

Interview with Felicity Hampel SC

By Alex Mathey, Crown Limited

I recently conducted an interview with Ms Felicity Hampel SC.'

Ms Hampel has been practising as a barrister since 1981 and was appointed a member of Queen's Counsel in 1996. (She has since elected to be referred to as Senior Counsel.)

She has extensive qualifications in teaching and, amongst many other things, Ms Hampel has lectured and conducted training courses in Australia and overseas, developed advocacy training programs and consulted on an impressive range of issues including legal education, post graduate studies and special accreditation.

Ms Hampel is dedicated to supporting and promoting human rights, civil liberties and women's rights. Her influence and achievements are significant.

Her observations on professional and personal development are inspirational.

This is an edited excerpt of the interview.

How did you start out in the law?

I was an Articled Clerk in a small commercial firm in South Yarra and spent most of my time drafting. I only went into court once really and that was when we were acting for a man [who was later charged with the murder of his barrister]. It was a most unusual introduction to litigation.

I came to the Bar at 25 after 2 years [in] private practice I found it very difficult to get work as a young, female, wannabe ... barrister. I had no contacts at all.

Do you think it's different for a young barrister nowadays trying to break in?

Look, I still think it's hard if you've had little experience in practice and you don't have many contacts.

Some people are fantastic, natural networkers.

It's better to develop experience and reputation in practice as then, hopefully, you've dealt with people who are more likely to brief you.

Tell me about your practice

When I started at the Bar, I had a very general practice but started getting more crime.

Initially only summary crime but then I got a lucky break and was offered a brief in a brand new area of anti discrimination.

The then Equal Opportunity Board, under ... [the then] Attorney General, Jan Wade, was just starting to hold hearings. I got one of the

early briefs there and worked for most of my years after that as a Junior doing a combination of crime and anti-discrimination. It was an unusual and interesting combination.

I started off doing criminal defence work, but became interested and involved in prosecution.

That then led to other interesting offshoots, like criminal administrative law. Nowadays, my practice is largely administrative with some commercial work.

Is there a glass ceiling for women, particularly for those in the law?

I think so. Things are changing and are much better than when I started in law but there is no doubt that women still have more limited opportunities for advancement than men.

There is a need to do more than put your head down and work hard and there are factors other than maternity or childcare that lead to women being so disproportionately represented.

Most of the overt discrimination is gone. The pressures are much more subtle now. Like the assumptions about who's good for particular jobs, how people network, things like that ...

But still, we will bow to the demands of the client when the client says "I don't want a woman".

Do you think that happens a lot?

Not a lot, but it does happen. Sometimes they'll say "I think this person is not right for the job".

What would you like to see happen?

We need leadership from the top of the profession.

I'm very keen to [see] that discrimination is everyone's responsibility and not just an obligation for the people in the group likely to be discriminated against to try and make others change.

Equality isn't achieved by treating people who start off unequal in the same way. All it will do is perpetuate the inequality.

What you've got to do is change the framework so that everybody within the framework has the same opportunity and the same capacity to achieve their potential. It's changing the framework, rather than changing the attitudes of the people who are already there.

What are some practical things that could achieve this?

I think the most important thing is to identify ... the factors that we value in people and ... the measures of success.

For a long time there's been a practice of time costing where people are prepared to devote ... 16 hours a day, 6 or 7 days a week ... that amount of time commitment [has been] used as a measure of success or commitment.

I think there's got to be a realignment of that, to try and look at the quality of the work rather than time spent and to acknowledge that people who have other lives and do other things are actually going to be more valuable... whether its off to play golf with your business connections or whether its going off to go horseriding or painting lessons or whether its going to watch the kids play sport, it doesn't matter.

You are the immediate past President of Liberty Victoria. What do you consider are current hotspots for civil liberties?

[T]here are always areas in criminal law reform ...and the unnecessary and disproportionate encroachment of peoples' rights for what is perceived to be a worthy outcome in an immediate case.

Access to justice is a big issue because there's no point having rights ... unless everybody's got a real opportunity to enforce them in the courts.

Do you think there's a need to extend legal aid to civil matters?

Oh, definitely. If some people can't have access to the courts then there can't be equality.

Then you have a whole breakdown in confidence in the capacity of a justice system, civil or criminal, to look after peoples' needs. That leads to a real breakdown in confidence in society, a breakdown of confidence in parliament to enact laws that will help everybody and not just the wealthy or very poor, those who are receiving legal aid.

Does the community have an obligation to provide legal aid to people?

Look, to me it is just fundamental ...to have ... fair, impartial and equal justice and I don't think we have that at the moment.

