New Zealand Women Judges Oral History Project: Part Two

Elizabeth Chan,¹ June 2017

1. Introduction 2
2. The New Zealand Women Judges Oral History Project 2
3. Law School 4
   3.1 Reasons for Going to Law School 4
   3.2 Number of Women at Law School 6
   3.3 Part-time and Extra-mural Study 7
4. Entering Practice 8
   4.1 Finding Work as a Young Person 8
   4.2 Partnership 9
   4.3 Moving to the Bar 11
   4.4 Public Sector 12
   4.5 Work and Family Life 13
5. The Māori Dimension 16
6. Involvement in Women’s Organisations 18
   6.1 Women Lawyers’ Associations 18
   6.2 New Zealand Women Judges’ Association 19
7. Moving to the Bench 19
   7.1 Becoming a Judge 20
   7.2 Judicial Training 22
     7.2.1 Before the IJS 22
     7.2.2 Formal Judicial Training 23
   7.3 Appealing Aspects of Being a Judge 24
   7.4 The Downsides of Being a Judge 26
   7.5 Qualities of an Ideal Judge 27
   7.6 Experience as Pioneer Women Judges 29
   7.7 Gender differences in judging 31
   7.8 Supporting Other Women Judges and Lawyers 32
   7.9 Judicial Leadership 32
8. International Work and the Importance of an International Perspective 33
   8.1 International Experience as a Young Person 33
   8.2 International Experience as a Judge 34
9. Post-retirement 35
10. Advice for Young Women (and Men) 36
11. Conclusion 37

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1. Introduction

Since Dame Augusta Wallace was appointed as the first woman judge in New Zealand in 1975, there have been around one hundred women appointed to the New Zealand judiciary. In 1989 Dame Silvia Cartwright became the first female Chief District Court Judge and was also the first female judge to be appointed to the High Court in 1993. The New Zealand Supreme Court currently has a majority of women judges. Chief Justice Sian Elias heads the New Zealand judiciary and the Supreme Court. Until recently, Justice Ellen France served as President of the Court of Appeal and Justice Helen Winkelmann was the Chief High Court Judge. Judge Jan-Marie Doogue is the current Chief District Court Judge and Judge Christina Inglis is Chief Judge of the Employment Court. Women have thus been Head of Bench in the District and High Courts, the Employment Court and the Court of Appeal and Supreme Court.

The New Zealand Women Judges Oral History Project (“Oral History Project”) celebrates and promotes the extraordinary achievements of these women legal pioneers and their peers.

2. The New Zealand Women Judges Oral History Project

The Oral History Project aims to provide the first national, publicly accessible records of the lives and careers of New Zealand’s trailblazing women judges. Under the leadership of Justice Susan Glazebrook and Dame Judith Potter, the Oral History Project has conducted life history interviews with 24 women judges. The themes arising from the first nine interviews are discussed in a 2014 article published in the Victoria University Law Review (along with a thorough description of the background and aims of the Oral History Project).

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2 This figure includes Acting Judges across all New Zealand courts and was calculated as at 23 August 2016. I am grateful to Heather Nordstrom, Associate to Justice Glazebrook, for this statistic. I am also grateful to Amelia De Lorenzo, the Supreme Court Research and Library Services Manager, for her research assistance.

3 Being Elias CJ, Glazebrook and Ellen France JJ.

4 Justice Ellen France was appointed to the Supreme Court on 22 July 2016 and Justice Winkelmann was appointed to the Court of Appeal on 1 July 2015.

5 The interviews and the transcripts of these interviews will be deposited with the Alexander Turnbull Library. The interviewees have, however, imposed various embargo periods regarding access to their interviews.

6 There are likely to be other interviews conducted by Dame Judith and Justice Glazebrook as time permits.
This paper discusses the themes arising from most of the remaining interviews.

The following judges (in alphabetical order) have been interviewed for the Oral History Project (the asterisks identify the judges whose interviews are discussed in this paper).

1. Dame Silvia Cartwright (Chief District Court Judge and then High Court Judge, retired)
2. Judge Trish Costigan (District Court, retired)*
3. Judge Dale Clarkson (District Court and then Chairperson of the Lawyers and Conveyancers Disciplinary Tribunal)*
4. Judge Frances Eivers (District Court Judge)*
5. Judge Caren Fox (Waitangi Tribunal, Maori Land Court and Alternate Judge of the Environment Court)
6. Justice Ellen France (President of the Court of Appeal and then Supreme Court Judge)*
7. Justice Marion Frater (District and Family Court Judge, High Court Judge and then Deputy Chairperson of the New Zealand Parole Board)*
8. Judge Anne Gambrill (Master of the High Court and member of the Legal Aid Appeal Authority, retired)*
9. Justice Susan Glazebrook (Supreme Court)*
10. Dame Lowell Goddard (High Court, retired)
11. Judge Carolyn Henwood (District Court and Youth Court, retired)
12. Judge Shonagh Kenderdine (Environment Court, retired)
13. Judge Anne McAloon (District Court, retired)*
14. Judge Stephanie Milroy (Waitangi Tribunal and Maori Land Court)
15. Dame Judith Potter (High Court, retired)
16. Judge Cecilie Rushton (District Court, retired)*
17. Judge Coral Shaw (District Court, Employment Court and United Nations Disputes Tribunal)*

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8 The project was funded in large part by the New Zealand Law Foundation and the convenors are very grateful for their support. See www.lawfoundation.org.nz for more information on the Foundation.
9 There have also been interviews with Justice John McGrath in his role as Solicitor-General and Justice Ronald Young, in particular in his capacity as Chief District Court Judge. The interviews covered their careers generally, as well as their insights into the process of appointing women judges. This paper does not cover those interviews.
This paper draws out the main themes arising from the 15 new interviews in roughly chronological order, tracking the career pathways of the interviewees from their decision to read law to their appointment to the Bench. At each of these life stages, this paper draws out the judges’ observations on how their gender affected (or did not affect) their decision-making and life experience.

3. Law School

3.1 Reasons for Going to Law School

Those interviewed chose to go to law school for different reasons. For some, attaining a university qualification was a milestone in itself. Before Judge Shaw decided to go to university, it “wasn’t something [she] had in [her] sights”. Except for one remote relation, she had no other role models among her family who had gone to university.

Judge Rushton said that going to university was “always a given”. Her mother “just didn’t recognise barriers [for women]”. Her father, on the other hand, was shocked by her decision to go to university: “Well, he was an army officer and just took the view that girls got married.”

For some of the other women judges, getting a professional degree was expected. Judge McAloon’s father was the one who encouraged her to do law – back in 1954. Judge McAloon replied, “But women can’t be lawyers, can they?” Hearing her father’s reply “Why ever not?” and with his continuing encouragement she decided she would go to law school after all.

Two women judges, Justice Frater and Judge Eivers, expressed interest in becoming diplomats before enrolling in law. Both were expected by their families to attend
university. Justice Frater told her family she was enrolling in law instead and “nobody blinked”.

A common refrain from many of the women judges was that high school either did not offer meaningful careers advice or, if girls were encouraged to go to university, it was to become a secretary or a teacher. Several of the interviewees said they did not want to be locked into a teaching career just because that was expected of young women.

Judge Rushton said, “I didn’t know what I wanted to do, other than go to university and I didn’t want to do an arts degree because you ended up either as a librarian or as a school teacher.” Judge Simpson too said, “I studied subjects [at university] that were away from what I had done at school because I didn’t want to end up being a teacher.” Judge Costigan said, “I think I decided that I didn’t want to do a Bachelor of Arts degree because I didn’t really want to go into the teaching field … so I thought I would try to do a law degree.” In a similar vein, Judge Gambrill said, “I realised, whatever I did, I did not want to teach school. I had no ambition to be a nurse.”

Judge Shaw shared a particularly humorous anecdote illustrating the dizzy heights of society’s expectations of bright young women in the 1950s:

> If you want to know about ambition, I’ll tell you what my father said to me … . I remember when I came home after I had been made the dux of Lyttelton Main [School], … . Dad said to me, ‘What I think you should do is you should go to university,’ which was astonishing for him to say that. And then he said, ‘And while you’re doing that, you should learn to type, and then you can become the personal assistant’ — I think it was still the secretary, maybe the chief secretary — ‘of someone like Sir James Fletcher or Sir James Wattie.’ That was as far as his world could see for a woman.

In Judge Ullrich’s case, the focus for female career advice in high school was “fairly limited” to teaching, nursing, or becoming a typist. However in her family, it was accepted when she said she wanted to become a doctor. No-one ever suggested that she became a nurse instead. She gave up on medicine after discovering a distaste for mathematics in the fourth form. She enrolled in law on the basis that it would open up more opportunities than becoming a school teacher.

Several women judges discussed the importance of independence. Justice Winkelmann decided to go to law school after Sixth Form. Growing up, she had always been very independent. Because her family did not have a lot of money, she and her sister always
had part-time jobs to support themselves. Deciding to go to law school was then naturally an independent decision that she made.

