

## **5<sup>th</sup> Annual Ethel Benjamin Commemorative Address**

**4 September 2001**

**Dunedin, New Zealand**

**Judith Mayhew**

In September 1896, the New Zealand Parliament was debating the Female Law Practitioners Bill: it would, thought the Hon Sir GS Whitmore, have the effect of "inducing a number of females to unsex themselves and to neglect the ordinary female duties". Ethel Rebecca Benjamin was then a third-year law student at the University of Otago in Dunedin and was no doubt following such arguments with horrified fascination. She had embarked on her law studies not knowing whether she would be able to practise at the end of them. But on 7<sup>th</sup> May 1897 the unthinkable happened in the Dunedin High Court, because of the 26 law graduates assembled before Mr Justice Williams to take the oath of admission into the legal profession only 25 were men. Aged 22, Ethel Benjamin became New Zealand's first woman barrister and solicitor, just two months after the only other woman lawyer in the British Empire, Clara Brett Martin in Canada. It was Ethel, however, who made the first appearance of any women in the Empire in court, as counsel. The local newspaper commenting on this fact also stated that she might have regarded it as a good omen that she was on the winning side.

It is interesting that the first women lawyers in the Empire came from the colonies and not the mother country. The formal barriers against women's education, their role in the professions and in public life were removed much earlier. Ethel's school, the Otago Girls High School, had been established in 1871 and in the same year the local University Council received a memorial signed by 149 women asking that women should be admitted to the University. The Council resolved that "women should be admitted to all classes and allowed to compete for all certificates equivalent to degrees, conferred by the University of Otago". Three years later when the University of Otago became a constituent college of the University of New Zealand, the later became the first University in the Empire to grant women the right of obtaining degrees. Quite remarkable when you think that some of the most distinguished universities in England did not grant women the right of obtaining degrees until after the second world war.

Ethel Benjamin was able to take advantage of this liberal attitude to women's education, she attended the Otago Girls High School from 1885 to 1892, and enrolled at the University in 1893 and graduated brilliantly with an LLB three years later. She was awarded the honour of giving the reply to the Chancellor's address at the graduation ceremony. Her speech was remarkable, "it was only yesterday that I was asked to undertake this pleasant task, and while deeply sensible of the compliment paid to me, I was somewhat diffident about taking so much upon myself at so short a notice. But I knew that little would be expected of me and even if I succeeded in talking nonsense, the charitable verdict would be "Oh well, it is all that can be expected of a woman". She went on to say "New Zealand has her lady butcher, her commercial traveller, optician, dentist, watchmaker, even her lady blacksmith....and it is well that women should make such an inroad into the fields of labour. We should come to a position where women

should be economically independent of men and should marry for love and not just for a home".

This remarkable speech set at the scene for what was to be a stormy and different career. Interviewed by one of the leading suffrage campaigners in 1897 (New Zealand gave women the vote in 1893) Ethel stated that she "had faith that the barriers in the legal profession would not long be tolerated...I particularly wish to practise as a barrister...I realise that in the legal profession there exists a noble opportunity for service by women whose hearts are touched by the weak and helpless". In the same article she mentioned her involvement with the laws and inequalities affecting women and children. This became an important part of her career and in 1898 she became a founding member of the Society for the Protection of Women and Children and became their solicitor. Many of her cases were related to the work of the Society. However, unlike many women reformers of the time, she was not part of the temperance movement and indeed at times represented various licensed victuallers' associations.

Practising as a lawyer and being accepted by her fellow lawyers was not easy. She had a major and amusing battle over what might be her appropriate court dress. She ignored that rather grim costume designed for her by the Otago Law Society. Their archives also contain the records of her battles to attend the Society's dinner and the right to advertise. The former right she won, whereas the latter she said was necessary because male colleagues would not refer any cases to her. When I joined the Faculty in 1967, together with Jane Lovell-Smith and others, we too were treated as pioneers as well some 74 years later. We too had to fight to attend the Society's dinner. I assume this is now open.

For reasons not known, Ethel left New Zealand in 1908 having married. She arrived in London just as British women were fighting for their emancipation. Her case was cited by the English women applying to become barristers and solicitors. However, she does not seem to have appeared to have taken an active part in the English women's campaign, possibly exhausted by her own battles, and partly no doubt because her husband was ill and had to live in a warm, dry climate. For this reason, they moved to the South of France only to return during the First World War. Family history relates that she ran a bank during the war, which probably makes her the first woman bank manager in the United Kingdom. After the war, she went to Italy with her husband only to return with the outbreak of the Second World War. In 1943, she was killed in a motor accident, aged 68, and already forgotten in her own country.

Despite attending both the Otago Girls High School and the Otago Law Faculty, I knew nothing of Ethel's achievements until contacted by a producer who wished to make a film of her life. We found her English relatives who had just recently destroyed all her papers, not realising their significance to the New Zealand legal history. Nearness to our past in this country can make us sometimes not see the importance of preserving and recording our history. Those of us who live abroad in other societies possibly can see that need more clearly.

I was fortunate, unlike Ethel I have been able to establish a career in legal and political life in London, having become the political leader of the City of London which is the world's premier international financial centre and contributes 8% to the UK's GDP.

