue. But she and I later became great mates.”

For the first time, Barbara got to do court work, both civil and criminal. Her first appearance was at a committal hearing in Cloncurry. “It was in the days of the typewriter so it was really slow. There was no legal profession in Cloncurry. It was like going to a one horse town in the Wild West.”. She discovered she had a feel for advocacy. The office was very busy and she enjoyed discussing cases with visiting barristers.

When an Aboriginal and Torres Strait Islander Legal Service was set up, she established a close relationship with the research officers and the field workers there. Her resourcefulness was soon called upon. “An indigenous client came to see me but then sat in my office and wouldn’t talk to me. I tried many different approaches and then contacted a worker from the Service who explained that he was being very polite. He would not talk until he was properly introduced by someone in his community for fear of giving offence.”

From Mt Isa, Barbara moved to Kingaroy where she set up her own firm doing mainly criminal work. Unlike other solicitors in the area, she was keen to work for the Aboriginal community in Cherbourg, and was dismayed, at a farewell to the local Magistrate, to hear a police officer talk of “dealing with the local problem.” He meant the Aboriginal population. “And some witnesses, if you questioned them at committals, would be openly racist in their comments.”

She had regular contact with the Public Defender’s Office, and when she moved to Brisbane in 1976 took up a position there as a clerk. “I really wanted to specialise in crime and I was prepared to go in at the bottom and learn the ropes.” She started two weeks after Margaret McMurdo (later to become President of the Court of Appeal). In a way that was becoming emblematic for Barbara, their relationship started with an argument and developed into a long-standing friendship. Margaret joined Barbara’s regular lunches with her law school friends.

A Legal Officer position came up shortly after Barbara joined the office, and soon she was Section Leader putting her passion for systems into effect. “I was told I had such an efficient section they would have to break it up so that they could get the benefit of it around the office.” That would prove to be prescient indeed. Soon, Barbara was supervising the entire preparation area of the Public Defender’s Office. She would brief

both male and female barristers and observe how competent they were. As a woman she did not have to adhere to the unofficial rules of the 'old boy' network. "I didn't take the view that women barristers couldn't work in criminal law. Julie Dick credited me with having a huge impact on her career. I said, 'You always had the talent.' And she said 'But nobody opened the door before you.'"

In 1977 Barbara was admitted as a barrister. It became apparent that the ongoing Russell Island conspiracy trial was going to confiscate a substantial portion of the financial and people resources allocated to the Public Defender's Office. So, in 1979, the then Public Defender, Bill O'Connor, took Barbara out of court work to manage the situation. She developed better systems within the office for recording information, and in liaison with Debbie Richards (now a District Court Judge) from Crown Law, got the Supreme Court Trial List under control. "I can honestly say Debbie and I never had an argument. I could trust her implicitly and she could trust me." In announcing Barbara's appointment as Public Defender in 1987, Justice Minister, Paul Clausen paid tribute to the way she had contributed to the minimisation of delays in criminal trials in Queensland.<sup>14</sup> While the appointment was generally well received, not everyone was pleased. "Someone in my office cleared his desk by throwing everything at the wall."

In 1988, when part of the funding to the Public Defenders Office was slashed from \$1.36 million to \$500,000, Barbara argued that this showed a lack of foresight. Funding cuts were illogical and wasteful because it was three times more expensive to brief work out to the private bar. And of course she had the figures to prove it. In a profession wedded to precedent, Barbara was ahead of her time in realising the importance of management skills. She computerised the office even though there was no money in the budget to do so, having worked out that computerisation would save enough money to cover the cost. She established a database of the cases they handled. And she set up a computerised database of Queensland sentences (with the factors taken into account in determining them) that was to prove invaluable to courts. It was the only one in Australia.

The Fitzgerald Inquiry itself meant that some good staff from the Public Defenders Office went to work for the Inquiry. Barbara decided that it was important to

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<sup>14</sup> Sunday Mail August 23, 1987.

establish the Office as a professional career path in its own right. She applied to have some of the legal positions in the office reclassified to more appropriately reflect the demands of the work, and sought out people in the office with talent to fill them. “I believed that we had a responsibility to the barristers in-house. I didn’t see my job to be providing a training school for young barristers to then go on to the private bar.” Barbara was keen to liaise with the other stakeholders in the criminal justice system: Department of Justice, State Prosecutions, Commonwealth Prosecutions, Police, Corrective Services, the private profession—in an attempt to make the system more cohesive. Traditionally these departments had worked in isolation making the term ‘criminal justice system’ a misnomer.

When the Labour government came into office in Queensland in December 1989, it was their policy that the Public Defender’s Office be merged with the Legal Aid Office. The merger negotiations involved great stress for Barbara. In 1989 she had been diagnosed with metastasised breast cancer and in 1990 was recovering from chemotherapy and radiation therapy. In 1992 she retired due to ill-health.

The loss of a professional career was a great blow. Barbara decided she had to focus on the positive side. It enabled her to spend more time with her daughters: Cara, born in 1978, Dale in 1980, and Edwina in 1982. She decided the most precious thing in her life was the opportunity to read to them, just as her mother had read to her. The close bond established in this way with her daughters remains. Like her, they have all progressed through their education for life at university. Today Barbara is very involved in the Cancer Self-Help Group. Just as she still attends Zonta meetings. Just as she still meets regularly with her women lawyer friends. The bonds she has established in these groups have been crucial to her health and well-being. In turn, she has been able to continue to work for the public good. In 2002 she was awarded the Medal of the Order of Australia in the General Division “for service to the community as an advocate for gender equity and equal opportunity through work in the legal profession, and through Zonta International and the Cancer Self-Help Group.”

What stands out about Barbara Newton’s legal career are her resourcefulness; her great talent for establishing systems that were both effective and just; her unwillingness to be bound by meaningless traditions; and her vision of justice as inclusive whether it be

in terms of the people she represented, her staff, or the people she briefed. Her legacy remains in the defendants who have obtained access to justice, and in the lawyers whose careers have been assisted because of the contribution she made to the law in Queensland.

## **Carmel MacDonald: trailblazing in the law in Queensland**

Carmel MacDonald was the first woman to be appointed an articled clerk in the firm where she worked in the late 1960s. She was the first woman to be appointed a solicitor in the law firm where she worked on her return from a postgraduate trip to Europe. In 1976, she was the first woman to be appointed as full-time law lecturer in Queensland. And in 2001, she was the first woman to be appointed as a full-time Member of the Land Court and Chairperson of the Aboriginal and Torres Strait Islander Land Tribunals. Carmel did not set out to be a trailblazer. It was not the spirit of adventure, but intellectual curiosity, and a desire to do work that would make a difference in people's lives that were her motivating forces.

It was probably predestined that Carmel become involved with law, and particularly property law. Born in Brisbane in 1946, she was the fourth daughter for John Patrick Kelly and his wife, Margaret Maud Hishon (Maud). Two other daughters, Margaret and Monica, were also to become lawyers, as was the only son, Xavier. Carmel's father and mother met when they were both working at the Titles Office. Maud was a conveyancer before the legal profession claimed a monopoly on those skills. She did not attend university, not because her family did not think it appropriate for women to do so, but rather the question of cost. "I remember one of my aunts saying that there wasn't enough money to send everyone so the boys took priority." John Kelly studied at university part-time. "He'd gone into the public service which is what happened to all the Catholic kids whose families didn't have any money." In those days there was no law degree as such, but he completed an Arts degree at the University of Queensland incorporating the limited number of law subjects available.

The connection with law goes back one generation again. Carmel's maternal grandfather, Patrick Mortimer Hishon, was a Magistrate, having been promoted to that position from his role as Clerk of the Court, as was the norm in those days. Her paternal grandfather, Michael Egan Kelly, was a police officer. Not only was law in the genes on both sides, Irish blood mixed with Irish blood. Carmel's paternal grandfather was born in Tipperary, her maternal grandmother in County Cork, and her maternal grandfather was also of Irish descent. Carmel grew up with an awareness of the poverty and disadvantage

suffered by the Irish under British rule. Her education in Catholic schools, where most of the nuns were of Irish heritage themselves, was to further nurture a commitment to social justice.

Having gained admission as a barrister, Carmel's father left the public service in the 1930s. He set up his own legal practice, John P. Kelly & Co where his younger brother Frank was to join him. Frank was a much-loved and generous uncle who lived in the family home at Coorparoo, enticing his nieces and nephew to share his passion for classical music. The oldest child, Margaret Kelly, went into the family firm straight from school and studied arts-law part-time. When Monica and Moira enrolled at the University of Queensland to study full-time, neither of them chose law, although Monica felt the pull of the genes and went into law some fifteen years later.

Maud Hishon had attended All Hallows' School. Before proceeding, with her sisters, to her mother's alma mater, Carmel first attended St Benedict's at East Brisbane, and then Mt Carmel at Coorparoo. Although it was unusual for women to complete Grade 12 in the early 1960s, All Hallows had a long-standing academic culture. It was made clear by the nuns that they expected the better students to go on to University. "We were made aware of brilliant past pupils who had achieved academically and professionally." Students were encouraged to achieve, just as it was expected that they would marry and have children. Just as it was expected that they would cease work on starting a family.

Although she had gone into the science stream in Senior, to maximise her career options, Carmel had more affinity with language and literature, and was keen to study Arts at university. Her father insisted that she have a vocational goal. Since she was not interested in school teaching, they agreed on librarianship. That seemed the only other career open to an arts graduate. (Ironically, when she was to become an academic, Carmel found that she really liked teaching.) Carmel won a Commonwealth Scholarship and in 1964, she enrolled in the University of Queensland where, as part of her English Honours course, she studied Linguistics, Old and Middle English, as well as English Literature and Elizabethan Drama, choosing French and Latin as electives.

Whilst she enjoyed these subjects, they seemed rather impractical, and she was not sure librarianship was for her. An alternative career which would accommodate her interest in language was of course law. Plus it would enable her to assist people to obtain justice. She switched to a combined Arts-Law degree. Her father was pleased but her mother not so sure. "I can remember her sighing and saying 'I wish one of you girls would do nursing'. She thought that would be more practical."

In order to enrol in law, Carmel had to discuss the change with the Dean, Professor Walter Harrison, a gentleman of the old school, who made her feel welcome. The question arose whether she could complete the combined degree in four years given that she had not done any law subjects to date. Professor Harrison advised her "Your academic record is good, but I don't think girls should have to work too hard. I think you should take five years." Carmel recalls with disbelief: "And I said 'Thank you very much'."

She did not find the law school as intellectually stimulating as her study in the arts faculty. Criminal law classes with Dr John Morris were an exception but she had no desire to practise in this area. She had a conversation, uncharacteristic for the time, with one lecturer, Robert Hayes, about the narrowness of the law course. He told her to make sure she read a non-law book each week—advice she was happy to follow. Most lecturers made little attempt to engage the students. Carmel remembers one student writing short stories during class to allay the boredom. In an early display of aptitude for an academic career, Carmel would give them a mark out of ten. Intellectual stimulation came from discussing legal issues outside class with friends. Having gone to an all girls' school she gravitated naturally to the small group of fellow female students. Some of the lecturers were patronising to female students. This was further cause to band together just as we still do<sup>15</sup>. "The group has been a huge support to me ... I'm so grateful that despite all our ups and downs and trouble trying to organise lunches, it survived."

When it was time to obtain articles of clerkship, Carmel, asserting her independence, declined to join the family firm. However, aware of the difficulty faced by women in securing articles, her father arranged with O'Sullivan and Rowell for her to be

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<sup>15</sup> Leneen Forde, Barbara Newton, Anne McMillan (before she moved to Wollongong), the younger (Justice) Margaret McMurdo (recruited by Barbara in her Public Defender days) and myself.

their first female articulated clerk. In a world untainted by billable hours, the male articulated clerks played cards every day at morning tea. Carmel thought it would be strategic to join them. When her employers realised she was more conscientious than her male co-workers, they started to view her less as a curiosity and more as a bonus.

