



Working towards gender diversity in New Zealand law firms

Four practical approaches to achieving change



NZLS CLE Ltd
CONTINUING LEGAL EDUCATION
NEW ZEALAND LAW SOCIETY



Introduction

The New Zealand Law Society has made one of its key objectives the promotion of gender diversity and encouragement of women into senior roles in the legal profession. While women now make up over 48% of all practising lawyers, there is still a major imbalance in the proportion of women who are partners or directors or in other leadership roles in our firms.

It is easy to be critical and to call for change. What is needed, however, is practical guidance, ideas and options which can be used by lawyers and their firms to assist with progressing towards a more equal and diverse workplace. There is now a lot of evidence that the more balanced the gender makeup of an organisation, the better it performs. Recognising that every law firm has its own history and special circumstances, how can we all get there?

In April 2016 the New Zealand Law Society's legal education provider NZLS CLE Ltd ran a day-long conference in Auckland and Wellington. This brought together some innovative and influential participants in the move towards greater gender diversity. NZLS CLE Ltd has very kindly given permission to the Law Society to make four of the papers presented at the conference freely available to the legal profession. We are sure that the ideas and experiences outlined in these papers will be a valuable and practical resource.

The Wellington conference on 11 April was live streamed and NZLS CLE Ltd has made videos of all sessions held in Wellington available. This covers not only the four papers included here, but the other proceedings. To access these, go to <http://www.lawyerseducation.co.nz/Courses/Free+Recordings/16WOML.html>

Kathryn Beck

President, New Zealand Law Society

A handwritten signature in black ink, appearing to be 'Kathryn Beck', written over a white background.

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Effective strategies to encourage progression of women in senior roles

By Michelle Dixon, Partner and CEO, Maddocks, Melbourne, Australia

Gender Diversity in law is an issue that is very important to my firm, Maddocks. We recognise that Diversity in the workplace is one of the most valuable tools that we can offer our clients. When we have diverse workplaces we will have diversity of thinking and potentially more creativity in our solutions. Diversity will push the barriers and stop us becoming trapped in traditional thought processes. It is a vehicle that drives innovation, one of Maddocks' core values. Diversity means we appeal to a broader market and develop better solutions, and yet the legal profession still battles with increasing the number of women in senior positions.

At Maddocks we wanted to break the stereotype and create a more diverse workplace in the process. Increasing gender diversity in the workplace is a long road as it requires a cultural change within each workplace and industry, and the broader community. This paper will outline the thinking behind why Maddocks has taken on the challenge, the strategies we have used to create lasting change and the rewards.

Maddocks is a leading Australian law firm established in 1885. We specialise

in healthcare, education, infrastructure, professional services, government and technology and employ over 500 people in New South Wales, Victoria and The Australian Capital Territory. We are a top 20 law firm in Australia and I am the first CEO in our 130 year history who is a woman. When I was offered the job there were so many things to consider, especially as I have a young family. As a family we decided that I would accept the position. One of the reasons that I wanted to do so was to step up and be the change I longed to see in gender equality. I wanted to show the 500 people at Maddocks that we could have a different type of leader.

Within Maddocks we had discussed gender diversity for a number of years and made the decision that we wanted to change. In 2008 only 18% of our partners were women, and only 9% of the equity partnership. We had one very large team with no female partners. For a firm our size these figures didn't measure up. We knew we had the opportunity to recruit and develop the

best in the business but they weren't making it through

to partnership or senior leadership positions. This was an exciting time for Maddocks. Over the next 5 to 10 years a large number of senior partners were expected to retire so it was time for succession, a "changing of the guard". We could proceed as we had in the past, and get the same results or we could look to change our culture to make sure we could recruit, develop and promote the best available talent. It was time for a change of approach.

We made a conscious, public decision that we were going to lead, not just support gender equity within the firm. One of our chairmen, three years before I was appointed CEO, drove a program of change within his team which was dominated by men. I then took it on as a personal objective as CEO and the Board provided their weight behind it.

The issue of leading vs supporting is very important. Support looks like – "happy to help", "isn't that a great idea", "lets run a workshop and discuss the

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issue” or “yes, I’m supportive of that”. Driving or leading looks like – “what are the KPI’s (Key Performance Indicator) around Gender equality”, “when will all partners and staff have completed their unconscious bias training”, “have we done a wage review of all staff?” It is action orientated, it is accountable, it is visible and it is transparent.

When I look at businesses having success in this space it is the ones who have management and leaders that are leading and driving the change, not just supporting it. At Maddocks we believe this is a critical success factor.

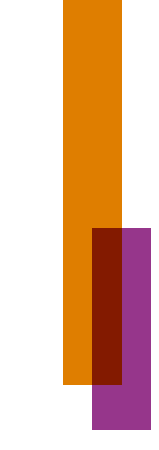
Part of leading that change throughout the firm is really understanding the current status quo. Having a good look in the mirror at the current situation is confronting, but necessary. At Maddocks we went beyond the partnership split and looked at the number of women who were given international executive training, the number on our leadership team and the number elected by the partners to key positions. The figures weren’t kind and the reasoning behind

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them didn’t stand up. Most people had been given these opportunities by a tap on the shoulder. Comments were made like “It didn’t occur to me that x would like to go to Harvard. She has a young family” or “Why would she want to be a partner?” Unfortunately, I don’t believe these attitudes and comments are unique to Maddocks.

Before we could develop our strategies we needed to understand from Maddocks’ perspective why the attitudes existed in our firm, a firm we all loved. The finding from this research will ring true across the industry. We found:

- The lack of visible women in leadership positions means that women



have a lack of obvious and accessible mentors, and cannot see the pathways to leadership positions; and

- Proceeding through executive ranks often conflicts with the time when women are considering or hoping to have children, and requires time and availability that conflicts with commitments that come with having children.

These elements aren't unique to Maddocks. The research points to the same conclusion. The American National Association of Women Lawyers and NAWL Foundation report regarding the 7th Annual National Survey on Retention and Promotion of Women in Law Firms, Oct 2012, found that the lack of women in senior leadership roles had a depressive effect on the advancement of women for two main reasons. Firstly, women's voices weren't part of the strategy discussion, so that policies weren't developed with the values and goals of all lawyers in mind. The second issue was that the scarcity of visible, senior successful women sends a powerful message, whether it is intended or not, and that message is you don't belong here.

The same messages were discovered in an Australian study conducted by Chief Executive Women and Bain and Company. They interviewed 800 Australian business professionals in their report *Creating a Positive Cycle: Critical Steps to Achieving Gender Parity in Australia* in February 2013 and found that both men and women saw the lack of significant number of women in executive positions as a key reason to question their organisations commitment to gender diversity. The same report found this poor track record of promoting women is the main reason professionals wouldn't recommend their organisation as a place where women could progress to senior levels.

Clearly the research is screaming that an organisation that doesn't have women in senior leadership is a key indicator that the organisation doesn't value women in leadership. It shapes expectations of both men and women in the organisation in terms of what women want, or are capable of.

Strategies for Change

We were committed to change and we used the research to drive our strategies. We developed strategies around changing attitudes and flexible working and then implemented quotas and targets for our Board and Partnership.

Changing Attitudes - Unconscious Bias Training

The first element we tackled was unconscious bias. We decided that every single partner and employee of Maddocks from the Board to the librarians, the kitchen staff, graduates, IT department, lawyers, receptionists, the lot would go through unconscious bias training. So over the course of about eight months, 526 employees were trained in unconscious bias, the final two were Partners and they were given private sessions as they were too busy to attend the group sessions. Everyone has been trained, no exceptions. This training included the Harvard Implicit Association Test to start the open discussion around understanding the different ways in which women and men are perceived in senior roles ie “she is bossy” compared with “he is a strong leader”. The feedback after this training has been enlightening, many of our staff have stated, “I never really thought about it that way before”.

We have made the unconscious bias training part of the induction process so that every Maddocks employee is involved in the discussion. We conducted tailored training for all our team leaders and charging them with the responsibility of keeping the discussion and concepts alive in their teams. They are thriving with the extra responsibility and they have taken up the challenge in a way that is unique to each team. This level of customisation is what we want at Maddocks. We don't want to drive out the individual but we do want everyone on board around diversity.

