

12TH ANNUAL ETHEL BENJAMIN MEMORIAL LECTURE, DUNEDIN ART GALLERY

Hon. Justice Lowell Goddard - Chair, Independent Police Conduct Authority

Good afternoon.

First of all, can I say how delighted and honoured I am to be invited to deliver the 2008 Ethel Benjamin Commemorative Address.

I would like to begin by acknowledging the University of Otago, New Zealand's oldest university. I would particularly like to acknowledge the Faculty of Law within the University, which commenced teaching undergraduates in the law as early as 1873.

I would also like to give special acknowledgement to OWLS, the Otago Women Lawyer's Society, for the sterling work that they do and for their inspiration and initiative in establishing the Ethel Benjamin Commemorative Address.

We are, of course, here today celebrating as well as commemorating the life and work of Ethel Benjamin, New Zealand's first woman lawyer, and an inspiration not only to other women but to anyone who aspires to attain the seemingly impossible dream.

As we are all well aware, Ethel Benjamin had the courage to enrol for a law degree at Otago University in 1893 – months before New Zealand women had even won the right to vote.

At the time she did not know whether she would ever be allowed to practice law. But she enrolled anyway, believing – and I quote – that *'a colony so liberal as our own would not long tolerate such purely artificial barriers'*.

She said; 'I therefore entered on my studies with a light heart, feeling sure that I should not long be debarred from the use of any degree I might obtain.'

Her faith was repaid, and as a result of the Female Law Practitioners Act 1896 she was able to practice law first in Dunedin and then in Wellington. Though most of her work was as a solicitor, she did occasionally appear in court and, on 17 September 1897, in a debt recovery action, is reputed to have been the first female lawyer to appear as counsel in any case in the British Empire.

Looking back over the distance of just over a century, we can admire Ethel Benjamin's confidence in the young, optimistic country she was part of. She had faith in progress. She believed that the socially just outcome would prevail.

It's interesting to contemplate what Ethel Benjamin might have made of New Zealand's legal system and indeed of New Zealand society now.

You would have to have a somewhat rose-tinted view of the world to claim that the last century has been one of seamless progress towards social justice. There have been, and continue to be, barriers for women in the law and in other professions. It seems that as each glass ceiling has been broken, another has appeared.

Sometimes, those barriers came down to practical matters. In 1918 the Otago Law Society wrote to the Minister of Justice one of the longest letters in its history to express its deep concern that some anonymous suffragist had nailed a 'ladies only' sign on the door of one of the lavatories.

And if that seems, 90 years later, like a humorous anecdote, it is worth noting that there were no changing facilities for women barristers in High Courts in the 1970s when I was first practising as a lawyer.

Sometimes, the barriers women have faced in the law have been matters of attitude. I am reminded of parliamentary debates in the late 1800s and early 1990s in which (male) MPs expressed their horror that allowing women to become lawyers or justices of the peace would open the floodgates to the truly horrific prospect of women one day becoming... judges.

Despite these concerns, there has been progress in the 115 years since Ethel Benjamin

enrolled in law, and that progress has been momentous. Imagine how tickled Ethel Benjamin would be had she known that her actions, and her faith in New Zealand, were paving the way for a woman – Sian Elias - to one day become Chief Justice. And that the Chief Justice would, by that time, not be the lone female in the judiciary.

It is twenty years since Sian and I were the first women to be appointed Queen's Counsel. There are now women at all levels of the judiciary in New Zealand, along with many more women Queen's Counsel, and of course women Prime Ministers, and women Governors General, as well as women in the senior echelons of the public service – including in that traditionally male profession – the Police.

I am now the first woman to be appointed to head the authority that oversees police conduct – formerly titled the Police Complaints Authority and now re-titled the Independent Police Conduct Authority.

I am also, as far as I know, the first person of Maori descent to head this particular organisation. Whilst I cannot claim, in this role, to represent the perspectives of all women or all Maori, I bring to the role my own perspective, which is very focussed on the need for independence, for impartiality, and for absolute fairness. The perspective that people expect of a High Court judge.

I believe there is an analogy to be made between the evolution of police oversight in New Zealand and the evolution of the role of women in the law. In both, there were small beginnings, and both have grown and developed and strengthened over the years. Things today are not perfect, but they are much improved from a generation or two ago.

We all of course remember or know about the Springbok Tour and the divisiveness of that for New Zealand society. It was the clashes between police and protestors during that tour, and the allegations of false arrest and excessive force by police, that first made New Zealanders ask for a body to which they could complain, if they felt they had been on the receiving end of police misconduct or improper treatment.

The Police Complaints Authority was established in 1988. Though it has always been legally independent, it has not always had its own investigators – the first investigators were not appointed until 2003 – so that the Authority has traditionally been seen by many simply as no more than a glorified system of the police investigating themselves.

The difficulties inherent in that system were really emphasised by the Commission of Inquiry into Police Conduct, which reported last year, and was set up following allegations that the police had not properly investigated – indeed that they had obstructed the proper investigation of – allegations of rape and sexual misconduct by senior officers, including former Assistant Commissioner Clint Rickards.

My first day in the role of Authority was 13 February 2007. The Commission of Inquiry reported that April, with a series of recommendations aimed at ensuring police more rigorously investigate themselves, and at strengthening the Authority's ability to both independently investigate and oversee police conduct. A significant part of my work has been about responding to and implementing the Commission of Inquiry's recommendations.