Carmel did some conveyancing and estate management, but the bulk of her work as an articulated clerk was motor vehicle accident litigation. "I think that was a bit self-selected. I quite liked litigation." She did not however believe she had the advocacy skills necessary for a life as a barrister. She tried her hand at family law cases but decided that she had insufficient understanding of the personal and emotional experiences of the clients; that training in more than legal skills is necessary to practise successfully as a family lawyer.

In 1970, along with Leneen Forde and Barbara Newton, she was admitted as a solicitor of the Supreme Court of Queensland. Keen to see the world, she continued on at O'Sullivan & Rowell to save the necessary funds to travel with her father to England for her sister Monica's wedding. The idea of living and working in England, like Monica, was quite appealing. But in the meantime, Europe and a fellow traveller in Barbara Newton beckoned. On their return to London, Carmel obtained a position as a solicitor at a London firm, this time without her father's assistance. She worked there for about a year, again doing civil litigation, but expanding her horizons beyond motor vehicle accidents.

While she never was to feel that she had found her niche in life working as a solicitor, she was reasonably contented with her job. Living away from home was, however, harder than she had anticipated. Fate stepped in when the office manager of the firm, with an Irish wife also called Carmel, invited her home to dinner. It was here that she was introduced to an accountant with a passion for food called John MacDonald. Little did John know then that he would end up living in Brisbane and establishing a very successful business as a food providore and wine expert.

John and Carmel were married in Brisbane in 1973. While she was back in Brisbane, she went to see Professor Kevin Ryan at the University of Queensland to discuss the possibility of an academic career. He suggested she obtain an overseas postgraduate qualification. When she and John returned to London after the wedding,

Carmel enrolled in an LLM at London University. It wasn't just the degree's vocational potential that interested her. "I think I am an eternal student." She was delighted to find that her lecturers at London University were excellent teachers who were experts in their subject areas. She was also fascinated by the mix of students from all parts of the world.

In 1975 Carmel and John decided to return to Brisbane to live. Carmel applied for a lecturing position at the University of Queensland but she was unsuccessful. It would be 1979 before UQ Law School would appoint a woman (Quentin Bryce, now Governor of Queensland) as a full time Lecturer. Given that there was only one university in Brisbane at the time, Carmel sought work as a solicitor again. The firm who appointed her were worried about their choice. "I was given a lecture about how they hadn't employed any female solicitors before. They hoped it would work out and that I would get on with the female administrative staff."

Carmel worked as a solicitor for about 12 months, without antagonising either the administrative staff or her employers, when the Queensland Institute of Technology (to become Queensland University of Technology in 1989) decided to establish a Law School. QIT advertised for academic staff and she applied. The Law Society representative on the appointment panel asked her how she was going to cope with the job being a married woman, and what she was going to do when the children came along. Apparently she allayed his concerns.

Although she was delighted to return to an academic environment, Carmel was concerned about her lack of teaching experience. Tom Cain who was the Head of School provided her with support and encouragement and once she started to gain confidence, she found that she enjoyed it. With typical Australian Irish humour, she relates: "One of the part-time students apparently told Tom at some stage during that first year that I was the best lecturer that he'd ever had. Now, all I can say is goodness knows what else he'd been exposed to." Carmel kept up to date with philosophical debate and the emergence of new theoretical approaches to legal thinking such as critical legal studies and feminist legal theory. The teaching side of her work was to give her great satisfaction. She particularly enjoyed seminars where personal interaction with students enabled her to guide the intellectual development of the students in a direct and challenging way.

When Carmel was to find out that she had been appointed on a much lower pay scale than the male lecturers, she raised the issue with her female lawyer friends. It was the sort of problem that they were all encountering. Carmel was involved in the establishment of the Women Lawyers Association of Queensland (WLAQ) in 1978, and headed up its research committee. She was to go on to be its President in 1983. Unlike the Queensland Law Society, the Women Lawyers Association allowed both barristers and academics as members.

The Association enabled women lawyers to support each other in a profession that was unused to, often uncomfortable with and sometimes downright hostile to their presence. It sought equal employment opportunities for women, linkages with other women's professional bodies such as the Queensland Medical Women's Association, and law reform to outlaw discrimination in all its forms, domestic violence and child abuse. Leneen Forde, who was the first President of WLAQ encouraged Carmel to make a written complaint to QIT about the disparity in salaries. She did, with minimal success. Tom Cain was, however, to support her application for promotion to Senior Lecturer and then Principal Lecturer at appropriate junctures in her career on a salary equivalent to that of her male colleagues.

Whilst on the Editorial Committee of the Queensland Law Society Journal... she went on to be Editor from 1985 to 1987...Carmel wrote an editorial in June 1979. Headed Women in Law, it described discrimination against women in the profession, and called for anti-discrimination legislation to promote equality of opportunity for all persons.

“This discrimination takes a number of different forms, the most common being that the onus is on women to prove that they are ‘better’ than their male counterparts to enable them to be admitted to partnership in a firm of solicitors; women, on applying for employment either as qualified personnel or as articled clerks are quizzed as to their marriage and or family prospects and commitments; again, on attempting to seek employment, interviews are refused outright because the applicant is a female; and in situations where, all other things being equal, a prospective employer is confronted with a male and a female applicant, the former is

more often chosen because of an innate suspicion that women are not reliable employees.”

There was a letter to the Editor in the next issue from RK Hill stating that such practices were not within his experience nor that of his colleagues, and finishing

“So, sir, may we hope that those of our profession who have joined the Women Lawyers can help our profession with new and progressive ideas, free of self interest, initiated by their collective and undoubted talents.”

The legal profession in Queensland was to continue its blindness to discriminatory practices within its ranks.

Carmel was teaching Contract Law. Seeking to go beyond the historical and therefore somewhat arbitrary categories of law, she became intrigued with the question of whether there were common themes in civil remedies in Contract, Tort and Equity. In her Masters degree, she studied a comparatively new development in English common law called Restitution, that had been recognised in United States law for a considerable period. Restitution and remedies were intertwined legally, and academic theorists were trying to bring conceptual clarity to the area. Carmel’s research in this area led her to the University of Bristol in 1987/8 as a Visiting Fellow. When QUT introduced a Masters degree in Law, Carmel’s interest in the area led her to offer courses on remedies and restitution.

In her second year at QIT, she was asked to teach Land Law, a daunting task, firstly, because there was no general property law textbook in Australia at the time, and, secondly, because it seemed an intellectually arid area. She co-wrote a study guide which was the only comprehensive written exposition of property law in Queensland for many years. And then the 1971 decision of the Federal Court in *Milliripum v Nabalco*<sup>16</sup>, sparked Carmel’s intellectual curiosity. The case involved a claim by indigenous people to land in the Northern Territory, twenty years before the landmark *Mabo* decision. Whilst the claim itself was unsuccessful, the judgment “raised issues which radically challenged my understanding of the role of the legal system.” Carmel’s head spun with the possibility of Australian law recognising and giving effect to the existence of an indigenous legal system and with the idea of a totally different concept of land

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<sup>16</sup> (1971) 17 FLR 141

‘ownership.’ She was fascinated by the cross-cultural issues raised when an indigenous culture seeks justice from an imported legal system, and avidly read the history of post-colonial claims by other indigenous cultures. She became aware of the importance of evidentiary issues, and the potential roles to be played by expert witnesses such as anthropologists and archaeologists.

Not only were these issues intellectually fascinating, Carmel’s sense of the injustice of dispossessing indigenous Australians from their land became a driving force for her continuing involvement in the area of ‘native title’. One of her students, Paul Chartrand, was an indigenous Canadian. In 1999, she took professional development leave to consult with academic experts across Canada, their legal response being more highly developed than here. It was a particular pleasure for her to spend time with Chartrand, by then Commissioner of the Aboriginal Justice Implementation Commission in Manitoba, and to arrange for him to be a Visiting Professor at QUT Law School in 2000.

Throughout her time at QUT, Carmel worked to make the university a more inclusive place. She was a member of the academic organisation Women in QUT, and founding Chair of the Law Faculty Equity Committee set up to address discrimination and disadvantage within the faculty. She enjoyed the change in culture that emerged as other females joined the law school academic staff. Firm friendships developed with many of the staff, in particular, Anne Wallace, Ros Macdonald and Poh Ling Tan who worked with her in the Real Property teaching team. It was Anne Wallace who convinced Carmel to co-author a textbook on the topic. First published in 1998, *Real Property Law in Queensland*<sup>17</sup>, is now the standard Queensland text on the subject.

In 1993 Carmel was appointed a part-time Member of the Land Court and a part-time Deputy Chairperson of the Aboriginal Land Tribunal. When she was offered a full-time appointment as a Member of the Land Court and Chairperson of the Aboriginal and Torres Strait Islander Land Tribunals in 2001, she was pleased to take up the challenge. Her work in this area has been enlivened and informed by visiting indigenous communities to take evidence.

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<sup>17</sup> MacDonald, McCrimmon, Wallace & Weir, *Real Property Law in Queensland* 2<sup>nd</sup> ed. Thomson, 2004.

Now that she is no longer teaching, Carmel misses “the personal contact with students.” When she retires, she plans to return to university life, not as an academic but as a student. She might revisit languages, or take up something completely different (like architecture) to tax the aging brain. In any event, there is no doubt that she will continue to spend much time on her great love, contemporary literature. She is a member of a book club which started in 1988 and is still thriving.

The appellation “trailblazer” does not sit comfortably with Carmel, although, as a lawyer, she is compelled to give due weight to the evidence. She suggests that the real trailblazers are people who never get into the public record: people like her older sister, Margaret, who paved the way for her siblings; indigenous elders who encouraged their people to be proud of their heritage and assert their rights. The nuns at All Hallows would no doubt nod favourably at Carmel’s genuine modesty, whilst at the same time polishing her name on the Honour Board.

## **Creating solutions: Fleur Kingham, Deputy President of the Land and Resources Tribunal**

For young women in the legal profession, the issue of how to combine a career with a family is a fraught one. Fleur Kingham did not want to sacrifice one to the other. Her way of resolving the issue has been to take time out with the birth of each of her three sons to reassess her life and her career choices. Turning conventional wisdom on its head, she has chosen to treat having children as a career opportunity. An ingenious approach, and one that has worked for her. In fact, creating solutions, giving birth to new ideas, is the great talent Fleur has brought to her work as a lawyer. And when we look at her family background that is not surprising.

It is not as if there were generations of trailblazing lawyers in the Kingham family. There were no lawyers at all. They were creative people. Fleur recalls telling her grandparents, and her uncle John Dommett who was an actor in the TV “soap” The Young Doctors, that she was going to study law. There was a hushed silence. “Then John patted Nana’s knee and said ‘It’s all right, darling. They get to dress up, you know. They get to wear wigs and gowns.’ And they were relieved because they thought I was attracted to the theatre of it.” Although it was not, in fact, the theatrical side of law that appealed to Fleur, her family have good cause to be impressed with the way she has applied her creative talents.

Fleur’s maternal grandfather, Leonard Dommett, was a vaudeville performer, a magician and escapologist. The whole family was caught up in his love of entertaining and all of the children were musically or theatrically gifted. When Fleur’s uncle Len and her mother Ivy were accepted into the Conservatorium of Music in Melbourne, the whole family moved with them. “They were like that, there was a gypsy element. Nana and Pop were always on the move taking the whole entourage with them wherever they went on their next adventure.” Len went on to become an internationally renowned conductor.

For Ivy, however, motherhood and family responsibilities brought to an end a promising career as a concert pianist, an experience that would spur Fleur’s determination not to choose between career and family. Fleur’s father, Philip Kingham, was a travelling salesman, another gypsy. Leonard was the matchmaker. Recognising in

Philip a kindred spirit, he brought him home to meet his daughters. When Fleur was born in 1961 in Brisbane, there were two older brothers, Robert and Martin, and an older sister, Cherida. Later, Marina came along. The family suffered an enormous loss when Cherida died of a brain tumour at the age of eight. Fleur was only six, and they had been very close, Cherida leading Fleur into adventure and into mischief: “I suppose she was my first role model because she was quite fearless.” Fleur can remember deciding she had to adopt more of that fearlessness. Cherida’s death changed family life irretrievably: “you never really get over something like that.” Her parent’s marriage did not survive and Fleur had to cope with another loss, that of her father.

