

A statistical analysis of gender at the NSW Bar

By Ingmar Taylor and Chris Winslow

Introduction

Statistical analysis of gender at the Bar can be problematic. Irrespective of which aspect is being studied, the imbalances in the aggregate figures and gender ratios are inescapable: there are only 288 local practising female barristers, representing just 14.7 per cent of the Bar. Further, because there are so few female barristers, changes affecting a handful of individuals may effect large proportionate changes. One example of this would be in respect of women who are senior counsel.

Nevertheless, data held by the Bar Association can reveal much about the history and the current position of women at the Bar. For a clearer perspective, this information can be compared with statistics from other professional bodies and educational institutions. This exercise reveals that the Bar is not dissimilar to the medical and engineering professions.

Bar News began this analysis by examining the proposition that the aggregate number of women at the Bar does not reflect the ever-increasing numbers of women who are studying law and entering the solicitors legal profession.

It then completes the picture by studying the numbers of women at each possible stage in their career at the Bar -

**TABLE 1: UNIVERSITY LAW GRADUATES:
NSW, PER CENT FEMALE 2003**

University	Per cent female
Macquarie University	60
Southern Cross University	77
University of Newcastle	41
University of New England	49
University of New South Wales	59
University of Sydney	61
University of Technology (Syd)	Not available
University of Western Sydney	50.2
University of Wollongong	62

including data relating to the Bar Practice Course, current areas of practice, female applicants for silk and appointments to the Bench. An important subsidiary issue is retention of women at the Bar, and whether women are more likely to leave the Bar having commenced practice.

Law students

Table 1 below reveals that in many of the state's law schools, there are more female graduates than male. This trend continues into the College of Law, where recent statistics show that in 2002, 58 per cent of those completing their practical legal training were women, rising to 61 per cent in 2003.

Legal practitioners

Statistics collected by the Legal Practitioners Admission Board show that women now comprise a clear majority of those being admitted as legal practitioners in New South Wales, and have done for a number of years.

Women also comprise a steadily increasing minority of solicitors in New South Wales. Table 2 below shows that by 2004, nearly 40 per cent of practising solicitors were female. If current trends continue, it is possible that within a decade they may represent fifty percent practitioners in this state. Clearly, this would not be possible unless the growth in the number of female solicitors greatly surpassed the rate of growth in the aggregate number of new solicitors. Accordingly, the Law Society's *Profile of solicitors* shows that, between 1988 and 2003, the number of female solicitors has increased by 258 per cent, whilst the total number of solicitors has increased by 93 per cent.

	Admission as legal practitioners - by year		
	2002	2003	2004
Male	756	736	235
Female	992	1107	336
Total	1748	1843	571
Per cent female	57	60	59

Source: Legal Practitioners Admission Board

TABLE 2: PRACTISING SOLICITORS 1988 – 2004

	1988	1990	1992	1994	1996	1998	2000	2002	2003	2004*
Male	7829	8393	8801	8992	9331	9414	10,060	10,987	11,170	11,412
Female	1979	2398	2837	3291	3868	4457	5322	6,477	7,079	7,469
Total	9808	10791	11,638	12,283	13,199	13,871	15,382	17,374	18,249	18,881
% female	20.2	22.2	24.4	26.8	29.3	32.1	34.6	37.3	38.8	39.6

Source: New South Wales Law Society web site *March 2004

Comparisons are often odious, and the equivalent statistics for barristers are not as positive. The statistics in table 4 (over) show that the total number local practising female barristers have increased from 179 in 1996 to 288 in 2004, an increase of 60.8 per cent. Over the same period the total number of local practising barristers has increased by only 23 per cent: see table 4.

However, in proportionate terms, women have grown from 11.3 per cent of barristers in 1996 to only 14.7 per cent today. During the same period, 1996-2004, the number of female solicitors has increased by 93 per cent, off a much higher base.