Making Women Available – Flexible Working Arrangements

When we reviewed Maddocks we reconfirmed something we already knew but hadn't tackled, why some of the great women weren't available to take some of our key leadership positions? We found the answer was that often the time to move forward with your career and make those step changes to leadership was also the time you might want to start a family. We had to develop a strategy that tackled maintaining practices while women are on parental leave, and importantly, flexibility.

Family commitments and work can be difficult to organise for everyone but there is no doubt that there is a deep-rooted attitude in society that a woman will be the primary carer, that her career may have to take a back seat to that of her partner.

What I hear time and again is that it's natural for women to opt out when

they're having children, or "step-back". This very language is premised on the assumption that women value their careers less than men do, or that mothers, in particular, care less about high profile or challenging work. We just don't buy that. It is a lazy explanation by business to justify inequity. At Maddocks we have tried to make it easier to return to work in a flexible way after children.

The first hurdle that we tackled was how we look after the practices of our women while they are on maternity leave and the transition back. We had to make coming back to work easier, achievable and expected, so that there was no risk that the woman's practice would be lost and they would have to build a new practice on their return, a daunting thought and exceptionally hard work.

We've put systems in place to ensure that there is a custodian partner for the woman's practice. Their responsibility (and KPI's) is to maintain the woman's practice while she is on leave, and ensure that an appropriate and sensitive transition takes place on her return. It doesn't always work perfectly, but even changing the language that we use has changed expectations and behaviours.

We have open communication with the lawyer, both before she goes on maternity leave and on her return. This has a huge business benefit because it means our women can hit the ground running. We also maintain a connection with women while they are on maternity leave. We discuss the amount of contact that they would like to maintain. Obviously we don't want to overburden anyone but we don't want anyone to feel disconnected.

The second issue was how we deal with flexible working arrangements. While we have had a large number of people working flexibly for many years we have shifted the paradigm to be focused around output, ie work achieved, not hours spent in the office and this has been a critical factor in addressing pay equity as well.

Valuing flexibility means that we are not only valuing the lawyer but we are also valuing the experience that they gain from their lives outside of work. Yes, it would be really convenient if all of our employees were available 24/7 but what is the real cost?

One of the things that we treasure at Maddocks is our client relationships. The relationship built on trust and good counsel also requires empathy and understanding and we all know that families, children and life outside of work teach you a lot about empathy.

Communication and trust are key to flexibility. It is the practical conversations that go along with working flexibly that have proven to be vital. We have trained our managers to have the conversation about the practical things: what hours are people going to work, what days of the week they plan to be in the office and the timing impacts of childcare pickups and drop-offs. One of the things that surprised us was in the training so many of the male managers had thought that it would inappropriate to have those conversations.

Quotas and Targets for Maddocks

We are serious about change to gender diversity at Maddocks so we have introduced quotas for our Board. We needed to make space for women. The idea of quotas was quite confronting for the partnership. We had the default debate that comes into play around merit – argued by both men and women. But when we looked at the real figures it was hard to support the merit argument. We had a large number of leadership positions in the firm, only one of which was occupied by a woman, despite having many capable women in the partnership. Our women were reluctant to run for positions against each other, the perception being that there was limited room at the table for women. The Maddocks' Board has 6 members and now we must not have less than one woman or one man. Today we have three men and three women. The quotas are working, in part because, having had the debate, women know now that there is room for them.

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We decided we couldn't put quotas in place for our key leadership positions, unfortunately it would be too hard to manage as people moved roles and might limit our choice. So with no quotas in place all our Practice heads are men and all our directors are women. This doesn't sit well with me and I will strive for more diversity. Often if we are having a directors meeting which at the moment is 3 women and me, I will ask a male counterpart to join us, it might be our Com-

munications Manager for example. I need to increase the diversity in the room. It cuts both ways.

We recognised that we needed to make significant changes to the promotion process as well. Firstly, we opened up all the financial information. We put in place a nomination system with the Board encouraging suitable women to nominate. This has increased the transparency around the process not only to equity partnership but also for all our leadership and key learning opportunities.

We have created a positive obligation on the current Board members to look for women to fill leadership or board positions when they become available. This works hand in glove with the nomination system. We have increased the transparency around the appointment of senior roles. We worked very hard to get away from the “tap on the shoulder” system that had worked for generations. We all know that this type of succession planning ensures more of the same.

Aspirational targets also fall into this area. While quotas are essential to create space for women to come through to the Board, aspirational targets are very important to keep the pool of talent diverse and to ensure that we have the systems and support in place to bring the right people through, whether men or women. We have set aspirational targets that by 2020 40% of our Partnership will be women and 30% of our Equity Partners will be women.

Gender Equity and Pay Equality

Equal pay always seems like a simple concept, but we conducted a gender pay parity review across Maddocks and the results were confronting. Systematically we went through the firm – practice by practice and adjusted pay, some went up and some came down based on performance relative to remuneration. It was a very clear message that we were serious about the issue. It also caused us to look at why there was disparity.

While the bands of pay and distribution of money across the partners appears equitable it is the way men and women approach the advancement of their careers, their promotions that causes the issues in law firms. My experience is that men generally are happy to chase the promotion, show confidence in their performance and ambition to make it in the ranks.

Women generally wait to be approached and mentored before seeking their promotion. This has caused a difference over the years in the timing of promo-

tions and therefore the pay packets. This is why the work we have done around the positive obligation on the Board to promotions and to increase transparency is so very important. We don't want to do another pay parity review and find similar results.

Small things matter too

While I have explained the broad strategies implemented at Maddocks sometimes it is the small things that make the biggest impact. For example, I send a note and flowers to every woman when she returns from maternity leave. I want them to feel connected and valued, because they are.

Sometimes it is these small things that make the biggest impact and can't be overlooked.

So are we getting results and what are the benefits to Maddocks?

Gender equity isn't just about equal numbers, it's about cultural change to value inclusion and diversity of thought. From Maddocks' perspective it is a commercial imperative and competitive advantage. We are a service business, therefore we are only as good as our team. If we don't employ, develop and promote the best lawyers then as a firm we will be weaker.

We need to be able to offer our clients the best solutions from diverse teams and we need to select our next leaders from the deepest pool of talent to bring a range of attitudes, outlook and experiences to the table.

There have been a number of benefits, including a strong commercial advantage.

A diverse organisation can attract a price premium. Microsoft, for example, pays (in Asia) a 2% premium to firms that meet their diversity criteria. 2%! Why are they happy to pay a premium? They are recognising that a diverse team delivers better outcomes. So if there is business to be gained by being a diverse firm, then we want to be at the front of the queue. Our clients are aware of what we are doing around gender diversity. They appreciate the challenges but readily recognise better outcomes from working with a more diverse team. Some of our clients are also asking us to help them drive change within their organisations.

We have now broadened our diversity discussion to include sexual orienta-

tion. Last year we joined Pride in Diversity. As a member firm, we will use Pride in Diversity's people to understand the importance of Lesbian Gay Bisexual Transgender and Intersex (LGBTI) inclusion and to map out a strategy to enable the successful transition to best practice. More importantly than joining Pride in Diversity was our employees' natural acceptance of us moving to new ground to create and encourage a diverse workforce. We had a number of employees who wanted to help champion the programs across the business. The work done in gender diversity will pay dividends in other areas.

Support just isn't enough, it won't happen without some tough discussion, challenging targets and leadership. However, it is worth making the effort: not only is it the right thing to do, it is a smart business decision.

We now have a diversity strategy in place that has KPIs around "promoting gender equality", "facilitating flexibility", and "cultivating inclusion". Each stream of the strategy has aligned programs and initiatives to keep them front of mind and engage all of our employees in varying ways. Our gender diversity program seems to have created a culture of embracing new ideas and we are having success at rolling out new programs such as treating depression and broadening our diversity issues to include cultural diversity. This is a bonus that we really hadn't considered.

Recruitment is another major win for us, we are attracting women from other firms who want to work with us and more often than not they are talking about the gains in this space.

When it comes to diversity you can hide behind the numbers and often make them reflect a more diverse workplace than you really have. I don't want to hide behind the numbers; I want diversity of thought and diversity of outcomes. I want real transparency.

