REVIEW ESSAY

REFLECTIONS ON THE PERPETUAL CYCLE OF DISCRIMINATION, HARASSMENT AND ASSAULT SUFFERED BY NEW ZEALAND'S WOMEN LAWYERS AND HOW TO BREAK IT AFTER 122 YEARS: REVIEWING GILL GATFIELD'S *WITHOUT PREJUDICE*

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Gill Gatfield Without Prejudice: Women in the Law *(Brookers, Wellington, 1996); and Gill Gatfield* Without Prejudice: Women in the Law — Same Issue New Cover *1896–2016 (Gill Gatfield, Auckland, 2016; Thomson Reuters, Auckland, 2018).*

I INTRODUCTION

In 2018 the Me Too movement arrived, somewhat belatedly, in New Zealand. One of its primary achievements in its first few months in the country was to expose the prevalence of sexual assault and sexual harassment in the legal profession. On multiple occasions in the early months of the year, New Zealanders awoke to headlines detailing incidents where women had been sexually harassed and assaulted while interning and working in the legal profession.[1] The revelations generated calls for enquiries, surveys and reports

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1 See for example, Melanie Reid and Sasha Borissenko "The summer interns and the law firm" (14 February 2018) *Newsroom* <www.newsroom.co.nz>; Melanie Reid and Tim Murphy "Law Firm Faces New Sex Claims" (26 February 2018) *Newsroom* <www.newsroom.co.nz>; and Vaimoana Tapaleao "New Zealand former lawyer speaks out about sexual harassment at work: It was like a frat house" *New Zealand Herald* (online ed, Auckland, 1 March 2018).

and, as at early October 2018, a number of initiatives have commenced to try to understand and address the issue of the sexual assault and harassment of women lawyers.[2]

Those who are involved in these initiatives or have an interest in the treatment of women in the legal profession should read *Without Prejudice: Women in the Law* (*Without Prejudice*),[3] Gill Gatfield's meticulously researched book on the experiences and position of women in the New Zealand legal profession from 1896–1996.[4] While the book was written 22 years ago, it remains the most thorough, thought-provoking and valuable text on women in the law in this country and its pages contain information that is critical for us to understand if we are to have any hope of transforming the experiences of female lawyers in New Zealand.

Without Prejudice details the history of women in the law in New Zealand. It is divided into three parts: the Past (the 19th century to the 1980s); the Present (the 1990s); and the Future. In the first two parts, Gatfield sets out the countless ways that women have been excluded, marginalised, undervalued and discriminated against since they first sought admission to the profession in the late 19th century. She also provides in depth analyses about why women have been subject to the treatment they have and the attempts that individuals and groups have made at various times to fight back against the endemic discrimination. In Part III, Gatfield turns to consider how the multitude of issues she has uncovered could be addressed and sets out a variety of well-developed strategies.

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2 The New Zealand Law Society has set up a regulatory working group, chaired by Dame Silvia Cartwright, to investigate harassment and bullying in the legal profession. They have also established a confidential online portal where reports about harassment and unacceptable behaviour can be deposited. For more information, see "Law Society takes action against harassment and bullying" (29 March 2018) New Zealand Law Society <www.lawsociety.org.nz>. In September 2018, the Law Society also established a Culture Change Taskforce, chaired by Kathryn Beck, to drive and guide systems and culture change within the legal community, see "Law Society Taskforce focused on culture change" (25 September 2018) New Zealand Law Society <www.lawsociety.org.nz>.

3 Gill Gatfield *Without Prejudice: Women in the Law* (Brookers, Wellington, 1996). Gatfield republished the book in 2016, adding the subtitle — *Same Issue: New Cover 1896–2016*. Thomson Reuters has published that edition as an e-book in 2018. The references in this piece are from the 2016 edition: Gill Gatfield *Without Prejudice: Women in the Law — Same Issue New Cover 1896–2016* (Gill Gatfield, Auckland, 2016).

4 Ideally, everyone interested and engaged in the legal profession in New Zealand would read the book but it is of particular importance that those active in the reform space take the time to read and consider its chapters.

