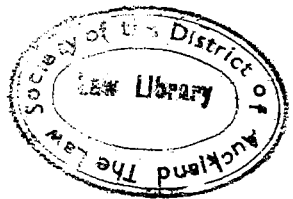


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AUCKLAND DISTRICT LAW SOCIETY

Report of the Working Party on Women in the Legal Profession



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1. INTRODUCTION

1.1. The Working Party on women in the legal profession was established in July 1981 by the President of the Auckland District Law Society to enquire into and report on the position of women in the profession in the Auckland District.

1.2 The members of the working party are :-

Rod Hansen (Convenor)
Denise Bates
Sian Elias
Norman Elliott
Rodney Harrison
Deirdre Milne
John Phillips
John Sheppard
Briar Wilson

Pam Mitchell was a member of the working party but resigned for personal reasons on 19th August 1981. Hannah Sargisson was co-opted to take her place.

1.3 The Working Party's terms of reference were unrestricted but it was asked to include the following matters in its inquiry and report :-

- (i) The essential facts relating to women practitioners such as numbers, status and age.
- (ii) The role of women in the profession as compared to that of men.
- (iii) Whether there is evidence of prejudice or discrimination against women practitioners and, if it exists, the reason for such discrimination.
- (iv) Whether there is evidence that the public are prejudiced against women practitioners.
- (v) Overseas trends.
- (vi) If there is evidence that the position of women in the profession is less favourable than that of men, recommendations to rectify the situation.

1.4 The Working Party found that there was very little information available beyond the bare data recorded on the Law Society's roll of practising members. No inquiry of this nature had been previously undertaken in New Zealand. A survey in 1980 by the Committee on Women, the official advisory body to

the Government on all matters concerning the role and status of women, was limited to five questions to Wellington firms designed to elicit their policy and practice on employment of women and their admission to partnership. The Working Party resolved to give priority to producing its report at an early date. If its preliminary research clearly revealed an unsatisfactory state of affairs, it was felt that this should be made known and any recommendations considered without delay. Further studies could be commissioned, if required as part of the follow up to the report.

1.5 The Working Party drew on the following sources of information :-

1. New Zealand and Auckland District Law Society enrolment records and annual reports.
2. Survey by the Working Party of male and female practitioners admitted during a comparable period in the mid seventies.
3. Survey by the Working Party of women currently holding practising certificates in the Auckland District.
4. Survey of 1981 law professional students carried out by the Faculty of Law, University of Auckland.
5. Statistics on enrolment, academic progress and graduation of law students compiled by the Faculty of Law, University of Auckland.
6. Heylen Poll of practitioners carried out on behalf of the New Zealand Law Society in 1977.

The Working Party has also drawn on overseas publications relating to women in the professions. Where possible all sources are acknowledged in the text.

1.6 There are more women members of the legal profession, in absolute and proportionate terms, than ever before. Their numbers are certain to increase. In this the legal profession is merely participating in a social change which has had a profound effect on the traditional roles of women. The Working Party believes that this provides a challenge to profession. The profession needs

to assimilate such social change; not only in order to serve the needs of the community as a whole, but also to ensure that its own members have a fair and equal opportunity to progress within the profession.

1.7 The Working Party's research establishes that the legal profession has to some extent failed to meet its obligations in this regard. Discrimination on the ground of sex does exist in the profession. Such discrimination is unprofessional and, in some cases, unlawful. It is also difficult to detect and hard to eliminate. Nevertheless a profession which has a responsibility to promote justice for all citizens cannot condone unequal and unfair relationships among its own members. The rights and privileges of membership as well as the obligations should be available to all who are admitted to its ranks. The purpose of this paper is to help the profession attain this objective.

2. THE POSITION OF WOMEN IN THE PROFESSION

2.1 Numbers

2.1.1 Separate statistics for women were not kept by either the Auckland or New Zealand Law Societies until 1977. A comparison between 1977 and 1980 shows the increase in the number of women practitioners.

	Total	Men	Women	% Women
<u>1977</u>				
N.Z.	3680	3512	168	4.5
Auckland	1346	1268	78	5.8
<u>1980</u>				
N.Z.	4016	3737	279	6.9
Auckland	1506	1382	124	8.2

2.1.2 The trend, both nationally and in Auckland is that women comprise an increasing proportion of new admissions. Over the period 1977 - 1980 women comprised 33% of new admissions in New Zealand and 29% of admissions in Auckland. Of those admitted in Auckland in 1980 49 or 37.4% of the total were women. The proportion rose to 44% of those most recently admitted, in October 1981.

2.1.3 The number of women enrolling at and graduating from the Law Faculties of New Zealand Universities is probably the most accurate indication of future trends. The following relating to the Faculty of Law, Auckland University, is illustrative.

	First Year Enrolment			Graduation		
	Men	Women	%	Men	Women	%
1971	108	28	20.5	98	4	3.9
1974	183	61	25.0	152	10	6.2
1977	131	57	30.3	120	19	13.7
1980	188	93	33.1	111	42	27.4
1981	122	118	49.1	102	48	32.0

2.1.4 The dramatic increase in the number of women graduating is reflected in a corresponding increase in the numbers of women admitted. This trend seems certain to continue. The steady increase in the proportion of women enrolling and graduating from law school will result in similar numbers of men and women graduating in law in the mid eighties. Most law graduates who complete their law professionals also seek admission to the profession. By 1985 or soon after the Working Party expects equal numbers of men and women to be entering the profession. By 1990 it is expected that roughly half of young members (i.e. those of seven years experience and less) will be women.