Maddocks currently looks like this

- 98% return rate from maternity leave
- 100% of partners and employees trained in unconscious bias
- 50% of the Board are women
- 100% of directors are women
- 100% of practice heads are men
- Women in partnership have increased from 18% to 32% over the last 6 years
- Women in partnership in the 35 to 45 age group are 52%.
- Innovation, Management, Succession and Risk sub-committees all have 50% women
- Strategy and International Strategy sub-committees are dominated by men and the Equal Opportunity and Diversity sub-committee dominated by women.

So our stats are on track, and we are pleased with the progress we are making but we know that we have to keep leading and driving this change. There is more work to be done.

For these changes to happen we know that the critical success factor is leading and driving the change through the firm. Support just isn't enough, it won't happen without some tough discussion, challenging targets and leadership. However, it is worth making the effort: not only is it the right thing to do, it is a smart business decision.



CHANGING LAW FIRM CULTURE – THE CHALLENGE OF PROMOTING DIVERSITY

By Andrew Poole, Chief Executive, Chapman Tripp, Auckland

It's not easy to divine the practical steps to take to promote diversity, in particular gender diversity. A lot has been written on the topic. Most articles and studies tend to recount the key statistics, say rightly that the current situation is not good enough and urge us to do more and to do better.

There are some key building blocks in any diversity strategy:

- acknowledge that there is no “silver bullet”. Some of the supposedly simple, one-stop solutions risk confronting the audience in a way that gives those less inclined to be open minded, a rallying point for opposition;
- ideas and actions that appeal to both emotion and logic are more likely to succeed;
- fundamentally, this issue is about changing culture. That is, the culture which typically reflects the majority who can easily and understandably

relate to each other because of common heritage, history, experience and/or outlook;

- processes and systems are critical to monitor and to measure progress.

All of the above need to be deployed in combination; none is likely to be effective by itself. Further, all of the building blocks and initiatives set out in this paper must link to the firm's strategic objectives. Both the strategic objectives and building blocks/initiatives must be visible and well understood.

There is no silver bullet

It is a tired phrase. But it is important to accept that there is no magic answer, no silver bullet. If there was, intelligent people would have fired it long ago. As lawyers, we pride ourselves on finding durable and pragmatic solutions to our clients' complex problems but this issue continues to find us wanting.

This issue is about people, as is our profession. This is not an IQ issue; this is an EQ issue with a significant business impact for lawyers and for law firms. If diversity is approached as a problem capable of being solved with a single answer, then those single answers will be easily challenged. To ignore biology entirely invites a simple and unhelpful response. Rather we should acknowledge

the impact of biology but emphasise that biology does not lead inevitably to every woman wanting to have children, nor for those who do have children necessarily to take large amounts of parental leave. Firms can do much more to ensure that parental leave is not a wholesale break in a woman's career.

Likewise, statements that research shows that more diversity inevitably means better decisions, more profitable business etc ignores some research that homogeneity leads to harmony and the building of a clear consensus,

What makes a difference is men who are prepared to be supporters, champions and sponsors of women. That is men who will lend their personal brand to aspiring women lawyers.

clear execution and clear outcomes. The way forward is a series of related steps, not a single silver bullet.

Emotion and Logic

Advertising campaigns are all about appealing to emotion. Lawyers are naturally logical beings who value logic highly. But to bring about change we need to deploy both emotion and logic, recognising that many lawyers will find the logical more attractive. In my experience, an appeal to emotion can generate buy-in. Some will agree to implement diversity initiatives just because it seems right and just. Fathers with daughters are a receptive audience.

But there is plenty that will appeal to the logical brain. Law school recruitment will likely be skewed in favour of excellent young women students. If firms recruit great women, then train, promote and reward them well, seeing them leave comes at a great cost. Lawyers could once simply produce great legal work for clients. Now the emphasis is equally on client service. The power has unquestionably moved to our clients. As the number of women in-house lawyers rises, including at General Counsel level, lawyers would be foolish to think that firms which appear to pay no regard to diversity will escape adverse client feedback.

The right culture is the fundamental plank on which success is built

Our firm recognised this and responded by engaging Australian consultants to provide diversity and inclusion training to all of our partners over four years ago. That was my lightbulb moment. I have learned a lot.

All of us, men and women, relate most naturally to those who remind us of ourselves. That is called homophily. If most partners are men, then our unconscious bias results in a preference for seeking out men to join us in partnership.

Role models are enormously important. Male and female. Women lawyers have just as much aspiration as men. But they may look at the law firm leaders, i.e. the partners, and see men or women who do not remind them of themselves. Those women may then feel that there is no opportunity for them to become co-owners or that they do not want to become a leader. Women (and men) need partners who look, sound and act like the people they are and the

partners they aspire to become.

For years we've talked about men mentoring women. That is not enough. What makes a difference is men who are prepared to be supporters, champions and sponsors of women. That is men who will lend their personal brand to aspiring women lawyers. Lending your personal brand in support of someone's partnership candidacy is the ultimate litmus test of your support.

Diversity initiatives will fail – or at least be slowed down significantly – where there is no genuine values-based culture which supports diversity. The first step is to create those values as part of a firm's culture, the second is to articulate and reinforce those values, and the third and most important step is to call out behaviour which contradicts those values.

Language is important. Lawyers love language and we look for the subtle clues in the language used in any conversation and in any document. There are two parts to this. The first is the need to establish a common language within a firm so that diversity can be discussed. That is the language of inclusion, homophily, unconscious bias and confirmation bias. Second, we need to recognise that the language we use can (often unintentionally) reinforce a dominant culture foreign to women. The casual language men might use over a beer or in a conversation about the rugby or the cricket may be quite different from the language to which women relate.

It is important to recognise the male/female dynamic and that it can be hard for women and men to have meaningful discussions in an environment which is not misconstrued. A couple of blokes can easily have a beer after work and no-one will give it a second thought. But if a young woman lawyer is having a glass of wine with a male partner, then the risk for the woman is that she is seen to be trying to charm her way into the partnership and for the man, that he has a more than professional interest in the woman. So language and settings are important.

Men tend to be more confident and to put themselves forward even if there is not a tick in every box. Women will often be less confident and more naturally doubt themselves. They will focus on the boxes which don't have a tick in them rather than vice versa. But women who express themselves in the same confident manner in which men express themselves can often be labelled in a way that no man would be labelled.

Finally, I think that women are blessed or perhaps burdened by what I ob-

serve to be generally better organisational skills. This can count against women. Women can sometimes find themselves in more of an organising role in a team e.g. undertaking or overseeing the due diligence exercise on a corporate transaction rather than drafting the sale and purchase agreement or researching the knottier issues. Beware of assumptions.

Systems and process

Lawyers often have a visceral reaction to systems and processes, sometimes with good reason. But there is little point in undertaking the full array of initiatives, or even a good number of them, unless those initiatives are backed by rigorous systems and processes. Firms need to focus much more on flexi time and flexible work processes. Our firm actively encourages part-time partnership. There is no upper limit on the number of part-time partners in our firm and we have both male and female part-time partners. This sends a strong signal throughout the firm.

Policies on parental leave for men and women are important. That is not about ensuring that we all comply with the minimum statutory requirements or are more generous. That is about regarding parental leave as a break rather than an end point in a career. It is about staying in touch and ensuring that the path back in is as smooth and seamless as possible.

Firms must embed a series of small but fundamental steps which can largely be described as monitoring and reporting. Firms should collect and monitor gender data in relation to:

- recruitment ratios;
- promotion ratios whether from solicitor to senior solicitor, senior solicitor to senior associate, or senior associate to partner;
- the partner pipeline, principally the pool of senior associates;
- rankings given to staff to assist in determination of salaries and bonuses;
- salaries and bonuses;
- the work spread, i.e. chargeable versus non-chargeable work (pro bono in particular);
- the distribution of different tasks or parts of matters (see the M&A example above);
- how often the Board has diversity as an agenda item;

- how often the partnership discusses diversity.

Leadership of diversity within a firm cannot sit with the HR Director. Leadership is the responsibility of leaders and that means the board, the chief executive (or equivalent) and all partners, assisted by the HR Director. The language of leadership does not come easily to all partners. But ultimately the manner in which partners conduct themselves, what they say and how they say it, speaks volumes.