3.2 Number of Women at Law School

Initially, women formed a very small minority of their law school classes. Five women started legal system with Judge Ullrich in 1965 and she was the only one who proceeded into the second year. Justice Frater began at Victoria University of Wellington in 1968 and estimated there were around 12 women in a class of around 120 but only three graduated. Judge Costigan recalled that her graduating class of 1974 had about five women. She found law school to be a largely positive experience, with the male students generally treating the female students well. By the time Justice Winkelmann went to law school in the early 1980s, numbers had increased and this period marked a point just before “women started to be numerically dominant in the law school”.

Regarding the impact that the arrival of women students had on the way law was taught, some judges noted that, in the early days of women in law school greater sensitivity was given to topics involving women. For example, Judge Simpson recalled that, “The way some topics were presented at law school, particularly in the criminal area, had to be modified to take into account the presumed delicate sensibilities of the female students.” In practice, this meant that lectures would “gloss over … the details of sexual offending”. Not all lecturers took into account women students, with Judge Ullrich recalling one lecturer entering the class and saying “Good morning gentleman” and not acknowledging her.

Judge Gambrill described how she got unwanted attention from her criminal law professor. She described him as “having a policy that he didn’t think women should do law, so he had a well-known system of getting rid of them”. That policy was to ask the women students to answer all the questions. As Judge Gambrill recalled, “You had to be ready to answer [all the questions], but every first question for about six weeks was

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10 When Judge Rushton went to Canterbury Law School, she was the only woman in a class of 39 men. She also had a positive experience at law school and got on well with her male classmates. When Judge Simpson went to law school in the early 1970s, there were around half a dozen women in the class. She recalled that at her admission to the Bar, there were probably fewer than 20 women among 90 admittees.

11 Similarly, Judge Eivers, who graduated in 1985, said that in her year “they were approaching the 50:50 mark”.

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directed [at] me. ‘Miss Shorland, be good enough to define sodomy.’ So with 90-odd other students, I suffered through that.”

Even when there were more women at law school, Justice Winkelmann recalled “a feeling amongst some of the lecturers that they didn’t want you [the women] there.” One professor in particular, although brilliant, did not relate to the women students well. He was always polite to the students, but there was a sense he was “rather dubious as to whether [the women students] had the intellectual capacity [for law]”.12

The women judges praised several of the female lecturers and professors. Justice Winkelmann described Professor Jane Kelsey as “an absolute firebrand”. She also described Professor Nadia Tollemache as “brilliant” and “a good role model because she’d had this very successful academic career, and also managed a family life, with six children.” Others mentioned were Professor Pauline Tapp and Professor Margaret Wilson, with Justice France fondly recalling Professor Wilson’s course on Women and the Law.

### 3.3 Part-time and Extra-mural Study

Law school in New Zealand is now largely full-time, but some of the early women judges had attended law school part-time. Judge Rushton initially worked full-time as a court clerk in the Magistrates’ Court in Christchurch. She was given three hours off a week to attend lectures.

Judge Shaw faced challenges trying to study law extramurally. Before going to law school, she already had a teaching career and was based in Thames with two young children. When she first approached Canterbury University, from where she had previously graduated with a BA, about studying law extramurally, the University resisted. When she insisted that the University Calendar offered extramural law study, the university administration relented, but only to a point: she could do the degree extramurally but she would not get any tuition or assistance. She agreed to these terms.

12 Speaking of the same professor, Justice Glazebrook said that, although this professor was perfectly fair in his marking and teaching, he did make the offhand comment to her that, “[It] wasn’t so bad that women were [at law school]” because most of the women would not go on to become lawyers anyway.
Upon reflection, Judge Shaw commented, “This sounds as though I was a brave, ferocious person, but I wasn’t. I just kept thinking, why don’t I just see what happens?”

4. **Entering Practice**

4.1 **Finding Work as a Young Person**

For several of the women judges, their pathways into a career in the law were not easy, especially because women were still a minority in the legal profession. When Judge Rushton first started out, she did not expect to have any difficulty finding a job. “I think that was something that I inherited from my mother. Not recognising barriers”. She found no real discrimination as a young woman starting out her career in Taumarunui. Perhaps the smallness of the community forced it to accept that lawyers would inevitably include woman. Taumarunui was a small farming county, a “fairly conservative area, [where] it was taken for granted that some of the lawyers were women.” However there was one occasion Judge Rushton remembered receiving a sexist attitude from a client. She acted for one organisation whose President obviously disapproved of female counsel. “He used to sit there scowling and chewing peppermints” She noted wryly, that despite this attitude, he was “still happy to give [her] all the work.”

Judge Clarkson found it hard to get her first job in the late 1970s. “There were a huge number of law students coming out to very few jobs, so if you weren’t in that absolutely top echelon, you were kind of worried.” When she first started out, she “tore the Yellow Pages of barristers and solicitors out for the North Shore [in Auckland], where she lived at the time. She “just went from firm to firm and door-knocked”. For the most part, she “just got the secretaries at the front desk saying, ‘No, we don’t need any receptionists, I’m afraid,” and she would not get past them.

Judge Clarkson finally got a job in September of her final year of law school. She took on a full-time job even though she was still studying law full-time “because [she was] so terrified of actually finding a job”. She worked as a law clerk – the first legally qualified clerk for that firm. The job mainly involved going to the Companies Office, filing applications and papers in court and doing searches at the Land Transfer Office. The fact

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13 For Judge Shaw, law school was her “very first experience of feminism and supportive women”, both in Thames where she was living and at the University. When Judge Shaw went down to Christchurch “once a year, once with baby at breast, in the holidays”, her group of women friends and sympathetic university teachers would give her a week’s worth of tutorials.
she was a woman affected her job responsibilities: “[The firm] was good for that basic experience, but I also had to make the coffee for the entire office, which I’m sure no male law student would have been asked to do.”

Judge Ullrich also remembered applying for a multitude of jobs in Auckland, Hamilton, Whanganui and Wellington. She was interviewed for positions, but in her words was “not sure whether they were serious.” She eventually got a job with Wallace McLean Bawden & Partners in Auckland.

Judge Clarkson decided to specialise in litigation. This was because of the limitations faced by women doing corporate work. “I think I decided that women wouldn’t have any credibility – because, by that stage I got the sense of how women were viewed in the profession, and how inflexible it was. There was a sense that the big corporate clients would not feel confident with a woman. It wasn’t going to be me to take them on. I left that to stronger souls like Judith Potter.”

4.2 Partnership

Many of the women judges achieved partnership in their firms, but the pathway was not always clear-cut. Justice Frater said that in the early 1970s, “They just didn’t make women partners. It was an unspoken thing, and I didn’t push for it”. Becoming partner was important – not just for the money but to be on the same level as the male lawyers in terms of recognition. Judge Rushton said that, after partnership and sole practice in Taumarunui, “I joined the firm of Urquhart Roe and Partners in Rotorua as a solicitor. I didn’t want to be a partner at that stage, but of course subsequently I decided that doing

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14 Judge Clarkson recalled how one of the partners had said to her at their first meeting, “I don’t approve of women lawyers. Perhaps you’ll prove me wrong.” Judge Clarkson felt devastated, particularly since she had been “so much on the fringe of the feminist element at law school”. Additionally, she had several experiences of being dismissed as the secretary. The discrimination came as a shock to her since she did not have particularly negative experiences as a woman law student, apart from one encounter with a lecturer who was doing the work experience placements. He had said to her, “I don’t know about you women being here. Why don’t you just go home and play the piano?” This was a harsh reality for Judge Clarkson, who had been raised by a strong mother who had many feminist friends. Fortunately, Judge Clarkson did have some supportive partners at the firm, including Graham Halford and [Sir] Anand Satyanand (later Judge Satyanand and then Ombudsman and finally Governor-General). Graham Halford assisted her in getting another job when she was admitted to the bar and her clerkship came to an end.

15 Judge Gambrill also mentioned the difficulties of landing large commercial clients as a woman lawyer. “People like [Dame] Sian [Elias] practised as a barrister for a long, long time and she said she couldn’t get the big commercial work.” Additionally: “It is not so much the attitude of the lawyers themselves, but it’s the attitude of the public to the lawyers, and their perception. Denise Bates [QC] sort of said the same thing. It’s still hard for them to get the right clients, and very often the most successful have had to go into their own practices.”
all the work and not getting any of the kudos was not a good idea.” Judge Simpson became a partner at her firm, Miller & Poulgrain in Thames, after four years of practice, at the age of 29. It was the expectation of this firm that she would become a partner. There were no other women practitioners in Miller & Poulgrain so Judge Simpson was “regarded as a bit of an oddity”.

Judge Clarkson made the decision to excel at a smaller firm, believing that her chances of partnership would be greater in that environment. “I knew that getting a partnership as a woman, in a big firm: a) it would probably mean that I couldn’t have children for ages, if at all, and b) it was going to be a battle rather than something which I’d been promised in advance.” Part of her motivation to become partner was due to a conversation with a male colleague, who said he wanted to make partner by the age of 25. Judge Clarkson decided she could do the same, and indeed she was made partner by 25.  

Justice Winkelmann also made partner at her firm at 25. Her firm made both her and her husband partners because they were considering moving overseas. She was the first woman partner at her firm. She had been “quite keen” to be a partner to have financial security, which was important coming from a family where they had no financial security. Financial freedom helped Justice Winkelmann and her husband to afford childcare. Being made partner also made it easier to engage with clients and get them to accept a young lawyer running their files. The partnership title gave Justice Winklemann credibility in the eyes of her peers as she was leading teams with lawyers in their late 30s and 40s.