2.2. Personal

2.2.1 According to the records of the Auckland District Law Society there are 139 women currently holding practising certificates in the Auckland District, excluding those admitted in October 1981. They comprise :-

		%
Partners	10	7.2
Sole practitioners	11	7.9
Barristers	11	7.9
Employees	107	77.0
	<u>139</u>	<u>100.0</u>

2.2.2 Based on the Working Party's survey of 122 of those holding practising certificates women practitioners are in the following age groups :-

40 years and over	9.9
30 to 40 years	28.1
Under 30 years	62.0
	<u>100.0</u>

The offices in which they practise are situated in:-

Auckland City	62.6
Auckland suburbs	25.2
Provincial towns	12.2
	<u>100.0</u>

73% have been admitted since 1975.

2.3 Involvement in Law Society Affairs

There is one woman on the Council, the first woman to be elected to the Council of the Auckland District Law Society. Sixteen women serve on Law Society subcommittees, six on the women's subcommittee.

Ten therefore serve with men on general subcommittees of whom three are on more than one subcommittee. If the women's subcommittee members are excluded, women occupy 6.8% of subcommittee positions which leave them slightly under-represented in comparison to their numbers (8.2% of practitioners).

2.4 Academic Achievement

Women at the Auckland law school have consistently shown a better university record than men. The Faculty of Law at the University of Auckland compared the overall degree pass rate of male and female students between 1973 and 1977 the results were :-

	<u>Men %</u>	<u>Women %</u>
1973	92	92
1974	87	91
1975	88	94
1976	86	90
1977	91	94

Women's grades were markedly superior as is seen from the following comparison of the percentage of each sex obtaining A or B grade passes in a typical

year :-

	<u>Men %</u>	<u>Women %</u>
Criminal Law	34.7	35.3
Legal System	44.5	54.5
Torts	34.3	49.5
Contract	37.3	53.7
Land Law	29.5	52.2
Equity	59.1	67.4
Family Law	59.8	62.0

3. DISCRIMINATION AGAINST WOMEN IN THE PROFESSION

3.1 The Working Party accepted as a basic premise of its inquiry that men and women should have an equal opportunity to enter and progress in the profession; that discrimination on the ground of sex is as repugnant as discrimination on the ground of race, religion or political beliefs. This principle is no longer controversial. It is Government policy in most developed countries and many others as well. The Human Rights Commission Act 1977 in New Zealand has purported to give it legislative effect. The legal profession's role in the administration of justice gives rise to a particular obligation to ensure that the principle of equality is applied to its members. To fail to do so would also affect the profession's ability to serve a community which increasingly expects women to be fully represented in the profession as well as in the Courts and other bodies which require the presence of trained lawyers.

3.2 The Working Party's primary sources of information are the two surveys of practitioners in the Auckland District already referred to :-

- (i) A survey of men admitted at the end of 1975 and the beginning of 1976 and of women admitted between the end of 1974 and the beginning of 1976. This was the earliest period when statistically significant numbers of women entered the profession. It was extended to cover women admitted one year earlier to increase the number of women interviewed without distorting the sample. In the event 56 practitioners answered the questionnaire, 41 men and 15 women (26% of the sample).
- (ii) A survey of all women who are currently holding practising certificates in the Auckland District. Of the 139 in this category 122 responded to the questionnaire.

4. EVIDENCE OF DISCRIMINATION.

4.1 Comparative survey of men and women

The primary evidence of discrimination against women came from the survey of men and women admitted in the mid seventies. Four areas were identified for investigation :-

- (i) Employment
- (ii) Salary.
- (iii) Areas of work.
- (iv) Partnership admission.

For the purposes of comparison we sought details of experience and academic and other qualifications.

4.2 The relevant information disclosed by answers to the Questionnaire is as follows :-

Average age

	<u>Men</u>	<u>Women</u>
Employee	29	30
Partner	29	30
Sole Practitioners and Barristers	31	29

Legal Experience (years)

	<u>Men</u>	<u>Women</u>
Employees - Total	5.2	6.7
- Post Admission	4.2	5.5
Partners - (at time of admission to partnership) - Total	4.2	7.5
- Post Admission	3.3	7.0
Sole Practitioner - (at time of commencing practice on own account) - Post Admission	-	4.5

Academic Achievement ¹

	<u>Men %</u>	<u>Women %</u>
In top 25% of class	39	27
In next 25% " "	41	40
In next 50% " "	8	30
Employees - in top 50% of class	72	67

Status

	<u>Men</u>	<u>Women</u>	<u>Total</u>
Employed	18	10	28
Partner	18	2	20
Sole Practitioner	4	1	5
Barristers	1	2	3
	<u>41</u>	<u>15</u>	<u>56</u>
	===	====	====

Absence from work - more than three months

	<u>% Men</u>	<u>% Women</u>
Employees	60	40
Partners	39	-

Employment

	<u>Men</u>	<u>Women</u>
Number of job applications required before obtaining first job (average)	1.9	2.0
Time taken to obtain first job (months)	1.3	1.7
Number of jobs held in law offices (average)	2.1	2.1