A further step is the setting of targets or quotas. This is controversial and an issue which can serve as a lightning rod for those with whom diversity initiatives do not sit easily. It is probable that the implementation of the initiatives set out in this paper without clear targets will fall short of what is necessary.

If targets are set, then the next question is whether they are published and if so how widely. Are they available just to the partnership, to staff, to clients or more generally to the public at large? The answer may depend on where a firm is at in the implementation of diversity policies and its starting position.

In all circumstances, any metrics set must be measurable. The leadership of the firm must be held accountable for achievement of those metrics. The logic of having published targets is at one level compelling. But realpolitik within a firm means that public statements of targets that look challenging, if not unachievable, may well not advance the cause of diversity. There are no simple answers on this point.

Summary

So, in a nutshell, the key takeaway points based on my and our firm's experience are:

- there is no silver bullet, rather a range of initiatives and steps that need to be undertaken together;
- an appeal to logic and emotion is likely to be more successful than an appeal to just one of them;
- culture is fundamental;
- systems and processes, though lawyers instinctively dislike them, are necessary to measure and reinforce change;
- there must be a clear link between the various initiatives and firm strategy;
- and

- any metrics must be measurable, with a firm's leadership accountable for their achievement.

Financial understandings for women prior to partnership

Though not a core part of any discussion on diversity, there is anecdotal evidence of women being less prepared for the financial side of running a business. Why this is, I am not sure. Perhaps it is that there are simply more opportunities for men in casual situations, over a beer or simply in informal discussions, to better understand at an earlier stage the business of law.

A modern law firm is both a collection of professionals practising law as part of a proud profession bound by a code of ethics and a business, with the part-

Likewise, statements that research shows that more diversity inevitably means better decisions, more profitable business etc ignores some research that homogeneity leads to harmony and the building of a clear consensus, clear execution and clear outcomes.

ners as co-owners generating a return for those shareholders. Most of us who go to law school are attracted by the former not the latter but the parts of any firm are equally important.

It is difficult to capture in only a few words the core financial understandings necessary before accepting an invitation to join a partnership. It is important to seek professional advice and ensure the opportunity is given to do so. That advice might come from a trusted partner within the firm, one outside the firm or from an accountant. Each firm's financial structure will be slightly different.

Incoming partners should form a trust to protect personal assets. That should be done with the benefit of good advice from someone expert in trust law and operation. Professional indemnity insurance arrangements may re-

quire the settling of a family trust.

Partnerships are likely to require the payment of capital in circumstances where many young partners will not have the necessary equity to further mortgage their homes nor otherwise source available funds. Would-be partners should enquire as to what arrangements the firm can put in place, for example guarantees to a bank that capital will be repaid directly if circumstances require it. Each situation will be different but again advice should be sought.

The accounts are likely to cause most lawyers' eyes to glaze over. Each firm will operate slightly differently and again professional advice prior to accepting a partnership offer is sensible. Understanding how firms make money is important. Conversations with partners are likely to be the most helpful way of getting this understanding. It's important to get a feel for the cost of keeping the doors open each week, how capex is funded, what the firm's borrowings are and what those borrowings are used for, and what other liabilities (eg lease commitments) new partners are expected to sign up to.

It is important to get an understanding of the firm's total revenue, the degree to which there is annuity (i.e. repeating) revenue and expectations around profit margin.

While few partners join partnerships simply for the personal financial return, it's very important to obtain a deep understanding of the firm's remuneration system. No two systems will be the same. Junior partners need to understand how income is shared, who determines income and also likely income levels, especially in the early years. All of that information should be provided as part of the offer of partnership.

Finally, it's important to recognise that a partnership's remuneration system will ordinarily reflect a firm's culture and values. Understanding the partnership remuneration system is a further way of gaining an insight into the partnership culture which a candidate will become part of.



Changing law firm culture – Be the change

By Ngaroma Tahana, Solicitor, Gordon Pilditch, Rototua

Be the change you want to see. I am proudly Māori, a single mother, a Crown Prosecutor and a lawyer trained in a large commercial law firm. I bring my own unique perspective to this kaupapa (topic). I want to share with you some of the challenges I face as a Māori woman lawyer and the strategies I have used to be the change in the legal profession that I want to see.

My challenges arise by reason of my culture and gender which cannot be separated and which have prompted me to adopt strategies to bring change. These strategies include:

- remaining true to who you are;
- backing yourself; and
- staying connected with your community.

I will address each of the strategies in turn but first I want to outline what Māori women say are some of the obstacles to succeeding.

What is impacting on Māori women's retention and achievement?

As Māori women we face both gender and cultural biases. These gender/cultural dimensions are also our greatest strengths. In a recent paper Her Honour Judge Fox set out common barriers facing Māori women in the law, as identified by members of Te Hunga Rōia Māori o Aotearoa (Māori Law Society).¹

Such barriers include:

- cultural barriers in the legal profession (individualistic and competitive);
- gender perceptions (all women will have children) – battling the status quo;
- working arrangements and motherhood;
- being a Māori lawyer; as a whanau, hapū and iwi member;
- confidence to act and/or be at the table; and
- a lack of role models and role modelling for wahine Māori (the counter-factual position being that wahine Māori in senior roles are required to be all things to all people).

Change in the legal profession can and will happen if we be true to who we are, build on our strengths and insist on workplaces that support these dimensions. If law firms will not change, we will look for, and create, alternatives. This is the reality for law firms. If law firms do not see this, they will ultimately be the losers as our societies, economies and realities are changing. The client base law firms seek to service, will insist on its service providers understanding their needs, as women, as Māori, as Chinese, as immigrants as people other than the status quo currently dominating leadership positions in the legal profession. I hope my journey in legal practice will in some small way inspire you as women from all cultural backgrounds whether it be Pākehā, Māori, Samoan, Chinese or Indian to walk this legal pathway in a way that is true to your needs as a woman of any cultural background. The legal profession will be richer for it and our clients will be better served as a result. I now explain my strategies for bringing change to our profession so that it can enable me to be the best lawyer I can be.

Staying true to who you are

I am the product of my parents, whanau, hapū and iwi.

My gender and my culture shape and inspire me.

I do not step out of my culture or gender to go to work each day. Cultural and gender values permeate my work and materialise in the relationships that I form along the way.

How does this play out in the work place and how might the firm benefit?

1. Fox J, *Strategies for Survival – Maori Perspectives*, October 2014.

In the prosecution context the benefits are obvious. Given we serve a public function there is an expectation that we reflect the communities in which we prosecute and my colleagues are generally grateful for my ability to navigate cultural divides. More importantly complainants are more willing to open up and share their stories when they are dealing with someone that gets them. Sadly, sometimes it is something as simple as pronouncing their name correctly.

I want to share with you a story of a young Māori woman who was the complainant in one of my cases and how we got her to Court. Disillusioned by the tragic hand life had dealt her she made a decision to end her life. She tied a rope to the rafters and placed it around her neck. Her life flashed before her including years of sexual abuse as a child by an older relative. “Was it real - had he done these things to me or am I mad and imagining things?” She needed to know. At that point she found the strength to dislodge herself from the noose, and save her life.

Plagued by her childhood memories and armed with a kitchen knife she went to confront her abuser. He invited her in and they went out to the backyard where she asked him if he had done it. He said nothing and hung his head in silence. Again she asked “did you do those things to me” but this time she raised

her hand revealing the knife. Her abuser turned and ran. As he clambered over a fence she lunged forward and stabbed him in the leg.

She immediately turned herself into Police. The following day she made the most harrowing statement disclosing the sexual abuse and why she had confronted her abuser.

That interview was recorded on DVD. She was charged, pleaded guilty at the earliest opportunity, convicted and sentenced to two years imprisonment. Consequently her abuser was charged with multiple sexual violations spanning an eight year period. He pleaded not guilty so the matter was set down for a trial.

In the meantime my complainant was a serving prisoner in Wiri Women's Prison, completely traumatised by her childhood tragedy and struggled to talk

Cultural and gender values permeate my work and materialise in the relationships that I form along the way.

about it without hyperventilating, losing her breathe and clamming up.

For evidential reasons the complainant's DVD interview could not be played. It was therefore critical that I connected with this young woman, that she trusted me and was comfortable to work with me to retell her story in Court. In preparation for the trial I made several visits to the prison. Much of our time was spent talking about everything else but the Court case but each time we were building trust. That trust enabled her to feel comfortable in attending court and giving evidence so that justice could ultimately be achieved.

