

DIVERSITY ON THE BENCH: MY PERSONAL JOURNEY

Celebrating Women in the Judiciary – Women Lawyers Association (NSW)

Speech Delivered by Judge Robyn Tupman on 6 November 2024

Amended November 2025

I acknowledge that we are here on the land of the Gadigal people of the Eora Nation and pay my respects to their elders past and present and acknowledge any Aboriginal and Torres Strait Islander people present.

Thank you to the Women Lawyers Association for inviting me to make a contribution to this celebration of women in the Judiciary and in particular to congratulate and welcome some of the new Women Judges who have been appointed over the last two years. Thank you to Ashurst for allowing us to be here in this fabulous space – quite properly referred to on the WLA website as the gorgeous terrace. And congratulations to all the new Judges who are here today to be welcomed to the judicial sisterhood.

This was my brief from your President:

“Please speak for 5 to 7 minutes about your experience as a judge; the things that you have witnessed during your time on the bench with reference to the gender and diversity of judges changing over time; your hopes for the future of the judiciary, and any anecdotes or wisdom you would like to share with the group.”

That is quite a task but I will do my best to fulfill the task.

So, as Julie Andrews said, let’s start at the very beginning, looking at my judicial journey as a way of addressing the evolving issue of gender diversity in the judiciary. I have been a District Court Judge now for almost 30 years, appointed on 31 January 1996. When I joined the Court, I was one of 4 women on the Court and by the end of 1996 there were still only 5, after Her Honour Helen Murrell, SC was appointed. That was from a total of 57 Judges. So about 8%.

In the early days I discovered that my name was recorded on the Court List in my Court, and on the JMT Foyer List, as “*His Honour Judge Tupman*”, with the “*His*” whited out and “*Her*” written over in pen. I protested and was told by the Court staff that it couldn’t be changed because - “*computer says no*”. I responded in the way that perhaps you might expect and in response the Chief Judge, Reg Blanch, told the staff that this was rubbish, to change it and they did.

Equally I started to receive Notices of Appeal from the Court of Appeal addressed to “*His Honour Judge Tupman*”. I also advised them that they’d made a mistake, but they persisted. I took it up with Chief Justice Spigelman, adding

that I thought it unlikely that Justice Simpson would put up with that. He agreed and they also changed. I still have the correspondence which I'll publish in my memoirs one day.

Also, in those early days some male barristers used to refer to me as "*His Honour*" in Court. I was not used to that because I had not come from the Common Law Bar. I did a lot of Family Law when I was at the Bar and family law barristers used to be able to tell the difference between men and women. They didn't seem to have any trouble correctly addressing the women Judges in the Family Court as "*Her Honour*".

This District Court Common Law practice all came to an abrupt end one day in court, after it happened again. A male barrister X said to a witness:

"Please tell His Honour what happened."

I said:

"Mr X (male barrister) is there something about me you haven't noticed?"

He never did it again and nor did anyone else. I know I've told this anecdote before and it is funny, but it is also serious and an indication of the importance of words. I had no doubt back then that this wasn't just a slip of the tongue – it was deliberate - or if it wasn't deliberate, it was an indication of such an entrenched culture in that part of the Bar that it needed to be brought to an end immediately.

Even getting to that low 8% of women on the District Court was not without its difficulties. The late Honourable Jane Mathews, AO had been the first woman appointed to the District Court, but by 1996 she had left, going to the Supreme Court, the Federal Court and to the position of President of the AAT. In 1994 there was a strong push to address the very real gender imbalance in the District Court. Not only that court – at that stage there was only one woman on the High Court, namely the Honourable Mary Gaudron, KC – but as a percentage that was about 14%. Also of great interest and concern was that there was only one woman at that time on the NSW Court of Appeal and Supreme Court, namely the Honourable Carolyn Simpson AO, from a total of 43 so only just over 2%.

But it wasn't as if women were missing in action in the profession at the time. By 1996, when I was appointed to the District Court, there had already been a woman elected as President of the Law Society in 1982, namely Mahla Perlman, AO who went on to become the Chief Judge of the NSW Land and Environment Court. There were at least two practising Silks at the time, one of whom was the Honourable Ruth McColl AO, who became the first woman to be President of the NSW Bar, later a Judge of the NSW Court of Appeal and who was President of the WLA at the time. A quick scroll through the Almanac for the year shows that there were many women at the Bar, and in the solicitors' branch, many of whom

went onto great things, including our own patron, The Honourable Virginia Bell AC and two people here tonight Justice Anna Katzmann from the Federal Court, who had been President of the NSW Bar and Justice Sarah McNaughton from the Supreme Court of NSW, who was the first female Commonwealth Director of Public Prosecutions. There was no lack of talent.