Salary

Average annual	\$19,086	\$17,786
Average per year of experience	\$ 3,706	\$ 2,646

Area of Work

	<u>Employees</u>		<u>Partners</u>		<u>Others</u>	
	<u>Men</u>	<u>Women</u>	<u>Men</u>	<u>Women</u>	<u>Men</u>	<u>Women</u>
Conveyancing	2.5 (3)	4.5 (5)	8.5 (1)	.5 (1)	-	-
Commercial	2.5 (3)	-	3.5 (6)	-	2	-
Common Law - Matrimonial	3.5 (4)	3.5 (4)	2.5 (3)	-	-	-
Common Law - Non Matrimonial	7.5 (8)	-	2.5 (3)	1.5 (2)	1	2
General	2 (2)	2 (2)	1 (1)	-	2	1
	<u>18</u>	<u>10</u>	<u>18</u>	<u>2</u>	<u>5</u>	<u>3</u>
	====	====	====	===	==	==

1. These figures were based on the respondents own assessment and should not be taken as a reliable indicator. Their subjectivity is revealed by the statistically improbable claim by 80% of males that they were in the top 50% of their class. Based on the University of Auckland's research (paragraph 2.4) a contrary indication could be expected.

(N.B. Where Respondents are involved in two areas of work each has been given a factor of .5. The number actually involved in each areas shown in brackets in each case).

4.3 Interpretation

The conclusions which can be drawn from the results of this survey are as follows :-

- 4.3.1 Employment. There was no significant difference in the time taken or the number of applications required to obtain the critical first job. However, the survey covered only persons who actually got jobs. It is unsafe to conclude, on the basis of this survey alone, that there is no discrimination in this area.
- 4.3.2 Salary. The salary differential of \$1,300 per annum in favour of men is significant when measured against the criteria of age, academic achievement and, particularly, legal experience. Employed women had on average eighteen months more legal experience than male employees. If salary is related to experience (which it is to some extent in the early years of legal practice) male employees are paid 40% more - \$3,706.00 for each year of experience compared to \$2,646.00 for women.
- 4.3.3 Area of Work. The women are practising mainly in the conveyancing and matrimonial areas. Except for one female partner none are involved in commercial law. A significant number of male partners are doing commercial and conveyancing work, frequently a combination of the two.
- 4.3.4 Partnership. The most striking evidence of discrimination relates to admission to partnership. 44% of the men have been admitted to partnership, only 13% of the women. At the time of admission to partnership the men had averaged 4.2 years legal experience (3.3 years post admission); the two women 7.5 years (7.0 years post admission). The disparity cannot be explained on the basis of age (no material difference), legal experience (greater on average for all women), continuity of service or ability as measured by academic performance. It does appear however that family associations gave some advantage to men, although insufficient to account for the disparity. Five of the men became partners in family firms. It cannot be supposed that none of these would have become partners without their family connection. Be that as it may, if they are

excluded the proportion of men admitted to partnership is reduced to 32%, still well in excess of the 13% of women who are partners.

4.4 Survey of Women.

4.4.1 The second source of information as to possible discrimination against women was the survey of women practitioners in the Auckland District. Of the 139 women holding practising certificates 122 were interviewed. They comprised :-

In legal practice - employees	84
- partners	10
- Sole Practitioners	9
- Barristers	6
Civil service and local body	6
University	3
Commerce	3
Unemployed	1
	<hr/>
	122
	=====

Of the 13 women not in legal practice 8 had tried but had been unable to obtain a job in private practice.

4.4.2 Women practitioners were asked to advise whether they had experienced discrimination in the four areas identified. The percentage who gave affirmative answers were as follows :-

Obtaining employment	40%
Salary	27%
Scope and level of work	31%
Partnership	61%

4.4.3 The questionnaire also attempted to ascertain whether women experienced other forms of discrimination from their male colleagues.

60% said they had experienced resistance to acceptance of their professional skills by reason of their sex.

81% considered that the fellowship of the profession was not unreservedly extended to women members.

42% said they had been subjected to discrimination in the form of belittling or embarrassing talk or conduct.

4.4.4 The perception of discrimination of women partners was significantly lower than that of women members generally. Five of the ten, including two who practised in small family firms, reported that they had experienced no discrimination at all. Women who practised in family firms also experienced less discrimination than the average women member. In contrast the perception of discrimination of barristers and sole practitioners was higher than average. Perception of discrimination appears to correlate to career ambitions. Seven of the fifteen barristers and sole practitioners identified lack of partnership prospects as a reason for going into practice on their own account. Of the women in family firms a low proportion aspired to partnership, 47% compared to 91% of all women.

4.5 Conclusions

4.5.1 The results of the Heylen Poll taken before the 1978 N.Z.L.S. Conference showed that more than 80% of practitioners welcomed the increasing number of women entering the profession, saw them as committed to a career, accepted them as suitable to hold positions of authority over men and considered them to be as suited as men to all aspects of legal practice. The Working Party's investigations suggest either that the minority is exercising a disproportionate influence or that the profession as a whole is saying one thing and doing another. Whichever is true the profession is clearly failing to give women the opportunities which an overwhelming majority believe to be their due. The totality of the evidence produced by these and other surveys shows that discrimination exists in all four areas identified.