I wasn't the prosecutor when I visited her in prison – I was me – just the lady from Rotoiti, Ngati Pikiao. At no time did my legal knowledge feature in getting this young woman to Court. Instead I drew on my innate abilities and nurturing qualities as a mother and instilled cultural values of manaakitanga (generosity), aroha ki te tangata (respect), humility, and uru (reciprocity). Women do think and act differently from men. Cultural diversity and gender diversity can provide alternative means of building relationships and solving problems – activities central to legal practice. I urge us all as women lawyers to be true to ourselves and to use this uniqueness to be the best lawyers we can be.

Backing Yourself

For Māori the motivations for entering law school and embarking on a legal career are varied but a key driver is helping your people. There is an expectation that you will take advantage of your career to benefit your whanau, hapu and iwi. Those expectations and obligations dictate the need to remain connected within your communities. For me that could not have been more true.

From a very young age our father drummed into us that we must further our education and use our skills and talents to help our people.

As a young management graduate I observed one of our Māori land trusts experiencing difficulties. The trust had entered a commercial arrangement, ill-advised, without having conducted a feasibility study and consequently suffered significant financial loss. I made a decision there and then that Ngati Pikiao needed sound commercial lawyers and I would study law, focusing on commercial papers. I chose Auckland Law School with a view to summer clerking with a large firm to gain an insight of commercial practice.

Bucking the trend, I applied for a summer clerkship, a solo mother in my thirties – certainly not your pin up, typical summer clerk!

Interestingly most of my Māori contemporaries never applied for the big firms. Too many underestimated their abilities. Her Honour Judge Reeves described the root cause of this malaise as the “imposter syndrome”,³⁴ where women question whether they are good enough, far too frequently. As a Māori to sing of your own sweetness is frowned upon and considered whakahihi (showing off) which can be inhibiting for Māori women. However, when you remain focused on your motivation for entering the law whakahihi is less likely to arise.

Staying Connected to Your Community

For Māori women staying connected means taking on various roles outside of their work lives and within their wider whanau and communities, whether it be attending tangihanga, acting as trustees on land trusts or helping the whanau out by babysitting kids. Our culture rightly demands that we help each other – that is what makes us strong and ensures we are not alone when things do not go so well. It is our strength but we also need time to enable us to fulfil these important roles. Our culture is not alone in this regard, many eastern cultures also have the same expectations around supporting extended family.

If law firms are to support all women, the availability of flexible arrangements should not be limited to accommodating our parental obligations and ought to extend to other areas required to enable us support our cultural values. Staying connected with your community also raises your visibility and credibility.

Those who seek to innovate, to be flexible, to understand and to allow people to be true to their gender and cultural background will ultimately be the most successful legal providers.

3. Fox J, *Strategies for Survival – Maori Perspective*.

4. Reeves J, Me, *My Journey to Working for our People* (Federation of Maori Authorities Annual Conference, 28 September 2014).

Education has always been central to my family. My father had a long career in education and served as the Chief Executive of Waiariki Polytechnic in Rotorua. It was therefore no coincidence (although a surprise) that after my father's death I was made a ministerial appointment to the Council of Waiariki – a position I have served for the past six years. This appointment is a paid position and according to Government guidelines warrants 14-20 hours a month.

At the time of my appointment in 2010 I was working at Simpson Grierson but started my role as a Crown Prosecutor with Gordon Pilditch shortly after. During my interview I emphasized the importance of staying connected to the community and the need for the prosecution to reflect the community it serves. During my contract negotiation I sought the partners' approval of this secondary employment and leave to attend meetings.

The partners talked about supporting another staff member to attend committee meetings for the Law Society but my request was more novel and not something they had considered before let alone had a policy on. Despite no policy, partner approval was given. It is not written into my employment contract but we have a mutual understanding that my prosecution role takes priority and any absences are made up outside normal business hours.

The availability of flexible arrangements should extend beyond accommodating parental obligations. Backing yourself, building the case, and having a sound rationale for flexible arrangements does work.

Conclusion

Be the change you want to see. Do not compromise on who you are, back yourself and stay connected to your community. This on its own will drive change and require those who lead the legal profession to follow or risk losing an increasing chunk of the legal talent and the changing New Zealand client base. Those who seek to innovate, to be flexible, to understand and to allow people to be true to their gender and cultural background will ultimately be the most successful legal providers.

In February this year we celebrated the inaugural Māori Appellate Court sitting of a full Wāhine Māori Bench – with Judges Caren Fox, Stephanie Milroy

5. Gordon Pilditch is a small firm with six solicitors (including two partners) and two support staff.

and Sarah Reeves presiding. Te Hunga Rōia Māori took this opportunity to celebrate and reflect on Māori women who have overcome the barriers and made great achievements in the law. Their journeys provide a powerful narrative that more wahine Māori can become leaders in the legal profession. They are our change and we will continue after them to be the change we want to see. Be true to who you are. Back yourself. Stay connected.



Turning the tide to make more women law firm partners in New Zealand

By Stacey Shortall, Partner, Minter Ellison Rudd Watts, Wellington

It has been over a decade since I last wrote a paper about the retention and promotion of women lawyers. At that time, I was an attorney at a Wall Street firm and *The American Lawyer* had just published a depressing article about attrition rates of female lawyers in large US law firms. Somewhat optimistically I thought that a new day was on the horizon and that large law firm culture – not only in the US but also here – would be forced to change because so many women were entering big firms. It is thus somewhat disturbing to me that I now find myself back home in New Zealand, 20 years into my career, a woman partner in a firm that is committed to gender diversity, but that female lawyer attrition remains a key problem in large New Zealand law firms.¹

What do the numbers tell us?

For over two decades, year-on-year, more women than men have graduated from New Zealand law schools. Assuming roughly a ten year journey to partnership, on those numbers alone, the partnership ranks of big law firms should surely be gender diverse by now. Not so.

The disappointing gender statistics surrounding large law firms in this coun-

1. I am a partner at Minter Ellison Rudd Watts, which has a long-standing commitment to gender diversity. Indeed, I work in an office where 40% of the partnership is female. The views expressed in this paper, however, are mine and should not be attributed to my firm.

try – of which, according to February 2015 data published in *LawTalk*, there are 12 with more than 20 partners or directors – are well publicised. By way of quick recap, that data tells us over 48% of lawyers in large New Zealand firms are female. At least an equal number of women and men have entered such firms as summer clerks and then law clerks for many years. But, according to the 2015 data, only 21.7% of large law firm partners in this country are female. From what I see in the profession, that percentage plummets even lower in some of the bigger firms with 40-plus partners.

We are not alone with this issue. In October 2015, the National Association of Women Lawyers in the US (NAWL) released its Ninth Annual National Survey on Retention and Promotion of Women in Law Firms. It is a sobering read.

According to that Survey (which tracks the professional progress of women in the 200 largest US law firms by providing a comparative view of the careers and compensation of men and women), men continue to be promoted to partner status in higher numbers than women. Moreover, the typical female equity partner earns 80% of what a typical male equity partner earns. Women continue to be under-represented on the highest governance committees. The typical female equity partner bills only 78% of what a typical male equity partner bills. However the total hours for the typical female equity partner exceeded the total hours for the typical male equity partner. Women represent just 18% of equity partners; only marginally better than when NAWL conducted its first survey in 2006.

Returning to our shores in New Zealand, there is likewise no way to sugar coat it: despite the strong pipeline of women entering large law firms, we lag well behind our male colleagues when it comes to promotion. Somehow, we're coming off the skids.

As a profession, we as lawyers often demand change for clients based on fundamental notions of fairness. But, in all large New Zealand law firms, are we doing enough to actively advance gender diversity in our partnership ranks?

I say, no. And I say our inaction strikes at the heart of women's equality in our nation's large law firms.

What is causing the leaky pipeline to female partnership?

There are several theories on why women leave large law firms. One is that such firms' cultures are intolerable for women. Another is that those women

who seek to have a family (and I am mindful that some do not and some are unable to do so) find large firm practice incompatible with being a mother.