But she didn’t lack for male role models. Her brothers were active both politically, in the anti-Vietnam War movement, and creatively, in the vibrant Brisbane community theatre scene of the 1970s. Their passions have endured. These days, Martin heads up the Victorian construction division of the Construction, Forestry, Mining and Energy Union. After a career in theatre, Robert went on to work in international aid in South-East Asia. Fleur’s brothers provided her with a political framework for a personal rebellion in her early teens. “They taught me to question things, not to automatically accept “received wisdom”. I don’t think it was a legacy that my teachers particularly appreciated.”

After a troubled period at Everton Park State High School, Fleur was sent to Fairholme boarding school in Toowoomba to complete her Senior education. There she made some good friends and got to visit their homes in unfamiliar places like Birdsville, Charleville, Moree and Goondiwindi. “I remember once climbing a windmill at dusk, watching the sunset and being exhilarated by the extraordinary beauty of my surroundings.” She felt a sense of connection to the outback which was to foster an interest in environmental issues. Back at school, however, “I was really angry, rebellious and unhappy.” A sense of “personal injustice” led her to seek out examples of injustices meted out to others. She passionately argued their case. One day in Grade 11, a teacher exclaimed: “Fleur Kingham, you are so argumentative, you should be a lawyer.”

The idea that her argumentative nature, which had brought her little but trouble, could provide her with a pathway in life held enormous appeal. During her teens Fleur and her father had built a strong relationship, so she turned to him for advice. Delighted

that his daughter was thinking about her future, he lined up an interview for her at the University of Queensland Law School. When the Sub-Dean looked at Fleur's marks and her report card, however, he was not very encouraging. This was red rag to a bull. She put all her energy into her study, and managed to get into UQ in 1978 without any problem. It was a case of a round peg in a square hole at first. "My expectations of university life were based on my vicarious experience, through my eldest brother Rob, of student life in the late 60s. I thought I would be immersed in a culture of challenge and debate and the law school just wasn't like that." Gradually she found kindred spirits, students interested in social justice who were active in organisations like the Students Legal Service and the Women Law Students' Association.

Fleur's attraction to wider political discourse led to increasing involvement with the student union. In 1981 she ran for the position of law representative on the union. In those days, students were not entitled to information about their appeal rights against decisions by the university. Fleur argued in favour of a students' bill of rights, and stressed the potential role of the Students' Legal Service in pursuing student rights. She won them over with arguments that appealed to their self-interest. Just as she convinced the student body as a whole to vote her in as secretary in 1982, and as president in 1983. She was the first female President of the University of Queensland Student Union in its seventy-two year history, and it was the strong support she received from the law school that helped her there. "My time in the Students Union was a maturing experience for me. As the student representative, in most cases the sole representative on the University decision-making bodies, I had to become comfortable being the lone voice, often touting the unpopular opinion. To gain support for the Union's agenda, I had to use the power of persuasion, as I certainly didn't have the numbers there. I developed skills that I continue to draw upon today and am grateful for that early opportunity".

Using her creative talents, she had extensive input into policy development within the university community, a commitment she continued as student senator, and then convocation representative on the University of Queensland Senate from 1984 to 1987 and then again from 1989 to 1992. It was on the senate that she was to find her "most important mentor" in Dr Janet Irwin who headed up the university medical service. "Janet is an extraordinarily generous woman who acted as confidante, helping me through an

uncertain time, and giving me confidence to be myself. I was impressed by her relentless, tireless devotion to the causes that were important to her.” Janet and Fleur worked together on the establishment of a sexual harassment committee, a sexual complaints process and an equal opportunity policy for the University. Likewise, Matt Foley, then on the academic staff of the Department of Social Work, and Fleur convinced the university to recognise equivalent non-academic qualifications of indigenous candidates for lecturing appointments. The University of Queensland Union named the Kingham Room in honour of her contribution to the university.

Having graduated with an LLB (Hons), Fleur obtained a position in 1984 as Associate to Mr Justice Macrossan of the Supreme Court. “He was a pleasure to work for. He treated everyone he dealt with in a respectful manner.” In that year, she was involved as one of “a small army of enthusiastic idealists” in the founding of the Women’s Legal Service out of the verandah of a house in West End. She also put considerable energy into the Queensland Council for Civil Liberties. These days she has philosophical difficulties with the extent of the focus on the individual which underlies libertarian ideology. She says she is more comfortable with a “collectivist view of rights and responsibilities”. Nevertheless she admires those involved in the Council in those days who had the strength of conviction, fearlessness and intellectual integrity to challenge the excesses of the government of the day. “they relentlessly brought to public attention outrageous abuses of power that may otherwise have gone unnoticed.”

Her first position as a solicitor saw her in a commercial law firm involved in litigation brought by some of the corporate raiders of the 1980s. She came to appreciate that the civil litigation process could be abused. “The civil procedure then provided ample opportunity to those with time and money to “encourage” a negotiated outcome on very favourable terms... to them, It was a lesson in the distinction between the law and justice.” When faced with continuing in that role or following her partner, David Barbagallo, to Townsville, she did not find the choice too difficult. David was taking up the position of North Queensland Organiser for the Labor Party; winning seats in the north could make all the difference; change was in the wind and Fleur wanted to be part of it. She took up a position with Boulton, Cleary & Kern, Solicitors, where she received a solid grounding in the full range of litigation work. As well as family and criminal law,

which she found were not for her, she started to handle some absorbing cases involving planning and environment law.

In 1989, the inaugural Lionel Murphy Foundation International Scholarship for study in science and law came to her attention. Lionel Murphy had been one of her heroes before she studied law. As a teenager she was aware of his reform agenda as Attorney General in the Whitlam government. She particularly admired the way he incorporated an environmental unit into the office of the Attorney General, took on France over the nuclear tests in the Pacific and won. “He was a wonderfully flamboyant, flawed and interesting person.” A scholarship in his honour was a good fit for her. She put in an application to do a postgraduate research degree in environmental law at Nottingham in England. The week she was notified she had been awarded the scholarship, she learned she was pregnant. With a state election looming, David was not in a position to move overseas. Not prepared to relinquish the opportunity, Fleur approached her mother about coming to England to help with the baby. Ivy had left England because of a baby. Returning 40 years later to support Fleur with her baby held special significance to mother and daughter. And baby Luke flourished.

Fleur’s topic was Can the CCAMLR (Convention for the Conservation of Antarctic Marine Living Resources) Survive? She was intrigued by the way environmental issues challenged notions of national sovereignty. It was a time too when environmental interest groups were seizing the political agenda, leading the way in the development of new legal principles and institutions. Not only did she relish the intellectual challenge, she enjoyed studying with students from all over the world. “I felt closest to a wonderful woman from Ethiopia who left her young daughter behind to pursue her studies...not voluntarily, but as a ransom to ensure her return.” Fleur was grateful that her own choices did not come at such cost. In 1990 she graduated with a Masters of International Law (Dist) in 1990.

On her return to Australia, Fleur, David and Luke moved back to Brisbane where she was recruited by Freehill, Hollingdale & Page, Solicitors, to help build their environmental law practice. During this time, she teamed up with some friends in the arts, to establish, and become founding President of the Arts Law Centre of Queensland, an advice and referral centre for arts workers. But, increasingly, her focus was on

environmental law. She was an active member of the Queensland Environmental Law Association, and started lecturing at the University of Queensland in the Masters of Environmental Management program.

When Fleur left Freehills in 1993 to have her second son, Sam, it gave her time to wonder whether she had her “ladder up against the wrong wall.” Working for national firms involved measuring her life in intervals of six minutes, and pursuing a partnership track which she found “even more frightening than marriage.” When she was asked to become Academic Director of the Masters program she was lecturing in, she fancied the challenge of a change of direction. “I love the steep learning curve. There’s nothing more exciting and stimulating.” During her period at the university, she and Dr Craig Emerson, then Director-General of the Department of Environment, came up with the idea of conducting forums, with the assistance of leading Australians, to define a vision for Australia in the year 2020. Cleverly titled 2020 Vision, the forums provided an opportunity for ordinary people to consider social issues on a longitudinal basis rather than within the four year confines of political debate. I can’t help sadly thinking how idealistic that seems in 2005.

In 1996, when Fleur was working with the Queensland Department of Mines and Energy helping implement environmental legislation for the mining sector, she was recruited by Clayton Utz to do similar work for their mining clients. “Mining is an area that interests me.” When I express surprise, she responds, “There’s a romance associated with it, a pioneering element that I find attractive. It’s endeavour on a massive scale. On the other hand, I’m horrified at the impact it has on the natural environment and keen to see the new environmental regime work. We can do what we do better and law is a critical tool to improve performance.” At the new firm, her concerns about billable hours and about the partnership track, were addressed respectively by implementing fixed fee charging, and becoming a consultant.

When, in 1997, her third child, Dominic was born, Fleur again used the time to reconsider her career. This time she decided to set up her own consultancy in environmental law, management and training. She advised local authorities and gave policy advice to the government, as well as carrying out training in the resource sector. Ironically, for the girl who did law because of her argumentative nature, a large slice of

her work, and the part she enjoyed the most, was mediation. “I recently had lunch with some women that I went to school with. When I told them I was a mediator, they fell about laughing. I argued that, if you’re argumentative, you have to be able to anticipate your opponent’s case. You get to see everybody’s point of view, and can use that knowledge to help people come together.”

For Fleur, the adversarial system has its limitations as a means of resolving problems. At the same time, she is aware that legal processes that have developed over time, such as the rules of evidence, have valid underpinnings and cannot be abandoned without a first constructing an alternative procedural foundation. “Rules have developed over time to assist judges to find the most reliable and relevant basis for their decisions. That must continue to be the objective underlying procedural reform.” The attraction of mediation for her lies in its potential to return the power to deal with disputes to the parties and its ability to clarify misunderstandings that often lie at the heart of disputes. Mindful that some fairly suspect processes are conducted under the banner of “mediation”, Fleur argues that “the next step is to ensure the quality of the process.” She has written articles both on reforming tribunal procedure<sup>18</sup> and on evaluating quality in court-annexed mediation.<sup>19</sup>

In 2000, Fleur was appointed Deputy President of the Land and Resources Tribunal. Although the tribunal has adversarial processes, there is also an inquisitorial role in that certain public policy issues have to be taken into account. Many parties are unrepresented. “What I find most difficult is when one party is represented and the other is not. I draw more on my mediation skills in that situation than on my legal expertise, because my job is to ensure that both parties have a fair opportunity to present relevant information. This is much harder when there is a power imbalance in the hearing room.” She would like to see a formal hearing treated as the option of last resort. She favours a greater use of experts during the resolution phase, rather than later at the hearing. If experts are involved early, “that’s when information and advice is likely to shift people’s opinions.”

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<sup>18</sup> F Kingham “Reforming Queensland’s Tribunals: procedural reform to realise the rhetoric.” <[www.lrt.qld.gov.au/LRT/PDF/Tribunal %20reform.pdf](http://www.lrt.qld.gov.au/LRT/PDF/Tribunal%20reform.pdf)>

<sup>19</sup> F Kingham “Evaluating quality in court-annexed mediation.” <[www.leadr.com.au/KINGHAM.PDF](http://www.leadr.com.au/KINGHAM.PDF)>

Currently, Fleur is immersed in projects that draw on her mediation expertise. She facilitated and is writing up two workshops examining practice issues for the mediation of native title matters. She is also working with the Hopevale Aboriginal Community, north of Cooktown. The community is developing a constitution to guide their decision-making about land, taking into account the interests of other Aboriginal residents as well as native title holders. Fleur is facilitating the community discussions and the government consultations. It is work she finds both challenging and rewarding. “In essence it is a governance project, building the rules from the ground up. I feel privileged to be part of it.”

Dr Janet Irwin taught Fleur the importance of the mentoring process.. She acts as mentor to young women lawyers, both informally, and formally through the Smith Family tertiary education support program. She, too, interprets the role as one of encouragement. Her commitment to mentoring is consistent with her advice to young women: “Don’t be a gatekeeper once you get there.” She advises young women doing law to “think broadly. People are drawn to law for all sorts of reasons, so they shouldn’t be put in a sausage machine.” She suggests that, just as she did, they might find stimulating and satisfying work using their legal knowledge outside the profession. It is no surprise that she advises young women to “see reproduction as a career opportunity rather than as a disadvantage.”