4.5.2 Employment. The evidence indicates that there is discrimination in this area. 40% of the women questioned consider it does. The comparative survey was inconclusive, but it covered only those who obtained and remained in employment. It also related to a time when jobs for graduates were more readily available. In times of unemployment it is more likely that the discrimination revealed in other areas of employment will show itself also in attitudes to female job applicants. This finds support in a 1981 survey of law professional students which found that 45% of women looking for law office employment were unemployed compared to 34% of men. Furthermore, the Working Party has been advised by both men and women that some employers have unequivocally stated that they will

not employ a women solicitor. The survey of Wellington law firms carried out by the Committee of Women also concluded that some firms do not as a matter of policy employ women lawyers.

4.5.3 Salary. Most women do not think there is discrimination against them in salary progression; only 27% thought there was. The comparative survey shows otherwise. If anything, it may understate the extent of the disparity between salaries paid to men and women. Based on factors such as experience and continuity of service it might have been expected that the women surveyed would have been receiving higher salaries than the men. The extent of discrimination may be greater still when it is considered that, if women were given equal opportunity for admission to partnership, some of those surveyed would have been principals.

4.5.4 Areas of Work. 31% of women considered that they were discriminated against in the areas of legal practice available to them. The comparative survey suggested that women were discouraged from entering some areas of legal practice, particularly commercial law. It showed that women were primarily engaged in matrimonial and conveyancing work; a finding which meshes with the Heylen Poll finding that many lawyers (27.9%) consider women practitioners are more suited to matrimonial and conveyancing than other work. (This notwithstanding the belief of over 80% that women had the necessary qualities to be successful commercial and courtroom lawyers). It is inevitable that in some measure the discrimination which the survey reveals in other areas is excluding women from certain areas of specialisation. The extent of this cannot be defined but clearly a significant minority of women feel affected by it.

4.5.5 Partnership. The clearest evidence of direct discrimination is in admission to partnership. Significantly this is the area where most women (61%) perceive discrimination to exist. It is also the point at which women are most vulnerable to the antagonism of a minority of their male colleagues. The opposition of one partner is sufficient to block admission to partnership. Many direct reports to the Working Party confirm that in a number of Auckland firms a woman employee has no chance of becoming a partner because one or more of her employers will not under any circumstances admit a woman to partnership. The

Wellington survey also reported that some Wellington firms have a policy against admitting women to partnership.

4.5.6 Although an overwhelming majority of practitioners welcome the presence of women in the profession most women have experienced resistance in one form or another. This ranged from the 81% who felt that the fellowship of the profession had not been unreservedly extended to women to the large minority (42%) who had experienced more overt forms of sex discrimination. Whilst some may ascribe this to the sensitivities of a minority, there can be no doubt that it exists and is practised, consciously and unconsciously, by male members of the profession.

4.5.7 In a small, but not insignificant way, the failure of the profession to accord full recognition to the presence of women can be seen in the facilities we provide for them. Their robing room in the Auckland High Court is totally inadequate. Even in the proposed new High Court the women's robing room, much smaller than the men's and situated downstairs, suggests that we have failed to appreciate their future presence. The Court of Appeal building, with one temporary robing room, does not recognise their existence at all.

4.5.8 The annual practising certificate of barristers and solicitors also assumes that all practitioners are men. Many legal forms do too. These things, minor in themselves, are irritants to women practitioners. The Law Society often patronises clubs and other organisations which exclude women from membership. This is offensive to some women members and is inconsistent with any stand against discrimination. The Working Party sees these as instances of a lack of awareness of the sensitivities of women and as a failure to appreciate their continuing presence in the profession.

5. CAUSES OF DISCRIMINATION

5.1 The instrumental cause of discrimination against women is, of course, the attitude of men. It is often expressed in the form of cherished convictions as to the proper role of women. Although half a century has elapsed since women won a protracted struggle for the right to vote, in many respects

they continue to occupy a subordinate status in society. In spite of the fact that men also have children, there is a tendency to regard all women in relation to their biological function and this, more than anything else, prevents them from assuming their rightful place in the community as equals with men.

5.2 The arguments most often put forward to explain or excuse discrimination are as follows :-

- (i) That women's careers are likely to take second place to bearing and raising children. The profession is a secondary role.
- (ii) That women are less intelligent and less capable than men or because of their manner and psychology are less suited to a career in an adversary system.
- (iii) Women are less acceptable to clients than men.
- (iv) Women have equal opportunities but fail to take full advantage of them.

Each of these propositions will be examined.

5.3 The profession is a secondary role.

5.3.1 This proposition assumes that because some women will choose to interrupt their careers to bear and raise children it is fair and reasonable to treat all women as if they will. It assumes that those women who do have children cannot continue in or return to the profession. It also involves an assumption that parental responsibilities will affect only women's careers. All these assumptions fail to treat women as individuals who, like men, will have a number of options open to them at various stages of their career which they will exercise according to their personal wishes and priorities. These beliefs require that women be treated as an homogeneous group who, after many years of training, will choose to forsake their career to concentrate exclusively on raising children. The reaction of women to this attitude was well put by Diana Cheeld in the English Law Society's Gazette in 1976 :-

"The Bar with exceptions, does not take women practitioners seriously. It is assumed that

no woman is capable of giving the long commitment necessary for a career at the Bar, because all women have babies. This is unfair to the many women who never marry or have children; it is unfair to married women who decide against a family and it is unfair to married women who decide to combine a career and a family, making their own domestic arrangements accordingly".

