

Women in Law – are our fears a barrier to our advancement?

By Vera Culkoff

In 2018 NSW celebrated 100 years of women in the law. Today, women make up almost two-thirds of graduates in law. Yet, despite these landmark celebrations and shift in participation rates of women in the law, women still face barriers to their advancement. Are we afraid to speak up when confronted with inappropriate conduct? Are our conditioned fears and societal belief systems stifling our advancement? I was confronted with my own fears, which I had to overcome, in publishing this article.

Let me share three personal vignettes by way of illustration and in the hope of identifying the conditioned fears that may cause us, as women, to respond in an automatic way.

It goes without saying, there are always likely to be people of perceived power 'above' us and there will always be those perceived to be 'below' us. Ask yourself what fears surface when someone with perceived power over you makes an inappropriate suggestion.

I start by saying that, with the exception of the below incidents, my experiences with the judiciary have been excellent.

Before I came to the Bar a (now former) Judge of the Federal Court suggested a get-together over coffee to collect Court Books (CBs) on the eve of a hearing. There had been problems in finalising the CBs. Following the usual communications with the Judge's Associate and the other parties arrangements had been made for me to deliver the CBs to the Court and leave them at the desk on the ground floor on a Saturday morning.

The next thing – out of the blue – I received a telephone call from the Judge himself inviting me to meet him to give him the CBs in person over coffee that Saturday morning.

I was a 5-6 year out solicitor at the time.

What would your initial thoughts be?:

- wow – I can't possibly say no to a Federal Court Judge – ie an immediate fear of saying no, that automatically has you saying yes; or
- wow – now that would be a feather in my cap to be able to tell my colleagues I actually had coffee with a Federal Court Judge!; or



- a fear of losing the case if you say no – ie if I say no, will that adversely affect the outcome for the client?

Or, like me, would your first thought be how inappropriate the invitation was; and if the other side found out and then lost the case, it could be the basis for setting aside the judgment on grounds of apprehended bias?

That was my fear.

I addressed the invitation by very politely informing the Judge that I would make sure that the CBs were there well before the time his Honour had indicated he could meet me for coffee, so his Honour would not be inconvenienced in any way and that I was not intending on stopping in the city; just dropping off the CBs.

Did my decision affect my career? No.

Could it have affected my career if I had accepted the invitation? Possibly? Who knows?

Was there a fear that saying no could cause me to lose the case? Yes.

These are the sorts of fears that arise and, on one view, may prevent true progress in equality within the legal profession, particularly at the Bar.

However, there is much freedom in not allowing our fears to make the choice, particularly where the choice offered is not an appropriate one and we know when that is so.

The second experience happened during my early years at the Bar. I appeared in the District Court. My opponent was male. The

Judge was a little abrupt and impolite to my opponent but his Honour was disrespectful towards me, repeatedly calling me 'girlie' instead of using my name.

My instructing solicitor was livid. At the end of the hearing, she said she was going to report the Judge. My view (back then) was you are unlikely to change the conduct and conditioned beliefs of the 'old guard' and did she really want to expend emotional energy, time and a disruption to her practice that may not lead anywhere. I also attempted to use 'humour' to deflect from the conduct by saying: 'Anyway, I haven't been called a girlie for decades, so his Honour must think I'm quite young. Maybe that's a compliment??' How often do we use 'humour' to deflect from our fears?

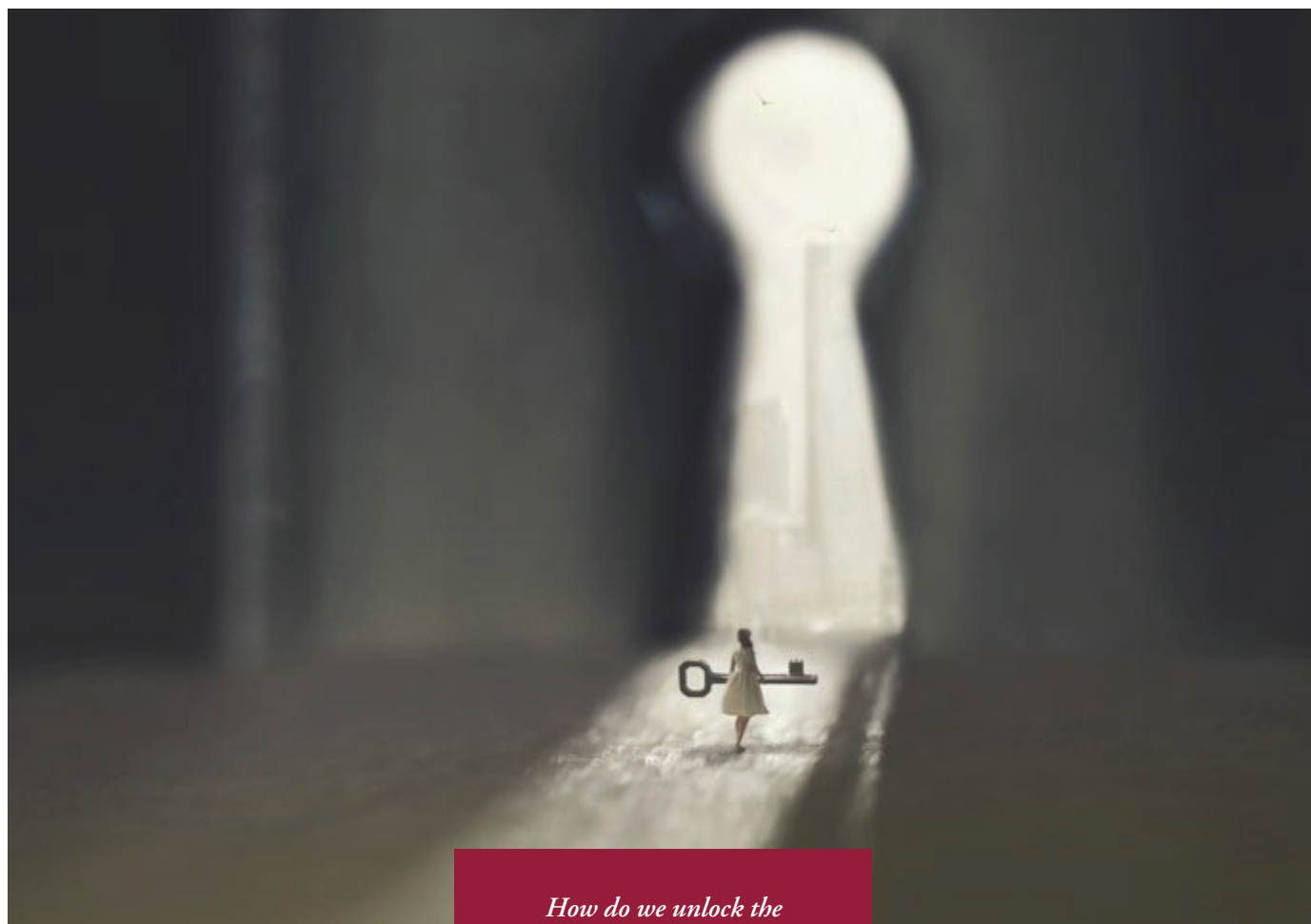
There was also discussion around our fear about how the Judge would deal with a matter if my instructing solicitor and/or I needed to appear again before his Honour. In addition, would such a complaint cause a negative response from other male Judges? Would they view the complaint as malicious or of little or no significance? Again, how would that impact any future hearings either of us was involved in?