Most large law firms are committed to addressing the first theory. For those of us who have practised for several decades in big firms, we have seen the change. The sexist language and behaviours that our predecessors (and some of us) experienced are nowhere near as rampant (or tolerated) as they once were.

Indeed entering our law firm corridors today is a generation of New Zealand women who have grown up expecting equal opportunity in the workplace. They have never experienced the overt gender discrimination that some of us and our predecessors did. They have not studied or worked in environments where they have been the only woman (or one of very few women) in the room. They have no expectation that their gender will – or even could – compromise their big law firm career.

Yet unconscious biases continue.

As a profession, we as lawyers often demand change for clients based on fundamental notions of fairness. But, in all large New Zealand law firms, are we doing enough to actively advance gender diversity in our partnership ranks?

While I am unaware of any specific New Zealand research on point, recent US studies confirm that unconscious biases still bar the way for promotion and retention of women in large law firms. While many of us in this country may feel we do not need to compromise our gender to be successful, we should not ignore that some law firm leaders may still consider us compromised because of our gender.

Take for example the lingering gender stereotypes about men being “better with numbers” and more financially literate than women. Or the ongoing view that certain client work lends itself to male lawyers who are prepared

to go drinking through the night and socialise at pub or rugby events. Or the traditional notion that because women lawyers are better at running teams, handling the administrative and logistical details on a file, mentoring younger staff to churn out more effective work and keeping up morale, they should hover over their desks in “worker bee” roles. Compare that stereotype with the one about male lawyers having stronger business networks and thus fitting the “rainmaker” role, which creates positive perceptions and improves partnership prospects. And let us not forget how the classic “double-bind” persists – that an assertive, uncompromising female lawyer is too aggressive and masculine, yet a woman who is less confrontational is ineffective and weak.

As a result of such implicit biases, it is my view that we, as women lawyers, may – in some firms – have to demonstrate greater competence and find ourselves held to higher standards than our male colleagues when seeking to make partner.

Even in those large firms that are successfully turning the corner on these biases and changing their cultures, many leaders still perceive the exodus of talented female lawyers who leave to have and raise children as inevitable. Because the timing of making partner in most large law firms collides with child-bearing and raising years, this theory – that women will leave because they believe successful mothers cannot be successful partners – provides a convenient excuse for female lawyer attrition.

But it should not.

While it has certainly not been my experience at MinterEllisonRuddWatts, I suspect that the “maternal wall” – constructed by negative assumptions about the commitment and career aspirations of female lawyers once they give birth or adopt a child – still exists in some other large New Zealand firms. And, with each additional child, I expect the maternal wall grows higher.

In such firms, women never get to the point of breaking through the glass ceiling of law firm partnership because they slam into the maternal wall first. And, because they do, it often becomes the women without children (who I do not judge at all – I was one of them for a long time) who progress which, in turn, can reinforce the stereotype that partners in large law firms cannot also be good mothers.

But women lawyers who seek to have children need role models. We can all imagine what it might be like to work in a law firm where there are no women

partners with a life we would want. And so I do what I can – hopefully successfully – not to be perceived as one of those partners myself.

For the first 14 years of my career I was just a lawyer. Ready, willing and able to work around the clock, travel at the whim of a client and always prioritise my job over every other aspect of my life. Frequently held hostage to a schedule not of my own making, I simply sucked it up. Although the all-nighters, interrupted holidays and frayed relationships that resulted from uncontrollable timing were tough, they were manageable because they largely impacted only me.

When my first child arrived, however, I suddenly became a working mother. And boy what a difference a day makes.

The travel commitment and sheer number of billable hours expected in a Wall Street law firm did not sit easily alongside my desire to be an involved parent. Notwithstanding that the firm was less focussed on requiring face time in the office and more open to flexible working arrangements than many large New Zealand firms, it was time to return home. And so I did.

When I arrived back in New Zealand in 2010, I had two infant children. Somewhat remarkably (to me at least), when being interviewed for law firm jobs, I was asked at some firms – by male interviewers – how I planned to balance my childcare commitments with the stress of law firm partnership. I am quite certain that such questions would not have been put to a male candidate with a young family at home. In any event, I was bluntly reminded how working mothers are often held to different standards than working fathers. (Needless to say, one of the reasons that I joined MinterEllisonRuddWatts was because no such inappropriate question was asked.)

Even for those mothers who scale the maternal wall and overcome any negative assumptions about their commitment, the brass ring of law firm partnership can remain elusive.

Returns from maternity leave are often fraught, particularly when mothers receive less significant and challenging work – often by supervisors with the best of motives in seeking not to demand too much too soon – which impairs their ability to advance in the firm. Or when client relationships that women had been handling before heading out on leave are not fairly transitioned back when they return. At a time when many mothers can feel particularly torn between being in the office or at home with their child, those firms that fail to manage returns sensitively soon lose these women.

Moreover the traditional law firm model requiring face time in the office does not, in my view, easily accommodate the flexibility that most working mothers need.

While I accept that the office face time model, and the firm culture it creates, affects both genders, it takes a particularly high toll on those women who experience irreconcilable conflicts between meeting law firm expectations and family demands. Of course, issues of work and family balance are not just women's issues. But the simple truth is that, in many – perhaps most – families, women still carry the larger share of child-rearing and household responsibilities. If conflicts between kindy or school and work or travel schedules are not vexing enough, throw in the day-to-day issues like getting groceries, attending kids' sports, baking for the school gala, buying new school shoes, remembering birthdays and buying gifts, calling sick relatives, sending anniversary cards and so the list goes on. Let us not forget, too, those challenging days when children are sick and only want their mother.

Assumptions about the commitment of lawyers on alternative schedules can influence performance evaluations, work assignments, mentoring relationships and promotion decisions.

Issues around institutional bias (colleagues disregarding a woman's alternative work schedule or failing to compensate a lawyer who exceeds a reduced-hours schedule) also are problematic. Assumptions about the commitment of lawyers on alternative schedules can influence performance evaluations, work assignments, mentoring relationships and promotion decisions. Their hours may not be respected by supervisors and their assignments may not be given priority by junior or support staff. Where alternative work schedules are undermined in these ways, I have seen women opt to leave a firm altogether rather than being in a position of needing to constantly remind others of their alternative arrangement.

In this connection, I believe women do not leave large law firms primarily

because of the number of hours. They leave because of the rigidity of those hours and their inability to accommodate competing demands.

A 2007 report by the MIT Workplace Center in the US found that by far the most important reason why women left law firms was “the difficulty of combining law firm work and caring for children in a system that requires long hours under high pressure with little or inconsistent support for flexible work arrangements.” Indeed the traditional notion that office face time reflects commitment and ambition is particularly challenging for female lawyers who are mothers. In my view causes many of them to simply desert the large firm partnership track.

I accept that some partners who built their careers at substantial personal cost find it hard not to expect the same price to be paid by our younger colleagues. But this expectation ignores that many younger women will refuse to pay that price because they have no belief that it is necessary to do so. And, if asked for payment, they will simply leave law firms to pursue other options instead. Reports indicate that millennials are more likely than their predecessors to rank family obligations ahead of work. In fact I predict that the retention and promotion of women lawyers in New Zealand will get dramatically worse – not better – unless greater flexibility becomes the mainstay of large law firms.

Why should we fix the leaky pipeline?

Female attrition is costly.

At a commercial level, it makes no sense to expend significant resources recruiting and training female lawyers only to then drive them away with a culture that is intolerable. According to US research, it can cost around 150% of a lawyer’s annual salary to recruit and train a replacement. US research also is largely consistent that most lawyers do not begin to generate good profits until they have practised for three or four years. Plainly it makes no business sense to attract and hire talented women only to lose them by the time they become really profitable.

If that was not bad enough, US studies show there is an immeasurable cost in client discontent when a law firm has a high turnover level, especially in mid-level ranks. Combine that discontent with the fact that there is a growing number of female general counsel, and other senior in-house lawyers, and New Zealand clients who notice – not in a good way – when women lawyers leave particular firms. Reputational cost thus becomes a factor too.

And then there is the real clincher for many firms. Women lawyers typically do not leave large firms to stay home full-time. Rather reports show that they leave to more accommodating workplaces – often in-house. In other words, the woman who has felt unhappy at the firm then becomes the (actual or potential) client. It hardly needs saying that the more unhappy the woman is at the point of departure the less likely she becomes to instruct the law firm in the future.

