

Reflections on the Future of a Changing Profession

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I was an editor of the Auckland University Law Review in 1997. I was actually the Commentaries Editor, which in those days meant rather than dedicating myself to a single article, I was in charge of the book reviews and legislation notes at the back. It was a role memorable primarily for us boldly deciding to take on a book review of the new volume of *Todd on Torts*.¹ I'm not sure why we thought we would have anything new to say about an update of a classic textbook, but we'd been sent a review copy and so we probably thought "why not?", underestimating perhaps the work involved in having something interesting to say about a 1,500 page textbook in under 1,500 words.

Being an editor of the Law Review was one of those things that always sounded really glamorous in a movie script. In movies about lawyers, there is always some hotshot who yells about having "graduated top of their class, been editor of their law review and filed death penalty briefs for the ACLU!". The reality of our cramped little office, single shared computer and 1,500 pages of *Todd on Torts* was a little different.

But in some ways that's true of a career in law in general. It's certainly true that my idea of the profession was shaped by TV shows and movies: *LA Law*, *Ally McBeal*, *A Few Good Men*, *The Firm* and *Legally Blonde*.

I didn't have a good sense of what was involved in the day-to-day practice of law but I was pretty sure after years of debating competitively that the only real kind of lawyer was a litigator. It took me far too long to realise how wrong I was.

I left the extreme tedium of discovery behind for the slightly less tedious activity of proofreading prospectuses, and embarked on a career in corporate finance law that took me around the world, including a stint as a 'crazy rich expat' in Singapore and Hong Kong, and at least one work day that lasted for a full 36 hours. Burnout was inevitable, and so I went back to school for a year. Most people would have studied something soothing and unrelated, like how to make wine or how to appreciate abstract expressionism. I went to the London School of Economics and got an LLM in Corporate Finance.

Briefly, when I returned to New Zealand in 2004, I thought I might like to teach law, before I realised that a career in academia is primarily about research and publication, both of which I hated. But the Law School was kind enough to let me just do the teaching bit. I lectured at Auckland for four years in the Law of the Capital Markets. I had these visions, again, inspired by television and movies, of leading in-depth, engaged discussions with students

* This speech was given at the 2018 Auckland University Law Review Alumni Dinner, hosted on 25 September 2018.

1 Stephen Hunter "The New Todd on Torts" (1997) 8 Auckland U L Rev 631. See Stephen Todd (ed) *The Law of Torts in New Zealand* (2nd ed, Brookers, Wellington, 1997).

about the nuances of ripped-from-the-headlines takeover transactions. Instead I was faced with a room full of students with their laptops open, who were — based on their facial expressions — definitely *not* listening to what I was saying. Securities regulation is many things, but funny isn't one of them. And my feedback loop consisted solely of the rattling noise of them all starting to type whenever I said something sufficiently pithy that sounded like it might be on the final exam.

It was discouraging, until I recalled my own final year at law school, when an 8 am class was typically when I would do that morning's cryptic crossword, and maybe have a nap. Part of that laziness in my final year was largely due to already having secured a clerkship at a large national firm. A process that at that stage rivalled something out of *The Hunger Games*. I assume it still does.

I was *beyond* naive, coming to the profession without any family background in the corporate world. At law school, people would speak knowledgeably about how their father told them they should *only* work for this firm, about which firms had the most important clients or the better perks. I didn't have any kind of framework to make a decision, so I just interviewed with all of them. I remember the clothing allowance being pretty compelling as I turned up to interviews in my second-hand suit.

It wasn't hard to see that it wasn't an industry that was particularly welcoming. Our law school was already graduating more women than men even then, but these stuffy, mahogany-clad offices were definitively male. My sole protest was to use that as my interview question. Whenever they said "Now, do you have anything to ask us?", I'd sit there nervously and ask why there were so few women partners at the firm. This question worked at any firm because it was true of every firm. The answers were always rehearsed — they were ready for the question. Only one ever stuck with me: the partner who answered said that he didn't think his firm's culture suited *some people*. I didn't go to work there.

That first summer, over drinks at bars, we clerks would swap the worst stories with our friends at the other firms. Some were just ridiculous examples of power imbalances: being asked to deliver dry cleaning, change tires or squeeze oranges for fresh juice. Others were more insidious: inappropriately sexual gifts, being made to work late in the office with male partners on your own for no reason, being invited to client functions where it was clear you weren't being asked to come along for your legal prowess.

This is not the story of any one firm, or even just New Zealand firms. When I was working in Asia later in my career, my supervising partner and I had two clients with us on a transaction in Jakarta. They all wanted to go out to a bar notorious for being a place to pick up sex workers. These were important clients: my presence wasn't optional. After an hour, with the clients on the dance floor, I said to my supervisor that I felt uncomfortable. He looked around the room, as if seeing it for the first time, and said: "I wouldn't worry, people will just assume you're a Russian hooker."