What makes the book so valuable to our current discussions is that it reveals that sexual assault and harassment are part of a much wider web of discriminatory practices to which female lawyers are subject, and that these discriminatory practices have deep roots and an array of causal factors. These facts suggest that we need to be wary of casting the current problems women face in the legal profession too narrowly and crafting solutions that seek to address the sexual assault and harassment of women without tackling the broader, systemic forms of discrimination that are deeply embedded in the profession.

In this piece, I discuss the central ideas that emerge in each part of *Without Prejudice* and provide some reflections on them. My hope is that by drawing attention to Gatfield's work and offering some thoughts on the arguments it puts forth, it will encourage a broader conversation around the treatment and position of women in the law so that we can tackle the wide array of discriminatory practices and systems in the profession while there is a spotlight on the law and there are people energised to achieve change.

II THE DIAGNOSIS: A DISCUSSION OF PARTS I AND II

As noted above, the first two parts of *Without Prejudice* explore the treatment and experiences of women in the legal profession from the 19th century through to the 1990s. They also seek to document and explain the discrimination women faced along with some of the efforts that were launched to try to overcome it. In the sections below, I set out some of the key points Gatfield makes in relation to these topics, provide some reflections on them and look at what those tackling the problems women face in the legal profession today can learn from the analysis in these parts of the book.

A Low Numbers in the Early Decades

Part I of *Without Prejudice* examines the history of women in the law in New Zealand prior to the 1990s. It opens with an account of the multi-year parliamentary battle to establish legislation allowing women to practise as lawyers in the late 19th century.[5] It then moves to detail the experiences of New Zealand's early women lawyers.[6] What is striking in these early chapters

5 Gatfield, above n 3, at chs 1–2.

6 At chs 3–5.

is just how few women chose to practise law in the first 60 years of being allowed entry into the profession in New Zealand. In 1911 only three women were in practice, by 1921 the numbers had increased by just one to four, and in 1936 there were only seven in total.[7] Unlike in other professions, the advent of World War II did little to swell the ranks of female lawyers with only 19 in practice by 1945.[8] Just over a decade later, in 1956, the numbers were still exceedingly low with just 28 women practising law, making them a mere 1.4 per cent of the profession.[9]

Gatfield lays the blame for the low levels of female lawyers largely at the feet of government economic and social policies.[10] She argues that incentives and concessions for men to enter university after both World War I and World War II,[11] and policies that stressed the importance of women staying home and raising children throughout the first part of the 20th century worked to discourage women from trying their hands at the law.[12] Gatfield presents a convincing case that these policies were powerful disincentives for women to enter the law. However, these disincentives, for the most part, would have applied to women seeking to enter any profession in this period. While women were by no means flocking to other professions, considerably more women did join many other professions. In both medicine and accountancy, for example,

7 At 454. See table A6: The Legal Profession and Lawyers, 1851–1991.

8 At 53.

9 At 454. See table A6: The Legal Profession and Lawyers, 1851–1991. The numbers of female law students during this period were similarly low, although there were slightly more female law students than female lawyers. One brief note on the accuracy of the law student figures: tracking down how many women were at law school in the closing years of the 19th century and the first part of the 20th century is extremely difficult. There are no comprehensive records of the numbers of law students from this time let alone a gender break down. Gatfield has compiled the number of female law students from the New Zealand Census of Population and Dwellings 1874–1906, Appendices to the Journals of the House of Representatives 1908–1944, and Education Statistics New Zealand 1945–1990. While these sources provide a reasonable estimate, I suspect the actual numbers may be marginally higher. The table in *Without Prejudice* suggests there were no women in New Zealand law schools in 1896 but we know that Ethel Benjamin was attending Otago Law School at this time. Further, the table shows that there were no female law students in 1920. The University of Auckland archive suggests, however, that there were at least two female law students in 1920: Freda Jacobs (later known as Fuzz Barnes) and Elin Erickson. Freda Jacobs never graduated and Elin died after graduating in 1925. It is questionable whether we will ever have an entirely accurate picture of the numbers of female law students from the early years of women in the legal profession. However, checking each university's archives may provide slightly more information in this quest.