Leonard Dommatt might be disappointed that Fleur is eschewing her robes and the courtroom in favour of less formal settings. And that if there are rabbits, they are not proceeding forth from hats. But he would be proud of her gypsy spirit, ready to move on to put her talents to best advantage. Of the way she has used her creativity to bring new solutions to old problems. And of Luke, Sam and Dominic.

## **Catherine Pirie: Queensland's first Torres Strait Islander Magistrate**

On a day in 2001, Catherine Pirie presided over a committal hearing of a murder charge in Cairns Magistrates Court. Not only was she a Torres Strait Islander, so was her Depositions Clerk and the Police Orderly that day. The non-indigenous defendant faced a court where the majority of court officials were indigenous.<sup>20</sup> It was a far cry from the time of Catherine's birth in 1963 when indigenous Australians did not have citizenship status. It was, however, an historic occasion, rather than a regular one.

Members of the indigenous community are today still surprised to find an indigenous woman on the bench. Soon after Catherine's appointment as a Magistrate, a former client of hers from the Aboriginal and Torres Strait Islander Legal Service appeared in Court seeking an adjournment. The applicant looked up at the Magistrate, and then exclaimed "Is that you, Cathy? What you doing up there? Where's Dave? Tell him g'day. We haven't seen youse for a long time. Have you got kids now? Are you still running?" Catherine Pirie smiled and responded to the questions. There would, however, have been no compromise of her position as Magistrate. What first strikes you on meeting Catherine is the dignity of her bearing. She has a clear air of authority, but not in any imperious way, combined instead with gentleness and warmth.

Catherine Pirie was appointed a Magistrate in the same week in September 2000 that Cathy Freeman won the gold medal in the Sydney Olympics. And the then Attorney-General, Matt Foley compared the pioneering achievements of the two women at her swearing-in. It was another first for Magistrate Pirie. In 1989, she was the first Torres Strait Islander to be admitted as a solicitor. The islands of the Torres Strait came to national prominence with the historic Mabo case.<sup>21</sup> In 1992 the High Court recognised the native title of the Meriam people<sup>22</sup>. The small Meriam nation has in fact produced six lawyers<sup>23</sup>, including Kevin Smith, Catherine's brother who manages the Queensland Native Title Tribunal Office.

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<sup>20</sup> Karen van Harskamp "*The good fight.*" (unpublished) p13

<sup>21</sup> Mabo v Queensland (No 1) (1988) 166 CLR 186

<sup>22</sup> Mabo v Queensland (No 2) (1992) 175 CLR 1

<sup>23</sup> van Harskamp op.cit. p2

The oldest of six children, Catherine was born in Cairns, but the family soon moved to Garbutt in Townsville and a two bedroom rented Housing Commission home where Catherine's mother still lives. Angelina Smith nee Williams was born on Thursday Island to James Williams from Stephen Island and Christina Mayo from Yam Island in the Torres Strait. There was Spanish/Filipino heritage on Christina's side. Catherine's great-grandmother, an Aboriginal woman from Darwin, Lottie Wilson was one of the stolen generation, taken, with her three sisters, from the care of their indigenous mother when their white father died.<sup>24</sup>

Kevin Smith Snr, Catherine's father, by contrast, was born in Townsville of British heritage: his father, Arthur Smith was born in England, and his mother, Hannah Crowley, in Ireland. What Angelina and Kevin had in common was the Catholic religion. Prior to their romance, Kevin had considered becoming a priest. Their meeting at a retreat for young people in Cairns put paid to that idea. Angelina attended school to Grade 7 after which she worked in a timber mill, later taking on domestic duties at Catholic churches and schools. Kevin's first job was as a timber worker. He subsequently worked as a labourer with Queensland Railways and the Townsville City Council. They married in 1962.

It soon became clear that Kevin Smith suffered from a severe and disabling form of schizophrenia. He would talk to himself for long periods of time, and suffered from paranoia and depression. The drugs available at that time were unsophisticated, and Kevin had to spend periods of time in Mossman Hall, a mental health institution at Charters Towers. He became unfit for work and was placed on the invalid pension. Notwithstanding his illness, however, he was loving and gentle to his children. "I never really viewed Dad's symptoms as particularly bothersome, although he took to a pattern of sleeping during the day and talking to himself each night."

Catherine has fond memories of her father, describing him as the most humble man she has ever met. Religion was very important to him and he "always had his rosary beads, scapulars and holy pictures with him." Even when he stopped going to the local Church, believing it afflicted with "apostacy," he continued his daily devotions. He also had a commitment to watching Point of View, a television program which featured Bob

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<sup>24</sup> op. cit. p7

Santamaria, Catholic intellectual and anti-communist labour organiser. Although his own lifestyle was circumscribed, Kevin was interested in following world events on the ABC News. And, until his death in 1997, he remained a fan of elite sporting events, particularly when the All Blacks or the Springboks were playing the Wallabies, or it was State of Origin time.

Angelina, Catherine's mother, is one of Australian society's unsung heroines. With the quiet determination of an Albert Facey<sup>25</sup>, she cared for her husband and provided her six children with a stable and happy home. Catherine describes her as a strong woman whose authority and discipline they respected but who was "neither loud nor aggressive or even assertive outside the domain of the family." With the invalid pension and child endowment as their source of income, there was no car and few material possessions. But her children "never considered ourselves to suffer deprivation." Not only were they very poor, Angelina and Kevin faced discrimination both because of their interracial marriage, and because of Kevin's illness. Angelina's way of protecting the family from discrimination was firstly, to ignore it, and secondly, to keep the family at one remove from broader society as much as possible. As the atmosphere at home was a welcoming one, the children were content to rely on each other for company.

Catherine remembers going through a phase of being annoyed with her mother for not speaking out about racism. She also could not understand why her mother would not talk about being indigenous. When she read My Place, the autobiography of indigenous writer, Sally Morgan<sup>26</sup>, the pieces fell into place. It was as if Sally's mother and her own were the same person. Although Catherine was sad that her mother was not able to take pride in being indigenous, she came to respect her mother's response to racism. Angelina demonstrated to her "the importance of not succumbing to bitterness or vengeance or a desire to see another humiliated."

The Smith children's desire to know more about their indigenous heritage was satisfied by James Williams, their maternal grandfather. "He was only too happy to tell us stories about the Williams family and his experiences as a diver and the pearling industry." He would tell his grandchildren about the Torres Strait Islands and Thursday

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<sup>25</sup> Albert Facey's autobiography, *A Fortunate Life* (Penguin 1995) tells the extraordinary life of an ordinary man who faced great suffering and hardship with determination and dignity.

<sup>26</sup> Sally Morgan My Place FACP, 1988

Island. In particular he would talk about his own people, the Eastern Island Group: Stephen (Ugar) Murray (Mer) and Darnley (Erub) Islands. As his native tongue was the traditional language, he spoke only 'broken English'. They loved his wood carvings of fish and other sea creatures but his traditional medicine concoctions were not so popular. They had to chew certain leaves to keep their teeth strong (he died with all his teeth in his mid-eighties). He made coconut oil for them to use on their hair. Any sign of an earache, and they had to endure his spitting a substance from the pawpaw tree in their ears.

Arthur and Hannah Smith assisted with school fees so that their grandchildren could attend Catholic schools at both primary and secondary level. The nuns, in turn, waived part of the fees. Their investment was not misplaced. Not only Catherine and Kevin, but all six Smith children went on to tertiary study. Carmel obtained a masters degree in business and has her own market research business in Sydney. Michael is completing a masters degree while working as Principal Maintenance Supervisor at the Ok Tedi mine in Papua New Guinea. Stephen, a high school teacher with a degree in education, is now pursuing an interest in conservation and wildlife. And David has a qualification in biotechnology.

The best part about school for Catherine was escaping into books. In Grade 11, she decided she wanted to go to university. Demonstrating some of what she calls her mother's "quiet determination", she put the effort into achieving her goal. She obtained a high Tertiary Entrance Score which enabled her to study law. Her only knowledge of the law was what she had seen on television. It seemed an appropriate choice for someone who has "always had the desire to see that people were treated fairly irrespective of their class, circumstances and culture."

Moving from a close-knit and isolated family in Townsville where she had never met anyone who had gone on to tertiary study, to the Queensland University of Technology in Brisbane where she knew no-one, must have been an extraordinarily daunting experience. "I felt very much like a fish out of water." By third year, she was ready to abandon her studies. Fortunately, solicitor Paul Richards offered her a job at the Aboriginal and Torres Strait Islander Legal Service. For a number of years, Catherine carried out a variety of roles in the Legal Service; law clerk, field officer, prison liaison officer and children's court worker. Not only did she develop a liking for criminal law,

she realised the possibilities of working as an advocate for indigenous people. With a goal to work towards, she recommitted to her studies and graduated with a Bachelor of Laws in 1988.

In 1989, Catherine met fellow law student, David Pirie, who was to become her husband. Although not indigenous himself, David was keen to work for the advancement of indigenous people. On completion of the Legal Practice Course in 1989 Catherine was admitted as a Solicitor of the Supreme Court of Queensland. She and David then travelled to Darwin where Catherine was admitted as a Legal Practitioner (Barrister and Solicitor) of the Supreme Court of the Northern Territory. Catherine secured employment with a commercial firm of lawyers in Darwin, however, she quickly determined that she preferred to be in a court room as a criminal lawyer than in an office and so obtained a position with the North Australian Aboriginal Legal Service where she appeared in courts in remote communities as well as in Darwin.

In 1990 she married David. They moved to Townsville where Catherine assumed a position as Solicitor, and later Principal Solicitor with the Aboriginal Legal Service. Many of her clients were from Palm Island. Ironically, according to family legend, Catherine's great-great-uncle, Jack Williams, was sentenced to a term of imprisonment on Palm Island. "The crimes which condemned Williams were not of a legal nature but were behaviours considered morally offensive to the missionaries, as Williams was reputed to have cut a romantic swathe through the female population of Mer."<sup>27</sup>

The next move for Catherine and David was to Western Australia in January 1993 where they both commenced work with the Aboriginal Legal Service of WA Inc. Catherine and David were keen to enhance their legal experience in a jurisdiction with a "fused legal profession" allowing them to appear as barristers as well as solicitors; and where criminal law had a codified statutory basis like Queensland. However, Catherine's introduction to WA was not without hiccup. In her first appearance in the Court of Petty Sessions at Perth, she was subjected to extraordinarily unprofessional and demeaning behaviour. She had just begun cross-examination of the Prosecution's first witness when the Magistrate interrupted to ask her if she was admitted to practice. When she said she was, the presiding Magistrate refused to take her word for it, insisting that she produce

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<sup>27</sup> op.cit p7

documentary evidence of her qualifications before being allowed to continue to represent her client.<sup>28</sup>

For most of their time in WA, approximately 8 years, Catherine and David worked in the Albany office of the Aboriginal Legal Service, where they were lucky enough to enter into a job-share arrangement of the senior legal officer's position and to enjoy quality of life. The arrangement worked well. Admitted as barristers and solicitors, they practised predominantly in criminal law and conducted their own jury trials, hearings and sentences in courts of all jurisdictions, work they both enjoyed. The arrangement enabled David to pursue his passion for surfing the south coast of WA and for Catherine to play guitar and paint. It also gave them time to consider a family and their two sons were born during their time in Albany.

Catherine came to realise that there were disadvantaged non-indigenous people in Albany who had limited access to legal resources. She became part of a core group that established a management committee and they successfully applied for funding for a full-time community legal centre in Albany. Catherine's work to this end clearly demonstrated her commitment to justice for non-indigenous people as well as the indigenous community. "It was a great joy to be involved with that." Catherine worked for a short time at the Albany Community Legal Centre on a part-time basis and was actively involved in community legal education partaking in a series of radio programs about criminal law and another on domestic violence issues.

