

The Hon Chief Justice Marilyn Warren AC

Farewell speech

Women Barristers Association

Victorian Women Lawyers

Delivered by Jennifer Batrouney QC

President Victorian Bar

14 September 2017

I remember the day like it was yesterday. 25 November 2003. A new Chief Justice was due to be appointed and, as always the rumour mill at the Victorian Bar was running at break neck speed...I was President of Australian Women Lawyers and [*no surprise!*] we were hoping for a female appointee.

I cannot begin to tell you the elation we all felt when it was announced that Justice Marilyn Warren had been chosen to lead our profession! I raced out, bought some flowers and delivered them to the glass box and then raced back to chambers to get a press release out. In it, I said that:

Australian Women Lawyers ... are confident that Justice Warren will lead the Victorian Supreme Court with strength, style and grace.

And ... do you know - I think that I might have been right!

I am not sure how many of you in the room are “Game of Thrones” fans – but to my mind, the Chief is our Brienne of Tarth. To those of you who don’t know, Brienne is a larger than life female warrior of unrivalled skill and loyalty.



There are moments in a woman lawyer's professional life when the pervasive male culture can be overwhelming and disheartening. In these moments, we can take comfort in the example set by Her Honour when facing discrimination and bias.

As Justice Tate mentioned, in 1976 the Chief Justice applied for a job in the criminal law branch of the Crown Solicitor's Office, only to be told the Crown Solicitor didn't think women should be employed in that branch as solicitors - or even typists - due to the unpleasant nature of the work. She argued her case on appeal...at the end of her submission she raised the matter of discrimination. This caused an 'extraordinary kerfuffle' and the Chairman of the Appeals Board sought an explanation from the law department.

Although she insists that her appeal was not some watershed moment, her courage and resilience to, as she often says, 'keep gender on the agenda' set the wheels in motion for a shift in hiring practices.

Within three months of the Chief's appeal a woman solicitor was appointed to the Crown Solicitor's Office. Within a year, the first woman solicitor was employed in the criminal law branch.

Upon signing the Bar Roll in 1985, her Honour's enduring work ethic enabled her to prevail over the predominantly male culture and look past the 'sea of men in grey suits'.¹

Her Honour's resilience was once again tested in 1996 where she accepted a brief from a partner in a major law firm only to receive a call five minutes later by the same solicitor who said:

"Sorry, Marilyn, wrong gender."²

The client would not accept a woman barrister.

It is these encounters with discrimination that have no doubt steeled Her Honour to forge ahead and show them how wrong they were. Your Honour would never say so, but Brienne has said:

¹ Karen Percy, 'Victoria's Chief Justice Marilyn Warren Urges More Diversity in Judicial System' *The ABC*, 13 April 2016 < <http://www.abc.net.au/news/2016-04-13/victorian-chief-justice-urges-more-diversity-in-judicial-system/732364>>.

²The Hon. Justice Marilyn Warren 'Promoting Difference' (Speech presented to the Victorian Women Lawyer Achievement Awards Presentation Dinner, Parliament House, Victoria, 15 May 2003).

*"All my life men like you've sneered at me,
and all my life I've been knocking men like you into the dust."*

Through her courage and determination Her Honour has paved the way for all of us to follow.

In advocating for diversity and representation of women in the law, Her Honour has focused on four main themes - leadership, mentoring, role models and perseverance for diversity. I would like to reflect on each of these in turn.



Her Honour has often commented on the need for true leadership from both male and female lawyers.

She urges senior lawyers to include women in their court teams because the best way of advertising women and their talent is for them to be seen in action.³

On the topic of leadership, Her Honour has called on us as women to be accountable, through our own actions, in facilitating equality in the law. She has caused us to reflect on our own practices and our complacency on the path to diversity. She has said:

When the opportunity for progression arises, duty ought to prevail. When the offer of partnership, the difficult brief or judicial appointment comes - there is a duty to accept...a **duty to gender**".⁴

Her Honour has prompted us to constantly ask ourselves:

"If I do not accept, who will?".⁵

We must "lean in" – we must seek out and accept the challenge of promotion. Her Honour led by example and welcomed the opportunity for advancement as Chief Justice of the Supreme Court.

To quote Her Honour "a woman who demonstrates leadership is a woman who possesses the power to bring difference to the profession".⁶ Her Honour is such a woman - and her mark in the law and for women lawyers resonates in all of us here today.

