

Hon Margaret Wilson

1/08/2002

**6th Ethel Benjamin Commemorative Address
Dunedin Public Art Gallery**

May I thank you for the invitation and honour of delivering this 6th Ethel Benjamin Commemorative Address. Ethel Benjamin was a woman deserving of remembrance, not only because she was the first one of us to be accepted by the legal profession as having the right to practise law, but because, as the Committee has noted, she had determination of spirit, strength of character, and a willingness to challenge accepted practice. These are all qualities that are associated with those who practise law.

As a profession, we have demands placed on us that are different from those in other professions. Not only do we have an obligation to ensure our clients act within the law, but we have a duty to challenge the law when it appears to operate unfairly or against the interests of justice.

I am aware that some within our profession may regard the law more as a business than a profession. The legacy of the 90s, with its emphasis on the commercialisation of all relationships, remains with us, though it is now subject to a more critical analysis. While I am the first to argue that the practice of law must be conducted in a business-like manner, I believe our code of ethics imposes on us a standard of conduct in our affairs that requires adherence to the law and to justice.

After reading what is known of the life of Ethel Benjamin, including Judith Mayhew's Address last year, I have no doubt she understood clearly the role of the law within our society. Judith's reference to the loss of papers relating to Ethel Benjamin's life was a reminder of how careless we are with our history. We need to understand our past to make sense of our present and prepare for our future. From the little we know of the detail of her life, Ethel involved herself in the business side of law through her commercial practice, as well as demonstrating a strong sense of social justice through her involvement with the formation and work of the Society for the Protection of Women and Children. The fact she could not fully practice law when she went to the United Kingdom in 1910, is a reminder of the barriers women like her faced and probably explained her move from legal practice to banking. While then Ethel forged new opportunities for women to develop their potential, she was constrained through law and prejudice from fully developing her own potential in the law.

Women today have benefited from the pathway opened by Ethel and the early women lawyers, but constraints still remain that make it difficult for women to fulfil their potential. We all owe a debt of thanks to the Otago Women Lawyers Society (OWLS) for initiating the Ethel Benjamin Commemorative Address because it will contribute to a better understanding of the issues relating to women and justice, and provides an opportunity to pause and reflect on the position of women in contemporary society. At this point it is useful to quote OWLS' objectives for the Address. They are to offer "the opportunity to commemorate a pioneer; to stimulate change; to provide a regular forum for discussion; to comment on contemporary issues of concern or outstanding achievements; to challenge existing beliefs; to highlight groups disadvantaged or prejudiced by the law; to educate. A review of the Addresses of past contributors illustrates how well these objectives have been achieved. I shall endeavour through my own contribution to fulfil the expectation of those objectives.

As some of you may be aware, I have spent a large part of my life teaching, researching, writing and practicing in the field of equality for women. I therefore thought that this might be an appropriate occasion on which to offer some reflections on those experiences.

I had intended to offer you a more learned dissertation on the contribution of women in law to the process of the making of laws in Parliament. But the early election intruded and I was involved in the reality rather than the analysis of women in law in politics. I had thought the topic of the contribution of legally qualified women to our political life may have been of interest, not only because it is what I am immersed in at the moment, but because so little has been written or commented on this dimension of women in law.

From the little work I have done, two facts are apparent. The first is the number of early women in law pioneers who took a keen interest in politics or the advocacy of law reform, often for women and children. For example, Ellen Melville, the second woman to be admitted to the Bar, was the first woman to be elected to the Auckland City Council, and she stood on seven occasions for Parliament, mainly as an Independent, after being rejected by the Reform Party. It is interesting to note that in 1944 she founded the Women to Wellington movement to encourage Auckland women to run for Parliament. (A forerunner of the Women's Electoral Lobby that was founded in the early 1970s). Annie Lees who was admitted in 1911, led an extraordinary life as a writer, teacher, lawyer and community leader. And Audrey Gale, who was of a later generation, being admitted in 1939, was very active in the National Party, but was turned down for selection as a candidate in 1966.