10 Gatfield, above n 3, at ch 3.

11 At 46–50 and 53–54.

12 At ch 3.

the numbers of women were higher at every census than they were in law and jumped significantly during World War II.[13]

This raises the question as to whether there was something distinctive about the law that acted on top of the economic and social policies to discourage women. Issues raised in other chapters of Part I may go some way to providing an answer. Gatfield details the patriarchal maleness that pervaded the profession during this era,[14] and reveals how closed the profession was to those without family connections to existing practitioners.[15] Indeed 70 per cent of the women who went into practice between 1897 and 1959 had a lawyer in the family.[16] It would make sense that both factors weighed on the minds of women who were considering entering the profession and perhaps pushed them to other domains.

There is, however, room for more research to be done exploring this issue in greater depth. I wondered as I read this part of the book whether perhaps the reluctance of women to consider law also had something to do with the nature and scope of the law and how it was used in New Zealand during this period. This grew from wondering why more women from the women's movements of the time did not pursue a career in the law. Throughout the period under discussion, save for a brief period around World War I, New Zealand had a strong women's movement that fought for an array of social and political causes. Today law school lecture theatres are filled with socially and politically minded students hoping to employ the law to further social justice and achieve political change. It would appear, however, that their counterparts in the early 20th century did not see law as an avenue for pursuing such causes.

There is evidence in Gatfield's book for the idea that the practice of law in New Zealand was not, at that time, a space for tackling the social and political issues of the day. To start with, contrary to other western, common law jurisdictions, women won the right to practise law through parliamentary action, not through taking cases to court.[17] Further, most of the early women

13 For example, in 1936 there were 248 female accountants and in 1945 there were 470. In medicine, there were 83 female doctors in 1936 and 137 in 1945. These figures are set out in Deborah Montgomerie "A Personal Affair Between Me and Hitler? Public Attitudes to Women's Paid Work in New Zealand During World War II" (MA Thesis, University of Auckland, 1986) at ch 3.

14 Gatfield, above n 3, at ch 4.

15 At 59.

16 At 59.

17 At ch 1 and 329. This is in stark contrast to what happened in most other western, common law

who entered the profession were engaged in the women's movement and in advocating for social and political change but appeared to keep most of their legal practice separate from their women's movement activities.[18] For example, while Ellen Melville did some legal work for National Council of Women (NCW) it was largely around the financial and operational needs of the organisation, not the substantive causes for which NCW fought.[19] Further, on graduating with her law degree in 1898, Stella Henderson spoke of her desire to use the law "to help forward the social movements of the day" and "to be of service in helping to remove the unjust restrictions which the law imposes on our sex",[20] but never ended up practising and instead led a life fighting for social and political change as a journalist.[21] These facts suggest that the law and legal profession in New Zealand were, or at least were seen, as rather conservative with little potential for furthering social and political change. Whether this was in fact the case, and if it was, whether it discouraged members of the women's movement from pursuing the law, requires further research. It may well be that additional factors that have not yet been considered are part of the story behind the low levels of women in the law from the 1890s to 1950s and that future research in this area will reveal them.[22]

B The Discriminatory Treatment of Women Lawyers Across the 19th and 20th Centuries

From seeking to understand the low numbers of women in the profession in the first half of the 20th century, Gatfield moves on to focus on the challenges and forms of discrimination faced by the women who did choose to train and practise as lawyers during this time. She covers the myriad ways they were excluded from both law school life and professional practice including being barred from law libraries, social gatherings and classes that covered sexual

jurisdictions where women won the right to practise law through taking cases to the courts.

18 At 93–96. Ethel Benjamin was an exception to this trend: see at 93.

19 Veronica Kuitert "Ellen Melville 1882–1946" (MA Thesis, University of Auckland, 1986).

20 "Miss Stella Henderson" *White Ribbon* (New Zealand, June 1898) at 1–2, as quoted in Gatfield, above n 3, at 93.

