

Acting Justice Jane Mathews AO

Tina Jowett¹ spoke with Acting Justice Jane Mathews for *Bar News* about her experiences as one of the few women at the bar and the bench in the 1960s to 1980s.

Jane Mathews was born and raised in Wollongong. She boarded at the Frensham School in Mittagong until she completed the leaving certificate² and was only one of two girls who then attended university.

Bar News: What motivated you to study law?

Mathews: That's easy; when I was 14 years old my school showed the movie of the Terence Rattigan play, *The Winslow Boy*.³ It was about a school boy who was wrongly charged with stealing. The lawyer representing him, played by Robert Donat, got up before the House of Lords at the end of the movie and said, 'let justice be done.' And that just got to my idealistic 14 year old heart and the next holidays I went home and said to my parents, 'I'm going to study law.' My father, who was very conservative in some things said, 'No daughter of mine is going to do law.' He thought it would be a complete waste of time and I'd go off and get married and have babies.

My mother was delighted. She came from a family of lawyers. But my father wasn't happy about it. So I spent a couple of years persuading him to let me and he finally relented so I went to Sydney University. There were very few girls studying law then. There were only two others girls who started and finished in the same year as me.

Bar News: Could you study law on its own at Sydney University or was it a combined degree?

Mathews: Law was a four year course then and you also had to do three years of articles. Your 3rd and 4th years at law school were combined with work doing articles. Then there was a further year of articles after graduation before we could be admitted to practice.

Bar News: Was it difficult to obtain an article clerkship?

Mathews: It was for women in those days, but I was really lucky as my father was chief engineer of the BHP⁴ steel works at Port Kembla. I don't like saying this, but Dawson Waldron Edwards & Nichols,⁵ did all the BHP work. So they agreed to take me on. I was their first female article clerk. At the very end of my articles I moved to a small firm. Then I was admitted as a solicitor in 1962. For a while I worked with a firm in Wollongong, and in early 1965 I returned to Sydney, and worked at Allen, Allen & Hemsley,⁶ doing defamation work for the Packer Press⁷ which was very interesting. Then I went to the bar in 1969.

Bar News: I wanted to ask you how people went about becoming a barrister and reading at that time?

Mathews: No such thing as reading. You'd say, 'I'm not going



to be a solicitor anymore, I'll be a barrister! You applied to be taken off the roll of solicitors and moved onto the roll of barristers and had another admission ceremony.

Bar News: How did you choose chambers?

Mathews: It was not easy. There was a room to rent in Forbes Chambers in Phillip Street. I couldn't afford to buy a room.

Bar News: I have looked at the Law Almanac from 1970, the year after you were admitted, to see how many women were practising as barristers and there were 16. I was wondering if you knew them and were they visible?

Mathews: I think probably in terms of women that were visible at the bar, it certainly would not have been more than 10.

Bar News: Were there Bar Association gatherings then?

Mathews: Downstairs in the common room of the Bar Association there was a lunch every day and the bar was open in the evenings after work. You could go down and have a glass of wine and socialise. I was probably the first woman to go down to the drinks on a regular basis.

Most of the women who were at the bar at the time were working in family law. Mary Gaudron was an exception. I did a couple of family law matters at the beginning but I didn't want to end up doing only family law. So I refused to do any more. It was very tough for a while. But then I discovered criminal law. There was a form of legal aid administered through the Bar Association, to represent accused people in District Court trials. The return was small so most people didn't want to do it.

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But for me it was work. That's what took me into the criminal law area.

Bar News: How did your appointment to the Royal Commission on Human Relationships⁸ between 1974–76 come about?

Mathews: I got a phone call from the Commonwealth crown solicitor offering me the brief. I was staggered.

Bar News: Do you think it had anything to do with being a woman?

Mathews: It had everything to do with me being a woman.

Mathews: The royal commission arose partly out of an abortion debate in the Australian Parliament. We dealt with all aspects of societal issues and I did the chapter in the final report relating to sexual offences. It was a huge eye opener for me and I realised just how much the legal processes victimised women who had been brave enough to report sexual offences.

After the royal commission I left my previous chambers and went to Wardell Chambers. Then I got a phone call from Trevor Haynes who was the head of the state Attorney General's Department offering me a Crown prosecutor's role which I agreed to take on.

Bar News: Did you enjoy that work?