I could tell you endless stories. Horrible stories. Stories that aren't my own. But you should read people tell them in their own words on Zoe Lawton's powerful blog.²

Discussing these stories with others over the last couple of months has been cathartic, I guess. But it's also been frustrating. The stories are often met with shock and horror, and I have trouble understanding why the men I'm telling them to seem surprised. Can they really have been unaware that the structures they've benefited from their whole careers had a poisonous side? Did they really not know that we've been routing around this behaviour our entire adult lives?

As Tarana Burke's #MeToo movement spreads slowly through different industries, I've spent time thinking about why the legal profession is any different than any other industry. In most ways, it's not. Harassment and misconduct have touched every corner of the working world. The way it manifests itself in professions is pretty specific though. As a junior lawyer, your work depends entirely on keeping favour with those who have more power than you. There's no way to carve out a career for yourself, just the work being given to you to do by other people. So if you complain, or if try to avoid working for someone who is making you uncomfortable, you risk cutting off your sources of work; you get frozen out, and there's no way to progress.

There was glacial progress in the profession around me, of course. The financial crunch in the early 2000s saw the large firms splinter off boutique firms and tighten their belts. The splashy excess of the 90s disappeared, and with it, much of the alcohol-fuelled misconduct. No longer was there a full open bar to drink dry at work every Friday. Firms had to compete hard for work, and clients were discerning. They didn't want to see you wasting their money. Increasingly, the flow of work to large firms became controlled by in-house counsel at large corporate clients, roles taken up more and more by women. Suddenly firms had to think of new ways to entertain: a boozy lunch at Euro and some tickets to a rugby game were no longer going to cut it. Change happened, but because it was a business reality, not because it was the right thing to do.

For years, I've said a partnership is literally the worst way to run a business. The owners are the managers, and there's no external governance. Power within a partnership waxes and wanes based almost entirely on how much money an individual can bring through the door. In the tech industry, where I work now, we talk about the problem of *brilliant jerks* — people who are tolerated for too long because they're very good at what they do. In the legal profession, the problem is *profitable jerks* — people who become bulletproof because of the amount of money they bring in to the business. It has taken far too long to deal with some of these individuals in the profession, even when the writing has been clearly on the wall for some time, because it wasn't in anyone's financial interest to do so.

2 See "#MeToo Blog" Zoë Lawton <www.zoelawton.com>.

I didn't leave the legal profession because of endemic sexism (and the way you know that's true is because I moved into the tech sector, which has its own serious issues), but it certainly didn't help. I vividly remember the year the Moa prospectus was registered.³ I didn't have any involvement with that transaction, but writing prospectuses was my bread and butter. I remember turning the pages on that document, the black and white photos of women on their knees, the jokes about second wave feminists, the advertisement featuring a naked woman on a horse, and I remember thinking about every lawyer, accountant, investment banker, director, senior manager, PR representative, designer and printer who had had to do the same. And no one had felt or been powerful enough to oppose it. I loved my job. I was *very* good at it. And I enjoyed and respected the people I worked alongside. But I think it was then that I realised that this wasn't a place I was ever going to make my own.

And I'm only talking about gender inequality here, whole chapters could be written on the racism and homophobia that is inescapable in the profession.

But here's the thing that makes all of this hard for me to talk about, and the reason I've stared at the notes for this speech for weeks trying to untangle how I feel: we didn't have a language for a lot of this as I was coming through the profession. And I say this as someone who studied feminism at university. I *felt* successful. I had a great career. Impressing these men, playing along to get ahead, that was just the cost of *having* that career. There was a thrill in being part of the team. I fell into the trap of thinking that because I'd been able to succeed, everyone else should be able to too. If I was able to put up with the odd off-colour joke, then the person complaining about it probably *was* humourless. It took me so long — far *too* long — to realise that just because *you* feel okay in a space, doesn't make it a safe space for everyone. I became complicit in those power structures. I found aspirational female role models and worked for talented male partners who would have been horrified by any bad behaviour. I was a partner by the time I was 32. I found a path for myself, and I didn't do anything to change the overall terrain.

But looking back on it now, I'm tired and I'm angry. Maris Kreizman recently wrote:⁴

I'm angry that the responsibility was on me to not "let the bastards grind me down" as I paid my dues, when all it would have taken was for them to stop acting like bastards.

When I talk about institutional sexism, I see some men tense up. It's like they believe I'm accusing everyone in the system of being sexist, when in fact it means more or less the opposite. It means the institutions we've built are set

3 See *Moa Group Limited Initial Public Offering Investment Statement: Your Guide to Owning a Brewery and Other Tips for Modern Manhood* (11 October 2012).