Are these the sorts of fears that can prevent action and so cause equality within the legal profession to move at a snail's pace, taking decades (and some would say centuries) before the pendulum swings to equilibrium?

Would it have brought greater awareness to that Judge and perhaps to other judicial officers if the complaint had been lodged? We will never know.

My final experience involved a brief I received in a commercial construction matter, around ten years ago. I had a lot of experience in that area. The client apparently left it to the instructing solicitor to brief an appropriately experienced Counsel to deal with the matter. However, when the client later found out the brief had gone to a woman, the client requested the brief be returned and a man be retained. The client categorically stated he did not want a female barrister.

The instructing solicitor telephoned me, embarrassed and apologetic. A better



*How do we unlock the
door to our fears?*

word might be incensed. Everything had been done to try and persuade the client that the brief should remain with me. The client was told I was very experienced in this field; I had conducted a lot of work for a very large and well-known construction company and, even telling the client, I was a University Medallist.

But the client would not budge and the brief had to be returned. Again, my response was to try and use 'humour' – angry 'humour' on this occasion – to deflect from what is, no doubt, probably a not unusual occurrence. I told my solicitor: "Tell the client that if he sees a female barrister walking down Phillip Street, with a penis hung round her neck, it'll be me."

I suspect withdrawals of briefs from female barristers are mostly avoided by not briefing us in the first place.

There have been changes during my 20 years at the Bar, but the changes have been slow. Deep rooted conditioned cultural beliefs are difficult to shift, even over decades of well-intentioned steps and policies. Again, I suspect our ingrained, conditioned fears play a significant role. No doubt, the client's fear revolved around losing the case. No doubt the client's conditioned beliefs revolved around the fallacy that a

female barrister could not be as fierce or as competent as a male barrister.

We have all heard of the expression 'women should be in the kitchen, barefoot and pregnant'. In a sex discrimination case in *Volovsek v. Wisconsin Dept. of Agric., No. 02-2074 (7th Cir. September 18, 2003)*, the United States Court of Appeals for the Seventh Circuit ruled that a woman who allegedly overheard her manager using the phrase, 'barefoot and pregnant' could take her case to a jury.

Just 17 years ago! Really? There are still those who think women belong in the kitchen?

When I made the decision to come to the Bar in 2000, I had three fears. I called them my '3Fs' – female, fat and forty plus. I viewed the Bar as pretty much a 'boy's club'. Would I succeed in such an environment? I was certainly stepping out of the kitchen. Are such fears still preventing women coming to the Bar – 20 years after I embarked on the journey?

Women (and men for that matter) have to find the courage to step beyond their fears and make the right decisions when confronted

with power plays – and life generally.

There are countless ways to interpret and respond to our experiences, but the perspective that I have explored is the role our fears play. I believe that we all have conditioned cultural and societal fears embedded in us – sometimes so deeply embedded that our responses are automatic and occur without any conscious forethought. We cannot battle our fears until we recognise them and call them out.

In a recent book I have written, *Freedom From Fear*, I argue that bringing awareness to our fears and our choices, rather than operating (unconsciously) from our conditioned fears and belief systems is the key to opening the door. Most of our fears are illusory. Junior solicitors, like me in the above example, may have embedded fears around how to act and not act around Judges. Again, these are more-often-than-not, conditioned into us by society's 'norms'. Those 'norms' need to change.

There is no doubt that the profession needs to do more to address this and is doing so. But awareness, personal responsibility and courage to step beyond our fears as women in the law also play a part. **BN**