When compared with data from other professions, the results are similarly mixed. According to the Australian Institute of Health and Welfare, the proportion of female medical practitioners has risen from 27.6 per cent in 1996 to 30.7 in 2001.¹ That aggregate figure, however, masks some wide variations. For example: nearly 48 per cent of RMO / interns are women, whilst only seven per cent of surgeons are women.²

Conversely, the gender balance at the Bar is not significantly worse than for engineers although, once again, there are great disparities between *disciplines*. In 2002, women comprised 15 per cent of engineering graduates, yet only 7.6 per cent of professional engineers. However, in 2001, the proportion of women graduates in chemical and environmental engineering was 30 per cent and 42 per cent respectively, whilst only 10 per cent of software engineering and 14 per cent of civil engineering graduates were women.

Given these significant variations between disciplines or branches of other professions, it raises the question as to whether the custom of viewing the Bar as monolithic entity hides similar differences in gender ratios. For example, 23 per cent of public defenders and 26 per cent of crown prosecutors are women. Alternatively, could any apparent preference that women may have for the work in particular disciplines or sections of the Bar, such as crown prosecutors, be used to leverage up the aggregate numbers of female barristers?

Demographics

Bar News mined the Bar Association's database to analyse how many women commenced at the Bar in each year from 1963. Table 3 (opposite) is not limited to current local practising barristers. Rather, it records all those who *ever commenced* practice at the NSW Bar and the year in which they commenced, and as such, may include women who have been appointed to the Bench, retired, reverted to being a solicitor, or passed away.

It reveals that until the 1980s, women starting at the Bar were very much the exception. Until 1976 no more than two women commenced at the Bar in any one year, and it was not until 1981 that more than six commenced in any one year. Only since the late 1990s have we seen consistently 20 or 30 women starting each year.

TABLE 3: COMMENCEMENT OF PRACTICE, MALE AND FEMALE, BY YEAR OF PRACTICE, 1963-2004 PRACTICE

Date (Year)	Males	Females
1963	14	1
1964	11	1
1965	11	1
1966	9	1
1967	18	0
1968	18	1
1969	15	1
1970	18	1
1971	29	2
1972	24	1
1973	32	1
1974	41	0
1975	63	1
1976	48	6
1977	64	2
1978	65	2
1979	57	6
1980	56	3
1981	68	11
1982	64	11
1983	75	12
1984	96	12
1985	86	4
1986	68	6
1987	68	12
1988	86	9
1989	90	11
1990	80	17
1991	92	14
1992	52	9
1993	67	18
1994	56	15
1995	90	15
1996	91	21
1997	117	17
1998	100	34
1999	102	33
2000	93	26
2001	88	34
2002	78	25
2003	77	25
2004	56	13

Coming to the Bar

How many women have come to the Bar in recent years and are women more likely than men to leave the Bar in their early years?

The first means of analysing admission to the Bar is to study the statistics from the Bar Practice Course. Data from pre-1997 courses was excluded because it was not reliable.

It should be noted that data contained in table 5 below does not capture *everyone* who started at the Bar in the last seven years. For example there were interstate applicants who commenced practice without having to do the Bar practice course.

However, noting those limitations, table 5 reveals that:

- between 1997 and 2004, 641 barristers completed the last 15 Bar practice courses;
- women comprised 24.7 per cent;
- since 1997 158 women have enrolled in the Bar Practice Course, comprising, on average, 25.4 per cent of the class;

- this average conceals quite a high fluctuation in numbers: The standard deviation between courses is quite high: 7.88; and

- there is no discernable upward trend in the number of women doing the BPC.

To see whether women stayed at the Bar, once they have started practising, an analysis was conducted of every person who completed a Bar practice course in the last seven years. The results are displayed in table 5 below.

The rate of retention was determined by checking off the names of readers for each Bar Practice Course against those who still have a current barrister's practising certificate. There are many reasons why some have not got a current PC. These include, *inter alia*:

- returning to practice as a solicitor;
- departing for interstate or overseas; or
- acceptance of an appointment to a commission or tribunal.