The expectation that careers can combine significant family responsibilities is shared by an increasing number of men in this country, particularly those with a spouse/partner who seeks to pursue her/his own career.

Attrition also places a heavy burden on the women who stay behind. The thinner the senior female ranks in large firms, the fewer of us there are to mentor or sponsor other women. This, in turn, can create morale issues and lead to further discontent.

And finally there is the lost opportunity for those large firms that are unable to advance enough women lawyers to develop a new more diverse culture. Here is where the concept of the “30% Solution” becomes relevant. This concept originated during the Fourth United Nations Conference on the Status of Women, held in Beijing in 1995. The conference determined that the presence of 30% women in decision-making bodies is the tipping point to have women’s ideas, values and approaches resonate. Application of that 20-year-old determination to large New Zealand law firms suggests that women’s ideas, values and approaches are still missing.

US studies show that gender diverse firms often also more readily champion other forms of diversity. They can be more open to the changing ethnic and cultural demographics of clients. The logic is simple – these firms are more likely

to recruit and develop the lawyers that clients of the future will demand.

How best do we fix the leak?

Lelia Robinson was the first woman to be admitted to the bar in Massachusetts in 1882. She is said to have advised her colleagues around 130 years ago:

“Do not take sex into practice. Don’t be ‘lady lawyers.’ Simply be lawyers and recognize no distinction between yourselves and the other members of the bar”.

Women lawyers throughout the US followed that approach. So, too, here. But not without sacrificing large chunks of their personal lives.

Few female lawyers are willing to pay that cost today. Accordingly any fix of the leaky pipeline to female partners cannot require the same sacrifice that our predecessors were prepared to make. Rather firms that seek to advance women lawyers need to step outside the box and set aside preconceived ideas of how lawyers must work to succeed.

Here is what I think that could look like.

1. Make alternative working arrangements available for all lawyers

Like many women working outside the home, I struggle at times to balance seeking to be successful in my career and be a present mother to my kids. So I work fulltime but with some flexibility. I doubt many of my clients know it. And those that do seem not the least bit fazed because the work still gets done. Indeed, for most lawyers, the barrier to alternative working arrangements has less to do with client expectations than law firm expectations of face time.

Even now I admit to a degree of trepidation in being totally frank about the flexible way in which I work. Notwithstanding having a very busy practice, there is still that small knot in my stomach that tells me honesty may come at a price. That someone somewhere will question my commitment because my constant days of long, gruelling hours at my office desk are done. But the thought that I might be perpetrating the perception that big firm partners need to always work inflexible and long office hours at the expense of their families to succeed ties a bigger knot. Unless senior female members of our profession are prepared to be totally candid about how we can and do balance our home and work commitments we can never truly hope for change. It is time to drop any facade and

tell it like it is, even at the risk of being criticised.

In so doing, I am mindful that we, as women, can sometimes be our harshest critics. Speaking out about how we manage home and work can be like walking a tight-rope knowing you will fall. Admit you have a nanny care for your children? You're an absent mother who has handed off parenting. Admit you leave the office early on a regular basis to spend time with your children? You're plagued by guilt and not interested in advancing your career. Went back to work when your child was still a baby? You're less of a mother. Extended your maternity leave to stay home? You're less of a lawyer.

Anyway – mindful that I may be judged most harshly by other women – here goes.

I am determined to show that parents can nurture their professional ambitions while being fully present in their children's lives. With this in mind, I try to set aside standing blocks of time to spend with my children during the week. For me, working flexibly does not mean working less; it just means working differently.

Technology (specifically my smart phone) enables me to remain very available, when I am not at my office desk. The billable hour system also provides for considerable flexibility because I can work from home at night and bill hours outside of the traditional work day.

Of course there are days and sometimes weeks when I am, for example, in court hearings or at trial. And there are meetings with my team and clients that must happen in person. But all those commitments can accommodate real family time in my experience. It just takes active management, a little resolve and prioritisation.

As a younger lawyer, I certainly sat through the "work-life balance" discussions in which the advice appeared essentially to be to "outsource" my life. Whether that involved finding a husband who was willing to stay at home with children through high school or hiring a nanny plus a housekeeper (neither of which I judge, and both of which I have seen work very effectively for others), none of it really appealed to me. And that is because I consider domestic tasks to be part of the "all" that I want to have. For example, I enjoy cooking the meals and making kindy/school lunches for my kids plus giving them a bath each night.

Given that I am being brutally honest, let me assure you that things do not al-

ways go smoothly. Working with flexibility is stressful. There is an ongoing flow of small trade-offs that can cause much stress. For example, when is a work matter urgent enough to mean I miss the touch game I promised to watch? Which internal meetings can be rescheduled so that I can attend the kindy picnic?

But working with flexibility can also be very successful. Desires for balanced lives are not unique to women with children. Moreover, the expectation that careers can combine significant family responsibilities is shared by an increasing number of men in this country, particularly those with a spouse/partner who seeks to pursue her/his own career. So once we move away from the view that office face time is a constant necessity, large law firms can become places where lawyers can have fuller lives and, as a result, overall attrition rates will improve.

Many law firm parents, especially working mothers, want to spend part of their daytime hours around their children without worrying about how it will affect their promotion prospects. Alternative working arrangements — whether

flexible or part-time working — make this possible.

And the advantages of alternative work arrangements are clear: retention of talented and experienced lawyers; preservation of client relationships; reduction in training and recruitment costs. In fact,

I am determined to show that parents can nurture their professional ambitions while being fully present in their children's lives.

US studies show that alternative working arrangements have become such effective retention tools that they can outstrip salary increases.

To state the obvious, alternative schedules allow lawyers to structure work hours around the office, home and other obligations – which is certainly possible in an age where calls and emails constitute the majority of client interactions and smart phones ensure everyone is in constant communication. Indeed, technology has made it possible for lawyers to work from almost anywhere.

In my experience, few – if any – clients are aware of or concerned about how

much face time a lawyer puts in at the office. For most clients, as long as lawyers provide timely advice and are accessible via email and for scheduled calls or meetings, it is irrelevant where they work or whether they work flexibly or part-time. In fact, lawyers may be more available to answer calls from home or outside a school than when tied up in trial or other lengthy meetings.

Following concern in the US that alternative working policies were being used almost exclusively by mothers, and thus gender stereotypes (that women, for example, are less ambitious, less dedicated to clients and less interested in career development) were being reinforced, and resentment was growing, most firms made such policies available regardless of gender. It is an obvious point that alternative schedules are less likely to be stigmatised if they are not used exclusively by mothers. So, too, should it be obvious that it is not just women lawyers – and not just lawyers with children – who can benefit from flex or part time schedules.

In some large firms, however, flex-time and part-time lawyers risk being assigned less challenging work. While not every matter is appropriate for someone on a flex-time or part-time schedule, where that is not a consideration, s/he should not be precluded from handling an important matter only because of the nature of her/his in-office work hours. In this regard, partners and other supervisors may need to be trained in how best to utilise flex or part-time staff. Partners also need to manage workflows so that lawyers taking advantage of flexible or reduced hours do not lose opportunities.

Concerns can be raised about the availability of senior lawyers on alternative schedules to supervise others. But many full-time lawyers are not sufficiently available, even when in the office, to answer questions or review work. Lawyers on reduced schedules may actually be more available than their colleagues who are constantly travelling, in court or in meetings.

There are many other myths about alternative work arrangements in large law firms. And, in my experience, they are just that – myths.

One recurring myth is that alternative schedules only suit some areas of practice. Which area, in my experience, largely depends on who is telling the myth. In any event, reviews and surveys in the US reveal examples of successful alternative arrangements across virtually every area of legal practice. I would challenge any lawyer who suggests that his/her area of practice cannot accommodate someone working an alternative schedule. Sure, it is not always

simple, and success depends in large part on the willingness of the lawyer working the alternative schedule to make some exceptions as required. But such schedules are now widely used in offshore large law firms that previously would have considered it impossible.

Nevertheless there can still be a perception that working differently hurts a woman's career. Even where firm policies explicitly state that alternative arrangements do not sabotage lawyers aspiring to partnership, it will only be believed when flex-time and part-time lawyers achieve that status. So, to state the obvious, lawyers who work alternative schedules must believe they are not jeopardising their prospects for advancement and must be eligible for partnership.