5.3.2 Only 28 (23%) of the women we surveyed had children and of these 11 had been admitted after their children reached school age. Many women who do choose to have children will not interrupt their careers to any great extent. Six of the 17 women we spoke to who had had children after admission had returned to work after only a short break. Furthermore, it is well established that women who are highly qualified tend to return to work more quickly after having children than those who are less well qualified.¹ One possible reason for this is the social value of their work which means they have to overcome less resistance from society. Another is the greater personal investment they have made in education and training. Also higher earnings make satisfactory childcare arrangements more accessible.

5.3.3 Fears of the disruption associated with childbearing and childrearing seem to be greatly exaggerated. Pregnancy provides a generous period of notice; ample time to re-arrange work or employ replacements, and a great deal more than is commonly given or expected from departing staff and partners.

Women who decide to return to work straight after having a child are away for no longer than the usual sabbatical term of three months. 90% of firms of four partners or more affected by our survey have schemes for sabbatical leave. There is no reason why a similar period of leave could not be available for maternity purposes.

5.3.4 The demands of maternity are only one of many reasons why practitioners, both men and women leave their jobs. There was little difference in the "drop out rate" of men and women admitted during

1.Kitzinger, S., Women as Mothers, (Fontana/Collins, London, 1978) p.26 cited in "Careers of Professional Women", Silverstone & Ward (Croom Helm, London, 1980) p. 211.

the period covered by the comparative survey. 48% of men and 52% of women admitted in the mid seventies no longer practise in the Auckland district. This reflects the increasing mobility of members of the profession. Job changes are frequent. Men and women leave their positions for a wide variety of reasons - overseas travel, study, politics, employment outside the profession, sole practice. Partnerships are no longer the "til death us do part" arrangements they once were. An uninterrupted legal career in one office is by no means the norm. There is no basis for putting parental responsibilities in a different category from other reasons for leaving the law. There are no grounds for saying that the possibility of a woman having a child in any way weakens her commitment to a legal career or her ability to fulfill its demands. Each person, man or woman, is entitled to be judged as an individual free of generalised assumptions as to the degree of his or her commitment to a legal career.

5.3.5 It is necessary only to look at women in other professions for confirmation that women are at least as capable as men of fulfilling a commitment to a career. In teaching, nursing, social work - the professions where women have "traditionally" worked - women have taken their full place. The great majority of support staff in legal offices are of course women. It has never been suggested that their parental role, potential or realised, should limit their opportunities.

5.4 Women are unsuited to a legal career

5.4.1 The Auckland University records reveal that women achieve better academic results than men. It is unnecessary to decide whether this is attributable to intelligence, industry, aptitude or motivation. It suggests that on graduation women are if anything better equipped for a legal career than men. The view persists, however, that a woman's manner and psychology, her "feminine qualities" render her less able to cope with the demands of legal practice, or, at least, some aspects of it.

5.4.2 The Heylen Poll found that 27.9% of practitioners saw women as better suited to matrimonial and conveyancing than other aspects of legal work. A much smaller, but significant proportion, considered that :-

- Women cannot stand up to the rigours of legal practice 10.6%
- Women are not assertive enough to be successful Courtroom lawyers 18.1%
- Women do not have sufficient business sense to be good commercial lawyers 16.8%

The questions themselves make some doubtful assumptions about the prime qualities required for success at the bar. Many other qualities, some arguably of greater importance than those identified, are required. They are found in widely varying proportions in leaders of the profession. There is no special recipe; it is the unique blend of temperament and ability in each individual which counts.

5.4.3 To the extent that the essential qualities can be identified, there is no basis for contending that men have them and women dont, or that they are found more often in men than women. For every tireless, assertive or shrewd man there is a tireless, assertive or shrewd woman. Qualities of tenacity, intelligence, eloquence, common sense and aggression are found as often in women as in men. Every practitioner must be judged on merit.

5.4.4. Some argue that men and women bring different qualities to the profession.

"....women barristers can make a separate contribution, and...the bar will be the loser if women are forced to behave just like the men. The "masculine approach" of the bar is characterised all too often by a combination of arrogance and insensitivity; and the sort of qualities which women can bring to their work (and which need not exclude the power to reason) are a greater awareness of people's feelings, a sense of humility and a genuine desire to help their clients rather than to impress them". 2

The Working Party does not accept that either sex has a monopoly of the qualities required for legal practice. If all practitioners are judged as individuals, and solely on the basis of the contribution they have to make, generalised comparisons become inappropriate and unnecessary.

5.5. Women are unacceptable to clients

5.5.1 This view is widely held. 37.8% of practitioners questioned in the Heylen poll considered that clients would rather deal with a male than a female lawyer. This indicates an unfortunate predisposition to pander to perceived prejudices on the part of clients, which, on the basis of the answers to other questions in the poll, the practitioner does not share. Given this, it is not surprising that women do experience resistance from clients as our surveys showed.