For some time, Catherine had received approaches from Western Australia and Queensland to pursue a position in the Magistracy but she felt her children were too young for her to do so. In 2000 she decided that if she did not say 'yes' when an offer of appointment was made, there might not be a similar opportunity in the future. Queensland won out. She wanted to be back near her family and back in warmer climes. In September 2000, when Catherine was appointed as a Magistrate, she was the first Torres Strait Islander to take judicial office in Queensland. She was assigned to the Cairns area.

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<sup>28</sup> op.cit p8

In July 2001, it was another historic moment when she first presided in the Magistrates Court at Thursday Island. Her circuits to that island were special in a personal sense. She was able to peruse the birth records of her mother, Angelina and the Williams family at the local courthouse; to visit her grandfather's grave on Thursday Island and to meet some of her relatives for the first time. Her circuits also took her to Cape York communities.

I ask how she responded to the violence in indigenous communities given that in her own home, not only was there no violence, there were not even any serious arguments or swearing. She had of course been exposed to such violence in her work with the various Aboriginal and Torres Strait Islander legal services. She says quietly "I don't think anyone, no matter how hardened, ever gets used to the violence and alcoholism, or to the effects of it. It is a very complex issue requiring more than a 'half-baked' response. I do not dare suggest that I have the answer. Each individual, the communities, government, society as a whole must take up the challenge to reduce if not eradicate serious violence and sexual offences perpetrated on women and children." When asked if her presence on the bench makes a difference to the indigenous community, Catherine suggests it would be naïve to think that she could make an obvious difference, however, she believes that her position can make a subtle one. Both her background and her work history assist her understanding of issues of disadvantage, although she is quick to point out that she is assisted in community courts by indigenous legal officers and the indigenous Community Justice Groups.

Catherine stresses that she has a duty to apply the law without bias and without fear or favour. "No matter what the race, culture or class of the litigant/defendant is, each case has its own circumstances. Whilst circumstances may be different, the principles to be applied remain constant. I think in many cases what is called for is a common sense balance of competing considerations to achieve a fair outcome without being formulaic or silly about it." One of her favourite books is Testament of Hope, a collection of the speeches and writings of Martin Luther King Jnr. She especially relates to his prescription for 'a tough mind and a tender heart' and applies it to her work as a Magistrate in the following way: "The tough mind is characterised by incisive thinking, realistic appraisal and decisive judgment. The tender heart is expressed in genuine

compassion and humanity where people are treated with dignity and not as impersonal cogs in an ever-turning wheel.”

I ask whether she is seen as a role model within indigenous communities. She says that she has been told by some women in the community that her appointment makes them very proud. She is also viewed as a role model in the broader community. Having transferred from Cairns to Southport Magistrates Court, Catherine recently received the ‘Women at Work International Women’s Day Community Role Award 2005’ at the Gold Coast.

Since Catherine’s appointment as a Magistrate, David has put his own career on hold to become full-time carer for the children, Jordan, 8 years and Lachlan, 6 years. “David does an excellent job with the boys and I fully acknowledge his sacrifice.” David clearly enjoys his time with the boys, and is able to indulge his passion for surfing as well. Catherine and David are active churchgoers. Catherine describes her Christian faith as the “greatest source of strength and peace” in their lives. When I ask whether the children have an understanding of her work as a Magistrate, Catherine laughs. “They like the big black robe. They think it is only baddies that come to court....and I will send people to jail if they do really bad things. According to Jordy, it is just one thing I do, he recently described me at school in the following way ‘My Mum is a judge and a hairdresser’ ...because I cut his hair at home.”

Catherine Pirie leads a life that must have been unimaginable to Kevin and Angelina Smith. You get the sense, however, that in terms of values and commitment to family life, nothing much has changed. The people of the Torres Strait could not have had a finer person to be their first bearer of judicial office. And the people of Queensland are fortunate beneficiaries of this exemplary appointment. Angelina Smith must be a very proud woman indeed.

## **Exegesis: Writing women into the law in Queensland**

The creative component of this thesis consists of profiles of seven significant women in the law in Queensland.<sup>29</sup> These profiles appear in an 850 page book, *A Woman's Place: 100 years of women lawyers*, edited by Susan Purdon and Aladin Rahemtula and published by the Supreme Court of Queensland Library in November 2005. This exegesis investigates the way the creative work developed out of the tensions between firstly, the political context in which, and the political aims with which, the profiles were written; secondly, the multiple positions I occupy as biographer; and, thirdly, the collaborative and collective nature of the enterprise. The interplay between these forces shaped the biographies, but this complex process suggests that the biographical enterprise is always particular and not easily characterized by a single simple function.

The starting point for the project was political. While an unprecedented number of women have been appointed to legal positions of power and influence in Queensland in recent times, the legal profession is still largely a masculinist enterprise. The appointment of many of these women has received a hostile response from within the profession and its representative organizations. Within that context, a book produced to celebrate the achievements of women in the legal profession in Queensland would always be a political act. While, in a profession driven by precedent, there is no precedent collection of lives of lawyers (whether male or female) to provide guidance, the book connects up with the wider phenomenon of the writing of women's histories and biographies as political action—that is, as an intervention in the dominant masculinist accounts of the world—since the early 1970s. However, there was the danger, particularly in the minds of some of the biographical subjects that, unless handled carefully, the publication of the book would also cause a political reaction. That is, while championing women's entry into the law and their contribution to it, it could personally or professionally undermine the women it profiles.

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<sup>29</sup> The profiles are of Leneen Forde, Chancellor of Griffith University and former Governor of Queensland; Justice Kate Holmes of the Supreme Court; Leanne Clare, the first female Director of Public Prosecutions; Barbara Newton, the first female Public Defender; Carmel MacDonald, President of the Aboriginal Land Tribunals and the first female law lecturer in Queensland; Fleur Kingham, Deputy President of the Land and Resources Tribunal; and Catherine Pirie, the first Magistrate of Torres Strait descent.

In writing the profiles, the same politics were alive, and I came to the project not as a disinterested observer but as a woman lawyer myself, a feminist, a friend to some of the subjects, and as a creative writing student. My views about how the women should be represented were not always consistent. My approach varied depending on which hat I had on at the time, and the final narrative was produced out of the tensions between these various positions. As a creative writing student, I wanted the profiles to be as complex and contradictory as the subjects themselves. As a feminist, I was not amenable to whitewashing gender issues in the profession. As a women lawyer, however, I was aware that “warts” would be magnified and vulnerabilities scorned. And as a friend, I felt under a subtle pressure to be kind. Further, with one subject, I found myself positioned in ways which were unusual and singular.

The final element in the triangle of forces was the subjects themselves. With living and deeply invested subjects, it was never just a question of how I thought the women should be represented. Not only did the subjects have their own views, I was required to obtain their agreement to the profiles. My subjects did not necessarily wish to acknowledge the existence of gender barriers, or to see themselves profiled through the prism of those issues. On the other hand, they were more forthcoming about their private lives than expected. They were tentative about the idea of being presented to the public as significant women lawyers, and only one subject had a readily constructed narrative of her life. For one subject, the style of the profile was an issue. The collective nature of the enterprise proved important in that the women discussed the draft profiles with each other and became emboldened by doing so.

## **Methodology**

In writing the profiles, I sought to work within the framework of what has come to be known as “creative nonfiction.” Forche and Gerard say of this genre, “Creative nonfiction has emerged in the last few years as the province of factual prose that is also literary....”<sup>30</sup> Or, as Cheney puts it, “Creative nonfiction tells a story using facts, but uses

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<sup>30</sup> Carolyn & Gerard Forche, Philip, Writing Creative Non-Fiction: Instruction and Insights from the Teachers of the Associated Writing Programs (Cincinnati, Ohio: Story Press, 2001).1.

many of the techniques of fiction for its compelling qualities and emotional vibrancy.”<sup>31</sup>  
In addition to providing factual information about my subjects and their professional lives, I aimed at an emotional truth that bare facts may not reveal or even hide.

The profiles therefore do not fit neatly within traditional research paradigms. These seven female lawyers are not being examined so that quantitative or qualitative judgments can be made. The profiles are intended as creative works. They fit best an emerging paradigm within universities, what Brad Haseman describes as “performative research” where the creative practice itself constitutes the research.<sup>32</sup>

I was engaged by the Supreme Court Library Committee to write the profiles.<sup>33</sup> The Committee, having decided to produce a book on women in the legal profession in Queensland, compiled a list of women they considered appropriate to be included. Originally, it was intended that the subjects write their own profiles or engage someone to do so. Some of the women approached agreed to do this but many consigned the task to the “too hard” basket. When little progress had been made within a reasonable period, the Committee decided it would need to take the impetus to engage suitable writers.

I was one of 5 writers who were engaged by the Committee to write profiles for for the book. As well as the 52 individual profiles of significant women, there were chapters discussing and analyzing the entry of women into the profession and the challenges and contributions that created. Thirteen young women lawyers were also invited to contribute individual chapters envisaging the issues facing the legal profession in the future.

Some of the subjects to be profiled had suggested my name to the Committee because of my background in law and creative writing, and I was invited to meet with the Librarian to discuss the project. My initial response was wariness of any publication of an “institutional” nature. However I was reassured that that the only constraint on what was written in the profiles was that they had to meet with approval by the subjects. The Committee would have no say in the content or style of the profiles. I would also be free

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<sup>31</sup> Theodore A Rees Cheney, Writing Creative Nonfiction: Fiction Techniques for Crafting Great Nonfiction (Berkeley: Ten Speed Press, 2001).1.

<sup>32</sup> Brad Haseman, "A Manifesto for Performative Research," Media International Australia incorporating Culture and Policy 118."Practice-led Research" (2006).103.

<sup>33</sup> I declined other profiles because of time constraints.As well as the seven profiles discussed here, I also rewrote another profile that was considered “lightweight” and was ascribed joint authorship for this profile.

to reject any of the profiles that I was offered. Some subjects had asked that I write their profiles; others were offered to me on an ad hoc basis. I declined two profiles for personal reasons. The terms of the agreement were put in writing, and the only constraints that I was subjected to in writing the profiles are those detailed in this exegesis.

The library provided me with a dossier of information in the public domain for each of the subjects prepared by research assistants, which I read before conducting interviews with the subjects.<sup>34</sup> The library had provided the subjects with a list of questions to give them an indication of the compass of the profiles. These questions had five main headings: family background and education; university; legal profession (including reflections on career and reflections on the legal system and profession); community involvement; and additional interests. I familiarized myself with these questions, but I did not have them with me when I conducted the interviews. Nor did I prepare my own list of questions. The interviews were free-flowing discussions, and not all interviews covered the same territory.

It was suggested to me that I might ask my subjects for names of people who might comment on them and their careers. I eschewed this advice on the basis, rightly or wrongly, that selected third parties were likely to eulogise, rather than provide useful information.<sup>35</sup> How I approached the task was not necessarily how the other profilers approached theirs. I was unaware of the identity of most of the profilers.

I had preliminary meetings with some subjects to discuss how the interviews would be conducted. The interviews were each approximately ninety minutes in length. These interviews were taped and transcribed. I used them as my main source of material and quoted liberally from them. I then provided the subjects with draft profiles, and there was extensive follow-up. The final form of the profile had to be negotiated with the subject. Initially, I was reassured by the fact that the final arbiter was the subject rather than a library committee, but I underestimated the degree of negotiation which would be required in some cases.

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<sup>34</sup> A source checklist had been prepared which included, inter alia, materials held by the Supreme Court Library, Parliament, Universities, professional organisations, journals, newspapers and magazines.

<sup>35</sup> Whilst I intended my profiles to be sympathetic, I was not inclined towards hagiography.

