

**Speech on the occasion of the 2012 new Senior Counsel  
announcing their appointment to the Hon Justice Pepper, Friday 9  
November 2012**

Again, on behalf of the Court, and for my part, for the first time, I would like to formally congratulate each of you on the tremendous achievement of being appointed to the rank of senior counsel. I say this to you both professionally and, given the length of time that I have known all of you, personally.

The moment cannot pass, of course, without acknowledging the increased number of women that have been appointed silk this year. Indeed, the number of female appointments in 2012 has shattered all previous records in this State and, it may be presumed, other States as well. Of the 26 silk appointments announced this year, 12 were women. These 12 women were chosen from a pool of 117 applicants, 85 of which were male. By way of comparison, in 2011 of the 98 silk applicants only 10 were women, and of the 10 only two were successful.

As you are aware, the institution of silk has a long and distinguished history dating back to 1604.<sup>1</sup> However, 330 years passed before the first female was appointed to the rank of silk, with Helen Kinnear appointed King's Counsel in, I am delighted to say, Canada in 1934.<sup>2</sup> The first women to be appointed as Queen's Counsel in the United Kingdom

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<sup>1</sup> James D Merralls, "Some Marginal Notes about Queen's Counsel" (1994) 89 *Victorian Bar News* 51; The Hon Justice M McHugh AC, Speech to welcome 2005 New Silks, High Court of Australia, Canberra, 31 January 2005.

<sup>2</sup> The Law Society of Upper Canada, "History – Chronology", <<http://www.lsuc.com/with.aspx?id=1052>> accessed 8 November 2012.

were Helena Normanton and Rose Heilbron in 1949.<sup>3</sup> Closer to home, Roma Mitchell became the first female silk in Australia on 4 September 1962.<sup>4</sup> Approximately 20 years later, Mary Gaudron became the first female barrister to take silk in New South Wales in 1981.<sup>5</sup>

One of the many benefits the presence of an increased number of senior female counsel at the bar provides, is that of role models for other women in the legal profession. Former High Court Justice Mary Gaudron, has, on several occasions, acknowledged the influence of several pioneering women lawyers on the development of the legal profession generally and on her professional development.<sup>6</sup> She particularly acknowledged the “invincible determination” of women such as Ada Evans, whose persistent efforts to gain admission as a solicitor in New South Wales led to the passage of the then revolutionary s 2(d) of *The Women’s Legal Status Act 1918 (NSW)*, providing that a person could not, by reason of sex, be deemed to be subject to any disqualification to, *inter alia*, be admitted or practice as a barrister or solicitor of the Supreme Court of New South Wales.

True it is that female lawyers have come a long way since Ada Evan’s application to practice was rejected on the ground that there was no precedent for her admission<sup>7</sup>, but it is to state the obvious that an under representation of women at the level of senior counsel remains.

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<sup>3</sup> James Derriman, *Pageantry of the Law* (Eyre & Spottiswoode, 1955) at 59, Hilary Heilbron, *Rose Heilbron: The Story of England’s First Woman Queen’s Counsel and Judge* (Hart Publishing, 2012)

<sup>4</sup> Shelley O’Connell, “Dame Roma: Not one to be excluded” (2011) 33 (10) *Bulletin (Law Society of South Australia)* 26, at 26.

<sup>5</sup> Tony Blackshield, Michael Coper and George Williams, *The Oxford Companion to the High Court of Australia* (Oxford University Press, 2001), at 294.

<sup>6</sup> The Hon Justice Mary Gaudron, Speech to launch Australian Women Lawyers, Friday 19 September 1997; The Hon Justice Mary Gaudron, Speech given at the 50<sup>th</sup> Anniversary Gala Dinner of Women Lawyers Association of NSW, 13 June 2002.

<sup>7</sup> The Hon Justice Mary Gaudron, Speech to launch Australian Women Lawyers, Friday 19 September 1997.

Recently, on the 50<sup>th</sup> anniversary of Dame Roma Mitchell's appointment as silk, Australian Women Lawyers released figures indicating that only 7.92% of female silks practicing in Australia were female.<sup>8</sup> The total number of female silks in NSW is 34, by comparison to 329 male silks, representing less than 10% of senior counsel in this State.

But this occasion is not the time to explore the historical and contemporary reasons why these figures are so low. Rather, I have every confidence that the number of female silks will continue to rise as talented women continue to be called to the Bar. The diversity of the senior counsel present before the Court today is a visible demonstration of the profession's continuing positive evolution in this regard.

The appointment of barristers as senior counsel provides a process of validation for those who, due to their skill and expertise, have distinguished themselves as leaders in their profession. Achieving the rank of senior counsel is an acknowledgment by the profession that you are highly learned in the law; that you are highly competent as an advocate; and that you possess the crucial qualities of integrity, honesty and independence. In short, your appointment is a public recognition that you embody the very best qualities of the Bar.

It remains for me to wish each of you every success in this new and exciting chapter of your careers. And I look forward to many of you appearing in this Court.

The Court will now adjourn.

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<sup>8</sup> Australian Women Lawyers, Media Release, 4 September 2012.