As a lawyer, I am in the Chairman's office of Clifford Chance, which is a new firm born in

January 2000. The old Clifford Chance was originally the result of a merger in 1987 between two law firms in the City of London, the first UK merger of law firms on this scale. Our vision then was to be the pre-eminent law firm in Europe. As we approached our goal, we raised our sights higher. The result is the tri-partite merger between the British Clifford Chance, the German firm Pönder and the US firm Rogers & Wells. The merger cements our pre-eminence in Europe and equips us with global capability. Each of the three firms has built an international practice in its own right, but together we are now uniquely well placed to serve banks and companies across the global markets. Particularly interesting to be in at beginning of first global law firm – where accountants were 15 years ago.

The new firm has a fresh vision, facing European challenges. We have a shared vision of where we want to go and a shared awareness that our combined international efforts achieve far more than we could ever have done on a merely national basis. What do we see? What is shaping our clients' requirements for legal services? There are some fundamental legal issues that underlie the increasing convergence between the Anglo-Saxon and continental European legal systems. How can common and civil law systems converge while allowing each to remain true to its foundations? This is the central challenge to us practising law internationally across a large number of individual legal systems (35).

Operating all over the world, our clients face an increasingly complex and competitive environment. The world is becoming smaller all the time. Deregulation, reduced barriers to entry, convergence of economies and technological advances – all make the world increasingly a single market. As we move from an industrial to a knowledge society, the Internet is accelerating these trends and rewriting the rules of business as it goes.

Yet the world is also becoming bigger. More markets are opening up all the time. Emerging sectors are attracting more investment than ever before. Third world economies are striving to industrialise, and often to leapfrog the traditional routes to economic prosperity. But, at the same time, as the world becomes more homogenised, individuals and nations want their own heritage and culture to be respected.

These are the realities of globalisation. The task of commercial lawyers like us is to ensure that our clients can successfully run their businesses in this environment. Their transactions are complex, cross borders and different legal systems. We structure, negotiate and document those transactions to provide the desired outcome in a predictable fashion by ensuring that the deals will work in practice.

The ability to advise on such transactions requires a global capability and understanding, but this must be combined with local law expertise. On the one hand, we see an inexorable trend towards convergence. On the other, we must remain mindful of profound jurisdictional differences. In this new world, respect for different legal cultures and the strength of our internal and client relationships will be key.

The question of culture is critical. Our vision is to create a genuinely *multi-cultural* firm. For just as business has to be global and local at the same time, so the law firms that serve it must be both. Just as the world is becoming smaller yet larger, so global legal practice requires immersion in local law and culture. Our aim is to practise law in a new way, which will require a new type of lawyer: the type who will command the respect of governments, banks and businesses, regardless of nationality or office location.

In order to succeed with this, lawyers must be more than providers of expert legal advice. Lawyers must also understand the business, the needs and the aspirations of the client. They must understand the commercial and political environment. They must have the personal skills to operate at the highest levels. Above all they must have broad horizons – looking beyond familiar geographical and jurisdictional boundaries.

If we are to maintain our ability to tackle the most demanding transactions, and to help shape the law, we require top-level intellectual input. One of the lessons that common lawyers can learn from their civil law counterparts is the benefit of a symbiotic relationship between legal practice and academic institutions, between the practitioner and the jurist.

But we are going further. We are creating our own Academy to help create the new type of lawyer I have mentioned, one who is at ease when dealing with the legal concepts of a number of jurisdictions, who is alert to the similarities and differences. The Academy is a critical component of our vision. It will be based in Amsterdam but, in keeping with the new information age in which we practise, will harness the latest technological and virtual advances to take from, and deliver to, any part of the globe in which we operate. The Academy is going to equip our common lawyers with sufficient understanding of civil law systems – and vice versa – to manage the delivery of transactions across a range of jurisdictions, knowing the issues to address and the obstacles to overcome.

As future generations of Clifford Chance lawyers pass through the Academy, they will absorb and impart in equal measure the culture of the firm and the local culture of the jurisdiction in which they originally qualified. I believe that in terms of legal culture we all have much to learn from each other, and to adopt best practice wherever it occurs. Lawyers can make a real contribution to the reality of a united Europe by promoting cross-fertilisation between civil and common law traditions.

So it is that our daily work helps to drive convergence. Our lawyers are admitted in one or more local jurisdictions but advise on global transactions. On the one hand, we see an inexorable trend towards convergence. On the other, we must remain mindful of profound jurisdictional differences.

A lot of the initial drive came from the international finance and the capital markets. Where the capital markets have led, others have followed. Companies that trade around the world look to protect their trade marks and copyrights. The applicable law varies from jurisdiction to jurisdiction, but companies increasingly want to manage the protection of their intellectual property rights around the world. Employment law varies from country to country, but corporate employment policy is increasingly centralised. Real estate is an area jealously guarded by local law but here, too, the role played by inward investment on the part of institutional investors, banks and multinational companies is promoting a standardisation of approach.

The last bastion of local law lies in the courts. But any multinational faced with a major dispute increasingly plans its litigation strategy at headquarters. Our task is to advise multinationals at a strategic level on where best to defend or launch proceedings. A law firm cannot do this unless it is both local and global.

The Clifford Chance vision is to create a genuinely multi-cultural firm. For just as business has to be global and local, so the law firms that serve it must be both. Just as

the world is becoming smaller yet larger, so global legal practice requires standardised approaches coupled with immersion in local law and culture.

That is the challenge for all of us as lawyers. I wonder what Ethel Benjamin would have thought of my experience some 110 years later.

Thank you.