## **The political context of the work**

The pre-publication brochure announces that “A Woman’s Place is a timely tribute to the achievements of women in the legal sphere since 1905, when women were first permitted to practise law in Queensland.” The concept of 100 years of women lawyers is somewhat misleading, as the law did not translate into practice. Women found it difficult to obtain employment in the profession, a situation that had not changed when I studied law along with a handful of female colleagues in the late 1960s.<sup>36</sup> These days, female faces are no rarity in law schools. Indeed in 2004, 54% of law graduates were female. However, the legal profession remains largely a male domain<sup>37</sup>—and a masculinist one. The literature suggests that women lawyers in Queensland (as indeed women lawyers world-wide) still struggle to be treated equitably in the profession.<sup>38</sup> Since the 1970s, there have been many highly qualified and experienced women lawyers who have been overlooked time and again for promotion to partner, or appointment as a magistrate or judge.<sup>39</sup>

Attempts to address these issues have been fought all the way. When Matt Foley was appointed Minister for Justice and Attorney-General in the Goss Labor government in Queensland, there was only one woman among the twenty-three judges on the Supreme Court in Queensland. Matt Foley set out to appoint more women as judges “because there’s a scandalous under-representation of women on the bench. It’s important that the administration of justice draw on the strengths, of not just a limited number from the old boys’ club, but from a broader cross-section of the community.”<sup>40</sup> During his term in office from 1998 to 2001, he appointed 6 women to the Supreme Court and another 13 to the District Court and Magistrates Court. There was an outcry

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<sup>36</sup> In order to qualify for practice as a solicitor of the Supreme Court of Queensland, articles of clerkship with an experienced solicitor were necessary. If your father or a close relative was not a solicitor, it was very difficult for women to obtain such positions.

<sup>37</sup> In 2004 only 34% of practicing solicitors and 15% of practicing barristers in Queensland were women. See Andrea Stratis, “Nice Girls Can Get the Corner Office,” *Brisbane Lawyer*.58 (2005).19.

<sup>38</sup> See Terry C M Hutchinson, “Women in the Legal Profession in Australia,” *Australian Law Librarian* 12.2 (2005). See also Hagan, J & Kay Hagan, F, *Gender in Practice: A Study of Lawyers’ Lives* (New York: Oxford University Press, 1995); Schultz, U & Shaw Schultz, G, ed., *Women in the World’s Legal Professions* (Oxford: Hart, 2003); J; Boyd Bourchard, S; Sheehy, E, *Canadian Feminist Literature on Law: An Annotated Bibliography* (Toronto: Canadian Journal of Women and the Law, 1998); Australia. Law Reform Commission, *Equality before the Law: Women’s Equality* (Law Reform Commission, 1994).

<sup>39</sup> This is true, notwithstanding the fact that many women, finding the profession alienating or not ‘family friendly’, leave the legal profession.

<sup>40</sup> M Foley, ed. Susan Currie (Brisbane: 2005) Personal interview, 1 July.

from an outraged legal profession.<sup>41</sup> The fact that he also appointed 15 men to various courts went unnoticed. Women's disadvantage was clear to Foley when it remained invisible to many of his fellow lawyers:

I think if anybody turned their mind to it, addressed it as an issue, most people would say, "Oh yes, it's a shame we don't have more women on the bench...but what happens is that each position comes up; people say "Well, you must appoint on merit for that position" and by merit they mean someone like us from the old boys' club.

Women are still not entirely welcome in the legal profession, and there is a widely held view amongst their male colleagues that those women who have assumed positions of influence and power are unmeritorious usurpers. They were appointed purely because they were women, the argument goes.<sup>42</sup> In announcing the appointment of Justice Susan Crennan to the High Court of Australia in September, 2005, Attorney-General Philip Ruddock declared, "It has been my view over a period of time that I should appoint the best person for the job, and sometimes that best person happens to be a woman."

Somewhat unexpectedly, an editorial in the Courier-Mail responded:

Attorney-General Philip Ruddock has made much of the fact that the new High Court judge Susan Crennan has been appointed on merit rather than gender. However, just as it should be an unnecessary antediluvian observation in the 21<sup>st</sup> century that the appointment of a woman could be seen as tokenism, Australia's record—two women High Court judges in more than 100 years—is shameful, and does not reflect the balance of highly qualified women within the legal profession.<sup>43</sup>

As Mary Jane Mossman points out, "while women lawyers have been 'let into' the legal profession, they now experience exclusion within the profession."<sup>44</sup> In Dissonance and Distrust, Margaret Thornton reports on her interviews with women around Australia in all aspects of the legal profession. It is noteworthy that the identities of the women

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<sup>41</sup> For a description of the reaction of the legal profession, see eg Barbara Hamilton, "Criteria for Judicial and Appointment and 'Merit'," QUT Law and Justice Journal 15 (1999).

<sup>42</sup> The fact that in the past only male lawyers were appointed to positions of power and influence somehow is overlooked as a gender issue.

<sup>43</sup> "High Court Post Is Sound Choice," The Courier-Mail 22 September 2005.

<sup>44</sup> Mossman, Mary Jane. Foreward. Professor Margaret Thornton, Dissonance and Distrust: Women in the Legal Profession (Melbourne: Oxford University Press, 1996). (ix.)

interviewed are not revealed in the book. I was one of the women interviewed, and I am aware that this anonymity was both to encourage the women to speak the truth, and also to protect them from retaliation. Mossman sums up the situation:

Margaret Thornton's book shows the power of law's barriers for women lawyers at the same time as it demonstrates women's courage and resilience in facing them. The power of this book is that women lawyers will now know clearly that they are not alone in their individual difficulties within the legal profession and the judiciary.<sup>45</sup>

Nine years later in A Woman's Place the women are upfront and personal. And vulnerable. Change is not easily won in traditionally male domains. The changes that are favoured are those that reinforce interrelationship between organisational power and maleness. In the late twentieth century, the new managerialism gained a stranglehold on a profession stumbling along at Dickensian pace. The new managers are "seen to need to be highly task-oriented, controlling and work long hours at the expense of any domestic involvements." This remarkable turnaround was possible because it underscored, rather than eliminated the traditional privileging of masculine qualities.<sup>46</sup>

### **The political aims of the work**

The book's production was sponsored by the University of Queensland, Queensland University of Technology Faculty of Law and Griffith Law School.<sup>47</sup> The rationale for the book is an optimistic one:

This vibrant publication features the profiles of 51 remarkable women, historical and contemporary commentary and previously unpublished statistics. In particular, the appendices consolidate for the first time, a variety of data from diverse and inaccessible archives, which relates to the involvement of women in a variety of legal fields including the judiciary, academia and professional legal associations. The publication of these statistics will serve as a vital one stop

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<sup>45</sup> Thornton (x)

<sup>46</sup> Flood, M & Pease, R, "Undoing Men's Privilege and Advancing Gender Equity in Public Institutions," trans. Academy of the Social Sciences in Australia, Reinventing Gender Equality and the Political (University of Sydney: 2005), 9.

<sup>47</sup> It is instructive that the two representative bodies of lawyers in this state, the Queensland Law Society and the Queensland Bar Association are *not* among the proud supporters.

resource for scholars and historians, whilst the personal reflections from some of Queensland's most prominent women will inspire readers of all ages. Its overall purpose is to inform, to honour and to inspire. The book also asks thirteen recent outstanding women graduates to guess at what the legal profession will look like in 2025. Michael Holroyd argues, "Biography began as a reinforcement of the existing order. By re-examining the past and pointing it in a new direction, it may now be used to question our understanding of the present, and affect our vision of the future."<sup>48</sup> A Woman's Place re-examines the past of the legal profession in Queensland and points it in a new direction by focussing material through the lens of gender. It is an exercise in writing women into the history of the legal profession.

In a profession that venerates precedent, this written collection of women lawyers' lives has no precedent. It does not occur in a context of written collections of male lawyers' lives. In fact, I have been unable to find one similar collection.<sup>49</sup> Or indeed a comparable compilation of women lawyers lives.<sup>50</sup> This lack of precedent cuts both ways: it frees the writing from its constraining hand, but it gives no guidance about the task.

Booth talks of "the self-help power of female collective biographies" which, she argues is:

generated by the friction among the three parties to the narrative exchange, who readily change places. A reader of a successful woman's life identifies with her, emulates her; she may possibly become, in turn, an eminent woman, perhaps a writer of tributes to famous women, and eventually find her own story circulating in the lists of recognition, part of a cohort that reforms the character of a nation.<sup>51</sup>

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<sup>48</sup> Michael Holroyd, Works on Paper: The Craft of Biography and Autobiography (London: Abacus, 2002).30.

<sup>49</sup> The only comparable collection appears to be: White, M and Rahemtula, A, ed., Queensland Judges on the High Court (Brisbane: Queensland Supreme Court Library, 2003). But it consists of scholarly papers rather than personal profiles. The Library is also in the process of collecting oral histories of prominent legal professionals (to date six former male judges).

<sup>50</sup> I have located collections of the lives of women lawyers in the US. See eg Virginia Drachman, Sisters in Law: Women Lawyers in Modern American History (Cambridge: Harvard University Press, 1998). It does not however go beyond the 1930s; Women's Legal History Biography Project, Website, Available: [www.law.stanford.edu/library/wlhb](http://www.law.stanford.edu/library/wlhb). It likewise looks to the past; Deborah L Jacobs, "Women Lawyers: Perspectives on Success. Edited by Emily Couric.(Law & Business/Harcourt Brace Jovanovich)," New York Times October 21 1984. It does not have the same limitations, but it is in fact a collection of autobiographical essays rather than biographical profiles. A review in the NY Times says that "too many of the essays are dispassionate outlines of professional achievements."

<sup>51</sup> It is rather perturbing to consider that women are still being called upon to take responsibility for the moral state of the nation.

While this is somewhat hyperbolic, there is no doubt that A Woman's Place fits neatly in the wider context of writing women's biographies and histories as political action.

Feminists have argued that history as it is written is literally his story and that women have been left out. Booth suggests that prosopographies of women have not been as thin on the ground historically as might be thought.<sup>52</sup> Her bibliography includes more than 900 volumes published between 1830 and 1940.<sup>53</sup> However, while some women who have been commemorated in these volumes have displayed a healthy agency of their own, or have been noted for their learning, the majority were championed for their beauty, for being good wives and mothers, or for their "virtue".<sup>54</sup> The writing of these early volumes, I would suggest, was indeed a political act, but one aimed at keeping women in their place, and that place was as wife and mother. Booth argues that prior to 1870, the only women grouped by occupation were queens, missionaries and writers.

The late twentieth century saw feminists seeking to redress this situation by identifying and acknowledging women's contributions to society at large. Carol Sanger identifies a five-phase evolution of writing about women's achievements: the recognition that what appears a "womanless" phase has ignored the contributions of the rare women who did engage with society at large; a search to find or resurrect pioneer women; a recognition of the problematic nature of women's position in straddling the public/private divide; a celebration of women and, finally, a rewriting of history to properly acknowledge women's achievements.<sup>55</sup> The legal profession in Queensland had been in the "womanless" phase until the Foley appointments. Suddenly the women in the profession became visible. The decision to compile A Woman's Place was revolutionary rather than evolutionary. Sanger's evolutionary phases are collapsed and condensed in a single act. The book searches out women lawyers of the past; discusses the obstacles confronted by women in the profession in essays on the history of women in the profession; celebrates women's achievements in the profiles; and is, at heart, a rewriting

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<sup>52</sup> *Prosopography* is the term applied to collective biography.

<sup>53</sup> Alison Booth, How to Make It as a Woman: Collective Biographical History from Victoria to the Present, Women in Culture and Society, ed. Catharine R Stimpson, 1st ed. (Chicago, London: The University of Chicago Press, 2004).2.

<sup>54</sup> Witness Thomas Gibbon's 1777 tome Memoirs of Eminent Pious Women, Who Were Ornaments of Their Sex, Blessings to Their Countries and Edifying Examples to the Church and World. (Arthur Vincent's atypical 1897 collection, Lives of Twelve Bad Women no doubt would have much greater appeal to modern sensibilities.)

<sup>55</sup> Carol Sanger, "Curriculum Vitae (Feminae): Biography and Early American Women Lawyers," Stanford Law Review 46 (1994).1248

of history to properly acknowledge women's achievements. It is an ambitious project, as ambitious as the Foley appointments themselves.