5.5.2 58% of the 122 women practitioners questioned had experienced resistance to their professional skills from clients which they perceived to be on the grounds of their sex. This survey did not attempt to ascertain the frequency resistance was encountered and whether it came from men or women. The comparative survey did. The results which distinguish employees from partners and sole practitioners were as follows :-

Employees

<u>Frequency of Resistance</u>	<u>From Same Sex</u>		<u>From Opposite Sex</u>	
	<u>Men %</u>	<u>Women %</u>	<u>Men %</u>	<u>Women %</u>
Never	100	40	78	30
Rarely	-	60	22	60
Relatively often	-	-	-	10
	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>
	=====	=====	=====	=====

Principals and Sole Practitioner

Never	100	100	83	40
Rarely	-	-	17	40
Relatively often	-	-	-	20
	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>
	=====	=====	=====	=====

5.5.3 There is an unavoidable element of subjectivity in this data. Resistance can take many forms. A client's reactions and the reasons for them are open to misinterpretation. Women, particularly less experienced practitioners, may be more sensitive

2. The Bar on Trial, ed. Robert Hazell, Chapter by Helena Kennedy, p.158.

to signs of resistance. They may also misinterpret resistance which is based on their youth, not their sex. Men are less likely to expect resistance and are therefore less likely to notice it. The terms "rarely" and "relatively often" are themselves hard to quantify.

- 5.5.4 It is inevitable that women will encounter some resistance at some time if only because the general public has always identified lawyers as men. The likelihood of resistance is increased if a defensive or apologetic attitude is adopted by practitioners when introducing clients to female solicitors. This will exacerbate the misgivings of clients or create misgivings where none existed before. Taking these matters into account it is perhaps surprising that some women practitioners have never experienced resistance from men or women and most of the others only rarely. It is important to note that men too have reported resistance from clients of the opposite sex.
- 5.5.5 Our surveys did not attempt to ascertain the extent of the resistance experienced. However, supplementary inquiries of women practitioners suggest that in the main it takes the form of initial surprise which is invariably overcome as clients quickly adjust to the idea of a woman doing a "man's job". Many women questioned emphasised that by the end of their first interview they considered that they had won their client's confidence.
- 5.5.6 It is obvious that the fears of practitioners in this area too are greatly exaggerated. In part they are caused by the practitioners own reservations which he has assumed are shared by his client. As the public and lawyers themselves become accustomed to women lawyers practising in all areas of legal practice we expect that such resistance as does occur will diminish and eventually disappear. Certainly, resistance from clients provides no justification for discriminating against women. On the contrary it gives rise to a positive obligation on practitioners to educate their clients to accept women as an integral part of the legal profession.

5.6 Women do not grasp their opportunities

- 5.6.1 In light of the clear evidence that women do not have equal opportunities it is hardly necessary to deal with this. But it may still be suggested that women are in part responsible for their failure to progress equally in the profession.

- 5.6.2 The Working Party's enquiries showed that women have the same aspirations as men. Almost all of the women we questioned had partnership ambitions. There is no evidence of a disinclination on their part to chance their arm. The comparative survey showed the proportionately more women than men had gone into practice on their own account and a high proportion of all women practitioners (15.1%) are practising on their own. Women are entering the Law Schools in equal numbers and are doing better than male students. Notwithstanding their comparative youth and the attitude of their male colleagues women are coming forward and participating in Law Society affairs. There are no grounds on which it can be suggested that the disadvantaged position of women in the profession is somehow their fault.
- 5.6.3 Several of the more senior women practitioners made the point that women should confront discrimination head on by being more assertive, playing an active role in Law Society affairs, seeking partnership and eschewing defensive and downtrodden attitudes. "If you go looking for discrimination you will find it". The Working Party does not accept that women practitioners generally have adopted a defensive stance. They have been no more than realistic in recognising that discrimination exists and have persevered in spite of it. It may be that more senior practitioners, inured by years of exposure and established in the profession, will be less aware of discrimination. The many practitioners who have been directly affected by discriminatory practices have not had to look for discrimination. The opportunities that have been lost or limited by discrimination will not be restored by ignoring it or pretending that it does not exist.
- 5.7 There are several other matters which do not fall into the category of overt discrimination but do limit the opportunities available to women or which may inhibit them from taking full advantage of the opportunities which exist.
- 5.7.1 First, the comparative survey indicated that men are more likely to receive assistance from their family. Although none of the employees, male or female, had received assistance from a member of their family other than spouse when obtaining employment, 6 of the 18 male partners surveyed had. Three had

fathers and three had uncles in the profession. Five of the six became partners in family firms. Family associations will facilitate entry into and progress in the profession and is a factor which appears to favour men.