TABLE 4: HOLDERS OF NSW BARRISTERS' PRACTISING CERTIFICATES 1996 – 2004									
	1996	1997	1998	1999	2000	2001	2002	2003	2004*
Male	1407	1312	1348	1615	1572	1601	1633	1622	1670
Female	179	201	197	224	230	242	265	270	288
Total	1586	1513	1545	1839	1802	1843	1898	1892	1958
% female	11.3	13.3	12.8	12.2	12.8	13.1	14.0	14.3	14.7

Note: Excludes interstate and overseas holders of NSW barrister' practising certificates. *As at April 2004

TABLE 5: BAR PRACTICE COURSES – COMPLETION & RETENTION RATES															
	1997		1998		1999		2000		2001		2002		2003		2004
	1/97	2/97	1/98	2/98	1/99	2/99	1/00	2/00	1/01	2/01	1/02	2/02	1/03	2/03	1/04
Total	45	35	40	53	52	43	53	37	39	32	41	27	42	34	68
Male	38	28	28	38	38	33	40	32	25	20	33	18	34	24	54
Female	7	7	12	15	14	10	13	5	14	12	8	9	8	10	14
% female	16	20	30	28	27	23	25	14	36	38	20	33	19	29	21
Current practising certificate – rates of retention															
Male	36	22	21	31	31	33	38	30	25	20	33	18	34	24	54
	(-2)	(-6)	(-7)	(-7)	(-7)		(-2)	(-2)							
Female	7	7	10	13	11	10	12	4	13		12	8	9	8	10
			(-2)	(-2)	(-3)		(-1)	(-1)	(-1)						

Of those 641 barristers, 33 men (6.8 per cent of men) and 10 women (6.3 per cent of women) have stopped practising

Holders of NSW barristers' practising certificates: seniority

The data above would lead one to expect that women will be found to be more highly represented in the first 10 or so years of practice. Tables 6A and 6B below confirm that is the case. They also reveal that over the last two years there has been an increase in the percentage of women in the 0-4 yrs and 5-9 yrs categories, again consistent with the increase in numbers of women coming to the Bar in the last decade. Today nearly a third of barristers with 0-4 years seniority are women.

Areas of practice

All barristers are asked to nominate their areas of practice as part of their listing on the 'Find a barrister' database on the Bar Association's web site³. Some choose not to provide any information, whilst others simply say 'general'. Further, barristers are not asked to quantify, and so 'Find a barrister' does not display, the proportion of their work which a particular area of practice represents. The data in table 7 (over) is drawn from those nominated areas of practice.

It reveals that for many types of work the percentage of women nominating an area is similar to the percentage of men.

For example:

- equity: 30 per cent of women and 33 per cent of men; and
- administrative law: 21 per cent of women and 20 per cent of men.

There are, however, a number of areas where there is a distinct disparity between men and women.

One of the starkest differences is in relation to appellate work, which 22 per cent of men but only eight per cent of women nominate as an area of their practice.

Given the greater proportion of men in the higher seniority groups (set out above), one can expect that, as barristers retire, the overall proportion of barristers who are women will increase. Further, the recent sharp reduction in work in the male dominated areas of personal injury and workers compensation (which anecdotally is expected to cause some barristers to not renew their practising certificate this year) may serve to create a more immediate (though small) increase in the overall percentage of barristers who are women.