Her Honour has emphasised the power that senior women lawyers possess in shaping diversity and equality in the law. She has noted that:

*[S]enior women lawyers have a responsibility - an obligation even - to provide support and leadership to the generation behind...and encourage the next generation to step up...for young women lawyers, there should always be an openness for new experience and a readiness to seek assistance.*⁷

³ The Hon. Justice Marilyn Warren 'Promoting Difference' (Speech presented to the Victorian Women Lawyer Achievement Awards Presentation Dinner, Parliament House, Victoria, 15 May 2003).

⁴ *Ibid.*

⁵ *Ibid.*

⁶ The Hon. Justice Marilyn Warren AC, Chief Justice, Supreme Court of Victoria, 'Women in My Life: Leadership Across the Generations' (Speech presented to the Victorian Women's Trust, Victoria, 15 November 2004)

⁷ *Ibid.*

The Chief Justice has said that “today’s young lawyers must look for inspiration and strong mentorship from a new generation of women lawyers”.⁸

Your Honour has been this inspiration for many women lawyers - both for those established women lawyers and the women entering the profession.



In August last year, the Chief Justice spoke to 200 year 11 and 12 students from Broadmeadows. In this suburb, two out of every five people speak a language other than English - and the Chief Justice emphasised that the law is open to anyone from any background and also that the courts must reflect the communities it serves.

The Law Student Mentoring Program - run jointly by Victorian Women Lawyers and the Women Barrister’s Association - aims to meet the need for mentors by connecting law students with women lawyers to undertake a formal mentoring relationship of at least 12 months. This program has now matched over 1,350 pairs in mentoring relationships since the program’s inception.

Along with mentors, role models are necessary at all levels of the profession. They ensure that women feel valued, supported and are likely to remain in the profession long enough to reach its senior echelons.

⁸ *Ibid.*

They provide women with tangible examples of all they could achieve, all the barriers they could dismantle, all the change they could make. Chief Justice Warren has been a firm believer in the importance of role models for women in the law. She notes that “good role models are invaluable...in that they continue to inspire women’s aspirations to follow their lead. They keep the doors open”.⁹

With this in mind, the Chief supported a photograph collage in the Law Institute Journal entitled “*21 women leaders in the law in the 21st century.*”



⁹ The Hon. Justice Marilyn Warren AC, Chief Justice, Supreme Court of Victoria, ‘Leading from the Bench: Women Jurists as Role Models’ (Speech Given on the Occasion of American Chamber of Commerce in Australia ‘Women in Leadership’ Breakfast, Melbourne, 12 February 2015).

This fold out photo and the accompanying articles highlighted the sheer number of women in respected leadership positions in the legal profession.

Although she insists that there is “nothing special” about her or what she has done, her contribution to diversity and promotion of women in the law suggests otherwise.

Continuing the warrior analogy - the Chief has always had our back. In her role as the modern day Brienne of the legal profession, the Chief Justice has gone into battle for us to uphold equality in the legal profession.

In response to an article in *The Australian*, which implied that the elite level of the commercial bar is exclusively male¹⁰, Her Honour rounded up all the relevant Chief Justices and Presidents of Courts of Appeal in Australia and together they wrote to the publisher and stated, in the strongest terms, that not only did *The Australian* ignore the facts - but argued that the article’s failure to include women resulted in a disservice to the Bar.¹¹

During her career, Her Honour has been an avid supporter and patron of Victorian Women Lawyers and the Women Barrister’s Association. She has always been happy to contribute to the profession.



¹⁰ *The Australian Legal Review* May 27 2016 “Bosses of the Bar”.

¹¹ *The Australian* Letter to the Editor from CJ Warren, CJ Bathurst, CJ Allsop, President Maxwell and President Beazley June 2016.

For example - she was a key presenter, along with all her heads of jurisdiction at the Australian Bar Association conference in Melbourne last year.