Justice Winkelmann observed that, across the legal profession, many of the top female graduates who went to big firms were “spat out very quickly”. When she made partner, there were probably only six or seven other women partners in Auckland (including Susan Rhodes at Simpson Grierson, Judith Potter at Kensington Swan, Helen Melrose at Chapman Tripp and Hannah Sargisson at Brookfields).  

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16 Judge Clarkson had joined a new firm called the Newmarket Legal Centre. At one stage, the firm was the first all-women practice, with a female partner and three female lawyers, some of whom worked part-time. When she had a baby, she took six months off. Ironically, “I thought I’d achieved a huge coup by getting six months maternity leave without losing profit sharing, except that because I was on leave, we didn’t make any profit, so all I achieved was a loss share. Pyrrhic victory.”

17 These women partners gathered together for lunch about once a month, acting as a support group. Justice Winkelmann remembered in particular how Susan Rhodes had mentioned her maternity leave arrangements to the group, so that when she fell pregnant, she was able to draw on Susan Rhodes’ experience to negotiate for leave at her own firm.
Judge Costigan had a more difficult experience becoming partner as the two firms she had worked for once she left law school would not take on a woman partner.\textsuperscript{18} She thought that, at that time, the male partners were of the view that clients would not accept women partners. In her words:

There was still some prejudice against women practitioners. I do recall when I started off doing common law work, particularly matrimonial and other family court work, the husband or male partner of a client would often scoff at the fact they had a female lawyer and think that you weren’t going to be taken as seriously as a male lawyer. That sort of attitude wasn’t that prevalent but it was there. And I think a few senior practitioners, apart from the ones who were really good at helping you, still felt that women really didn’t really understand the areas of commercial law and the like and they would not be effective as a company director or in any of those areas of the law. I think they believed that because they hadn’t seen women practising for long enough to realise that they were just as good and just as competent and just as skilled. That came in time, but it was just the start of that era I think.

4.3 Moving to the Bar

Some of the women judges decided to join the Bar. For Judge Clarkson, this was a particularly fraught decision as her move to the Bar was partially influenced by her law firm’s unwillingness to accept part-time arrangements. Initially Judge Clarkson had negotiated an arrangement where she would work four days in the office and one at home. A few years later, the law firm hired a management consultant to see how the firm could be more profitable. The management consultant was “extremely hostile to [Judge Clarkson’s] part-time and family law low-paid work”. Consequently she felt “basically frozen out” so she decided to go to the Bar.\textsuperscript{19}

For Judge Rushton, going out as a barrister sole in Rotorua was a big step forward. There were simply no other women barristers in the region at the time. She was greatly encouraged in this move by the members of Southern Cross Chambers and in particular the late Justice Robert Chambers. “It was early days for women barristers sole, although there were quite a few up and coming lawyers by then.”

\textsuperscript{18} After it became apparent that neither of the firms would take on a woman partner, Judge Costigan entered practice on her own before amalgamating with another firm and becoming a partner there.

\textsuperscript{19} It was a particularly low point in her career, especially as the firm was unwilling to compensate Judge Clarkson for work in progress. “[The firm] said that work in progress was not an asset, so therefore I wasn’t to share in the work in progress other than what I took with me.” Further, Judge Clarkson only received one instruction from her old firm once she was a barrister, and that was for a highly undesirable client the firm itself would not have wanted to act for. She thought this was a “shame” because “we’d never had a cross word through the entire partnership”. Although Judge Clarkson thought that some of the other partners were accommodating, the management consultant’s advice heavily influenced the partnership’s decision. “It was an unfortunate end to what had been a very happy partnership.”
4.4  Public Sector

Justice France spent much of her early career in the public sector, working in the Law Reform Division at the Justice Department. While at the Justice Department, Justice France conducted research on areas of law on which the government had decided to legislate. This role involved instructing parliamentary counsel on the drafting of bills, attending select committee meetings, writing reports for the select committee and writing speeches for the Minister in the House of Representatives. She found the Law Reform Division to be a friendly environment for women. Janice Lowe, who was then the head of the Division, was an important mentor. “She encouraged you to do anything you wanted to do or were interested in doing. She was very good at advancing people’s careers.”20

Justice France thought that the public sector of her time provided a more flexible environment for women lawyers than was the case at that time in the private sector. There were “quite a number” of women working in her division. The public sector’s provision of maternity leave and favourable employment policies probably explained why women lawyers were attracted to the public sector.

Seeking a change and the chance to do some court work, Justice France moved to the Crown Law Office. Litigation representing the government was “sometimes a searing experience”. She also enjoyed the chance to work on Treaty of Waitangi settlements, including working closely with historians. Additionally, Justice France was part of the new Bill of Rights team. It gave her the chance to work with other teams in the Crown Law Office, especially the criminal law team. At the time, Crown Law was working to build a more comprehensive approach across the government in addressing matters implicating the Bill of Rights. For example, Crown Law was involved with vetting bills for compliance with the Bill of Rights and working with the Justice Department in this regard.

Justice France credited the then Solicitor-General, (Justice) John McGrath, for actively advancing women to leadership roles. During his time, the Crown Law Office was undergoing a restructure, with the result that the majority of new team leaders were women. Justice France recalled Jennifer Lake, her team leader, as being “a very good lawyer and quite influential” on how Justice France learnt basic skills like writing submissions and how to structure them.

20 Working with Sir Geoffrey Palmer on a secondment was particularly memorable. She was involved with drafting what became the New Zealand Bill of Rights Act 1990 (Bill of Rights).
4.5 Work and Family Life

Many of the interviewees spoke about the challenges of balancing work with motherhood, as well as the choice not to have children. For Judge McAloon, working and being a mother at the same time was out of the question. She left her legal job in 1961 because she was about to get married. At the time, Judge McAloon was 22. She went on to have five children in seven years. She agreed with the interviewer that it was the mores of her time. "[I]t was an extraordinarily difficult thing for me to do and I was really upset about having to leave something which I loved doing. But, as I say, there was no question that that was what was going to happen." In Judge McAloon’s home, there was a clear gendered division of labour. "It was my task to look after the children and his task to make the money. That was made very clear to me. In 1978 [her husband] was appointed a Magistrate and it didn’t really change very much."

Judge McAloon had been away from practice for more than 25 years when she re-entered the work force. She applied and was welcomed at Cameron & Company. She worked extremely hard, progressing from being a law clerk, to an Associate, and eventually, a partner – within six years of returning to practice. She thought it was possible to have made this quick progression because she was alone at that point and her children had grown up.

Justice Frater commented that “It wasn’t the expectation that if you had children, you would be able to work." She was not sure if, in the earlier years of her career, she knew anyone who had children and worked. Many of the judges commented that they were asked in their interviews if they had children.21

Several of the women judges commented on the helpfulness, even necessity, of having home help. Judge Gambrill thought it was important not to have unrealistic expectations. “You just balance everything the best you can – and sometimes not very successfully.” She commented on how useful it was to have had “long periods of long-term help”. Judge Shaw was thankful she had incredible support from her husband:

21 For example, Justice Frater said “and I was offered a job with what was then called the Technical Correspondence Institute out at Waiwhetu in Lower Hutt – there was an old girls’ high school out there – as a tutor in law. It was put forward as very flexible and friendly and if I had children, because, of course, I said I wanted to become pregnant, which was hardly the winner for a job interview but anyway. They said, there’s no problem there, because of course you didn’t have students face to face.”
I acknowledge that none of this, without my husband, would have been possible. Absolutely none of it. He once joked that he sacrificed his teaching career for me, which is rubbish because he was dying to stop, but the important thing is that he stayed at home. He cooked the meals, had the meals waiting when I came tottering in, exhausted, at the end of the days, saw me right when I was exhausted. Supported me through it. I don’t know how women do it on their own, quite frankly, particularly if they’ve got a family. You need somebody staunch to stand by you and support you, and I’ve been very fortunate in that. Very fortunate in that.

Justice Glazebrook commented on the need to have realistic expectations about the time needed for child care. Justice Glazebrook was able to negotiate a maximum of three months off work when she had her first child. “I, of course, thought that, as one does naively, that the baby would be asleep a lot and I could do a lot of work while the baby was asleep, not realising that yes, they are fed every three hours but in the meantime you’ve got to try and change them, wash them, change your clothes, have a shower, if you can possibly manage it, get some sleep because you’ve not had any sleep etc. You don’t realise a lot of those things.” When she had her second son, she only had six weeks’ maternity leave, which was too short and “not sensible”, even with the help of a nanny. Justice Glazebrook also commented on how it was not always easy, even once she moved to the Bench, to be assertive about needing to prioritise her children. Being on circuit was particularly hard because it involved being away from the children. She said that a couple of times when her children were ill, she should have apologised and said that she could not go on circuit.

Justice Winkelmann mentioned how, in her firm, the male partners had diverse views on lawyers taking adequate time to raise children. There were some male partners who saw her as they might see one of their own daughters: “Wouldn’t it be fantastic if their daughters were doing something like this [namely, being a leader in the legal profession]?” One of the male partners was “absolutely fantastic”, encouraging Justice Winkelmann to reach partnership and then have children, “in that order”. Other male partners “lacked that emotional intelligence and just expected everybody to be one of the boys”.