Can pro bono work paper over the cracks of the system?

Well, papering over the cracks is actually ... an inapt metaphor. Really, it's a huge hole.

I don't think pro bono work should be regarded as a means of absolving

governments' fundamental responsibility to ensure that its citizens have access to its courts.

The role for pro bono work, I think, comes in areas of test cases, in areas where people fall through the cracks of what should be a legal aid system.

But it is no substitute for what should be the government's responsibility.

And there's something that really sticks in my craw about this promotion of pro bono work generally in a sense of saying 'well, you're a trained lawyer, you should give your time for nothing'. We are trained lawyers and we are entitled to receive as any other person with training and skills, appropriate remuneration for our services.

Given the impending legislative regime concerning privacy, do you consider privacy to be an important issue?

I think privacy is an enormously important area and it's an area that's growing exponentially.

The increases in technological advances have meant that there's a much greater capacity to gather information about people.

We need to come to terms with that and work out what is acceptable in terms of tracking or collating information about people and ... how to regulate that.

At the moment I think we're playing catch-up with technology to do things and we then react to what it can do in terms of whether we try and regulate or say that's perfectly acceptable. So it's the technology that's driving the privacy boundaries

There's got to be accountability and disclosure ... I think the new State privacy legislation, as an extension of the Commonwealth legislation, provides us with a very competent step in the right direction.

Are there any other areas that you think can be singled out for special mention for civil liberties?

Good government and accountability.

What do you mean by that?

What I mean by that is, first of all, a much greater knowledge by people generally as to the role of government and the three arms of government.

The greater accountability by those who exercise power in parliament, executive or judiciary in terms of access to information about their deliberative processes ... acceptance that things should be open unless there is good reason to keep them closed, rather than keeping things closed unless there's a good reason to open them.

We already have that in terms of the judiciary because court is conducted in the open, judgments are open ... parliament is open to some extent because of the open proceedings and committee hearings. We don't have it as much in terms of the executive ...

[Another issue] is accountability, things like the importance of Auditors General, independent statutory office holders whose job is to review the workings of government and to make them accountable.

I see a significant factor in the change of the State Government and its reaction against the erosion of powers of the Auditor General and of other leading statutory office holders like the DPP and the Equal Opportunity Commissioner.

What affect has this had?

I think there's generally a great level of cynicism, particularly in young people, about the capacity to change government or to change policy and it will take a long while to restore that faith in accountability.

There is a very high attrition rate amongst lawyers. Do you have any views on that?

Look, I don't see law as a straight vocational course and even before the increase in law schools around Australia, which meant that there were more law graduates being turned out than could possibly get jobs practising as solicitors or barristers, I always thought that law was a terrific training for all sorts of things.

It's no accident that lawyers account for more politicians than any other professional occupation group.

I think there's an increasing trend for people to use their legal skills in government and business and merchant banking and the like. And I see that as a good thing.

I think it's a very good idea for people with law degrees to get some practice as solicitors or barristers before they go into those wider areas of practice.

But having said that I think that a lot of the attrition is because of the unacceptability of demands that are made on lawyers generally and of our often unpopular public perception, to be wary of going out and telling someone you're a lawyer and being harangued for the wrongs of the legal system generally or being told dreadful stories of divorce and how badly treated they were by their own lawyers and by the system.

[T]here will continue to be a large attrition rate whilst the demands that are placed are unrealistic and whilst people see that they're just not getting enough personal satisfaction, financial satisfaction or other lifestyle satisfaction in what they're doing.

Do you have any advice to young lawyers starting their careers?

I think a career in law can be a very exciting and rewarding thing.

It's important to keep a perspective about what you want to do and where you see yourself in your practice and in your life.

So, seeing it as a capacity to achieve real good, or to achieve change.

There is a difference, I think, between a profession and an occupation and that difference means an adherence to some higher values of doing good generally rather than simply advancing yourself as much as you can.

So I think keeping that in mind, looking beyond the next day or the next week or the next year to what sort of a person you want to be and what sort of a practitioner you want to be is really important.

Enjoying what you do is terribly important, having a passion for it, so if you're not happy where you are, thinking of changing rather than thinking you've got to endure this for the rest of your life.

[T]here's ... lots of ways to go about achieving what you want ... [Look] at how those who have actually [got-ten] there and see what they've done and whether you can do that too or whether you want to pay the price.

I think a lot of us are in a great hurry to do things, we don't need to be in such a hurry, there's plenty of time to pursue other interests and have other lives as well as have a fulfilling and important career and practice.

NOTES

1 The interview was conducted on 19 April 2001 at Ms Hampel's chambers.