

Summary of the published article

Competence in Caring in Legal Practice

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The article is based on a collaborative project between us and Dr Francesca Bartlett at The University of Queensland's Law School, to explore our consistent observation that women lawyers are proportionally over three times less likely than male lawyers to find themselves subject to complaint. In the course of considering why there might be different rates of complaint against women lawyers, we looked further at the LSC stats on complaint rates, we undertook a demographic survey of women lawyers in Queensland to get a better picture of where they practised, and we conducted focus groups and interviews with women lawyers to gain a greater understanding of what it means to practise as a woman lawyer in Queensland.

Why women lawyers receive fewer complaints proportionally is not an easy question to answer, but in the course of hearing about the experiences of lawyering from women lawyers in Queensland, we feel we have learned about some aspects of legal practice that, if well supported, could contribute to lawyers achieving lower rates of complaint in future.

LSC statistics on complaint rates

Our access to detailed complaints data that we hold gave us an opportunity to further explore the statistics of complaints in Queensland, and we note that there were 272 closed conduct matter complaints against female solicitors, compared to 1,277 for male solicitors between 1 July 2004 and 1 November 2008. Therefore, only approximately 17% of complaints were against female solicitors. Women comprise approximately 41% of the total number of persons holding solicitor practising certificates (Bartlett, 2008; Queensland Law Society, 2008). Thus complaints received by female solicitors are proportionally much lower than their representation in the profession.

Research in other countries such as the United States, Canada and the Netherlands shows that lower rates of complaint against women lawyers are not just a local phenomenon, but are experienced internationally. Proposed explanations for the differences in complaint rates vary, with researchers in the United States, for example, contending that the difference is chiefly a reflection of the lack of seniority of women lawyers as complaints tend to be made against more senior practitioners.

We considered that the difference in rates of complaint against men and women lawyers raised many questions and that to explore other possibilities as well we needed to build a clearer picture of women's legal practice in Queensland.

A demographic survey of women lawyers in Queensland

We identified a number of initial questions as to how and where women were working in the law in Queensland. Do female lawyers, for instance, have a different client base than male lawyers? Are women working in greater numbers than men in particular areas of law?

We initially sought to fill some of those demographic gaps and sent our on-line survey to a large proportion of female solicitors in Queensland. We received responses from 458 female solicitors, approximately 14% of female solicitors practising in Queensland. Our survey indicates that while the majority of women work in partnerships, those partnerships tend to be small to medium practices of between one and twelve partners. Respectively, 28% and 27% of those surveyed worked in firms practising in the areas of commercial and general practice. The women surveyed reported practising predominantly in commercial (20%) and general law areas (20%), and another large percentage (16%) in family law. This makes the lower complaint rates even more interesting, as the majority of complaints we receive are from clients of small to medium practices, in emotive areas such as family law.

The most dramatic difference between male and female practitioners is their age and seniority. It appears that women practising in Queensland are predominantly junior. Approximately 41% of lawyers we surveyed had held a practising certificate for less than five years and had not had a break in their career; 31% of those surveyed were under 30 years old. We also referred to a Queensland Law Society demographic survey undertaken earlier, where women were found to predominate in the junior ranks and were proportionally far more junior than men (Queensland Law Society, 2008).

Focus groups and interviews with women lawyers

Our research sought to shed some light on the qualitative aspects of the question of differential complaint rates by analysing the perceptions of women lawyers and their lawyering experience. These perceptions and experiences are explored through their stories and their accounts of ethics in practice and their insights into the lawyer–client relationship and legal professionalism. We based our analysis on our interviews with women lawyers in which we asked, among other things, about their understanding of the disparity in complaint ratio and reflections as to their experiences as lawyers.

Many people answering the survey indicated interest in participating in focus groups, and it was from these volunteers that we drew our interviewees. We conducted three focus group sessions (with between three and five people each) and a similar number of telephone interviews using open-ended, semi-structured questions and seeking responses to known statistics. Our group of participants were roughly representative of the average organisation in which women work in Queensland – all participants worked in solo, small or medium law firms or Legal Aid; they worked in family law, commercial and general law; there was a range of levels of experience from senior practitioners (with over 30 years experience) to graduate lawyers.