As I said, in early 1994 there was a push to appoint women to the District Court. There was only one woman on the Bench at that stage, Her Honour Angela Karpin AM, who had been Deputy Chief Magistrate. This organisation, the Women Lawyers Association of NSW, was at the forefront of that push. There was also very strong support for this from the Bar Association at the time, spearheaded by the President the late Murray Tobias, AM RFD KC who these days would probably be described as a *“Male Champion of Change”*. I think his resolve to be a champion was probably strengthened by the then CEO of the Bar Association, the late Babette Smith OAM, a formidable woman.

Now we all know, don't we, that historically whenever this issue of lack of gender diversity or representation is raised in many areas, like sporting clubs, private clubs, offices and the like, the old chestnut response has always been, *“Oh we can't have 'the ladies' because we just don't have the facilities – we don't have the toilets.”* We all recognise that for what it is, and it gives off the correspondingly strong whiff. But back then in 1994, the response was slightly more nuanced. When government was pressured to appoint more women, the response was, *“We can't appoint more women to the District Court, because no one will take it!!”*

Well, that response had about as much validity as the missing toilets response, but an even stronger whiff about it. Fortunately, the Bar Association decided to treat that as a challenge and Murray Tobias, almost certainly also strongly encouraged by Ruth McColl and Anna Katzmann, rang around a number of senior counsel and senior juniors at the Bar to ask the question, *“If asked would you take the job?”* I was one of those people asked and I answered, *“Yes I would.”* Murray Tobias then put that list together and gave it to the Attorney General.

Now it took a while to get to me because the government probably thought that they had risen to the challenge after they appointed a woman from that list, the late Cecily Backhouse, QC, in March 1994. She was the most senior judge on Murray's list. They appointed Margaret Sidis in early January 1995. Margaret was a leading Sydney solicitor at the time, so she probably wasn't on that list. The list went into abeyance for a while until the campaign was revived after the government changed in March 1995 and the list was forwarded to the new Attorney General. Murray Tobias rang me again some time in 1995 and asked me, again, whether if asked I would say *“Yes”*. My response was, *“Murray - yes, means yes.”*

By the end of 1995 then, there were 3 women District Court Judges. I was appointed on 31st January 1996 and Helen Murrell, who I think had also been on the list, in September 1996.

So that was a long campaign to prove that the very low number of women on the District Court was not because there were no women who would take the job. But it took a lot of time and effort, and needed support from organisations like the WLA and to cut through the misinformation. And all of that is not ancient history – it was only 29 years ago. I know to some of you that seems like ages but to me it doesn't seem so long ago.

But it took a lot of effort to make it happen and to continue, but with at least some encouraging results. After next Monday, 11 November 2024, when 3 new Judges will join the District Court, we will have a total of 90 judges of whom 37 are women, so 41%. Of significance also is that since April this year, for the first time, we now have a woman Chief Judge of the District Court of NSW, Her Honour Justice Sarah Huggett.

There are now 15 women Judges on the NSW Court of Appeal and Supreme Court, from a total of 53, so 28%, including the President of the Court of Appeal, the Honourable Justice Julie Ward. Hopefully one day the ceiling will crack even further, and we will have a female NSW Chief Justice. I hasten to add, in making that comment, I mean no harm whatsoever to the current incumbent who is a supporter and a male champion of change.

Also we know of course that there has been a significant change to the gender balance of the High Court of Australia including the Honourable Susan Kiefel, AC as the first woman Chief Justice of Australia, and a time when the majority of Judges on that Court were women. There is now a woman at the helm of the Federal Court of Australia, the Honourable Chief Justice Debra Mortimer and there are many other Chief Judges and women judges in senior and leadership positions through the various courts of Australia. So, things are changing in relation to gender diversity.

But of course, diversity can't just be measured in numbers and isn't just a question of achieving equal numbers. It is about real equality and trying to push for a society, including within the judicial arm of government, where true equality and diversity is not remarkable and just comes about as a matter of course without the need for campaigns. I am reminded of what the late Justice Ruth Bader Ginsburg said when she was asked about having women appointed to the US Supreme Court. She was asked *'When do you think it will be enough? When will there be enough women on the court?'* Her answer, *"When there are 9"* because, she went on to say, it has never raised an eyebrow when there were 9 men on the Supreme Court.