Justice Winkelmann’s firm did not give her a “hard time” about maternity leave, even though she became pregnant not long after achieving partnership. “I suppose they may have been crinkle mouthed in private, but they were actually really, really good to me.” Her maternity arrangements were, by default, three months long. Any additional time had to be negotiated for. Judge Eivers, however, had “lots of issues” with maternity leave. She said “it was really difficult for the male partners to walk the talk about maternity leave.
They said one thing but then got angry.” This led to her resignation from her firm. She had asked:

[I had asked] … are there partnership prospects in this firm? And he said, yes, of course there are. I said, OK, once I’ve had my baby and come back, can we talk about that? and he said, Yes, that’s fine. So I did a deal with him that once I came back … I’d have six months off and then once I came back, I would work four days a week which I had done before anyway. The way we women work is that even when we’re four days a week, we would work most nights or even work, go in on that day off if we have to do something. You do. You didn’t leave anyone needing – so they said, Yes, that’s fine. But then they called me in just before I was due to go back, and the tide had completely turned. I got told that I had to prove myself, that I needed to go out and find more clients, that they did not want me to do four days a week. I had to do five because there would be clients that would be suffering, to which I said, who suffered last time when I was working four days? They just completely turned the tracks, turned everything around and I felt really insulted and angry. So I went home and I thought about it and I resigned.

Judge Eivers was replaced by a male from another firm – who got “Thursday afternoons off for golf”.

Like Justice Glazebrook, Justice Winkelmann found “being a mum hard work, because of the loss of control of how your day would turn out, and the very singular focus required on this unpredictable little being”. Like many other professional women, Justice Winkelmann also hired a nanny. She also followed a regimented policy to make sure she was home for dinner with her children: “I also have had this rule my entire working life that I don’t work late at the office, so when I was in practice I was always home by 5.30, if I wasn’t in court, or 6 if I was. Then if I had to do work, and I usually did, I’d do the work when the babies were in bed.”

There was support from the wider legal community. Justice Winkelmann fondly recalled “Minor Proceedings”, a crèche on Bankside Street in Auckland, which many of the women lawyers used. The Auckland Women Lawyers’ Association, led by Toni Fisher, created this crèche in the late 80s or early 90s. Justice Winkelmann supported the crèche by putting one of her sons there when he was about three.

Justice Frater recalled being met “with silence” when she requested maternity leave towards the end of 1977. Eventually she was given unpaid maternity leave for three months. She remembered feeling “a pressure to maintain those contacts and a concern that if I was away for a long time, I wouldn’t get back in”. She was allowed leave again for her second child, but found it difficult not being able to discuss terms directly with the
partners and having decisions made – such as to deny her a pay increase in a pay round before she went on leave, to be reviewed on her return - without any input from her. She then left the firm she was with and began working with a barrister. She spoke of the increased flexibility and trust in that working relationship. While working there she had her third child, and was paid for her maternity leave.

Judge Eivers spoke of being in an “extreme minority” as a women judge with young children. The “daily grind of washing and washing up, washing folded, food cooked, homework” and the commute home after work was mentally exhausting and she spoke of trying to find balance with outside help to ease this.

Being unmarried and not having children presented its own challenges. Judge Simpson felt somewhat isolated as a young woman in Thames: “It took me a good two years before I felt comfortable in Thames. It took me a while to build up a social network because I was 25 when I went there and there weren’t an awful lot of unmarried 25 year old women.” Indeed, the community did not easily accept her status as a career woman in a small town. “I remember as my social life developed people would invite the sons of farmers to make up the table so that we would have dinner and there would be three or four couples at the table and I was always matched with some young man.”

Judge Simpson reached out to the wider network of women lawyers who lived in nearby towns. The women lawyers in the region, including from Waihi, Tauranga and some from Hamilton, would get together, “talk and laugh and tell stories”. Judge Simpson also found companionship through participation in other organisations, including the Thames Valley Law Society Sub-District, the Caledonian Society, the Thames Music Group and the Anglican Church. Alas the Thames Club was a men’s only organisation and she could not persuade Jim Poulgrain to propose her for membership.

5. **The Māori Dimension**

Judge Eivers was born in Kawerau in the Eastern Bay of Plenty. Her iwi is Ngati Maniapoto but, having grown up in Te Teko, she feels a strong allegiance to Ngati Awa also.

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22 Part One of the Oral Histories Project deals with this is more detail: see Elizabeth Chen “Women Trailblazers in the Law” (2014) 45 VUWLR 407 at 428-435.
During her time at university, there was only one other Māori student in her stream, but there were more in the other stream. She remembers the Māori students “immediately identified with one another” and attributes this to the fact that they were “a little bit different” as “just being country kids made us different, actually, let alone being Māori” and being a woman as well “didn’t help”.

This feeling of difference did not disappear after university. Judge Eivers recalls being told somewhat in jest that “not only are you a woman, you’re a Māori woman”. In the work place the cultural and value differences were evident. Judge Eivers was involved in the formation of Te Hunga Rōia Māori o Aotearoa, the Māori Law Society. She remembers feeling that “there was a need for Māori Law students to support one another and this was a way to do it” as a “kind of a platform for us to be able to discuss political issues as well, and to put a Māori viewpoint across on things as a group, rather than have to do it individually” or a “reason for us to be together”.

On becoming a Judge, Judge Eivers was sworn in at Kokohinau, her home marae.23 She spoke of her appreciation of the offer made by Judge Russell Johnson and Judge Peter Boshier to be sworn in at the marae.

Judge Eivers is involved in the Rangatahi Court, which is based at the marae and has a Youth Court jurisdiction. It involves family group conferences, a plan with monitoring, and mentoring. She said:

Where the Rangatahi Court comes in is that the mentoring is done at the Rangatahi Court and it’s tied in with bringing young Māori back to their roots and having them take part in culturally appropriate practices at the marae, and carry out this plan. Part of the reason – it was started really by the late Russell Johnson because he was concerned about the statistics, which still exist today. There are, per head of population and percentage of population, more Māori appearing in the criminal courts and the mental health and everywhere else than any other race. And this is one of – he got talking to then Judge Hemi Taumaunu, they developed this model with Judge Andrew Becroft, so they’ve all done it, and I’ve been fortunate enough to be invited to be one of the judges that can appear at the marae, and with these young people, and it is probably one of the most enjoyable aspects of my work.

Judge Eivers said that the only time she has sensed an expectation of a judge to be male is in the Rangatiahi Court. In her own words:

23 She was appointed on 29 November 2009.
... I think it's just that it's a shock to start with, and they're used to one of the others who are males, and the males have their own style. Of course in Maoridom, it's the males that tend to do these things, but that doesn't mean to say females can't and don't and haven't, but it's not the norm and so they – but, certainly, once they see how different the style is, they like it as an alternative, as a change.

6. **Involvement in Women's Organisations**

Many of the women judges spoke about the importance of belonging to support networks to assist each other throughout their careers. Such networks were particularly important, especially because being one of the few women in the legal profession was often an isolating experience.

6.1 **Women Lawyers’ Associations**

Judge Clarkson was one of the founding members of the Auckland Women Lawyers’ Association, along with Denise Bates (now QC), Hannah Sargisson, Shane Matheson and Helen Melrose. Judge Clarkson thought it was important for women lawyers to have other female mentors: "I remembered how lonely it was and how I couldn't name a single person as a mentor. There have been lots of people who've supported and come in and done their bit along the way, and in bits and pieces."

The Women Lawyers’ Association was thus really important “because there [were] so few women role models, like [Dame] Silvia Cartwright and other women who were achieving in their fields and senior women lawyers like [Dame] Sian Elias and so forth. But your women colleagues were really important because there wasn’t really that mentoring, old boys’ network structure to pull you up the ranks the way that the men did effortlessly, and expected to move up.” It also became an important source of connection to the legal profession when Judge Clarkson was on maternity leave:

I felt out of it with a baby, and I was out in the country so I was very isolated. I thought, being at home for that six months, I’d do the real Mum thing and go to the playgroups and the Plunket meetings and the coffee mornings, but I was treated as such a weirdo because I was the only woman in Dairy Flat who had a career. They’d say, ‘Oh, we didn’t expect that you’d be here, or that you’d be interested in

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25 Similarly, Justice Frater was involved in the establishment of the Wellington Women Lawyers’ Association.
this,' so that didn’t work quite how I’d planned. So I, like a refugee, rushed back into the city to meet the women lawyers as often as I could.

6.2 **New Zealand Women Judges’ Association**

A number of New Zealand women judges were involved in establishing the New Zealand Association of Women Judges (‘NZAWJ’). Judge Shaw described how her and other women judges’ participation in the 1993 New Zealand Women Judges conference to mark the centenary of Women’s suffrage in New Zealand motivated them to start the New Zealand chapter. … In that same year, Judge Shaw went to an International Women’s Judges (IAWJ) Conference in Rome centred on domestic violence. Judge Shaw later became an international Director of IAWJ and encouraged her judicial colleagues to join the organisation as well. She was the de facto organiser of this group of women judges until it was formally established as the NZAWJ. Upon her retirement from the New Zealand Judiciary Judge Shaw was honoured to be asked to be the patron of the NZAWJ.