The second fact to emerge is how few legally qualified women have been elected to Parliament. It was not until 1978 that the first woman lawyer, Ann Hercus, was

elected as the Labour member for Lyttleton, an electorate she held until her retirement in 1987. The fact that it took so long for a legally qualified woman to be elected to Parliament may be part of the explanation why it took so long for women in New Zealand to achieve legal equality.

Apart from Ann Hercus, there has been Lianne Dalziel elected as a Labour Member in 1990; Georgina Te HeuHeu elected as a National Member in 1996; Patricia Schnauer an Act Member from 1996 to 1999; Laila Harre an Alliance Member 1996 to 2002; Annabel Young elected as a National Member 1997 to 2002; and myself and two newcomers Metiria Turei a Green Member in 2002; and Judith Collins a National Member elected on Saturday.

There have been only nine legally qualified women elected to Parliament since women were legally eligible to stand for Parliament in 1919. This represents 11% of the total of 83 women who have been elected to Parliament since the first one of us was elected in 1933. It would be interesting to do a statistical analysis of how many legally qualified men have been elected to Parliament, what positions they held and the length of their careers.

It is interesting to speculate on why so few legally qualified women have made it to Parliament. Is it a lack of interest or is it that the opportunity to be selected for a safe seat was rarely offered to women? It is also true that the overall numbers of women in Parliament have been small until relatively recently, as has the number of legally qualified women. The 1970s marked the beginning of the era when women started to enter both Parliament and the law schools in greater numbers. As it takes time for women to gain experience and confidence to take on new roles, it is not surprising that it is only now we are seeing politics as presenting itself as an option for legally qualified women. Relevant facts that influenced women's opportunities in law during this period were the prominence of the second wave of the feminist movement that arrived in New Zealand at the end of the 1960s, and the introduction of limited entry on academic merit into the law schools in the mid 1970s. I also know that in the Labour Party the formation of the Women's Council in the 1970s was a major impetus for the promotion and support of individual women in politics, as well as developing a policy agenda for the equality of women that became part of the Party's policy in 1984.

The advent of MMP was also hailed as the opportunity to increase the number of women in Parliament. While it is true the numbers increased in the 1990s, it is also true that after this election, the number of women in Parliament has dropped for the first time in 20 years - from 37 to 35. The decline is due to the dominantly male Party lists of NZ First and United Future. Both Parties may be characterised as subscribing to a conservative political agenda.

The drop in numbers was also due to the position on the Party list, as was apparent from the fact that only six women remain in the National caucus. Proportionately, the Greens with four out of eight Members and ACT with four out of nine Members are the Parties that achieve the best representation of women. MMP then is no automatic guarantee to a gender balance in the institution that makes the laws that govern us all.

It is also interesting to note that the legislative programme of law reform on issues of gender equality began in the late 1970s, at the same time the number of women in Parliament started to increase. Apart from the Equal Pay Act 1972 and the Human Rights Commission Act 1977, the major impetus for gender law reform began with the Contraception Sterilisation and Abortion Act 1977, followed by the Matrimonial Property Act 1978; Maternity Leave and Employment Protection Act 1980, the reforms to the Rape Laws in 1985; and the short lived Employment Equity Act 1990. After a fallow period in the 1990s when the ideology of neo liberalism prevailed, the agenda for law reform has been reactivated with the Property Relationships Act 2001, the inclusion of the Equal Opportunities Commissioner in the Human Rights Amendment Act 2001, and the Paid Parental Leave Act 2002.

It is tempting to conclude when Parliament has among its Members women and men who support the equality of women, the legislation reflects those values. Much more work needs to be done on who and what influences a legislative programme and why some policies succeed in the transformation to Act of Parliament and some do not. As I am now part of this process, as opposed to an observer and analyst, I am gathering experiences that better inform me on how the legislative process can work in the best interests of those of us who firmly believe in gender equality. One conclusion I have come to however is that if women are not in Parliament to protect and further their interests, then little will change.

