



Diversity

The Hon. Justice Kelly Rees, Supreme Court of NSW Equity Division

Profile Interview by Kevin Tang

What does the term Diversity mean for you?

I guess I am being asked this question because I am a female but I don't think that makes me diverse, it just makes me half of the population.

To me, 'diversity' means seeing



all levels of our profession accurately reflecting Australian society in 2019 in terms of differing social and economic advantage, whether you are from Sydney or come from regional or remote NSW, Indigenous Australians, multiculturalism, gender, disability, and the list goes on.

OK, well how do you think we are doing in terms of Diversity?

Not too flash. From the bench, I see more diversity than I think I did at the bar as I am seeing a lot more solicitors. But I still think we are travelling some decades behind the population in terms of diversity in the profession.

What are some of your life experiences which have marked you as perhaps unique and different?

Mmmm. Well, I guess the thing which makes me feel different from my colleagues more than any other reason is where I came from, in terms of a rural upbringing, attending the local public school and coming from a family where tertiary education, or finishing high school, was not necessarily part of my future.

I feel good about that though. It has always given me perspective about the intense, all-consuming world of the bar and the bench. I know there are plenty of people who have never been to Sydney or dealt with a lawyer who are living perfectly rewarding and complete lives. If this law malarkey doesn't work out, I reckon I will be just fine.

You grew up on a farm. Did that make you feel different when you started your legal studies?

Well, I didn't think there was anything different about where I came from. But I vividly recall when I first became aware that it was a bit unusual. I was in, basically, the first class at UNSW law school and the lecturer got us all to put our hands in the air, and then told us, 'Take down your hand if you went to private school.' Then, 'Take down your hand if your parents are tertiary educated' and 'Take down your hand if you are from the lower north shore or the eastern suburbs of Sydney'. Within three questions, there was only me and another person with our hands still in the air.

The point was that there was a lack of diversity in law students having regard to socio-economic background and geography. And the debate which followed was: how can the legal profession serve a diverse community when we are not ourselves diverse?

I guess it must have been an adjustment coming to Sydney to study?

It was! I don't think city people appreciate how much it is. After about three days in the city, a country person really wants to get the hell out of here. But you get used to it, after a year or three.

I do, however, have a semi-funny story. In my first week on campus – I was living in a residential college – I walked up the hill to the law school and said hello to everyone I passed on the way. Most people ignored me, some people looked at me like I was mad, and a few said hello back. I thought, 'These

Sydney people are so rude!!' A few years later, I saw that Crocodile Dundee film where Paul Hogan walks down Fifth Avenue, New York and did exactly the same thing. Well, I laughed for days.

The other thing that really was a big difference was the multicultural landscape of Sydney.

My rural community was almost completely Anglo plus Indigenous Australians of the Gumbayngirr Nation. The variety of faces, language, food and culture in Sydney was initially confronting but became just plain marvellous.

Did your background affect getting a job or coming to the bar?

It didn't matter when getting a job in a big law firm. Those jobs seemed to go on academic achievement. The big firms didn't seem to care where you came from. Suited me fine.

But when I came to the bar, which is more than 20 years ago now, the pathways and entry points to the NSW Bar were not particularly clear. I think the NSW Bar Association has done quite a bit of work to de-mystify that with the information available on its website about Coming to the Bar.

But I do think people coming to the bar who come from legal families or the same socio-economic or geographic background as a 'traditional' barrister will navigate their way more easily. And I think there is a natural tendency for barristers to select applicants for readerships who look like them or remind them of themselves when they were young.

What can barristers do about that?

I think there is a place for chambers to be ambitious and adventurous in their choice of readers, licensees and members having regard to academic qualifications and work experience but also with an eye to diversity. Give someone a go who may not otherwise have a 'rail run'. Why not?

If I can just ask you about gender, though. Do you think we are making progress in having gender diversity at the bar?

There are people much more informed to talk about this, but I reckon there are two big problems.

The biggest one, I think, is making the bar a good option for women lawyers when mapping their career path. Half of law graduates and solicitors are, unsurprisingly, women. But only 23% of the bar are women. So we're just not attracting women to choose a career at the bar in the first place and a higher proportion leave the bar than men. I could talk about that for ages, so I will spare your readers and just leave that one there.

The second problem is women getting speaking roles in cases. I know this is a challenge for the junior bar as a whole, but it does seem to impact more acutely on women



barristers. I had a good look at the statistics which the NSW Bar Association pulled together recently from a review of Austlii judgments – in fact, I got the stats from them and drilled down further into women in the Commercial List of the Supreme Court with speaking roles.

Do you know that in the last six months of the data, only three women silk appeared in the Commercial List and only 6% of appearances were by women with a speaking role. I'll repeat that figure again: 6%. Now the data may have heaps of limitations, but I think there is still a real problem here.

Well, isn't that just about getting solicitors to brief women?

Actually, I think solicitors are now pretty aware of these issues and are changing their patterns. I think the real change-makers here now are our silks. Solicitors often ask silks for recommendations as to who a silk would like to work with, and this creates a powerful opportunity for change. Rather than recommend a 'mini-me', be outrageous and support change.

How about when asked for a list of names including women that you put the woman barrister at the top of the list as they are more likely to call her first than if you tag her name on the end of the list for 'equitable briefing policy' reasons. Otherwise they probably won't call her at all as someone above her in the list will be available.

How did you manage the challenges of being a woman at the bar?

Most of the challenges of the bar are gender-neutral: getting the work, getting through the work, getting paid for the work, getting on with your chambers colleagues and so on.

Juggling the bar with children is a big one though. Men have to do that too, but I guess it does tend to impact more on women. To my observation, the bar loses a lot of women at this point in their career, 'cause it is just so hard.

What makes us good barristers, I think, is that we want to do our job really well. This is also how we want to be parents – we want to do that really well too. I would say don't whinge about it, or at least not to your colleagues, and just get on with it. In my experience, your colleagues will do everything they can to quietly support you. And be kind to yourself: you're doing the best you can, you're putting in a huge amount of effort and commitment; and it would be tough if you were just trying to be a barrister or a parent, let alone both.

Any final words

I am confident that we will get there. Despite the conservative, traditional reputation of the law as a profession, I think that it has great capacity to embrace diversity. I can't wait!