Judge Gambrill also mentioned the international women judges’ conference that was held to celebrate the anniversary of women’s suffrage in New Zealand in 1993:

"It was a special conference to celebrate the centenary of women’s suffrage in 1993, and the small committee chaired by Silvia 26 had been able to invite women judges from around the world and get Mary Robinson, the Irish president as the keynote speaker. The social events were excellent too, and I think it was certainly one of the most enjoyable and stimulating conferences I have been to. As [Chief Justice Elias] and [Justice Potter] had not been appointed and [Dame] Silvia [Cartwright] was still in the District Court, I was the only person eligible from the High Court. The committee did me the honour of proposing our thanks to all the overseas visitors, both speakers and non-speakers."

As a member of both the New Zealand and International women judges’ associations, Justice France believes that these organisations “should be supported”. She pointed out the good work the NZAWJ has done, including “funding or assisting other women judges in the South Pacific” and allowing New Zealand women judges to get to know women judges from other countries. 27

7. **Moving to the Bench**

26 Judge Carolyn Henwood was also very involved with the organisation of this conference. See also Elizabeth Chen “Women Trailblazers in the Law” (2014) 45 VUWLR 407 at 425-426.
27 Justice Glazebrook is currently the Vice-President of the New Zealand Association of Women Judges and one of the Vice-Presidents of the International Association of Women Judges. The biennial conference of the IAWJ is to be held in Auckland in May 2020.
7.1 *Becoming a Judge*

Given that the women judges interviewed were all pioneers, it perhaps is not surprising that most of them did not expect to become judges. Judge Gambrill had earlier been approached to become a judge but had turned down the opportunity because she did not want to go to the District Court. She later turned down a position on the Family Court “I had enough problems running my own life with three children. I didn’t want more of that sort of ilk. I much preferred the common law and contracts, motor insurance, banks, [property cases] and things like that.” Judge Gambrill finally accepted appointment in August 1987 when a new summary judgement jurisdiction was created in Auckland: the Masters jurisdiction. 28 Justice Frater was also approached and turned down a District Court appointment in 1989 as she did not want to move to Auckland from Wellington, in part because of her friendship network that she could rely on to help with her children if required. Justice Frater eventually accepted an appointment to the Wellington District Court in October 1990 and was appointed as a Judge of the High Court in February 2003.

Judge Simpson was appointed as a judge in 1987. At the time, there were only three other women judges: Dame Augusta Wallace, Judge Cartwright and Judge Carolyn Henwood. After the then Chief District Court Judge, Peter Trapski, confirmed her name had been put to the minister, Judge Simpson delivered this news to her male partners at work. “I told them that I was about to be made a judge. It was very much stunned mullet look. They were very, very surprised.”

The then Chief District Court Judge, Peter Trapski, encouraged Judge Rushton to join the Bench. She was 47 when she was appointed in June 1987. She followed in the line of a number of women judges, including Dame Augusta, Judge Margaret Lee, Judge Henwood, Dame Silvia and Judge Simpson.

Judge Clarkson was the youngest – and remains the youngest – appointment to the Family Court. The appointment process had begun when she was 29. One of the Family Court judges had asked her if she would consider being a judge. The thought had never crossed her mind. “I was a suburban practitioner; it didn’t occur to me that people like me were appointed as judges.” A couple of years later the then Principal Family Court Judge

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28 A Master is now called an Associate Judge. This change in terminology occurred from 20 May 2004.
approached her to see if he could put her name forward for appointment. She agreed, but Sir Geoffrey Palmer thought 31 was just a bit young. Practically, Judge Clarkson, “went to Plan B and had a second baby, and was at the Bar, and enjoyed my practice for a while.”

Less than a year later Judge Clarkson was appointed to the Family Court at the age of 33 in September 1989. She thought it was “pretty brave of [Sir Geoffrey] really. He was keen to get women appointed and that meant promoting women younger than would normally be the case. It was the only way to get people on board.” Judge Clarkson recalled how there was a strong reaction to her appointment because she was so young. “Some of the more senior men in family law thought it was pretty outrageous and that I wouldn’t cope.” Judge Clarkson was extremely conscious about her youth. For the most part, her colleagues were very warm and welcoming, especially her Family Court colleagues. “For example, if they came free early and I had a sick child or something, they’d pile in and help me finish my work so that I could get away to the child, that sort of thing. I couldn’t have managed without them, actually.”

Justice Glazebrook acknowledged that her female judicial predecessors had paved a much smoother pathway for the upcoming women judges. She felt that women’s participation in the judiciary had become a new norm by 2000 when she was appointed. Justice Glazebrook praised Chief Justice Sian Elias’ leadership, and commented in particular on how she was able to make the swearing-in process more family-friendly and friendly to women. “[Chief Justice Sian Elias] is very good, in terms of how she acknowledges family and the children, and includes them in those occasions, so they can be quite formal and nice, but at the same time, they have that informality and inclusiveness.”

Justice Glazebrook talked about her fears about becoming a judge with general jurisdiction, after having been a commercial lawyer for so long. “I don’t think I would have considered it if I hadn’t known Peter Blanchard who had also been a commercial lawyer and then gone onto the bench, and also Judith Potter, who was again a commercial lawyer. I think it would have been very difficult to consider if you’d been the first, but being the third, you thought – not so much, if they can do it, so can I, but more, well, it is possible to do that, and obviously people think I can, and therefore I’ll try.”

29 Justice Glazebrook was appointed to the High Court on 1 June 2000.
30 She was the sixth female High Court judge. At the time of her appointment, Elias CJ, Cartwright J, Goddard and Potter J were High Court judges, as well as Judge Gambrill, then a Master.
Justice France also received a phone call: “The Attorney General rang and asked me if I would do it, and I said yes. By that time I’d been at Crown Law about ten years, and so was ready to have a change.”

7.2 Judicial Training

Training for new judges is an area that has undergone significant change in the last three decades. Formal judicial education in New Zealand began in 1988 when Judge Satyanand led the first orientation programmes for new judges in New Zealand. Following the success of the orientation programme and after a period of consultation and political process, the Institute of Judicial Studies (IJS) was established in 1998.

Justice Glazebrook thought that the establishment of the IJS marked a change in the philosophy concerning judicial training: Initially, “[i]t was thought that you just came straight out of the egg, and you were perfectly able to do all this stuff, and in fact, to educate you would be compromising your judicial independence.” The judges themselves thought they needed specialist training to their jobs – prior experience as an advocate was not enough. IJS was thus formed to educate judges, with an emphasis on participatory learning. It has had three women chairs: Justice Potter, Justice Glazebrook and the current chair, Justice Winkelmann.

7.2.1 Before the IJS

Many of the judges appointed earlier in time commented on the lack of judicial training. Judge Simpson’s training comprised spending about a week (or up to 10 days) of sitting on cases with other judges. Learning to use stamps was particularly memorable: “Half the desk is covered with a plethora of stamps covering all sorts of things that I might say, like a person is granted bail or they are not granted bail. Or whatever. Lots of stamps. So I learned how to manipulate those from Judge Brian Blackwood.”

Judge Rushton described herself as “the last of the untrained judges”. “I just had to sit with another judge for half a day and was told, ‘Right, you can go on your own now.’” Later on, Judge Trapski set up training for new judges. When asked whether she had received any training before she sat as a judge, Judge Gambrill said, “Oh, Lord no.” She

31 Justice Ellen France was appointed on 26 April 2002.
I realised I’d never sat in a Bankruptcy Court, so I crawled in the Thursday before I got sworn in, to have a look at what went on in the Bankruptcy Court. No, there was no training – learn by trial and error. There were people you could go and talk to because you’ve been lawyers at the same time. You weren’t completely stymied.

When Judge Clarkson first started, training consisted of spending two to three days watching another judge in trial. She shadowed Judge Peter Graham, who gave her very helpful advice: “You don’t need to panic because you never, ever have to feel forced into a decision. You’re in charge of the process, and so if you don’t know what to do, just stop. Stop and take a break. Go and ask someone.” Judge Cartwright had also set up a helpful mentoring system. Judge Clarkson recalled how she was matched with a judge whom she had been afraid of as a lawyer. Though he seemed stern as a judge, as a mentor he was “very twinkly and nice”.

Four or five months into her job, Judge Clarkson participated in a week-long judicial orientation course. She did not feel like this orientation was particularly well executed. The course involved role-playing of bail hearings, scenarios involving difficult litigants and similar situations. She thought that the judicial training programs available now are much better. “Since the [IJS] came about, I think our judicial training has just gone ahead in leaps and bounds. It’s fantastic. Now, normally, judges get sent away around the country to sit with different judges and get different experiences.” Additionally, Judge Clarkson praised the introduction of te reo Maori language teaching that was brought in by Judge Shaw.

7.2.2 Formal Judicial Training

Justice Frater had about six weeks training when she was appointed to the District Court in October 1990. She found the shift from administrative law and civil work she had been doing to her Family Court warrant “hugely scary”. Of her training, which took place in Auckland, she remembered that “you didn’t know where to get your lunch or where the bathrooms were, let alone what you were supposed to do when you went on the bench” However, she found the judges she sat with hugely supportive.

