

It's our problem, not theirs

By **Kate Davenport QC**



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I am a lawyer.

I am also a Leo, a mother, very bad at parking and, (obviously) a woman.

None of the factors in the last list should have any bearing on the first statement and on my ability to be a good, competent and effective lawyer. But the results of two recent studies of the profession have shown that all too frequently women lawyers are still finding that their gender presents a challenge to their ability to progress through the law.

Two reports

The United Kingdom Bar Standards Board's report on Women at the Bar, published in July 2016 and the summary of Josh Pemberton's report *First Steps: Experiences in Retention of New Zealand Junior Lawyers*, reported in *LawTalk* 891, 1 July 2016, make sobering reading.

It should come as a no surprise to any employer to read that for all young lawyers their experience of working in the law in their first few years after graduation determines whether the law is likely to remain the choice of employment for the young graduate.

The Pemberton report shows that a staggering 60% of those leaving the law cited "dissatisfaction with workplace culture", "better work-life balance elsewhere", and "better opportunities elsewhere" as their reasons for leaving practice. 70% of young lawyers reported that they found their work either moderately or highly stressful.

For young women graduates the position appeared to be worse still. Two-thirds reported that in their view their gender had a negative bearing on their prospects of a future in the legal profession.

They reported a lack of senior female role models who had a lifestyle (balance of career and family) that the young women could relate to. Some reported they experienced workplace bias against women. These young women reported that in their view the profession still valued "stereotypical" male traits and said that their voices did not get heard.

One responder said: "They don't think that I would represent the client as forcefully as a man would."

Some reported explicit sexual discrimination. Some referred to the fact that in their workplace women were referred to in a disparaging way with one saying that female employees were referred to as "battery hens". One woman in a top-tier law firm reported that she was objectified, and that there had been sexual harassment within the firm.

In the UK

The position is not a lot better at the UK Bar.

In 2014 the Bar Standards Board introduced equality rules which required multi-tenant chambers to have an equality policy and an action plan to achieve equality. Chambers were required to appoint an equality and diversity officer, ensure that selection panels were trained in recruitment, and to conduct diversity monitoring, analyse data and produce anti-harassment, parental leave and "reasonable adjustment" policies.

Yet despite these rules the Bar Standard reports that two out of every five respondents had experienced discrimination, and two out of five had suffered harassment at the Bar with only a small proportion reporting this. This harassment was not reported because women barristers were concerned about the negative impact on their career. The new Rules appear to have had some impact on recruitment but have done less than expected to improve lives of women in chambers.

These reports continue to make sobering reading on progress within the profession in achieving gender equity.

But the purpose of this article is not to dwell on these negative reports but to suggest that the rest of the profession needs to take responsibility for these issues.

Retention

Retention of young professionals is the whole professions' problem. If we want young men and especially young women, to stay in the profession, then the rest of us need to do something about it.

There is a reason that Justitia, the Goddess of Justice, is blindfolded. The blindfold is to show that justice is objective and blind to the wealth, fame, colour and gender of all

those who come to seek justice. The legal profession has long fought tirelessly for basic human rights for all, yet we seem to struggle to implement these rights in our profession.

I don't have children who are lawyers but I have two intelligent, energetic, enthusiastic nieces who are in their first years of their legal careers in firms in Auckland and Wellington. I have mentees who are young women who are passionate about the law and hopeful for the future.

What do I want for them? I want those young women to experience the intellectual challenges of the law, to strive to do their best for others, to work hard, to play by the rules, to be fair to all, and to be courteous and courageous. I want them to feel the excitement of law and not feel that the job is too stressful to handle and that the people that they work for are too demanding, don't appreciate their efforts, or don't recognise the inherent stress in learning a new job, where a lot is at stake.

I want the profession to welcome them into the law. Because if we fail to achieve this then the legal profession will be the worse for it.

This is what we should all wish for all young professionals – male or female. But it is also worth considering whether in truth there are any "male" characteristics which make better lawyers. Do you need to be aggressive, to dominate others and have a loud voice to be an effective lawyer? I don't think so, but I may be somewhat biased in answering this question. I have never found the aggressive lawyer an effective lawyer. Every lawyer needs to learn how to advance their client's position without fear or concern but aggression is counterproductive and often leads to more litigation or protracted negotiations.