- 5.7.2 On the other hand family connections have been helpful to women who do have children and leave the law for a period. Of the women who worked part time because of family commitments, most worked in family firms or with their husbands. Some may argue that only a family firm would be prepared to subsidise the presumed inefficiency of part time work and/or flexible hours. Overseas studies have shown this not to be the case; part timers are more efficient than fulltimers and there is no qualitative difference in their work.³
- 5.7.3 It is acknowledged that the legal profession does not lend itself as easily as some occupations to part time work. But women who do choose to have children and do not want to return to work on a full time basis (53% of mothers in our survey) are deserving of some special consideration. The Working Party believes that there is scope for more imaginative terms of employment to accommodate practitioners in this category. These could be introduced by firms wishing to utilise the skills of trained lawyers and at the same time provide them with the means of fulfilling their legitimate aspirations. It must be added that this would also benefit men who are not, for family or other reasons, able to make a fulltime commitment to the law.
- 5.7.4 The Working Party considers that some special consideration may also be due to practitioners who take a lengthy break from practice for family or other reasons. It is in the interests of the profession and the wider public that the profession should facilitate the re-entry into the work force of trained professionals. The profession could extend its support by helping those who are temporarily absent from it to maintain links with the law.
- 5.7.5 Secondly, the Working Party believes that the mystique which tends to surround legal partnerships and admission to them works to the disadvantage of

3. Robinson, "Part time Employment in the European Community", cited by Silverstone & Ward (supra) at p.213.

younger practitioners generally and therefore women in particular. The tradition of inscrutability regarding partnership matters is an unnecessary source of uncertainty and anxiety for employees aspiring to partnership. There is a coyness about discussing partnership arrangements which prevents younger practitioners generally from knowing about the financial and other commitments associated with partnerships in the law. There is a case for a much freer exchange of information both within legal firms, between employers and employees, and within the profession generally. Younger practitioners should not feel restrained from discussing partnership possibilities with their employers and should be able to approach the issue with at least a basic knowledge of what partnership involves and the criteria applied for admission. As a minority within a minority women are likely to be especially affected by difficulties in this area.

6. DISCRIMINATION, HUMAN RIGHTS AND THE LAW

- 6.1 Discrimination against women on the grounds of sex is contrary to basic principles of human rights and, in some of its manifestations is unlawful. It is also, therefore, unprofessional.
- 6.2 Discrimination is contrary to basic principles of human rights. As they relate to discrimination of the grounds of sex these principles can be conveniently stated by quoting from the United Nations International Covenant on economic, social and cultural rights which was ratified by New Zealand in 1978. In terms of the covenant New Zealanders have undertaken to :-

"Guarantee that the rights enunciated in (it) will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Article 2.2)

and to

"Ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in thecovenant". (Article 3)

These rights include the right to "just and favourable conditions of work which ensure in particular :-

...fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;...

equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;" (Article 7).

6.3 Discrimination is unlawful. The Equal Pay Act 1964 and the Human Rights Commission Act 1977 proscribe discrimination in employment on the grounds of sex. The latter Act also prohibits discrimination on the grounds of sex in respect of admission to, achievement within, or expulsion from partnerships consisting of six or more partners. The Maternity Leave and Employment Protection Act 1980 confers certain rights and benefits on female employees who take maternity leave. It covers female employees whose Award or contract of employment provide rights and benefits which are less favourable than those provided by the Act. It probably supersedes the Northern District Legal Employees Award which makes only limited provision for maternity leave in the case of female employees of twelve months service by permitting them to retain service and long service entitlements if they are re-engaged by the same employer within six months. The Award does not oblige an employer to offer re-employment. The Act does.

6.4. Discrimination is unprofessional. The forms of discrimination dealt with by the Human Rights Commission Act are notoriously difficult to detect and prove. They are unlawful nonetheless and therefore unethical. The partnership provisions of the Human Rights Commission Act were opposed by the New Zealand Law Society in its submission to the Committee studying the Bill. The submission saw it as "quite unnecessary and indeed wrong to take away the right of existing partners to decline to admit a new partner" on the grounds now stated in the Act. The submission favoured the deletion of this provision or, as an alternative, an increase from six in the size of partnerships affected by the Bill. No grounds were advanced for opposing a bill which merely gave legislative effect to widely accepted principles of human rights. The Working Party can see no rational justification for making arbitrary distinctions between partnerships of

different sizes or for proscribing some forms of discrimination and not others. Although there is inconsistency in the legislation relating to discrimination the Working Party sees no reason for similar inconsistency in the profession's ethical standards.

7. DISCRIMINATION : WOMEN, THE PUBLIC AND THE PROFESSION

7.1 Discrimination on the ground of sex is patently unfair to women. It is also contrary to the public interest and to the interests of the profession as a whole.

7.2 Discrimination is unfair to women. Equality of opportunity for all, regardless of race, religion, politic beliefs and sex, is the cornerstone of our democracy. Discrimination on the ground of their sex denies women that equality. It prevents them from developing to their full potential. It may negate years of study and self sacrifice. It tends to diminish a woman's feeling of self-worth. These things may be self evident but the inherent unfairness to women of discriminatory practices may not always be fully appreciated.

7.3 Discrimination is contrary to the public interest. Any practices which are contrary to law, to established principles of human rights and which adversely affect women generally are clearly contrary to the public interest. Moreover, the public has a right to expect that the resources devoted to providing a specialist education for women are properly utilised. The public interest, as reflected in the aspirations of women themselves, is in having women represented at all levels of the profession and in other bodies requiring the presence of trained lawyers. Finally, it cannot be in the public interest that a profession which is an integral part of the administration of justice should be countenancing injustice and illegality in its own ranks.