21 At 93.

22 If there is something to the idea that the law provided few avenues for social and political change, it would be interesting to explore the extent to which this has changed. While many students nowadays profess a desire to use their law degrees to pursue social justice in their careers, I remain sceptical about the extent to which this happens in practice and the extent to which New Zealanders use the law and courts to further movements for change.

topics; being discouraged from attending court; having their court room attire controlled and having no changing facilities provided at court; being pigeonholed into particular areas of the law such as family law; and having to navigate a world where they were frequently the only woman, the old boys' network was pervasive and the press took an unnatural interest in charting their actions.[23] What is more, almost none of them partnered or had children.[24] Rounding out Part I of the book is a chapter that explores the ways that discrimination persisted and developed in the legal profession in the 1970s and 1980s, even though the number of women involved in the profession was increasing as were the efforts that women initiated to tackle inequity.[25]

Part II of the book draws on a nationwide survey of female and male lawyers that Gatfield conducted in 1992 with sociologist Alison Gray, as well as information from extensive interviews and focus groups that Gatfield conducted with individual lawyers and professional legal bodies, to provide a detailed analysis of the state of the profession for women in the 1990s.[26] It canvasses the fact that law school student numbers continued to rise but that beyond this, problems persisted for women with far fewer women than men entering the profession, women leaving the profession at three times the rate of men, women being paid less than men and women failing to rise to plum positions within the profession.[27] It also explores how women were asked about their plans for marriage, contraception decisions and children in job interviews;[28] how they continued to primarily be given work in a limited number of substantive areas if they did get a foot in the door;[29] and how the strong role that male power played in the profession generated the conditions for sexual harassment to become a normal part of life for many female lawyers.[30]

It is depressing to see how much of the discrimination that is documented in Parts I and II of the book remains pervasive today. In 2018, we have for

23 See chs 3–5.

24 See ch 3.

25 See ch 6.

26 For a discussion of Gatfield's research methods, see at xi–xvii.

27 See ch 7.

28 At 163–164.

29 At 174–176.

30 See ch 11, particularly at 253–254.

the first time more women than men in the legal profession.[31] However, numbers (as Gatfield perceptively predicted)[32] appear to count for very little as the experiences, positions and status of women in the law today mirror to a significant extent those of early women lawyers and many of the underlying issues and forms of discrimination persist. We know all too well from the media revelations earlier this year that sexual harassment (and worse) continues to plague the profession. Further, despite a number of law firms taking steps to increase workplace flexibility and provide childcare support, concerns about the difficulty of combining a legal career with motherhood remain at the forefront of many women lawyers' minds.

In addition to these factors, I have been concerned to learn in the last couple of years that the idea that women are best suited to certain areas of the law or are not necessarily cut out for the "serious" commercial aspects of legal practice are alive and well. Students at the University of Auckland's Faculty of Law talk about how commercial law subjects are "male subjects" while other, so-called "fluffy" subjects such as family law, international law and human rights law are "female subjects". These views are reinforced by the latest statistics from the New Zealand Law Society which show that significantly more men practise in company and commercial law, while more women practise in family law.[33] Concerns that women are screened out of certain legal jobs through problematic interview questions are also persistent. While I have not heard stories of women being asked about their approach to or choice of contraception in job interviews, female students discuss the fact that they still, at times, get asked about their marital status in interviews.[34]

What is more, after nearly three decades of more women than men graduating from law school, men continue to outrank women in the upper echelons of the profession with women making up just 30.9 per cent of partners in law firms,[35] 18.7 per cent of Queen's Counsel,[36] and 31.3 per cent

31 Geoff Adlam "Snapshot of the Profession" *LawTalk* (March 2018, Issue 915) at 49.

32 Gatfield, above n 3, at 322–323.

33 Adlam, above n 31, at 57.

34 On a personal note, when I interviewed for a graduate position with a top tier firm in Shortland Street in 2006, I was asked whether I liked baking muffins.