Mathews: Yes and no. I enjoyed doing the court work. Early on I did a sexual assault case and the victim, of course, was a woman. Invariably, I was the only person with an active role in the court who was a woman. The juries then were all men. The very first time I did a sexual assault case the victim was almost in tears with joy at having a female representing her interests. I went back and asked to do more sexual assault cases, not because I particularly enjoyed them, but it made such a huge difference to the victims.

'I want to appoint you to the District Court and if you say 'no', I'll thump you.'

Bar News: In 1980 you were appointed as a District Court judge.

Mathews: It was a complete surprise. The call came from Frank Walker, the NSW attorney general. I'd been on the Bar Council and had got to know him. He rang and said, 'I want to appoint you to the District Court and if you say 'no', I'll thump you.' So, of course I didn't say 'no'.

It was a huge eye opener for me and I realised just how much the legal processes victimised women who had been brave enough to report sexual offences.

Bar News: You were 39? Very young to become a judge. Were you daunted by the concept of being a judge?

Mathews: Of course I was.

Bar News: Was there any judicial training then?

Mathews: None at all. I hadn't done civil work for a long time and I suddenly had to sit on civil cases. But I still did a lot of a criminal work and circuit work. I just loved it.

Bar News: Were the other judges helpful and did they provide you with assistance?

Mathews: It varied. The older more conservative ones were probably not all that happy about me being there, and there were quite a number of them then. They didn't say anything, but you could tell from their attitude. On the other hand, I made some really good friends on the court.

Bar News: When you were first appointed to the District Court you were the first female judicial appointment in New South Wales?

Mathews: I'm certain there was a female magistrate.⁹ But for full judicial office, yes.

Bar News: You were appointed a senior judicial member of the Equal Opportunity Tribunal from 1985 to 1987?

Mathews: It was part of the state anti-discrimination legislation. You don't often get a chance as a judge at first instance to make a real difference. But I was able to make decisions in all sorts of areas of disability and sexual harassment in the workplace. There was a fascinating case called *Leves v Minister for Education*¹⁰ that rectified the imbalance that then existed between elective subjects that were offered to girls and boys in single sex public schools. The girls were given all the domestic-based subjects. The boys were given the subjects that could equip them for big careers. I found discrimination. The minister appealed to the Court of Appeal.¹¹

Michael Kirby was on the Court of Appeal¹² and he pointed out that the boys were also being discriminated against because they might want to study the areas that were designated for girls. After that the full range of subjects had to be made available to both boys and girls.

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Bar News: Then you were the first woman appointed to the Supreme Court in 1987. How did that happen?

Mathews: I got a phone call from Terry Sheehan and he said, 'I want to offer you the Supreme Court.' I was enjoying my time on the District Court and I said, 'Well, look I'll have to think about it.' But when I did think about it I realised that I really had to take it.

Bar News: You were the second woman in Australia to be appointed to a Supreme Court after Roma Mitchell. How was the reception when you arrived at the Supreme Court?

Mathews: The chief justice was Laurence Street. He was terrific. But there were some very conservative judges on the court then. They clearly didn't like it.

But there were some I'll never forget, like Mervyn Finlay.¹³ He was wonderful. He was the list judge in Common Law. I don't know how I would've survived without Mervyn.

Bar News: You were at the Supreme Court from 1987 until 1994 and then you must have got another phone call?

Mathews: I did, from the Commonwealth attorney-general, Michael Lavarch. I had no idea. He offered me the presidency of the AAT¹⁴ which of course also meant being a Federal Court judge. I also said I would like to be on the recently formed National Native Title Tribunal. It was the beginning of a fascinating seven years.

By the beginning of 2001 I had been a judge for 21 years. I left the Federal Court because Jim Spigelman¹⁵ told me that I could return to the Supreme Court as an acting judge, and I have been doing that ever since.

Bar News: You have been the president of the Australian Association of Women Judges and I believe you were the founder?

Mathews: Yes, I was the founder. It started in 1989 when the American Association of Women Judges had its tenth birthday. They obtained funding to bring women from all over the world to a conference in Washington DC. I was the only woman Supreme Court judge in Australia at the time. So I went as the Australian representative and it changed my life.