By the time Justice Glazebrook joined the Bench, judges spent a week sitting in court with different judges to see how they operated, as well as having access to the IJS courses.
As a former commercial lawyer, Justice Glazebrook found the criminal trials to be particularly challenging. Eventually, though, Justice Glazebrook came into her own: “The worst was after about six months, when you began to think you knew what you were doing, because I’m sure you were at your most dangerous at that point.”

In Justice France’s first week as a judge, she sat in court with her judicial colleagues. It was particularly helpful to be able to consult with the list or executive judge, who went through “practical things with me, like going on circuit, where you stay, and then dealing with particular types of things like bail, and so on.” Other judges also shared precedents that they had. “In terms of the criminal procedure, Justice Neazor had a great summary of the whole process from start to finish. In terms of criminal law, that in fact can be the most daunting thing, if you haven’t done a lot of crime – when do you come in, what does the jury do, that type of thing.”

Judge Eivers recalled that training went for around three weeks going to different courts and sitting with difference judges. Some judges went through decisions with her, while others laid down the challenge for her to “have a go”. She was encouraged to go to an orientation programme and to observe oral judgments and settlement conferences to learn more. At the time of her oral history interview, as she shifted from the Family Court to the Criminal jurisdiction, Judge Eivers was also being mentored and this appears to be something that is being brought in across the District Courts.

7.3 Appealing Aspects of Being a Judge

Many of the judges mentioned decision-making as being a challenging yet rewarding aspect of being a judge. Judging as a non-partisan referee was very different to being a partial advocate. Judge Rushton commented on the change of role in becoming an impartial arbiter: “Suddenly I was looking at everything very objectively. And it made it so much easier.” However, this was no panacea for inequality of arms, in terms of the quality of counsel, in the court room: “Sometimes you would get lawyers who should have known better carrying on an argument and you would have some poor guy on the other side appearing for himself, who had all the facts on his side, but this lawyer, being paid big money for whatever he was doing, was trying to tie everything up in knots. And you had to try and get some sort of fairness into the system”.

Judge McAloon enjoyed “the ability to be non-partisan. To be able to see and understand both sides of the story”. The judicial role allowed her to resolve litigants’ problems, particularly in the Family Court, Summary and Youth Court jurisdictions. It was humbling to have the opportunity “to interact with people who have been enormously disadvantaged. For whom, perhaps the voice of understanding and reason, and dare I say, kindness, from an authority figure, might make a difference.”

Judge Eivers spoke of the intimacy of the Family Court and the pain she saw. It highlighted for her “how difficult it is for people to go to court, and how we have to deal with them sensitively and fairly, and lawyers need to be dealing with them sensitively and fairly”.

Judge Costigan also found the conflict resolution aspect of judging satisfying, especially “in [Family Court] cases where you believe you have found a resolution or an answer that is workable and is accepted by parties.” She felt it was important to “try and appreciate the circumstances from the litigant’s point of view or the complainant’s point of view and to try to approach each case independently and not succumb to ‘Oh, I have heard all this before’. That’s the real danger I think of the job.” Judge Costigan recalled receiving a touching letter from a litigant who wrote to her saying that Judge Costigan’s intervention had allowed her to begin a new life. She concluded her message with, “You will never know how much you did for me. It was incredible the insight you seemed to have into the whole sordid situation.” Reflecting on this letter, Judge Costigan said:

Sometimes you think you are just doing your job and you don’t realise the impact that a recognition of the person’s complaint or their views on the matter can have on them. It’s very reinforcing of the importance of listening and empathising with people, rather than just brushing over it. Letting them have their say and letting them know that you understand what they are saying is important.

Judge Clarkson similarly commented on the satisfaction of finding “creative solutions” in the Family Court jurisdiction, particularly in parenting, and care and protection cases. As a judge, she hoped that her decisions have helped to make “some difference”. “I can think of some cases where I’ve intervened and taken children out of situations where I think they’ve been very unsafe, and I can think of other cases where I think children have been removed unnecessarily, and I’ve returned them to their parents.” Of course, there is

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32 Similarly, Judge Ullrich enjoyed that as a Judge she was able to “hear everything” and do her own factual enquiry to some extent as well as her own legal enquiry.
often a tension between giving litigants adequate time to voice their issues, at the same as time as getting through a busy schedule of court hearings. Judge Clarkson said:

It’s always a challenge not to become desensitised because of the volume of similar work that you do and to try and treat every litigant with respect. You should always make them feel that they have been listened to. That is not always easy to achieve in huge list courts and the like, but perhaps a little easier to put into effect when you have got time to write a reserved judgment and address the concerns of each litigant and sum up as best you can the reasons why you have made the final decision.”

Being at the High Court was an incredibly stimulating time for Justice Glazebrook. She remembered “everything as new and different”. It was such a change from being part of a firm to joining the Bench:

It was interesting going from the firm where you had a lot of administration and marketing, to go there [to the Bench] where you were just concentrating on doing the work. Also, in the firm where it was quite competitive because you were all doing your budgets and you had to do better than other people, and you had to look after your teams, and you went to a situation where it wasn’t competitive at all, where you could discuss things with people or where they were just interested, where they were interested in the law for its own sake, so it was a really stimulating time, I thought.

Aside from the decision-making aspect specifically, Justice France mentioned that another appealing aspect of being a judge was the “chance to have some input into the law and legal thinking”. She also enjoyed the opportunity to interact with people in different ways, and to contribute to public service through being a judge.

7.4 The Downsides of Being a Judge

As for the downsides of being a judge, a consistent refrain was the relentless rhythm of work, particularly writing an enormous number of judgments at a time. Judge Gambrill described the pressure in this way: “Getting up in the middle of the night and dictating many of the judgments. The sheer volume one got through. I wrote over three thousand judgments. … One was constantly tired.”

Justice Winkelmann talked about how highly regimented and rigorous her daily routine as a judge was. She also described judging as a physical challenge because:

You become a very sedentary person. If you’re an office worker, you’re a reasonably sedentary person, but it reaches a whole new level when you’re a High Court judge because you sit … doing your judgements, all day, or in court. If you’re sitting in Court, when you stand up everybody stands up, so it’s incredibly physically constraining. It’s bad for you to sit for lengthy periods of time.
Judge Costigan described judging as “an extraordinarily demanding job”. Judging could also be an isolating experience so judges were often reliant on their colleagues for support. “[As a judge], you can’t have the same contacts and friendships with the Bar that you may have had in the past. You can still maintain friendships but there is a distance that you have to maintain.” From Judge Costigan’s view, judging could also be emotionally taxing:

I think it is important to really be able to stand back from the job, or the workload, and not become insensitive to the distress of others. I think some defence counsel when they are dealing with quite significant violence and facts of a distressing nature can become desensitised to the essence of some of the things they are dealing with because their focus is on whether the charges their client is facing have been made out.

A number of the judges also mentioned the risk of facing violence from disgruntled litigants and the pressure of media attention as a downside of being a public figure if decisions were perceived as being wrong.

7.5 Qualities of an Ideal Judge

When asked about the qualities of being a good judge, one common theme was being a good listener. Based on her experience in the Youth Court, Judge Simpson mentioned the need to give everyone the opportunity to “say their piece”, although this did not mean that she was necessarily going to agree with them. In particular, in the Youth Court, “the victims wanted to be heard”. “We would ask them for their opinion about what ought to happen next. Very often they didn’t want harsh punishments. They just wanted to be assured that this young person was not going to behave that way towards anyone else.” Judge Shaw said:

[Listen is the great skill of judging. Active listening. Listening, and processing as you’re listening, is what it’s all about. If you’re a judge who talks too much, then you’re not listening and you’re not absorbing, and you’re not hearing and you’re not giving the impression that you’re listening. People want nothing more than to be heard, and heard well, and to feel that they’ve been given full attention. There have been a number of cases where at the end of the case, somebody has stood up and said, ‘Thank you for hearing my case. I don’t care what the outcome is, but at least I know somebody’s listened to me.’ It’s touching. That’s when I cry when people say that to me.

Justice Glazebrook also agreed that listening was important: “You certainly have to be somebody who is prepared to see both sides and to listen to arguments”. At the time same as having an open mind, it is also important to make firm decisions. “You need to
be able to keep an open mind but you also need to be able to decide, and you need to get on with it efficiently. Sometimes, yes, you could spend an awful lot more time and you could come up with something much better….but actually sometimes what’s wanted is an answer.”

Another common theme was being open-minded. Judge Shaw underscored the need to listen to all sides of a dispute and to maintain rigorous independence:

The need to be absolutely, rigorously independent, and to work at being independent, and to never stop questioning whether you are independent of all forces that are thrown at you. It's independence not just from institutional things or from interest groups, it's from your own background, from your own leanings, from your own domestic situation. You've simply got to be able to isolate yourself, and if you can’t, then to recognise it and to balance it.

The quality of being open-minded requires being open-minded over the course of a hearing, including being willing to change one’s mind. Justice Winkelmann said “You have to be prepared to have an open mind and maintain that open mind through the course of the hearing, notwithstanding that you may have formed preliminary views when reading the materials before the hearing. You have to be prepared to rethink any preliminary views.”

