

## A Bar for women?\*

Lilla Crouse  
Port Elizabeth Bar

**S**tarting as a junior at the Bar is never easy, and it is particularly challenging if you are a woman. For some years I was the only woman at the Port Elizabeth Bar. One of the biggest drawbacks was my inability to relate to many conversations in the common room – rugby, cricket and women. But, like the rest of our country, the Bar is also changing. Of the 46 advocates currently practising at the Port Elizabeth Bar, six are women. Conversations in the common room have become much more interesting!

### A profession for males only

Advocacy was even more difficult for woman in the past, when it was considered a revolt against nature to allow a woman to enter the legal profession. In *Incorporated Law Society v Wookey* 1912 AD 623, Innes ACJ, Solomon J and J de Villiers JP upheld an appeal by the law society that the respondent should not be admitted as an attorney because she was a female. Innes ACJ addressed the question to counsel appearing for the respondent: “How can a married woman appear for another and not for herself?” (at 626).

In an article discussing this judgement, RPB DaviesJ concluded in (1914) 31 *SALJ* 383: “The law of nature destines and qualifies the female sex for the bearing and nurture of the children of our race and for the custody of the world. . . all life-long callings of women, inconsistent with these radical and sacred duties of their sex, as is the profession of law, are departures from the order of nature and when voluntary, treason against it.”

Mabel Jansen SC of the Pretoria Bar told me that her mother, Rhona Jansen nee Cradle, completed her legal studies, scoring top marks in her class. Her classmates included some of our respected former judges of appeal. Yet Rhona was not allowed to practise at the Bar because she was a woman.

### Blame it on Carfinia

Modern man cannot be entirely blamed for women’s struggle during the past century to be admitted to an exclusively male profession. For a long time men adhered to the views of great Roman and Roman-Dutch masters of law who advised against allowing women into courts. (see Barbara Lucatti “A Crack in the Glass Ceiling” 1989 July *De Rebus*). In Digest 3.1.1 (quoted in *Wookey v Incorporated Law Society* 1912 CPD 263) mention is made of the Praetor’s Edict which originates from an incident which Voet recounts as follows:

“Thus, although, for example, we find in many females a praiseworthy modesty of sex, yet

from the shameful manner in which a certain Carfinia pleaded a suit, and annoyed the judges, we may see that other women might be given to the same vice of immodesty. Therefore it was rightly enjoined that a woman should not appear as an advocate for another person.”

One can only wonder if this unacceptable and unreasonable measure precluded some brilliant legal minds from making a considerable contribution to our legal history.

### Firsts and related problems

The first woman to be admitted to the Bar was Irene Antoinette Geffen. I was unable to establish when.

In 1969 Miss Justice Van den Heever was the first woman to be elevated to the Bench, after having joined the Bar in 1952. She was also the only woman to be appointed to the Supreme Court of Appeal. In an article in 1999 March *Consultus* 33 Judge Van den Heever spoke out against having to take on low-paying and oh-so-deserving cases that male advocates refused. Based on my own experience and feed-back from other women at the Bar, I have concluded that not much has changed since Judge Van den Heever joined the Bar.

Male domination in our courts has caused tension regarding the dress code

*Lilla Crouse BJuris (UPE) LLB (Stell) joined the Port Elizabeth Bar in 1992 after working as a prosecutor for several years. She is a member of the Bar Council, and is also involved in youth and women’s organisations. She is married with two children.*

for woman advocates. Some ten years ago a Cape Town judge complained about the fact that a female Cape Town advocate wore trousers in court. At the time gender equality was very much an issue and the advocate under fire contacted several female colleagues, including myself, to protest. At that stage I had not appeared in court wearing trousers, but realising that there was no reason not to, I subsequently did.

That sorted out court dress for me, but not dress code. Female advocates are still unsure what they should wear outside the courtroom. Males advocates wear ties and jackets. But female attire is much more nebulous. Women do not wear ties. And jackets do not necessarily determine whether women are dressed formally or not.