We have since had one round of legislative change, aimed at strengthening our independence and more able to respond with appropriate timeliness to complaints. Additional legislative changes are planned to further enhance our ability to investigate and, indeed, to decide if criminal charges should be laid if they are warranted.

We have also had a significant increase in our resources. Last month (July) we appointed four new investigators, bringing the total number of our investigative staff to nine.

We are also working on a new system for managing cases, which will allow us to focus our investigative resources on the most serious cases. Less serious cases will be referred back to police for investigation or conciliation, with oversight from the Authority, or in some cases, a right of appeal to the Authority, if the complainant is not satisfied. This approach will allow us to focus our independent investigative capacity – which is growing but of course is not infinite - towards cases of real seriousness and high public

interest.

We are working with Government on these changes because we recognise the importance to civilised society of truly independent oversight of the use of coercive powers.

It is part of the lifeblood of any just system of law enforcement.

It protects citizens against abuse of power and excessive use of force.

It exposes misconduct and poor practice or policy.

It provides public accountability, ensuring that justice is seen to be done.

And it is also crucial for police themselves. It encourages internal discipline, and it builds public trust and confidence in a nation's system of law enforcement.

I think the need for oversight that can be seen as truly independent is particularly important at this time, when police actions are arguably under a more powerful microscope than at any time since 1981.

Because of the trials of Clint Rickards, Brad Shipton and Bob Schollum, the report of the Commission of Inquiry last year, the terror raids of 15 October, and other cases such as the shooting of Stephen Bellingham and the use of force on Rawiri Falwasser in Whakatane.

Let me make it clear however – in case it is not already - that independence does not always mean finding fault with police.

Nor does it mean always finding in *favour* of police either.

It simply means, that in every case, a fair, rational and reasonable finding about allegations of misconduct will be made, based on the facts and in accordance with the

law.

Its real value therefore lies in the reassurance that it brings, of impartial and robust scrutiny of police actions in the public interest.

I make this point because a very small number of people believe that being independent must mean always finding fault. I wonder if those same people would wish for a court system that always finds in favour of the complainant, the prosecutor, the plaintiff?

I can illustrate our developing role by referring to some specific cases.

In some of our reports, we have made significant criticisms of police. For example, we found that they failed to act quickly to recall convicted murderer Graeme Burton to prison late in 2006, after warrants had been issued for his arrest.

In others, we have taken what might be seen as a middle ground. In one recently issued report, we expressed concern at the very high speed police reached during a vehicle pursuit which ended in the deaths of three Auckland teenagers, but accepted that, for a number of reasons, the pursuit did not cause the deaths.

In other reports, we have found clearly in favour of police. We found, for example, that Operation Austin – the 2004-06 investigation into the alleged sexual offending by Rickards, Shipton, Schollum and others – was a very thorough and professional investigation, “exemplary” in fact, and that the police decision to lay charges against Clint Rickards and those other officers was justified.

That case in particular, and the original flawed and corrupt investigation of it, does, I suggest, highlight the importance of independent oversight.

In taking the steps we are to strengthen our ability to truly independent investigate such matters, we hope to reassure the community that if there is any woman who in the future should find herself in the situation Louise Nicholas was in 20 years ago: she has somewhere to go. The Independent Police Conduct Authority will investigate.

So, as will be apparent, I see the responsibilities that I currently discharge as challenging and also as important to society. The Authority, I believe, has a role to play in ensuring positive social change where it is needed.

The laws of any society embody its basic tenets and minimum standards of acceptable conduct. They are the contract by which the members of that society have agreed to abide. The law is the civilising influence. It provides the framework for people to live together, for their interests to be balanced, and their conflicts peaceably resolved.

How right it is, then, that women should equally participate in all aspects of the law: in the drafting and enactment of the law; in upholding the law and maintaining peace; in enforcing the law; in the practise of law; in giving legal judgment and in the general administration of the law.

What women bring to these roles is nothing more and nothing less than *normality*. The world's population is made up of men and women, and any profession that aims to reflect its society, and have positive influence within that society, needs to have a reasonable balance of genders – and, for that matter, of cultures and age as well.

Men and women are different, and those differences are to be celebrated. But there is certainly no basis, and never has been any basis, for distinguishing one gender or other as more suitable for any type of work.

Women do not expect special treatment. We do expect, I believe, to be treated equally on merit, on the skills and knowledge and dedication that we bring to a job. We expect that gender will simply not be an issue. And we expect that the legal profession and the judiciary will represent its society, and that the law will be based on the collective wisdom of all perspectives in that society.

Since Ethel Benjamin's time there has been, as I have already mentioned, great progress. There are now more young women than young men graduating in law and entering the profession, and women have risen to the profession's highest ranks.

It is no longer remarkable to see women judges, women Queen's Counsel, or women taking leadership roles in the practice of law. It is no longer remarkable to see women leading in difficult commercial cases, though commercial law has been one of the last bastions to fall.

This all suggests progress. But I do not think we can say there is, as yet, perfect equality.

The judiciary is still more male than female. So is Parliament. So – overwhelmingly – is seniority in private law firms.

What I am leading to is this: women entering the law today will face challenges. But those challenges will by and large be smaller than those faced by the women who have gone before because it is no longer remarkable to be a woman professional.

A young woman entering the profession of law today can do so with confidence – knowing that with the right combination of talent, knowledge, judgment and determination, she can reach the top of the profession.

She may face glass ceilings. But they will be much more fragile than the ones that have already been broken. And they will be much closer to open sky.