Justice Winkelmann acknowledged that being open-minded is not always easy because the subject matter of a case can be emotionally confronting. “It can be quite difficult, but I don’t think it’s appropriate for a judge to be in court and showing emotions because the court case is not about us – if we show emotions, our emotional reaction is focused upon, and may cause people to form conclusions based on that reaction, rather than upon the evidence. I think, really, it’s [not our role] to be emotional in a courtroom. Which does not mean that we are not emotional, … but I try and familiarise myself with the file, and [deal with the emotional demands of the case], before I get to court.”

A judge’s role in the courtroom may be different depending on the case involved. Justice France commented on how a judge should be slow to intervene in a criminal proceeding. The role of the judge is to “make sure everything is working as it should but [the judge is] not a feature”. Of course, the judge played an important role in managing the courtroom process, especially determining whether certain evidence is admissible or not, but the judge should not make himself or herself the centre of attention in a trial. Justice France thought the judge’s role in a civil case was different. It was certainly
important to ask questions about anything that was unclear. But a judge should not intervene so much that “people can barely get their sentence out”.

As for judgment-writing, Judge Clarkson said that “write your decision for the losing party” was a helpful piece of advice:

I think [this advice has] got limitations, and having done a judgment writing course since, I wouldn’t strictly adhere to that, but certainly making sure that you absolutely cover off everything that the person who is not doing as well out of the deal and might feel aggrieved, making sure that you at least note down that you’ve heard everything that they’ve argued, I think is a really important thing for a judge to do. People have to feel they’ve had their day in court, which is why mediation is so much better. They have so much more of a say, and they have their say. It’s not filtered through a lawyer’s sort of sanitising process. Legalising process.

Judge Clarkson also emphasised the human aspect of being a judge and the necessity of being empathetic. “Being human, remembering how easy it is to get things wrong and make mistakes. Being prepared to give people another chance. And being able to communicate.”

7.6 Experience as Pioneer Women Judges

The judges interviewed for the Oral History Project were pioneers in their field and often the first or among the first women to join New Zealand’s judicial common rooms. When reflecting on their experiences as the first women at different levels of the judiciary, the judges described both good and bad experiences.

Judge Shaw was the first woman to be appointed as a permanent judge to the Henderson District Court. She appreciated the company of her male colleagues, who included Judge Satyanand. “They sort of mothered me along a little bit, so I was very fortunate in that.” When she was later appointed to the Employment Court, the Chief Judge saw me as a prize. The first woman judge in the Employment Court. They were very proud to have a woman judge there and were really supportive of her. “To their credit, in a way because I was a woman, they took care of me”.

Counsel’s reactions to Judge Shaw’s appointment as a judge were mixed. Some were “immense bullies”. “When they saw women coming – it wasn’t just me because I heard many stories of it, some would just not take ‘No’ for an answer. Saying, ‘Oh but’ – in circumstances which were completely inappropriate. Saying, ‘Well if you do this, I’ll
appeal.’ Just being completely disrespectful and bullying.” To these lawyers, Judge Shaw was firm. “I wasn’t frightened by them. I was old enough. Again, I had all that experience in my background, so I could deal with them.”

Judge Costigan was the first woman appointed to the Christchurch judiciary and there were no other women judges in the South Island for a considerable part of her time on the Bench:

I didn’t actually find it too difficult. I was fortunate in having a very good common room. I think they may have felt slightly apprehensive themselves to have a woman come along as one confessed to me some years later. I think they were pleasantly surprised that I seemed to fit in pretty well. I expected that I probably would because I knew most of them reasonably well and I didn’t anticipate too many difficulties. I was impressed with the collegiality and support that they gave to each other and to me.

But the language used in court still reflected the judiciary as a traditionally male-dominated field. Judge Costigan said:

I think because the Bar was so used to appearing before male magistrates, District Court judges and High Court judges that whenever they addressed a judge they would always, once they had got past the initial use of the term “Your Honour”, use the term “Sir” when addressing the court. In some ways the term is something of a filler, and used almost automatically. Initially, it was difficult for them to replace “Sir” with “Ma'am” so I was frequently referred to as “Sir”. I think they were sometimes not conscious of the fact that they were referring to me as “Sir”. I often saw litigants looking somewhat puzzled and imagined them thinking “why is my lawyer calling her “Sir” and sometimes you couldn’t help smiling to yourself … but I understood why they were doing that and I did not see it as a deliberate slur in any sense. It was simply that they were so used to referring to the Court or the Bench as “Sir” that it was difficult for them to change. They did, in time, but it took a while.

The progression of women judges through the judicial hierarchy brought with it some challenges to the established traditions and precedents of the previously exclusively male jurisdiction.

Overall, however, many of the women judges interviewed felt that there had been progress made by women in the legal profession. As Justice Costigan reflected:

It’s wonderful to see women in the Supreme Court, the Court of Appeal and the High Court and District Court. You just couldn’t imagine that 35 years ago. If you had said that would happen at that time people would have laughed in your face. We have had a woman Prime Minister and now a Chief Justice.
7.7 Gender Differences in Judging

On the question of whether women judges judge differently from men, there was a general view that this issue could not be determined conclusively without some careful study. But at least from the women judges’ experience, they felt that their lived experiences as women certainly influenced their judicial decision-making.

Judge Clarkson thought that women judges did judge differently from men “at times”. Women brought different factors to bear on their judging. This difference was to be welcomed:

I think you need – society is very varied, so why wouldn’t you want your judiciary as varied as possible? We’re not computers. We can’t churn out the same answer for the same question. We’ve got to be consistent enough to be relatively predictable, obviously, because otherwise the law would suffer. But I think difference is within, and uniformity in a judiciary is very dangerous.

For Judge Shaw, being a feminist meant “being counterfactual all the time”. That is, “Always looking at it from a woman’s point of view, and saying, Why can’t it? Why should women be treated in this way? Bringing a woman’s perspective to everything. I think it’s really important, only because it’s not the lingua franca. When it’s the lingua franca, then I won’t have to bother anymore.” She described the legal profession as “still a man’s world”. “Men were called ‘lawyers’ but women lawyers, you were called ‘women lawyers’.”

As to whether women judges judged differently from men, Judge Shaw declined to give a definitive view, being more inclined “to think it’s about the individual”. Nonetheless, she thought that “women judges must bring a different perspective.”

Justice Glazebrook doubted whether differences in judicial decision-making could be split along gender grounds. This was particularly true at higher levels of the judiciary, where the law constrained the range of possible outcomes. However personal experience did play a role:

One thing is that I’m sure is that your personal experience [makes] a difference at the margins, in terms of how you do things….But whether that splits on gender grounds is probably a moot point, and I’m not sure you could really even show that.

Justice France thought that her gender did influence her judging, as did other personal factors: “I think it is just part of what you are and how you approach things, just in the way that other life experiences are.”
Judge Ullrich is of the view that it is important that the Bench is reflective of the community, and that means to her it should be half women. In her view:

Men are different from women and they do bring a different perspective and a different way of approaching things. It is useful to have that all incorporated into the fabric of things and that applies to practice as well as on the Bench of course.

7.8 Supporting Other Women Judges and Lawyers

Many of the women judges saw creating networks of support for women judges and women in the law as being very important. Several judges mentioned mentoring as an important part of their role as judges. Justice Winkelmann regarded herself as a feminist and thought that this identity affected how she behaved towards other women. “I always try to be very supportive”.

Justice Winkelmann thought it important to educate young women lawyers, particularly in advocacy skills:

I speak whenever I [can on the topic of women and advocacy]. For example, the Auckland Women Lawyers’ Association – the New Zealand Women Lawyers’ Association and New Zealand Bar Association were running a series of seminars called ‘Get Up and Speak’. A thing that I’m particularly concerned to ensure is that women do not end up being juniors all the time. They should take on lead advocacy roles, so whenever I can, I speak about that. I try to de-mystify courtroom advocacy because women tend to think there’s a right way of doing things and they have to do it perfectly, whereas men seem to be more prepared to just get up and have a go. So I tell women lawyers about this, and I tell them about all the [rough] jobs I’ve seen male counsel do, some of the best counsel, but eventually they get there. And how irritating it is for judges to see young women counsel sitting down. They’ve done all the thinking and the work, and [then] male counsel stand up, and deliver the lines written for them by able women counsel.

7.9 Judicial leadership

Justice Winkelmann was appointed Chief High Court Judge in 2010. For her, it was a suitable role as, even though the appointment meant regular time in Wellington, it still allowed her to be based in Auckland. She said that she was still able to sit a lot but agreed that making speeches was part of the role. She also said that as Chief High Court Judge, she tried to mentor female judges through to leadership positions within the judiciary. She encouraged a non-hierarchical approach to decision making in relation to judicial administration.
8. International Work and the Importance of an International Perspective

Another common theme arising from the interviews was the importance of having international experience and an international perspective.

8.1 International Experience as a Young Person

Several of the judges participated in a “big OE” (overseas experience), which is considered to be a rite of passage by many young Kiwis. When she was young, Judge Shaw spent some time in the United Kingdom working as a cook, while her partner worked as a cleaner, to fund their travels around Europe:

We bought the usual old clapped out van, and went to Europe. We were there for the opera and the classical music and the art, and that's what we did. It was terrific. In Europe driving around in the night – Peter's a notoriously bad driver – drove on the wrong side of the road, had a terrible car accident. I was flung out of the back of the van, and we were rescued, because we had a charmed life, by a farmer who came with his tractor and pulled us out of a ditch, took us home and gave us work for three months – Peter as the farm worker, and me as the second maid. So our year was spent – high art in the evenings, and low work during the day. We had a very eventful, amazing, poverty-stricken year. It set us up culturally for the rest of our lives.