Before I became deflected by the role women lawyers' play in Parliament and how they influence the legislative programme, I had stated I would make a few observations on 30 years of experience in pursuit of equality for women. The first observation is that the role of women in law has changed but just how much it has changed is not clear.

There are more of us in the law schools, the profession, and the judiciary, in Parliament, in business, in the community. There are more women studying law at both undergraduate and graduate level than men, yet women still only represent 35% of the legal profession. It is a real question as to why 60% of new admissions to practice law are women but only just over half of that number practice law.

A more disturbing figure is that only 15% of principals in law firms are women. The picture is no better in judicial appointments. Of the country's 120 District Court Judges, only 24 are women. Of the six Masters, two are women. And although the Chief Justice is a woman, there are only three women on the High Court and one on the Court of Appeal. This is total of five women Judges, including the Chief Justice, out of 36 Judges on the High Court and Court of Appeal.

At a time when the popular rhetoric suggests women are dominant, it is sobering to reflect on the reality. It is also important to ask the questions - do these figures reflect the choice of women or do barriers and constraints still remain that prevent women fully developing their professional potential? While then the position of women in law has changed since I entered law school in 1966 as one of 6 women students, it would be wrong to suggest women have achieved equality of opportunity in the practice of law. There is still much work to be done.

I have two other observations to make before I finish. The first is that I believe that a good education is the foundation of a democratic and just society. As the former Dean of Waikato Law School, I am also convinced the law in context approach to legal education, not only produces lawyers with a more relevant skills and knowledge, it is also prepares students for a diversity of occupations in which a legal education is beneficial to the student and society as a whole.

The capacity to reason, think rationally and to be open to new knowledge is essential for the well being of a democratic society that values tolerance of difference as well as social, economic and cultural justice.

The importance of a good education to the maintenance of the democratic process is seen in the way in which we now receive information. The Internet has opened a world of information that has no boundaries. Access alone to this treasure trove does not mean all we read is true. We need to be able to exercise our critical faculties to discern what is relevant for our purpose, as any teacher knows who has marked an essay full of references to the Internet.

The recent election campaign as conducted through the media was a useful reminder that elections have now been classified as entertainment and therefore must be presented according to the rules of that genre. The frustration of politicians of all political parties having to convey their ideas and policies in this context reinforced the need for more face-to-face communication without the distraction of intermediaries whose job security is dependent on the production of a good show. Politicians and media presenters both seemed to be trapped in this new genre of political debate as game show, or contrived reality television. There is little point criticising this development. It is our reality. It does make more important however access to a

variety of sources of information and the capacity to assess it critically. Hence the importance and value of a good critical education.

Finally, I want to finish with a comment on the concept of equality that has provided the moral underpinning for improving the status of women as individuals with the right to exercise their free will. It is true that equality was often interpreted to mean the "same as". Equality before the law is seen as fundamental to the society for example. The fact is that we are not all the same, never will be, nor should we aspire to be. A simplistic application of equality has in the past led to much injustice. It is the challenge for those of us who work with and within the law to retain the notion of equality but ensure it is applied in a way that does not create further injustice.

We live in an age and a society where we recognise and affirm the value of diversity. We have the right to be different and it is the concept of equality that still provides the moral basis for that difference. As our community becomes increasingly multi-ethnic, as people embrace a variety of life styles, from the traditional to the same sex family, as we are confronted with new challenges through the reality of globalisation, we need through our laws and practices to develop the values of peaceful co-existence. This means we need to be tolerant and open to that which is different from what we are used to. I have no doubt these are already characteristics of the New Zealand identity which will see us develop to the next stage in our evolution as a society with confidence. As women in law who have had to adapt to much change, I have no doubt that in the tradition of Ethel Benjamin we will continue to contribute much to our society.