So, in order to ensure a gender neutral approach to this question I have asked a number of senior lawyers to give me their views on what traits a good lawyer needs.

Traits of a good lawyer

Andrew Steel, a partner at Martelli McKegg, says that:

A “good lawyer understands their role in the profession and adheres to it”. He says a lawyer must “uphold the rule of law and facilitate the administration of Justice. A good lawyer should have courage and passion to pursue their client’s interest in a professional, diligent and lawful way. A lawyer must always be respectful and courteous to opposing lawyers, self-represented persons, of course the Court and its staff.”

Raewyn Lovett ONZM, a partner at Duncan Cotterill, says:

A good lawyer has “a sense of responsibility, the ability to see another’s perspective, good analytical skills, be good communicator, have the strength to withstand pressure, to act ethically and to build relationships of trust and confidence”.

Jim Farmer QC says:

“The hallmarks of a good lawyer are honesty and integrity, good judgement in assessing strengths and weakness of a case, diligence and hard work, having good relationship with other practitioners, living a balanced life and having a social conscience”.

Justice Venning, the Chief High Court Judge says:

“In my view the most fundamental point is that lawyers should enter the profession for the right reasons, because they want to be part of a satisfying and challenging profession which involves serving the public and the rule of law. In addition to the values which underpin the profession, honesty and integrity, an ability to be able to communicate and relate to people from all walks of life is important.”

He adds: “It is also important that, as the profession is built on relationships, (between bench and counsel and between counsel and solicitors) they understand the practice of the law is a long-term commitment. It takes time to build the trust and respect which those relationships depend on.”

David Bigio QC says:

“It is easy to stereotype a good litigator as being someone who is necessarily aggressive. Being assertive does come into play from time to time. However, one particular quality which may be underrated is

empathy. This applies not just to one’s own clients but also to the opposing party. Sometimes the most effective cross-examination comes from focusing on the other party’s world view and why they are insisting that they are right. It goes without saying, therefore, that a related and vital trait is to be willing and a good listener.”

Jane Anderson QC says:

“In my view qualities of an effective lawyer are incisiveness, intelligence, integrity, an ability to see the issues from all sides while advancing your client’s position, and above all exercising good judgement”.

Justice Cooper offers this view:

“First and foremost, the ability to empathise. Good lawyers are able to put themselves in the shoes of others. The law is all about how people interrelate. Once this is understood much else falls into place, including substantive law. A good lawyer will try to understand her client’s reactions and needs. A good lawyer will be sensitive to the costs of the legal transactions in which she is engaged. A good cross-examiner will have been able to imagine herself in the witness’s position. A good advocate will understand why some submissions will fare better with a particular judge than others, why lengthy submissions ought to have an index, why brevity is often an important path to persuasion. These are all examples of empathy.

“The ability to sift the important from the unimportant, and to focus on the former.

“A sense of justice and fairness.
Honesty.”

The Attorney-General, Christopher Finlayson QC, offers this perspective on what makes a good lawyer. He says:

“A willingness to learn. Law graduates must

accept law school is only the beginning, not the end, of a legal education. They must continue to educate themselves throughout their legal careers.

“Good knowledge of the law. In my experience, the lawyers who most often get in trouble are the ones who lack adequate legal knowledge, or fail to seek assistance when they should.

“Excellent judgement and analytical skills. Lawyers need to be able to understand and evaluate complex information and make reasoned decisions based on that information.

“Recognition that being a member of the profession is a privilege. The best lawyers don’t see the profession as a business or embark on a legal career to make money.

“Humility. This characteristic goes further than any other in my opinion. No one is entitled to career progression or success. It must be earned.

“A life outside the law. It is very important to look after yourself and have interests outside your job.”

So these comments offer a diverse view of the necessary skills and traits of a good lawyer but the theme that runs through them all are that the core skills of honesty, integrity, communication, intelligence, judgement, hard work and respect for others are vital.

None of these skills are gender specific. So let us rise to the challenge to lead and inspire the newcomers to our profession by modelling these skills in all our dealings with others. If we can all do this then I remain very hopeful for the future of this great profession.

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