I'd been really isolated. I'd been on the bench for nearly 10 years as the only woman on my court. To suddenly be among a whole group of women experiencing exactly the same thing was amazing. Out of the 1989 conference was born the International Association of Women Judges. We were very

lucky; our founding mother, as we called her, gave it very broad goals, not just about women judges or women in relation to law, but human rights. And it's a wonderful organisation that does huge things. I was treasurer and then later president of the International Association between 2004 and 2006.

I started the Australian Association of Women Judges in about 1991. In order to start it I had to get five female judicial officers together. Finally after court one day, I got Deirdre O'Connor from the Federal Court, Barbara Holborow who was a magistrate; there was one District Court judge and, I think, Elizabeth Evatt and me. It took me ages. I'm still closely involved.

Bar News: You are the patron of the Women Lawyers Association of New South Wales?

Mathews: Yes, I have long been concerned about issues regarding women in the legal profession, particularly women at the bar. There have been more women than men graduating in law for decades now. I'd always assumed that we'd have this surge from the bottom up, and that by now women would be equal all the way to the top. But the surge becomes a small trickle the higher you go.

One of the problems is that women aren't going to the bar, which is the usual pathway to the bench. Hence, the importance of the Women Lawyers' Association's Career Intentions Survey, to try and find out why women are not choosing the bar as a career. For only then can we start to address the reasons why.¹⁶

Bar News: Thank you for this interview. It has been a great pleasure having a conversation with you.

Endnotes

1. Tina Jowett is on 6th Floor Windeyer Chambers and was called to the bar in 2003. She was associate to Jane Mathews from 1995 to 1996.
2. The Leaving Certificate was the equivalent of the Higher School Certificate. At that time High School was for five years, not six years as it is now.
3. *The Winslow Boy* is a 1948 film adaptation of Terence Rattigan's play of the same name. The play focuses on a refusal to back down in the face of injustice. The entire Winslow family, and the barrister who represents them make great sacrifices in order that right be done.
4. Jane Mathews' father, Frank Mathews, worked for the Broken Hill Proprietary Company Limited (BHP), that was founded in 1885 to mine silver, lead and zinc deposits in far western New South Wales. In 1915, the company moved into steelmaking, opening a works at Newcastle and later Australian Iron & Steel Limited (AIS) was acquired by BHP in 1935 and it operated a steelworks at Port Kembla.
5. Now Ashursts.
6. Now Allens.
7. The 'Packer Press' was Australian Consolidated Press a company that Frank Packer created in 1936 by merging E.G. Theodore's Sydney Newspapers and Australian Associated Newspapers.

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8. The Royal Commission on Human Relationships was set up by the Whitlam government with the support of the opposition in 1974 until 1978. The commissioners were Anne Deveson, Elizabeth Evatt and Felix Arnott. The terms of reference for the commission were 'to inquire into and report upon the family, social, educational, legal and sexual aspects of male and female relationships'. The broad terms of reference allowed the royal commission to look at all aspects of society including the more controversial issues such as abortion, prostitution, rape, incest and homosexuality: Australian Federal Government, Royal Commission on Human Relationships: The interim report 1, 12th February 1976, Canberra.
9. Margaret Sleeman was appointed a NSW magistrate on 27 July 1970 and was Australia's first woman magistrate. At the time of her appointment she was 36 years old and had worked in the Justice Department for 21 years.
10. (1986) EOC.
11. *Haines v Leves* (1987) 8 NSWLR 442.
12. Among many other achievements Michael Kirby was a High Court judge from 1996–2009, president of the Court of Appeal from 1984–96 and Deputy president of the Australian Conciliation and Arbitration Commissioner from 1975–83.
13. Mervyn Finlay was admitted to the bar in 1952 and was a Supreme Court judge from 1984–94. He also represented Australia in the 1952 Helsinki Olympics as an eights rower.
14. Administrative Appeals Tribunal.
15. James Spigelman AC QC was the chief justice of NSW from 1998–2011. He is currently the chairman of the Australian Broadcasting Corporation.
16. The Women Lawyers' Association of NSW Career Intentions Survey is the first study in Australia with the capacity to measure and address the effectiveness of initiatives targeting diversity, retention of talent and leadership in the legal profession. 1,403 law graduates from all university law schools and the College of Law in NSW participated in the survey from 2010 to 2015. The reasons that women law students gave for not practicing at the bar were (1) because the bar involves too much stress and pressure; (2) it is too intimidating; (3) it is not family-friendly; and (4) it is too male-dominated.