7.4 It is contrary to the interests of the profession. Within ten years half of all young members of the profession will be women. Time and resources will be devoted to their practical training. It is surely unwise to limit their opportunities to capitalise on that training. As many women as men now aspire to a legal career. To discourage them from entering the profession is as contr

to its interests as it is to frustrate the legitimate expectations of present members. Discrimination is divisive and is apt to corrode the spirit of co-operation which is essential to the proper functioning of the profession. Most importantly, perhaps, it is contrary to the interests of the profession that it should be seen to be actively discriminating against a minority of its members, contrary to the precepts on which it is founded.

8. RECOMMENDATIONS

8.1. For the reasons we have given -

- because it is unlawful,
- because it is contrary to accepted principles of human rights,
- because of its unfairness to women,
- because it is contrary to the public interest, and
- because of its effect on the standing of the profession and its ability to serve the needs of the community,

the Working Party believes that the Society should spare no effort to eliminate discrimination against women in all its forms. The recommendations we make are directed to this goal. Some are general in nature because more work is required to marshal the information needed for detailed answers to some of the problems identified. Further research will enable many of the suggestions to be refined and given practical effect. Many of the recommendations will require a continuing commitment on the part of the profession. Underlying them all is an assumption that the profession will not shrink from taking all necessary steps to ensure that women take their rightful place in the profession.

8.2 The Working Party makes the following recommendations :-

1. The Society endorse the principle that discrimination in the profession on the ground of sex relating to :-

- employment opportunities,
- allocation of work,
- remuneration,
- partnership prospects, and
- relations between practitioners

is totally unacceptable.

2. The Society adopt a positive educational role in promoting an awareness in the profession of -
 - the discrimination against women and other problems encountered by women in the profession,
 - the consequences of discrimination against women, and
 - the capacity of women to meet conventional career objectives in the profession.
3. The Council promote the inclusion in the New Zealand Law Society Code of Ethics provisions giving effect to the principles enumerated in recommendation 1.
4. The Council prepare a report for distribution to the profession outlining the forms of discrimination found to exist in the profession and recommending the positive steps which can be taken to ensure equality of treatment and opportunity in the profession.
5. The Council promote further and continuing research into the position of women in the profession for the purpose of assessing the progress of women, and to better identify and overcome the particular difficulties they face. Specifically the Council could aim to establish another Working Party in three year's time, or less, to carry out and report on further surveys.
6. The Council keep permanent records of persons admitted to the profession, whether practicing or not, for the purpose of facilitating such research.
7. The Council stress to the profession that in some respects discrimination on the ground of sex is unlawful.
8. The Council re-affirm that discrimination on the ground of sex is unprofessional conduct and may, in appropriate circumstances, be the subject of disciplinary proceedings.
9. The Council express its concern to the New Zealand Law Society in respect of the submission made to the Parliamentary Select Committee relating to Clause

16 of the Human Rights Commission Bill and recommend to the New Zealand Law Society that it seek an amendment to the corresponding section (Section 19) of the Human Rights Commission Act 1977 to make the provisions relating to partnership applicable to partnerships of all sizes.

10. The Council acknowledge that the Society has a responsibility to :-
- (a) Initiate and oversee research programmes on women in the profession.
 - (b) Receive and investigate complaints and suggestions relating to discrimination or other problems experienced by women.
 - (c) Consider any legislation affecting women in the profession.
 - (d) Ensure that all necessary information relating to the position of women in the profession is communicated to the profession in Law Society publications.
 - (e) Encourage and assist its women members to work together to achieve the objectives referred to in these recommendations, to promote greater self confidence and to investigate the practical ways of alleviating the difficulties faced by women.
11. The Council establish a committee with independent status to assist in and advise on the implementation of these recommendations and to take specific responsibility for the matters referred to in recommendation 10.
12. The Council co-operate with women in the profession, or any group or co-operative of women, in assisting to establish and maintain facilities for co-ordinating childcare and other household services.
13. The Council investigate and promote moves to make the employment of women with children more attractive to employers by appropriate tax reforms or the provision of other financial incentives relating to childminding and associated expenses.
14. The Council be conscious of the sensitivities of its women members to symbols of discrimination, inside or outside the profession, and take steps

to cease any practices which are inconsistent with its resolve to eliminate discrimination within the profession.

15. The Council promote the establishment of a special category of membership for those not holding current practising certificates which would entitle such members to receive newsletters, receive notice of and attend continuing legal education programmes, participate in legal office observation schemes and attend the Society's social functions.
16. The Council establish and publicise a register of practitioners who are available for short term locum employment.
17. The Council consider the preparation of a booklet explaining the legal and financial structure of legal partnerships and the matters which require consideration upon the admission of a new partner or the retirement of an existing partner.

• 8. CONCLUSION

This paper has necessarily been critical of the profession. The Working Party is sure that the profession would prefer an honest appraisal to an examination which attempted to gloss over the problems. It does not believe that the profession should feel defensive about its findings. The Working Party is well aware that few sectors of society would emerge untarnished from an honest and critical self examination of the sort we have undertaken. The legal profession's professed values and commitments should put it at the forefront of moves to identify and then eliminate injustice in whatever form it is found.

4th December 1981