Many of our interviews with female practitioners suggested a distinctive style of lawyering, based on caring, and on a greater ability to form relationships. Some of the practitioners we interviewed saw a link between such practices and receiving fewer complaints from clients. This led us to pose two questions in light of our research: do female lawyers practise ‘differently’ by adopting a ‘caring’

professional approach (Menkel-Meadow, 1985)? Is this a legitimate style of legal practice?

Despite the difficulties of divining a lawyer's style we were told by many female lawyers that they perceived certain differences between male and female lawyering styles. For instance, when asked whether they were surprised by the discrepancy in rates of complaint (between men and women) many told us that they were not, instead they were of the opinion that a coherent explanation for fewer complaints is the greater propensity of female lawyers to adopt a relational, more personal style with clients. A former family lawyer in regional Queensland emphasised that emotion is important to clients, which is better recognised by women: she said

I think by and large women are more comfortable with people being emotional and absorbing that [emotion]. They seem to . . . have a bit more compassion and empathy for people in their situations. They can allow themselves to feel [empathy] and not be uncomfortable. I've found it's really important to be able to absorb [emotional responses] because [clients] need to feel like they [have been] heard before they're in a position to have more objectivity about decisions they make.

Similarly, a senior associate in a small corporate practice said: "I think that women are more empathetic with clients . . . Men don't step back and ask 'how would I feel?'".

These interviewees suggested that a capacity to recognise and respond to emotion directly correlated to fewer formal complaints. A senior associate working in a small commercial practice explained that in her experience, women are quite details focussed whereas men have more of a strategic big picture. Things like getting back to clients, even just following up on them. She said: ". . . Women just say 'look I couldn't get to this for you today but how about Monday'. Men often think, 'I'll speak to them on Monday when I've got to the work'. I think all those little things get clients upset and hence they make a complaint."

Equally one interviewee argued that a relational style will assist in resolving issues before they escalate to the stage of a complaint: She said "I think we tend to work through a problem with a client and tend to have a better chance of resolving issues with a client before it [gets] to the stage of a formal complaint."

The perceptions expressed to us make judgements about the style of male lawyers and the likes and dislikes of clients. The women we spoke to see the 'caring approach' as resulting in better relationships with clients. However, our research also found that women often display a complex attitude to their professional role. Our interviewees described what Judith Butler (1999) has called 'gender performance' of 'a complex of occasional identities in response to shifting contexts' (Sommerlad, 2008, p. 173). For instance, a junior lawyer in a medium sized law firm said that she deliberately adopted a professional persona that she characterised as 'not feminine' in her presentation of herself to her clients: "I try to always be to the point. I never giggle". We infer from these accounts that women are acutely aware of the imposition of gendered expectations at many levels in their working lives (fellow lawyers, organisations, clients). This creates tension in adopting a particular 'style' of lawyering.

Nevertheless, we argue that the values our interviewees expressed to us are by no means predominant in legal professionalism, and may well describe how a more caring practice could lead to happier, less disenfranchised clients. Our article attempts to explain how a broader adoption of such values could, according to some

ethics theorists, provide a valid conception of legal professionalism. It may also lead to a more enjoyable working life for (all) lawyers.

Conclusion

Our project began as a reflection on data we regularly collect relating to complaints and professional discipline. The disparity in rates of complaint against men and women lawyers raised many questions and warranted a more qualitative, contextual approach. We sought to provide context for these data by conducting a survey and a number of interviews and focus groups with female solicitors.

While our research has provided insights into the relationship between gender, complaints and ethics in lawyering, it has also raised many more questions which remain to be explored such as whether men and women practise in differing areas of law, have differing clients or interact with clients differently. We also wish to further consider the possible relevance of issues such as seniority in the profession for client perceptions and complaints.

We do not assert a 'true' and homogenous women's working style, nor imply that the voices presented herein speak for all female lawyers. Yet, we contend that some women purposely adopt a lawyering ethic of care. The article suggests that this is a valid approach to lawyering, and calls for caring roles and skills to be re-valued in the legal professional context – ultimately to be values taken on by all and not seen as specific to the way in which women lawyers practise (and perhaps devalued for that reason).

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