2. Make unconscious bias training mandatory

One of the most difficult obstacles to overcome to create gender diversity around the partnership table is tackling the innate bias we all carry within us. Training to understand unconscious bias is critical, in my view, to advance women in large law firms.

Hidden bias and stereotypes linger in most workplaces. But studies show they can be successfully tackled through awareness training which is meaningful and extensive. In other words, one-off training alone will not do the trick. If a large firm accepts that it must be unacceptable to do or say anything that reflects a hidden bias, as I suspect most would, it is easy to agree that unconscious bias training should be mandatory in firms and rolled out on an on-going basis.

The cultural change that often flows from such training can be transformational. For example, many lawyers may be unaware of the interplay between working mother stereotypes and performance perceptions until it is spelled out to them. And, once they become aware of the interplay, those lawyers can correct themselves before jumping to unfair and unjustified conclusions about their female colleague.

3. Offer and encourage both paid maternity and paternity leave

Policies providing for paid maternity and paternity – which is increasingly called partner – leave for all births and adoptions are fairly standard in the US.

In some industries, paternity leave is the norm. Silicon Valley, which has

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led the way with corporate benefits and employs a disproportionate number of people in childbearing years, has noteworthy partner benefits. For example, Facebook equalizes paid leave, offering both men and women four months.

Part of the rationale for paternity leave is based on the view that, if men are able to be very involved early on in the care of their children, they will stay involved. This, in turn, according to the rationale, will translate into more equal parenting and family roles. In fact, one of the best ways to advance women in the labour force, economists say, is to involve men more at home because women are more able to work outside the home when they can share the domestic load.

While Silicon Valley continues to lead the way, large US law firms also have been relatively progressive around offering generous paid parental leave regardless of gender. Less so in New Zealand. Yet here, just like there, the provision of both paid maternity and paternity leave helps to level the playing field. The possibility that some men may resent their female colleagues (or, frankly, female partners) who take maternity leave is mitigated when they can do something similar. In addition, those men who have experienced being on parental leave and then transitioning back to the office away from their child/children have a better appreciation of the challenges working mothers face which, in turn, can defeat some negative stereotypes.

But the letter of parental leave policies matters little if they are not used. Indeed – like for the alternative working arrangement policies mentioned above

– it is the way such policies are regarded and implemented that tells the real story.

Lawyers of both genders taking parental leave – and talking about it – is essential. Otherwise the negative assumption that those women who take maternity leave (often several times) get “special treatment” can, in some firms, unfairly delay, if not undermine, their partnership prospects.

Unsurprisingly, when a man’s co-workers take paternity leave, according to reports, it increases the chances that he will too. So having male partners utilise parental leave policies is critical too.

In addition, remaining connected to parents who are on leave is important. Partners need to lead the way here as well and make a point of checking in with lawyers on leave.

Discussion within the firm and with the parent about how to “on ramp” after a hiatus can help everyone transition effectively too. Done well, this can create strong loyalty on the part of the parent who feels supported by the firm during a period that – ultimately – will be short lived in the arc of her/his career.

4. Formalise sponsor arrangements

It is well-accepted that having sponsors (who promote) and mentors (who guide) are key to making partner in any large law firm. More than just mentoring, a sponsor will champion a younger lawyer and push them forward.

It is equally well-accepted that sponsors often naturally gravitate towards younger lawyers who look and work like them. Here is where things can get challenging for female lawyers, particularly those who are mothers, in firms with few women partners. There is simply a natural sponsor shortage.

To overcome this issue, formal sponsor arrangements can be very helpful. Of course it is important to balance formalised policies and the need for individual compatibility. But, while one size will not fit all, neither will ad hoc arrangements that exclude some (often female) participants. Accordingly, law firms should identify the senior male partners who can help champion younger female lawyers, and incentivise them to do so.

In that regard, encouraging sponsors to develop female rainmakers is essential in my view. I have certainly found that having my own client base means having greater freedom to manage my own practice. Because I am able to control my own workflow, I am not dependent on others for work allocation and

this autonomy helps to create the ability to be flexible. Sponsors who can help women lawyers become rainmakers are not only advancing female partnership but helping to retain and promote lawyers by assisting the development of more workplace flexibility.

5. Recognise and reward commitment to gender diversity

Which brings me to my next point.

Large firms need real strategies – not lip service – to advance women lawyers. And those strategies need to be measurable so that the partners who champion them can be recognised and rewarded.

Some US law firms include efforts to strengthen the firm's diversity as one component of overall partner evaluation (with compensation consequences). In other firms, bonus pool eligibility is influenced by active involvement in supporting diversity activities. Similarly, many US investment banks use a diversity bonus pool that rewards partner-equivalents for performing well on recruiting, retaining and advancing traditionally underrepresented groups including women.

6. Have an active pro bono practice

Women in particular tend to want to work for firms that make a public difference. In my experience, while lots of male lawyers also do valuable pro bono work, the existence of a committed pro bono practice will factor into the decision of many women lawyers to remain at a firm. So this must be another area of focus for large New Zealand firms who want to advance women.

7. Demand more from firm leadership

While many large law firms today will have gender diversity committees, training and policies, the strength of those initiatives lies in the commitment of firm leadership to their success. Even where there are good policies on the firm books seeking to advance women, unwritten workplace norms and expectations can discourage them from being used. Unless senior firm leaders – many of whom will be men – publicly show support for these policies, they are quite frankly useless. Window dressing is just never enough.

Firm leaders need to set a “tone at the top” that encourages lawyers to take advantage of policies governing parental leaves, alternative schedules, family-related benefits and pro bono work without feeling they need to pay any

price. To this end, firm leaders must set benchmarks and monitor performance. In my view, such benchmarks should at least include the number and status of lawyers using the policies, the satisfaction of those involved, and the perception of clients and colleagues about the suitability of such policies, and the career consequences of using them.

At a practical level, firm leaders should establish a separate billing code for (gender and other) diversity activities, consider requiring a minimum number of hours to be spent annually on diversity events and make active involvement in diversity activities a criteria for anyone to be promoted to partnership.

After Barack Obama won the U.S. presidency in 2008, he famously committed to making his White House family-friendly, to which his then chief-of-staff reportedly replied “family-friendly to your family.” Leaders in large firms need to watch this space carefully too. Creating a law firm culture in which partners can successfully manage work and home commitments is just one part of the journey. Unless all lawyers in the firm have that experience, regardless of seniority, there remains much work to be done.

Who leads the charge?

Madeleine Albright recently got herself in a large pot of hot water for repeating a phrase I understand she has used often (and actually recall hearing her say at an event I attended in Washington DC several years ago) that “there’s a special place... [] for women who don’t help each other.” Well, at the risk of being similarly burnt, let me join her.

I believe it is incumbent on all senior women in our profession to actively create pathways for other women. The notion that we struggled to reach partnership or other purportedly prestigious roles and thus other women should earn their stripes by enduring a similarly arduous journey is just wrong.

There are many men who are sympathetic and want women to succeed. And they are strong allies. But women partners personally understand the struggles that other women have been or are going through. I believe women partners have a responsibility to reach back and help nurture younger women.

We simply must advocate for other women in our firms – not at the expense of the men, but to ensure that no one is unfairly excluded from advancement because of their gender. We need courage. And we need to show it now.

Summing up

My concluding point is simple: there is no good excuse for the number of women leaving our large law firm corridors.

Although there certainly are examples in this country of women lawyers who have risen to the highest levels without – at least not obviously – sacrificing family or other interests, they are the exception rather than the norm. What the New Zealand legal profession continues to lack is a critical mass of these women who can influence law firm culture from the partnership ranks. And, in so doing – to use words I heard expressed in New York – not only shatter the glass ceiling but help plug the leaky pipeline and dismantle the maternal wall as well.

If large firms want such women as partners, they must create new flexible avenues to the top, so that the notion that women lawyers cannot successfully balance their lives with a successful private practice career can finally be buried – once and for all. And I never need to write this paper again.



The full proceedings of the conference Women in the Law – Career by Design are available for purchase from NZLS CLE Ltd for \$65 (GST included).

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