At the age of 23 or 24, Judge Rushton left her job in Taumarunui and went overseas for about two years. She worked as a waitress and a school teacher. “I applied for a job as a teacher, because in those days if you had a degree from the colonies you could teach school.” Like Judge Shaw, she also travelled. With two female friends, Judge Rushton went “up through, from Belgium, up through Scandinavia to Tromso, about 300 kilometres or miles, I'm not sure what now, above the Arctic Circle and then across Finland and down through Sweden.”

Judge Ullrich went overseas in 1973, first to Asia before settling in London. She was able find work as a solicitor with “no difficulty at all”. She then started doing her Master of Laws (“LLM “) part time at the London School of Economics and Political Science with a focus on comparative family law. During this time, she worked at a Polytechnic teaching criminal law and a course on law for accountancy students.

Justice France spent a year at Queen's University in Canada doing her “LLM”. “I thought a North American postgraduate degree was a good thing to have, and it was an
It was in Canada that Justice France developed her interest in administrative law and public law. Her thesis was on the liquor licensing board of Ontario, with a focus on administrative law requirements and how they dealt with people’s rights. As a result of her LLM, Justice France also became more interested in law reform. She would later on spend six months on contract at the Law Commission of England and Wales, working on a project involving reform of adoption law. “The family law team at that point was headed by Brenda Hoggett who became Baroness Hale” and is the Deputy President of the Supreme Court in the United Kingdom. She was very interested in advancing women’s issues. That was a great group to work with as well. Primarily women in their family law team.

Justice Glazebrook spent some time studying in England and France. She went to Oxford University straight after completing her law degree in New Zealand. Students at her college, St Anthony’s College, came from all over the world. She completed a thesis studying the criminal justice system in Rouen during the French Revolution. She appreciated her experience in Rouen as a chance to learn about a different culture. She said: However good your French is, it’s an interesting thing living somewhere with a different language because there’s no doubt language is culture.”

8.2 International Experience as a Judge

One might think that judging in New Zealand would be a heavily domestic career, but it has a significant international aspect. As Justice Glazebrook has said: “When I became a judge I thought I would necessarily become less outward looking. Obviously, there would still be the need to have an outwards looking focus in looking to the jurisprudence of other jurisdictions, but the actual human contact with those in other jurisdictions may, I thought, be less frequent. This has not turned out to be the case. We have frequent visits from distinguished jurists from overseas, often of course sponsored by the universities and the Law Foundation. We are lucky too to have had recently a number of international legal and judicial conferences in New Zealand, with no doubt many more to come.”

33 In relation to that thesis she noted that the “very good thing about France is that they wrote everything down, so if somebody went in to complain that their neighbour had called them a fat pig, that was earnestly written down. And the response that the neighbour had called her a fat pig because she had emptied her chamber pot down on the wrong place of the staircase, was also meticulously recorded, so you had a lot of interesting detail.”

Justice Glazebrook has been involved in several legal initiatives in the wider Asia-Pacific region, including the Inter-Pacific Bar Association\(^{35}\) (while she was in practice) and, after becoming a judge, the Advisory Council of Jurists for the Asia-Pacific Forum of National Human Rights Institutions.\(^{36}\) As a member of the Advisory Council from 2002 to 2010 Justice Glazebrook took part in a number of studies, including on trafficking, torture and education.\(^{37}\)

9. **Post-retirement**

The women judges interviewed had a variety of challenging roles after they left the judiciary.

Justice Frater was approached to join the Parole Board after her retirement from the Bench. This gave her the opportunity to leave Auckland and return to Wellington. As Deputy Chairperson as well as Chair of the Policy Committee and the Education Committee, her role includes “trying to think through what the Board does, why it does it, set systems in place and have people on those committees that can contribute”.

Judge Shaw was appointed as an inaugural judge to the Internal United Nations Tribunal in July 2009. Judge Shaw explained that the Tribunal was:

> set up to hear and determine employment cases within the United Nations. It’s called an internal justice system because UN staff can’t take their employment disputes outside the UN. If a UN employee has an employment dispute, they have a process. First, they go through what’s called management evaluation where an internal low-level group is asked to re-look at the decision that’s been made. Sometimes it gets sorted out at that level. If it doesn’t, they can bring a claim to the Tribunal where the judges hear the case and write a judgment about it.

The Tribunal heard the whole range of employment-related disputes. “[W]e heard everything you can imagine in an employment context, ranging from the minute ‘You owe

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\(^{35}\) An organisation of business lawyers in the Asia-Pacific region. For more see <https://ipba.org>.

\(^{36}\) For more, see <http://www.asiapacificforum.net>.

me more annual leave than I’ve been given’, to serious claims of sexual harassment and bullying. There were eight judges on the Tribunal. “Two judges each in New York, Nairobi and Geneva who are there permanently, and then two half-time judges [including her]. The two half-timers rotate, and move about, going to whichever duty station needs extra assistance.” Judge Shaw found working with judges from different judicial cultures to be an enriching, and at times frustrating, experience:

[The difference in the judges’ judicial cultures] was very difficult to start with, and continues to create difficulties because half of us are from common law jurisdictions where we believe in the freewheeling common law, and if there’s a problem you fix it. The other half of us – just less than half of us – are from the civil law jurisdiction where if there’s no rule, you don’t do it. If there’s a rule, you obey it. Very rules-bound. We’re gradually, again, turning that ship around by introducing the idea of measuring conduct not just against the actual written rule but by international laws and norms of behaviour – human rights, etc.

There was limited training for the Tribunal members and limited administrative support: “The institution started on 1 July 2009. The week before that, seven or five days before that, we were all brought to New York and we were given one week’s orientation where we had to learn everything about the UN. We had to learn everything about the administrative processes that go on and we had to draft the rules of procedure for a system that none of us knew anything about. We had one week’s orientation. Then we walked into this system and asked, ‘Where’s the courtroom?’ The answer was, ‘Oh, you’ll need courtrooms?’ Yes. Nobody had thought about courtrooms.”

10. Advice for Young Women (and Men)

At the end of each interview, the women judges were asked to share any advice they had for young women and men in the legal profession. Some of the key insights from these interviews included:

Succeeding in the law requires hard work. Judge Gambrill said, “Do whatever work you can get to get experience, and be prepared to work not only long, but erratic hours, and if you are on your own in practice, make sure you can share your worries with someone else. Work out the type of work you prefer to do.”

Judge Costigan said: “I suppose you never cease to be surprised at what you can achieve. I think you should never underestimate your own ability to apply yourself. I suppose it all goes back to the importance of education, reading, being alert to others,
being observant. I think young people can make a good living and have a career as long as they remain focused and have the skills to pull it all together and be there.” Justice France said, “Now, I say to my niece at a similar age, that there needs to be a bit more planning and forethought but, in fact, that hasn't actually disadvantaged me at all, so I think I’d probably say, take the opportunities that come your way.” Justice Glazebrook made a similar comment. Judge Ullrich said she would “hate to think that there were women who were being limited by the fact that they are women in any way. Any woman can be confident that she has got as much ability as men and their aspirations can be as astonishing as any man’s aspirations and they should go for it if that’s what they want.”

Young women should be aware of the challenges that women face in fitting both work and personal commitments in their lives, but should not be overly cynical about the ability to find balance. Judge McAloon said, “It saddens me sometimes when I look at young women lawyers who are so driven to succeed in their careers that they deny themselves a lot of the other things they could have in life. I never, despite what I have just said about going back into practice earlier, I have never regretted having had my children. I have never regretted the joy and fulfilment that they gave me. I am fortunate that I had the opportunities to go back into practice that I had and I know that in these days that is probably not possible. Or it would be very, very unusual.” Judge McAloon continued:

I think, however, that younger women looking at a long-term career in law should not eschew the possibilities of marriage and family purely because they want to advance in their careers. And as I understand it there is now a much more favourable climate towards allowing women who have young children to work at home, to work part time, to provide child care facilities to accommodate those particular needs. And I am delighted to say I know that young men these days are much more inclined to help their wives with the children so it becomes a shared thing. And the responsibilities and demands of childcare are as much for the father of the children as they are for the mother. So I suspect that will make a difference for the advancement of younger women in the profession. I certainly hope so.

And, finally, do not worry too much. Judge Shaw said, “If an opportunity arises, take it, and don’t agonise too much about it because if it works out, it’s fantastic and it’s meant to be. If it doesn’t work out, then you’ve had the chance and you can go and do something else, but don’t waste your life agonising about it because the moment will pass.”

11. Conclusion

This Oral History Project is important because it shares the stories and perspectives of New Zealand’s pioneering women judges. As the IAWJ said about a similar project: these
judges’ “personal stories and leadership are inspiring, yet those stories remain largely unknown and risk being lost unless mindful efforts are made to preserve them”. The Oral History Project is a “mindful effort” to record and share the reflections of New Zealand judges on life, law and gender. It is hoped that this experiences told in this paper will serve as inspiration to young women and men in the law.

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