A male opponent and I recently attended a judge in chambers on a courtesy call to inform him that a trial, which would have commenced the following week, had been settled and that he no longer needed to read the papers. I wore a smart leather jacket and trousers, my colleague wore a suit. (In our division advocates do not robe to attend a judge in chambers.) A few days later I was back in the judge’s chambers – with the leader of our Bar to offer moral support – to apologise for my attire on the previous occasion, as the judge had complained about my dress to my male colleague! Needless to say, I have not worn the jacket in question to chambers since.

Since this incident a notice by our judge-president was brought to my attention. It reminds female practitioners that court dress is as follows: a white blouse with a collar, a black skirt/

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pair of slacks and black shoes. It would therefore seem that it is not necessary for a female practitioner to wear a jacket in court. This still, however, does not address the issue of whether or not it is required of a female advocate to wear a jacket outside court.

Of course it is not only in terms of dress that women differ from men in court. I have had the opportunity to appear against male and female legal practitioners. In general I have experienced men as more emotional during trials. In particular men tend to struggle to separate adversary in court and out of court behaviour. Of course this is not true of all male colleagues, for which I am very thankful!

Unfortunately women in court tend to receive unkind labels. A woman arguing a case is easily labled "emotional" or "aggressive", while similar behaviour in a man is "assertive."

## Statistical view

Thirty years ago two percent of advocates in South Africa were women. In 1997 12,7 % of advocates were women (Barbara Whittle "Women in the profession" 1999 March *De Rebus* 10). And by 1998 14 % of junior members and 2 % of silks affiliated with the GCB were women.

In January 1999 there were two female silks at the Johannesburg Bar, three at the Pretoria Bar and one at the Cape Town Bar. There were 196 female juniors in total (according to GCB statistics).

Three years later there are eight female silks (2% of all silks) and 230 female junior members (16 % of all juniors) practising at the various Bars (according to GCB statistics).

The increase in the percentage of female juniors at the Bar is encouraging. However, these figures still do not reflect the growing ratio of female legal graduates.

I was unable to obtain the racial division of statistics on female advocates.

Representation at the annual GCB meeting is now racially equal, but there is no gender equality, and this should be addressed by the Bar.

## Practical difficulties

Being a mother, a wife and an advocate poses its own problems and is probably more difficult than being a father, a husband and an advocate. I have been in court the day before giving birth and I have returned to chambers shortly after having a baby – as have other female advocates.

The following anecdote is from Jansen SC: "In 1986, when I addressed a letter to the Bar Council, seeking a respite from paying Bar fees in order to give birth to my first child, I received a laconic response from Swart J (then serving on the Bar Council). It read as follows: "*Volenti non fit iniuria.*" In the

received "maternity leave", and were exempted from paying Bar fees for a period of four months.

Thus, finally, *conversa tandem est fortuna!* May female members ride this tide and bear many happy children who, no doubt, in the not so distant future, will clamour for paternity leave."

The Pretoria Bar Council should be commended for this positive stance.

## Conclusion

As yet, woman advocates in South Africa are equal to male colleagues neither in numbers nor in status. We have come a long way in proving Van Leeuwen wrong in his opinion that, due



"... typing a 50 page affidavit in the maternity ward."

result, I completed a trial in Johannesburg on the Friday, gave birth to my daughter on the Saturday, and was back at chambers the next Wednesday. This sorry state of affairs had not improved when I gave birth to my youngest daughter in 1995. I remember the incredulity of my gynaecologist when I sat typing a 50 page affidavit in the maternity ward. This time, presumably due to old age, I did not return to chambers for two weeks.

However, for the past four years, the Pretoria Bar has, at long last, seen the light and five women from our Bar have

to inborn weakness, nearly all women are less suited than men for matters requiring knowledge and judgement. Yet female advocates in general are still breaking free from the mould created by our past. I am of the opinion that the more female advocates join the Bar and the ranks of senior advocates, the more it will be accepted that a woman can do the job as well as the next man (as I think has happened in the Office of the Director of Public Prosecutions).

On the other hand, as the bumper sticker says: "Women who want to be equal to men have no ambition..." 