The word prosopography means more than just a collection of short biographies. Lawrence Stone's 1971 definition, "the investigation of the common background characteristics of a group of actors in history by means of a collective study of their lives" is often quoted in the literature. As Alison Booth points out, prosopographies "suggest the interdependence and social construction of identities."<sup>56</sup> They both pursue the model of the autonomous self-directed career, and dissolve it in their testament to the collective nature of the enterprise.<sup>57</sup> While A Woman's Place specifically celebrates 51 individual women lawyers, it is above all a tribute to all women lawyers in Queensland, suggesting that the whole is greater than the sum of its parts.

A Woman's Place shows us real women lawyers at work. To date, society's perceptions of women lawyers are likely to have been shaped by popular culture. David Papke made a study of women lawyers in contemporary Hollywood cinema. He argues that while there is a growing willingness to feature women lawyers, the women portrayed are often conflicted.

Their professional tasks and traditional gender imperatives crash and collide. The woman as lawyer has to resolve conflicts with traditional responsibilities as daughter, wife, mother, and self-sacrificing lover. The resulting imagery might even be seen as a cautionary tale for women so bold as to hang up a shingle.<sup>58</sup> He views these constructions of women lawyers as part of the cultural backlash against women moving into traditionally male domains.<sup>59</sup> It remains to be seen whether stories of real women lawyers confirm, confound or complicate the popular culture template.

Liz Stanley warns that we have a romantic view of the value in articulating working women's lives given that the organizational ideal is a masculinist construct.<sup>60</sup> Certainly, the subjects of this book were concerned about how it would be received

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<sup>56</sup> Booth 9.

<sup>57</sup> Booth 278.

<sup>58</sup> David Papke, "Cautionary Tales: The Woman as Lawyer in Contemporary Hollywood Cinema," Univeristy of Arkansas at Little Rock Law Review 25.3 (2003).485

<sup>59</sup> Papke 501

<sup>60</sup> Liz Stanley, "From 'Self-Made Women' to Women's Made-Selves? Audit Selves, Simulation and Surveillance in the Rise of Public Woman," Feminism and Autobiography: Texts, Theories, Methods, ed. Celia Lury Tess Cosslett, Penny Summerfield (London: Routledge, 2000).43

within the profession; about how vulnerable they made themselves as a group, or individually, by participating in this project; whether their achievements would be further undermined; and whether making themselves visible in this way would contribute further to their disadvantage. In summary, we might say that the fact that A Woman's Place was published in a political and cultural context resistant to the very idea the book propogates, namely, that a woman's place is in every reach of the legal profession, makes its publication a political act.

### **My multiple positions as biographer**

Lieblich views the writing of biography as a relational project.<sup>61</sup> She questions the traditional (masculinist) viewpoint on biography which values neutrality in the attitude of the writer to the subject. Lieblich suggests that “the biographer cannot avoid being there with her feelings, hopes and satisfactions, and her own echoes of the tales of the protagonist's life.” I never entertained the idea that as a biographer, I was merely a disinterested observer nor attempted to adopt a neutral position to my subjects whatever that might involve. While I strove to be truthful, fair and ethical in writing the profiles, my multiple positions in relation to the subjects clearly impacted on my interpretation of these values in practice. I came to the profiles as a woman lawyer and feminist, as a friend to some of the subjects, and as a creative writing student. These positions were sometimes in conflict. And, with one particular subject, an indigenous woman, I was concerned whether as a non-indigenous person I could do her story justice.

As a female lawyer, the political and cultural context in which A Woman's Place was being written loomed large in my own consciousness as I interviewed my subjects and as I shaped the profiles. I needed to be mindful of the effect on the subjects of what was said about them and how it was said. I did not want to make the subjects more vulnerable than they already are in a professional domain where acknowledgement of vulnerability is likely to be seen as a weakness. I did not want to cause them any harm.

Carol Sanger raises the question of why, in the US, women lawyers are the ones writing the biographies of early women lawyers.<sup>62</sup> Perhaps, she says, it is driven by

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<sup>61</sup> Amia Lieblich, "Writing Biography as a Relationship," Nashim: A Journal of Jewish Women's Studies & Gender Issues 7 (2004).3.

<sup>62</sup> Sanger 1247.

autobiographical impulses given that they are likely to have faced choices and constraints similar to their subjects. When I was a legal academic, I had contemplated writing a history of the women in the legal profession in Queensland, before being gazumped by the editors of this book who were sensible enough to realize that this was a collective enterprise.<sup>63</sup>

Initially, I was anxious about accepting the assignment to write the lives of these women. The stories told by my subjects revisited old internal conflicts for me about whether I should leave the law because I found it such an alien environment, or whether I should stay and work to change it from within. All these women had opted to stay (whether to work for change or not). Their careers were not only established but celebrated. I was still struggling to take myself seriously as a writer, let alone be acknowledged by anyone else. I was the biographer as vulnerable observer identified by Lieblich. I was concerned that I might come to regret my decision to leave the law after examining the lives of women who had stayed. In the years since leaving the Law Faculty, I hadn't located myself firmly anywhere else. I had never developed a strong sense of professional identity as a lawyer, and now even that was gone.

It was scant reassurance to know that I was not alone, that many women find the legal profession an inhospitable environment. But it did raise a symbiotic consideration. Might my decision to leave be equally confronting to those who stayed on, unhappy with their professional lives or unwilling to look too closely at whether the difficulties had been worth it? Would some of my subjects share my anxiety about examining their lives more closely?<sup>64</sup>

Once I finally decided to write the profiles, there were further issues to confront as a feminist. In this regard, I wanted to shape the profiles so that they would emphasise the considerable contribution of these women to the legal profession in Queensland, acknowledge any disadvantage or discrimination they had encountered and offer inspirational but realistic life narratives for women lawyers to come. I viewed my role as profiler as being, in part, about consciousness-raising, an enterprise that has yet to have

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<sup>63</sup> I also asked myself what was the point of this if I was leaving the profession. In 2002, I left a tenured position as a Senior Lecturer in the Law Faculty at QUT for potential penury as a creative writer.

<sup>64</sup> As it turned out, that did not prove to be an issue as detailed later.

its heyday in the legal profession.<sup>65</sup> I did not want to be involved in any whitewashing of the treatment of women in the profession. Some of my subjects were however reluctant to talk about disadvantage or discrimination they had suffered.

Sanger is sensitive to the fact that the feminist lawyer as biographer is subject to extra constraints: “What are my obligations to the women’s movement? What if my subject turns out to be ordinary or manipulative or a passive dupe of the hegemonic patriarchy?”<sup>66</sup> Feminist literature teaches women to take off the male glasses through which they have viewed the world, going beyond the surface of their lives, and the lives women in general lead and have led. Being a feminist may involve talking about issues which are uncomfortable, and telling truths which will not be well-received, and for which a variety of punishments may be imposed, not just by men. Is it too much for the feminist biographer to reasonably ask of a female subject? Was it too much for me to ask of my subjects? Did my feminism commit me to insisting that issues of discrimination be addressed head-on? And what if that was likely to rebound on the subjects? Should I be ignoring the context in which I was writing, dismissing any consideration of the consequences of what might be written?

As a creative writing student, my focus was ensuring the profiles were three-dimensional, complex and contradictory narratives of real people,. Did it join forces with my feminist alter ego in insisting that discrimination be transparent? Or did it suggest that discrimination could be an authoritarian and overly-simplistic template?

And where did my role as friend to some of the subjects, bringing subtle pressures of its own, sit in all of this? I valued my friendship with some of the subjects. To me, it was as important as my work as writer. Would this compromise the writing of these profiles? As it transpired, fortunately, there were no significant challenges from my friends impacting on the ethics or integrity of the profiles. I felt unencumbered in this regard in both the writing of the drafts and the negotiation of the final product.<sup>67</sup>

The creative writer in me won the battle for the profiles to be bold rather than cautious in both content and style, but deferred to my woman lawyer demands that the

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<sup>65</sup> It is interesting to muse on the term “ profiler.” In contemporary society, it is usually preceded by the initials, FBI, and employed on serial killers. Notwithstanding my previous occupation as an academic specialising in criminal law and criminology, these profiles are not like those profiles.

<sup>66</sup> Sanger 1252.

<sup>67</sup> A minor friendship skirmish about an unexpected issue will be detailed in the next section.

context and the consequences of the writing be taken into account. I took into account writer Cassandra Pybus's assertion that the investigative non-fiction writer needs to consider the impact what is being written will have in the public domain.<sup>68</sup> And I was reassured by Michael King, biographer of Janet Frame, that there are special constraints facing the biographer of living persons. He says he aims for:

a compassionate truth: a presentation of evidence and conclusions that fulfil the major objectives of biography, but without the revelation of information that would involve the living subject in unwarranted embarrassment, loss of face, emotional or physical pain, or a nervous or psychiatric collapse.<sup>69</sup>

Clearly this involves taking context and consequences into account. But there was a concomitant pay-off.

As Michael King points out, if a biographer suggests to the subject that this is the way the biography be approached, the pay-off is often access to information and materials that might otherwise be denied. For me, this was an important dynamic in the interviewing process, although not always an explicit one. My subjects trusted me as a colleague (and sometimes friend). Most were more forthright as a result. I understood the difficulty of their positions. They did not have to explain the nuances of their lives to me. Having been through similar experiences, I was empathetic. I could provide an informed ear. In fact, I could lay my own experiences out before them, so that they felt comfortable talking about these issues. It was not a conscious ploy. It was the way I was used to relating to other women: bonding over shared experience, and bonding over confidences especially about our shortcomings.<sup>70</sup>

No doubt my internal woman lawyer did assist my creative writer in the cause of presenting the subjects in a considered light, eschewing too fulsome praise, but able to interrogate a professional career so that accomplishment is not neglected. Sanger proposes that the woman lawyer as biographer may well be more alert to, and cautious about, making assumptions and claims, thereby producing more authentic biographies.<sup>71</sup>

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<sup>68</sup> Cassandra Pybus, "Dogs in the Graveyard," *Australian Humanities Review* (1999).3

<sup>69</sup> Michael King, *Tread Softly for You Tread on My Life: New and Collected Writings* (Auckland: Cape Catley Ltd, 2001).16.

<sup>70</sup> They also had to consent to the final form of the profile.

<sup>71</sup> Sanger 1251.

As for my feminist self, it had to concede some ground in relation to highlighting discrimination. In this regard, I was reassured to know that male writers sympathetic to feminist issues such as Flood and Pease argue that there is greater benefit to be gained from focusing on the issue of men's systemic privilege in public institutions rather than women's disadvantage or discrimination against women. As things stand, "the men who benefit from existing inequalities are often "let off the hook" and the role they play in reproducing gender inequalities is neglected."<sup>72</sup> In their view, we should shine the light on those whose privilege is currently invisible so that gender becomes a male issue.

Not only was there the question of the different hats I wore, in one case, where the subject is the first person of Torres Strait Islander heritage to be appointed to the bench, there was the question of whether I owned the necessary hat to put on. Did I have sufficient cultural awareness to conduct the interview and write the profile? I had not previously met this woman. I decided that we should meet and discuss the matter. She would be the best judge of whether I was a suitable biographer. On meeting, we discovered that, while, as expected, our lives were in many respects different, we had one unexpected thing in common, both our fathers suffered from a mental illness. This enabled sufficient identification for both of us to feel comfortable about my involvement (although I gained the impression that this subject would be comfortable regardless of the context). In any event, there was no contestation of the appropriateness of having me as her profile writer.

Ultimately, identifying and acknowledging potential conflicts in advance of the project and throughout the process, enabled me to tease out the issues both in an internal dialogue and in discussion with the subjects. My multiple positions as biographer not only resolved themselves in this way, but I believe that they added to the authenticity of the profile-writing. Further, the fact that the subjects had to consent to the final form of the profile proved not to be an obstacle to my aims as a creative writer. It was not an unusual constraint for me. As a feminist researcher my practice has always been to work collaboratively. In this case, this constituted itself as a process of negotiation with each individual subject regarding matters both of substance and style. I was challenged, I

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<sup>72</sup> Flood 2.

defended. Sometimes I compromised, sometimes the subjects did. We worked at this process until we were both happy with the outcome.