Noone can rest on her laurels of course, because as I've said in other places, the price of equality is eternal ratbaggery and the gender diversity, which we would like to happen as a matter of course, still doesn't come without a push. It isn't easy to stand up and be a rat bag about these sorts of things. It doesn't always make you popular and sadly not always amongst other women in the profession and what's more not everyone is comfortable or good at dealing with the confrontation that often occurs. But it does require everyone to be vigilant about these issues and call out bias and discrimination when it happens.

So that's just a few thoughts and a bit of history about the evolution of gender diversity in the District Court of NSW in particular and the small part I've played along the way. I'm now the most senior woman Judge in Australia in terms of longevity as a Judge. I more or less share that honour with my colleague on the Supreme Court of Tasmania, Justice Helen Wood, who has been a judicial officer longer than I have, but she started as a magistrate and there is some distinction about who has been a judge longer, as opposed to who has been a judicial officer longer. This is almost entirely semantic however.

But the statistics make it clear that it is an ongoing challenge to achieve gender diversity – it isn't over. Other aspects of diversity are also important. One question often asked is, *"Why is judicial diversity important?"*. As for gender diversity I have long been a proponent of the role of symbolism in this area, and of the adage, *"you can't be what you can't see"*. That goes for high level government leaders and leaders in the legal profession generally too, but as for the judiciary it is important for women to be appointed as Judges as role models for women in the legal profession generally. Also to normalise the proper role of women in the judiciary.

High Court judge, the Honourable Justice Jacqueline (Jackie) Gleeson, in an Article in *The Judicial Review* in 2022, addressed the issue of gender diversity in the legal profession more broadly but said that in our efforts to achieve gender diversity, including in the judiciary, we should consciously include people of other identity groups – people from diverse ethnic and cultural backgrounds, socio-economic backgrounds, abilities, genders and sexualities. With respect I agree with Her Honour, although I must say that I am hoping that my male colleagues will share that load because whilst as women we are pretty good at doing more than one thing at a time, and holding up the universe, sometimes it gets a bit tiring.

But there are many good reasons to aim for diversity in the judiciary. One is symbolism – to be representative of the community which we serve. In my view another really important reason for diversity, and especially gender diversity, is because whilst we all apply the law dispassionately and without fear or favour, affection or ill will, everyone comes to the court with their own life experiences which affect their approaches to issues, and ultimately decisions, and

also, in my experience, the ability to see a practical solution to a problem which often arises from day to day experience of life in all its aspects.

Also, the community's trust in the courts is likely to be higher if they see people on the court who come from different and diverse backgrounds and as Justice Gleeson pointed out, studies have shown that exposure to people from diverse backgrounds plays a big part in curtailing implicit bias and curtailing structural inequalities.

So keep up the fight for gender diversity. Take others along with you from marginalised groups and, in particular, I mention indigenous Australians. The next District Court judge appointed after me in 1996 was Bob Bellear, the first indigenous NSW District Court Judge. He was a role model but more is needed in this area.

We can't solve every problem, but we can take other groups along with us. Importantly, as we achieve and succeed, we should reach down to help others up and make our shoulders available for others to climb on. Do our bit to encourage diversity by promoting women and others within marginalised communities into positions within our control - into our firms as lawyers, onto our floors as readers, as our Associates if we are Judges, put forward for positions of leadership, representation, and acknowledgment within the community. Don't be backward in supporting people for these positions and honours.

I have so far had quite a range of Associates – young law students, older graduates, people doing PLT, a young Afghan woman completing a law degree at WSU, someone with 1st Class Honours in History from UNSW, members of the LGBTQI community, short ones, tall ones, blonde hair, dark hair, even red hair! Two ridiculously beautiful former models who are now DPP solicitors, and one former Associate who went on to become a Magistrate. The full range.

So, there you have it. A little more than 7 minutes and unfortunately not quite as funny as my speeches usually are. But a bit of a pep talk. When I was sworn in on 31 January 1996, I acknowledged that part of the reason I was chosen and offered the position was because of my gender. Now that you know how it all came about, you will recognise that this was true. At the time, in that speech, I said that whilst it was no doubt true that this was part of the reason, I didn't apologise for that. After almost 30 years I still don't apologise for that, but I hope I can say, without hubris, that I think I've proved the merit bit.

So, congratulations to everyone. It is a big and important step that everyone takes when she becomes a judge. The sisterhood is behind you – wear you gender and your obvious merit with pride.

Thank you, Women Lawyers Association, for this soap box tonight