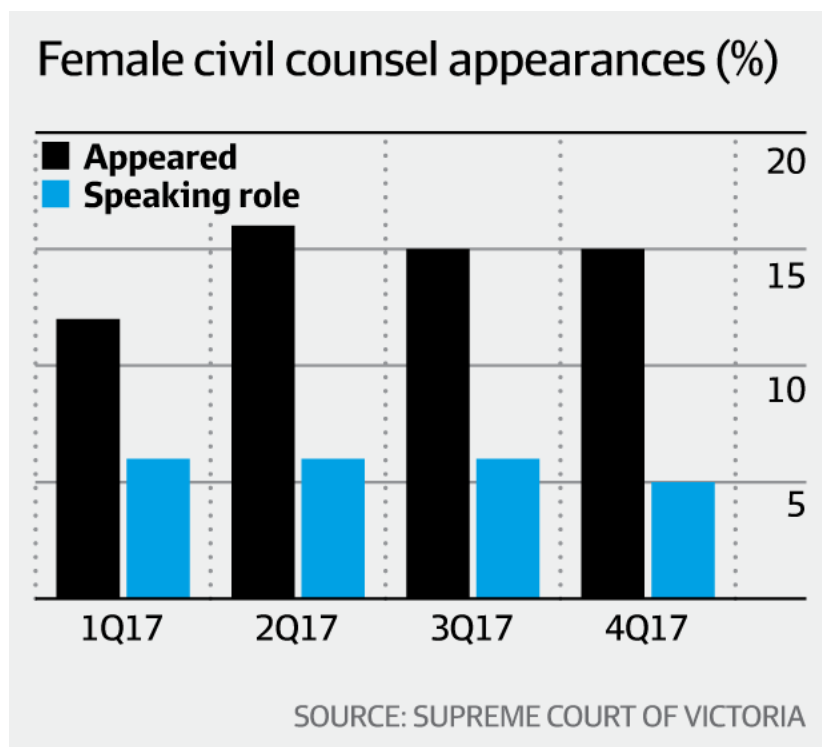
She also delivered a cracking speech at the Victorian Bar dinner last year entitled “A day in the life of a Chief Justice”.



Finally, she was a strong supporter of the VWL and WBA Regional Practitioner event recently held at Government House.

Her Honour's involvement in the establishment of the Warren Moot in 2015 has encouraged women lawyers to participate in public speaking and obtain an insight into a career at the Bar. It has proved to be a space for women to empower themselves by testing and honing their advocacy talents.¹²

In 2013 Her Honour made the observation that whilst she was presiding in two large commercial appeals in the Court of Appeal, she saw a total of 17 barristers and none were women.¹³ Sadly, not much has changed.



Recent figures released by the Court of Appeal establish that, in commercial matters, only 6 % of speaking roles were undertaken by women.

But we have hard evidence now, that things can be changed - and changed by YOU!.

Her Honour has encouraged the profession to move on from hollow rhetoric to practical action to increase the number of women being briefed.

¹² Victorian Women Lawyers, 'Inaugural Warren Moot Set to Foster New Generation of Women Advocates', <<https://vwl.asn.au/inaugural-warren-moot-grand-final-to-showcase-new-generation-of-women-advocates/>>.

¹³ The Hon. Justice Marilyn Warren AC, Chief Justice, Supreme Court of Victoria, 'Joan Rosanove Would be Happy' (Speech presented to the Women Barristers' Association 20th Anniversary Dinner, Melbourne, 5 June 2013).



Leading by example, Her Honour was an active supporter of the CommBar equitable briefing project. This involved workshops between the Judiciary, law firm commercial litigation partners and in-house counsel to identify practical ways to combat the under-representation of women in commercial law matters. Head litigation partners sat up and noticed and asked the clerks to tell them what percentage of THEIR firms' briefs went to women. Many were startled by the results and initiated change in their firm's briefing practices. These workshops have resulted in positive and remarkable increases in the rates of briefing junior women. **It can be done!**

The Chief Justice has demonstrated, in words and by example, that we can succeed, not *despite* our differences but *because* of them.

We *can* succeed as women and be proud of it.

Her encouragement to "keep gender on the agenda"¹⁴ helps to remind us that although we have come a long way, there is still progress to be made.

Her call for us to uphold our 'duty to gender' echoes in the halls of law schools, law firms and chambers.

¹⁴ The Hon. Justice Marilyn Warren 'Promoting Difference' (Speech presented to the Victorian Women Lawyer Achievement Awards Presentation Dinner, Parliament House, Victoria, 15 May 2003).

The Women Barrister's Association and Victorian Women Lawyers will shatter the glass ceiling that inhibits women from occupying an equal share of the influential roles in our legal system.

When Her Honour was appointed Chief Justice in 2003, I said then, in my capacity as President of AWL, that your Honour commanded the respect of the entire legal profession and would bring a unique perspective to the administration of justice in Victoria. It is personally satisfying to now be able to say, in my capacity as President of the Victorian Bar, that I couldn't agree with me more!

May I say on behalf of all of us present here today (and indeed the female legal profession generally), that your presence on the Court has been immensely powerful and reassuring. During your career, you have been an avid and active supporter and patron of Victorian Women Lawyers and the Women Barrister's Association.



You have been our standard bearer, the strength in our arm and our champion. Please join with me in thanking the Chief Justice for her vast contribution to the legal profession.

Jennifer Batrouney QC
14 September 2017