TABLE 6A: SENIORITY PROFILE OF THE NSW BAR 2001													
TABLE 5A	0-4	5-9	10-14	15-19	20-24	25-29	30-34	35-39	40-44	45-49	50-55	Total	
Male	415	283	359	324	244	150	43	20	13	8	4	1863	
Female	122	67	47	30	13	5	2	1	0	0	0	287	
Total no.	537	350	406	354	257	155	45	21	13	8	4	2150	
% of total	25	16.3	18.9	16.5	12	7.2	2.1	1	0.6	0.4	0.2		-
% Female	23	19	12	8	5	3	4	5	0	0	0	13.3	

As at November 2001, includes interstate and overseas practitioners

TABLE 6B: SENIORITY PROFILE OF THE BAR 2003													
TABLE 5B	0-4	5-9	10-14	15-19	20-24	25-29	30-34	35-39	40-44	45-49	50-55	Total	
Male	377	320	300	291	229	188	52	22	15	7	2	1803	
Female	177	77	43	28	15	4	2	2	0	0	0	348	
Total	554	397	343	319	244	192	54	24	15	7	2	2151	
% of total	25.8	18.5	16.0	15.0	11.3	9.0	2.5	1.1	0.7	0.3	0.1		
% Female	32	19	13	9	6	2	4	8	0	0	0	16	

As at August 2003, includes interstate and overseas practitioners

TABLE 7: AREAS OF PRACTICE AS AT APRIL 2004

	Number of women	Percent of women	Number of men	Percent of men
Equity	87	30%	632	33%
Criminal	84	29%	549	32%
Personal injury	71	25%	643	39%
Commercial	70	24%	495	30%
Administrative	60	21%	332	20%
Family law	60	21%	177	11%
Wills and probate	54	19%	316	19%
Professional negligence	52	18%	621	37%
Medical negligence	47	16%	443	27%
Trade practices and competition	46	16%	440	26%
Property	46	16%	341	20%
Industrial/employment	39	14%	281	17%
Insurance	36	13%	499	30%
Civil & human rights/discrimination	35	12%	93	6%
Alternative dispute resolution	31	11%	173	10%
Workers compensation	30	10%	301	18%
Bankruptcy/insolvency	26	9%	227	14%
Building and construction	25	9%	268	16%
Local government/environmental	25	9%	187	11%
Intellectual property	24	8%	162	10%
Appellate	23	8%	362	22%
Defamation	22	8%	90	5%
Contracts	20	7%	133	8%
Banking	19	7%	226	14%
Migration	19	7%	84	5%
Constitutional	17	6%	104	6%
Inquests, royal commissions & statutory tribunals	15	5%	101	6%
Local courts	10	3%	56	3%
Tax	9	3%	68	4%
Native title	9	3%	31	2%
Liquor licensing	8	3%	53	3%
International	7	2%	66	4%
Dust diseases	6	2%	31	2%
Transportation law (aviation/maritime)	6	2%	89	5%
Communications / media	6	2%	29	2%
Conflict of laws	4	1%	21	1%
Customs	3	1%	59	4%
Motor accidents	3	1%	22	1%
Total numbers practising	288	100	1670	100

Excludes interstate and overseas holders of NSW barristers' practising certificates.

Not all practising barristers advise the Bar Association of their areas of practice and the association does not take any responsibility for the accuracy of the information provided to it by members in relation to the areas in which they practice.

Men are more likely than women to nominate as their areas of practice:

personal injury
 professional negligence
 insurance
 trade practices
 workers compensation
 building and construction
 appellate

Women are more likely than men to nominate as their areas of practice:

family law
 civil and human rights

Taking silk

While the number of women at the Bar has increased in recent years, is that translating into a higher number of successful female silk applicants? It is unusual for a barrister to obtain silk with less than 14 years seniority and, as the above data reveals, it is only in the last 10 to 15 years that women have been commencing at the Bar in greater numbers.

Table 8 below documents the number of men and women who have applied for silk since 1994 and the number who have been successful.

The percentage of silk applicants who are women broadly reflects the percentage of barristers who have more than 14 years seniority (see table 6B).

Over the last 10 years 65 silk applications have been made by women and 1002 have been made by men. From those applications, 13 women were successful and 191 men were successful. Because barristers can reapply each year one cannot determine what percentage of the total male or female applicants in the 10 year period were successful. However, the

percentage of successful applicants can be determined for each year, and they are set out in table 8 below.