4 Maris Kreizman "This 60-Year-Old Novel About Sexual Harassment Was Ahead Of Its Time" (9 July 2018) BuzzFeed News <www.buzzfeednews.com>.

up in such a way to disadvantage women, regardless of the good intentions of people who work within those systems.

The whole point of #MeToo is that these cases are not isolated. They're not rare. This isn't one partner, or one firm, or one chambers. And yes, of course all of these behaviours exist on a spectrum. From full-on harassment to subtle day-to-day patterns of favouritism and exclusion. Every single woman has experienced behaviour on that spectrum. And experiencing it, worrying about it, trying to work out how to handle it or avoid it, all of that is a massive amount of *work*. We get up every day and have to take on this extra load on top of our day jobs, and we have to make that work look *invisible*.

And so it's unsurprising that women leave the profession. Sometimes they do it because they've been driven out by bad behaviour. But more commonly they leave because they're tired. Because on top of this incredibly demanding job that you *see*, is the incredibly demanding job that you *don't*. So they make other decisions: leave for roles with more flexible hours; spend more time with their families. And it becomes frustratingly self-fulfilling. I can't count the number of times I've heard senior practitioners make the argument that women choose to have children rather than having a career, as if that accounts for all the senior women we've lost.

And it is a loss. Imagine the potential, the sheer overwhelming force of talent, that we don't have access to any more. As Caroline Framke wrote last year, in response to harassment allegations in Hollywood:⁵

It's true that a lot of great art will now forever be marred by disturbing subtext concerning its creators But what about the people they targeted, whose resulting trauma affected their chances or ability to advance their careers and pursue their dreams? What about the great art we *lost*?

What about the legal scholars, the talented barristers, the learned judges we will never hear from? What about the great jurisprudence we lost?

A lot of the work I do now in the tech sector is focused on helping young companies build diverse and inclusive teams and organisations, because literally all of the data tells us that diverse and inclusive businesses outperform homogenous ones on every metric. I'd been doing this for a while, speaking at conferences and writing and so on, when a friend asked me why I was so passionate about improving the tech sector when I'd never seemed particularly passionate about improving the legal profession. The only answer I could give him was that the tech sector seemed *willing* to change. After the events of this year, I'm cautiously hopeful I might have been wrong about that distinction.

I want to believe that the Law Society can take sincere, meaningful action, but I'm sceptical. When the results of the Colmar Brunton survey were published showing horrifying levels of harassment, bullying and misconduct,⁶

5 Caroline Framke "Instead of mourning great art tainted by awful men, mourn the work we lost from their victims" (13 November 2017) Vox <www.vox.com>.

6 See Colmar Brunton *Workplace Environment Survey* (New Zealand Law Society, May 2018).

the Law Society's response was to establish a taskforce and to call for unpaid volunteers.⁷ You tell me exactly how much value you attribute to work you're asking me to do, when you tell me how much you are prepared to pay me for that work.

The Auckland University Law Review is still a proudly student-run publication of student work. When I was an editor there was ongoing pressure to change that, and to publish the work of faculty and others. I am delighted and proud that two decades on, that change hasn't been made. Here's why: the profession needs *you*. It needs intelligent, vibrant, courageous young voices prepared to speak truth to power.

The Governor-General, Dame Patsy Reddy, speaking about the legal profession at the Women of Influence Awards, said:⁸

We thought things would change — it was just a matter of time. We now know that we were wrong — or at least too optimistic. It seems that for culture change to occur at anything faster than a glacial pace, disruption is inevitable.

I want to say to those young women in Wellington, and by extension the 615 women who were admitted into the profession last year, that I see you. I'm proud of you for being brave enough to decline job offers in places where you no longer felt safe. I'm sorry I didn't do more to change things to make it safer for you, and I'm sorry that you're still having to make those calculations, all the time, about what you're prepared to put up with to have the career that you want.

Know that you now have more power than you think you do. You can have a bright career outside the structures of a large firm, if you want to. The compromises we made are not the only way. You're bright and talented and qualified: a career with a large firm is not the only way to demonstrate your success. And if you *want* to stay inside those firms, keep pushing for change. You outnumber them, both literally and in the court of public opinion. Their time is up, not just in the legal profession, but across the board. It's taken far too long, but you'll win.

7 Kathryn Beck "Embracing the power of real disruption" (2018) 918 LawTalk 12 at 13.

8 Patsy Reddy, Governor-General of New Zealand "2018 Women of Influence Awards Dinner" (SKYCITY Convention Centre, 18 September 2018).

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