### **The collaborative and collective nature of the enterprise**

While all my subjects, being living subjects, were concerned about how they were to be represented, the considerations were not the same in each case, and visibility was potentially more hazardous for some than others. In this section, I will explore the varying impacts of visibility, and describe how the collaborative process played itself out in relation to one subject who was particularly vulnerable. As outlined above, and detailed further below, negotiations about the degree of attention that was to be focused in the profiles on gender issues proved important. There were also issues about revealing personal details, although not to the extent that I had anticipated. I found it somewhat surprising that most women seemed unused to reflecting on their work. Only one subject had a ready narrative of her life, and it was a modest story. Indeed, the women were often reluctant to acknowledge their own achievements. The collective nature of the enterprise meant that they became more comfortable with telling their stories. Further, it was the collective response that resolved an unexpected issue of representation raised by one subject.

In *Ways of Seeing*, John Berger argues that issues of representation are of particular concern to women because “according to usage and conventions which are at last being questioned but have by no means been overcome—men act and women appear. Men look at women. Women watch themselves being looked at.”<sup>73</sup> My subjects were pioneers in their professional roles, carving out territory where no woman had been before. The awareness of a gaze upon them that was not always benevolent or even benign was not restricted to those women who were Foley appointments. It applied even to women who had been appointed according to standard selection criteria in the public service.

The considerations for these subjects were, however, not always the same. One of my subjects had been forced to retire early because of illness, so this profile was probably a final tribute to her work. Another was no longer working as a lawyer, but now a major

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<sup>73</sup> John Berger, *Ways of Seeing* (London: Pelican, 1972), 45

public figure heading for retirement. For the five who were still working as lawyers, there were differing levels of visibility in their professional lives.

One of my subjects in a very public position had been relentlessly under attack by the media for decisions she had made. Prior to interviewing her, I had formed the impression that she felt herself to be vulnerable because of her gender. She seemed to have gone to great lengths to avoid being seen to favour women or give them special privileges. I was unable to assess the accuracy of those views in the interviews. She was a reluctant subject, very guarded, and careful in her responses. She resisted any gender analysis of her career. Indeed, she was at pains to emphasise the importance of male mentors in her life, and made no mention of other women even as supports. She rejected the original draft of the profile as being constructed to rebut the media attack on her, and asked that it be rewritten to focus instead on the achievements of the organization she headed. It seemed that she had come to the conclusion that if she was to be made more visible, she would use this opportunity for her own “political” ends. I formed the opinion that she was a private and modest person, genuinely uncomfortable with a public profile of any sort. I decided to use this reticence as a framing device for her profile. I did not, however, interrogate her resistance to a gender analysis. While, as a feminist, I did not agree with the stances she had taken, as a female lawyer I was empathetic to the pressure she was under.

It is not uncommon for women lawyers to be hesitant in acknowledging discrimination, against a backdrop of widespread evidence of its existence. Hunter, who carried out research into this phenomenon, argues that:

structural and psychological explanations of denials of discrimination are inadequate to account for the range and public nature of the stories told by these women. Rather, the evidence suggests that the women’s interview responses were part of the active constitution of themselves as (non-gendered) subjects of the Bar.<sup>74</sup>

It is only in recent times that feminist literature on law has found its way into the curriculum of law schools, and none of my subjects were exposed to it while at

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<sup>74</sup> Rosemary Hunter, "Talking up Equality: Women Barristers and the Denial of Discrimination," Feminist Legal Studies 10.2 (2002).

university. There they would have been taught that the law was neutral, and that gender was of no account before or under the law.<sup>75</sup>

Five of the subjects, nonetheless, did tell stories of gender discrimination at university and at work: the older women told of blatant, direct discrimination; the younger ones of more covert, indirect discrimination since the passing of anti-discrimination legislation. One of my subjects expressed anger during her interview about the blatant, direct discrimination she had experienced, but asked me to downplay it in her profile as it was not seemly to dwell on it. Heilbrun suggests that women are affected by the idea that it is unwomanly to display anger, and that this may discourage the expression of anger at discrimination they have experienced.<sup>76</sup> It may also have to do with not wanting to be portrayed as a victim. I found that most of the women I interviewed were comfortable with making reference to the discrimination they had experienced in their profiles, as long as it did not frame the whole work. They were keen to balance this material with acknowledgement of the male lawyers who had been supportive to them.

In one regard, the issue of work/life balance, my subjects were more open than I had expected. I was sensitive to the fact that women are likely to be criticized if their working lives are seen to make inroads on their domestic responsibilities.<sup>77</sup> My subjects were, however, largely comfortable with talking about their home lives, and made no claim to successfully juggle the competing demands of work and home.<sup>78</sup> The personal details that came under contention tended to relate to their families of origin. One woman wanted all material about her parents deleted, and another forbade any mention of her sister.

Again unexpectedly, my subjects did not appear to have reflected closely and questioningly on their working lives in the way I have done. Former Dean of Griffith University Law School, Professor Rosemary Hunter, herself profiled in the book, says that her research shows:

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<sup>75</sup> Ironically, the challenge to that position came from the men who argued that the women had been appointed *purely because they were women*.

<sup>76</sup> Heilbrun 24.

<sup>77</sup> Whereas a man who allows his public life to cause detriment to his family life may escape adverse comment from the community because his behaviour fits traditional gender roles.

<sup>78</sup> A minority of them had husbands who stayed at home and looked after the children. Those women wanted the contribution made by those men acknowledged and emphasized in the profiles.

It is characteristic of legal practitioners at large that they don't reflect on their work and who they are and what they're doing. The only ones who routinely think about what they're doing are women who already identify as feminists. And they've had to do that kind of thinking, often before they went into practice.<sup>79</sup>

One of my subjects, possessed of an extraordinarily good memory, overwhelmed me with facts. It took quite some time to shape those facts into any sort of pattern. Each time I did so, I was confronted with even more facts. Ironically, in her professional life this subject had been instrumental in establishing innovative systems. She could see the big picture at work, but had difficulty applying this skill to her own life. I had to be firm about pruning this detail back to make her story comprehensible and interesting.

Another subject said she found the interview exhilarating for the very reason that it gave her the opportunity to reflect on her working life, but that she was not sure that she liked what she saw. This subject, sympathetic to social justice perspectives of life, took a surprisingly conservative approach in her professional work to what she could achieve for women. I constructed my profile of her around this paradox, and, to her great credit, although she did not like being represented in this way, she agreed that it was fair comment and allowed it to stand as it was.

These women lawyers were chosen by the Supreme Court of Queensland Library Committee to be profiled because of their significant achievements. However, none of these women had constructed or assigned to themselves an identity as a significant women lawyer. Indeed, as stated earlier, there was a general reticence about claiming achievement. Heilbrun argues that women, having internalised the notion that power is unwomanly, are uncomfortable with acknowledging their own power. She claims that,

Well into the twentieth century, it continued to be impossible for women to admit into their autobiographical narratives the claim of achievement, the admission of ambition, the recognition that accomplishment was neither luck nor the result of the efforts or generosity of others.<sup>80</sup>

Indeed, one of the subjects, arguably the one whose achievements were most noteworthy, denied to me being particularly talented or clever. Indeed, she said that she had been

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<sup>79</sup> Personal interview, 8 September, 2005.

<sup>80</sup> Carolyn G Heilbrun, *Writing a Woman's Life*, 1<sup>st</sup> ed. (London: The Women's Press, 1988) 13.

successful because she had identified others' strengths and encouraged them to make use of them. This did not strike me as false modesty.

Hatfield interviewed women who were considered leaders in the Canadian legal profession. She concluded that:

Women in the legal profession who are called upon to account for their leadership must do so within the context of a complex set of cultural controversies. For example, women must position themselves in relation to negative perceptions of feminism, negative views of women who are too assertive or aggressive, controversies of materialism or a morally questionable exercise of power.<sup>81</sup>

Masculinity has conventionally been conceptualised as demonstrating an absence of traits associated with being a woman, the ultimate insult to a male being to suggest he is like or acts like a female. As a result women who enter traditionally male domains present a challenge to the construction of masculinity. According to Heilbrun, "Women who acquire power are more likely to be criticised for it than are the men who have always had it."<sup>82</sup> Jocelynn Scutt claims that "Living in a male-defined world, women frequently ignore, or have never come to see, their achievements, their very real successes, and the way they have stepped out, into the world, as political and social beings."<sup>83</sup>

A publication like A Woman's Place is only possible once there is a critical mass of women in positions of influence in the legal profession which, if it does not provide a shield from retaliation, at least gives them some sense of community should they choose it. One of the women indeed acknowledged that the greatest source of inspiration and support she had received in her professional life had been other women. The book itself by its collective nature also worked to reinforce this sense of community. I am aware that the women profiled drew strength from each other in relation to having the courage to be as open and frank as possible. I found that there was much discussion between the subjects of the profiles about the nature of the profiles, largely in the form of seeking reassurance. Indeed, one of my subjects sought legal advice from another woman subject about my use of certain rather uninhibited quotes about her male colleagues.<sup>84</sup>

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<sup>81</sup> Jennifer Hatfield, Women and Leadership Dilemmas and Opportunities, 2005, Canadian Bar Association, Available: <http://www.cba.org/CBA/Equality/Equality/leadership.asp>, 3/03/05.1

<sup>82</sup> Heilbrun 16.

<sup>83</sup> Jocelynn A Scutt, ed., As a Woman- Writing Women's Lives, 1st ed. (Melbourne: Artemis Publishing, 1992).2

<sup>84</sup> She decided to let them stand.

I was grateful for the development of a sense of community among the women profiled when a rather tricky issue arose with one of the subjects who was a friend of mine. Having received her draft profile, she failed to respond after a reasonable period of time.<sup>85</sup> When I contacted her, she told me robustly that “I hate it.” To my amazement it appeared that the major bone of contention was my use of direct quotes. She was not objecting to the choice of material in the quotes, but to the use of direct quotes as such. She informed me, categorically, that use of direct quotes was not appropriate in a legal context. When I challenged this view, she claimed the authority of her time as editor of the Law Society Journal when she had deleted direct quotes from any material submitted for publication. My argument that direct quotes make a text more lively and immediate met with the response that only the passive voice was appropriate in a legal context. I was not prepared to concede this battle. I said I was prepared to negotiate about the choice of quotes but not about the use of quotes. I heard later that my friend took her argument to lunch with other friends of mine who were being profiled who howled it down with laughter.<sup>86</sup>

### **Conclusion**

This exegesis has detailed the political context in which, and the political aims with which, these profiles of women in the law in Queensland were completed. It was an exercise in writing women into the law in Queensland in a context where their accomplishments have not been validated by the profession at large. It has shown how, as biographer, I occupied multiple positions as feminist, woman lawyer, friend and creative writer. It has described how resultant tensions required trade-offs and how these were resolved. Finally it has explored the collaborative process at work in particular contexts, particularly the vexed issue of discrimination, and how the collective nature of the enterprise impacted upon the subjects. As can be seen, the writing of the profiles was a complex process not easily categorized.

It is too early to determine what effect, if any, the publication of A Woman’s Place will have on the careers of the women profiled, or the status of women within the

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<sup>85</sup> I had not initially been assigned her profile and had been rather relieved as I knew she was a very private person. However, she had insisted that I write it.

<sup>86</sup> She did not however concede defeat graciously, subsequently labelling some of my prose “of Mills & Boon standard,” even though, I am sure that she, like me, has never read a Mills & Boon novel. Fortunately, our friendship survived this challenge.

legal profession more generally. Stanley argues that “a feminist analytic approach with a political edge to it can and should be built around ... resistant relationships between [the organizational ideal] and actual lives.”<sup>87</sup> She suggests that by examining the gaps, disjunctures and silences, we then get to see how women do enact and perform lives that are not perfect simulations of organizational models. The lives of the women which I have written are by no means such perfect simulations of organizational models. Hopefully, they will play a role in reforming those organizational models so that they become more inclusive, and less prescriptive. Hopefully, they will contribute to the validation of these women’s achievements. Hopefully, they will reassure young women lawyers and young women contemplating law as a career that there is no singular template for doing so. And above all, hopefully, they will inspire them to work to address disadvantage both within the profession and within the law itself.

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<sup>87</sup> Stanley 57.

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