An analysis of those who hold silk over the last 10 years reveals the percentage of all female barristers who hold silk increased from 1.8 per cent to three per cent between 1994 and 1998 and then has remained steady at three per cent, which is significantly lower than the percentage of all barristers who hold silk (which has fluctuated in a range of 11 per cent to 15 per cent) see table 9 (over). It should be noted that in the last 10-15 years there has been a large increase in the numbers of women commencing at the Bar (most of whom would not yet be ready to take silk), which means the total pool against which the number of female silks are compared has grown. Nevertheless the disparity seems remarkable.

Appointments from the Bar to the Bench

The last area examined is appointments to the Bench from the NSW Bar. These figures are drawn from the Bar Association's annual reports. Over the last six years, of the 69 appointments drawn from the Bar, 12 were women (17 per cent) and 57 were men (83 per cent). On those figures, women were appointed at only a slightly higher ratio than the ratio of women at the Bar. See table 10 (over).

Conclusion

The overall percentage of barristers who are women will not be anywhere near 50 per cent in the foreseeable future. Currently 14.7 per cent of barristers are women and the percentage of women commencing each year is rarely greater than 25 per cent. However there has been a significant change in recent years in the gender make-up of the Bar at the junior levels. Now it is not unusual for 30 women to start at the Bar in a year, a far cry from 20 years ago when it was unusual to have more than two women commencing practice.

TABLE 8: APPLICATIONS FOR SENIOR COUNSEL, 1994-2003										
	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Applicants										
Male	72	56	84	91	106	111	106	123	126	127
Female	6	4	5	8	3	5	7	7	12	13
Total	78	60	89	99	109	116	113	130	138	140
% female	8	7	6	8	3	4	6	5	9	9
Appointees										
Male	12	15	13	15	18	21	18	19	27	33
Female	2	1	0	2	1	2	0	1	1	3
Success (%)										
Male	17	27	15	17	17	19	17	15	21	26
Female	33	25	n/a	25	33	40	0	14	8	23

TABLE 9: BARRISTERS HOLDING SILK										
	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Male	201	204	208	213	231	241	253	249	251	272
Female	3	4	3	5	6	7	6	7	8	9
Total	204	208	211	218	237	248	259	256	259	281
Senior counsel ratios:										
Silks to all barristers	13%	13%	13%	14%	15%	13%	14%	14%	11%	15%
Female silks to all female barristers	1.8%	2.3%	1.7%	2.5%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%

Excludes interstate and overseas holders of NSW practising certificates.
 Statistics include the appointees for the given year.

TABLE 10: APPOINTMENTS TO THE BENCH FROM THE NSW BAR						
	FY 1998-99	FY 1999-2000	FY 2000-2001	FY 2001-2002	FY 2002-2003	FY 2003-2004
Male	12	8	7	14	11	5
Female juniors	1	0	5	1	1	0
Female silks	2	0	0	0	2	0
Total female	3	0	5	1	3	0

The overall number of women practising as barristers in NSW has increased by 60.8 per cent in the last nine years. Of those with 0-4 years seniority today, nearly one third of barristers are women. And an analysis of the Bar Practice Course students of the last seven years reveals that women do not give up their practice at any greater rate than men. If that remains the case then we can expect that in a decade about one third of silk applicants will be women. Perhaps then we may also see a significant increase in the percentage of all female barristers who hold silk. And if there is a significant number of female silk role models, perhaps that will in turn encourage more women to come to the Bar.

¹ Australian Institute of Health and Welfare, *National health labour force series: Number 28*, 'Medical labour force 2001', p.1
² *ibid.*, p.5
³ The list of practice areas contained on the Bar Association's database was reviewed by the Bar Council in March 2002. The rationalised list was developed for consistency and to ensure that the search facility remained a useful searching tool for the use of solicitors and the public looking for a barrister to brief for their particular circumstances, and in terms of deriving useful statistics.