35 Adlam, above n 31, at 54.

36 At 51.

of the judiciary.[37] Concerns about the fact that men appear more frequently in the Court of Appeal and Supreme Court and women advance more slowly through the ranks of the legal profession prompted Jenny Cooper QC and Gretta Schumacher (under the auspices of the New Zealand Bar Association) to launch a formal study documenting the exact numbers of men and women appearing in the country's highest courts.[38] This study shows that women appear as lead counsel in New Zealand's higher courts at a disproportionately low level compared to their proportion of the profession; as an example, in each year over a six year period (2012–2017) women made up less than 30 per cent of lead counsel in the Court of Appeal.[39]

While the fact so little has changed for women lawyers in the years since Gatfield penned *Without Prejudice* is depressing, the encouraging news is that there is information in the book's pages that will be helpful in trying to tackle the situation we face. First, Gatfield provides extensive analysis about the causes behind the discrimination against women in the legal profession. These include biases in the recruitment and promotion processes of the profession;[40] the fact that the structure of legal practice, with its long hours and myopic focus on rewarding those who bill the most, is incompatible with many women's lives especially when they want to raise a family;[41] and the insidious effects of the health and strength of the old boys' network.[42] She also challenges common assumptions that emerged in the surveys and interviews she conducted including that women fail to advance in the law because they *choose* to prioritise having children over work and that they *choose* to leave private practice for reasons disconnected from any form of discrimination. She persuasively shows how problematic the idea of "choice" is in both contexts and how it is far more accurate to see women's experiences as the product of systematic gender discrimination.[43] She then turns to detailing the obstacles to change that existed in the 1990s including

37 "NZ Supreme Court leads in proportion of women judges" (22 June 2017) New Zealand Law Society <www.lawsociety.org.nz>.

38 Jenny Cooper and Gretta Schumacher *Gender Ratio of Counsel Appearing in Higher Courts: Report of the New Zealand Bar Association* (September 2018).

39 At 3 and 5.

40 Gatfield, above n 3, at 161–174.

41 At 205–216.

42 See generally chs 8 and 9.

43 See ch 10.

attitudes, paternalism, a culture of conformity and the fact that it was in the best interests of many men for the profession to continue as it was.[44] All of these issues remain relevant today; recognising and understanding them will help us think through the sorts of responses and solutions that need to be devised.

A second set of information in the book that is helpful for us to reflect on is the material Gatfield provides about previous attempts that have been made to improve the plight of women in the law. It is apparent that throughout the first century of women in the legal profession, the vast majority of changes to the experience and status of women were instigated by external forces, often with heavy resistance from members of the profession.[45] It was women's organisations and some progressive politicians, for example, who succeeded in lobbying for women to be allowed to practise in 1896 despite strong opposition from the various law societies around the country.[46] Similarly, in 1977 the Human Rights Commission Act 1977 was adopted because the women's movement pushed for change, despite strong resistance from the profession. This Act made it illegal for an employer to deny women access to employment opportunities in New Zealand on the basis of their sex. The profession was deeply concerned by this law and campaigned hard for an exemption to be made for partnerships but was ultimately unsuccessful.[47]

Gatfield does note instances where female lawyers (and very occasionally male lawyers) stood up against discriminatory practices and worked to achieve change especially in the 1980s and 1990s.[48] However, she casts doubt on the efficacy of much of the work done, explaining that a lot of it was focused on documenting the problems and seeking to educate people about the issues that existed.[49] She argues that lawyers became adept at conducting surveys and shining a light on gender issues in the profession but then doing little more. In her words, the "legal profession has a long history of denouncing discrimination and doing nothing".[50]

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44 See ch 14.

45 At 320.

46 See ch 2.

47 At 101–102.

48 See ch 13.

49 See, for example, at 290 and 297–298.

50 At 291.

In the past, I have had some sympathy with efforts that raise awareness of problems without necessarily going any further. I have believed that the mere fact a problem is unveiled, and a conversation had, has meant that people are likely to re-evaluate their behaviour and approaches. *Without Prejudice* has dispelled my faith in the power of conversation, at least in this context. The book drives home that while some consciousness raising practices may have resulted in some individuals reassessing their views (at least temporarily), it has never resulted in shifting the underlying structural problems in the profession. Thus, we have become trapped in a cycle whereby discrimination occurs, concerns are raised, the raising of concerns lulls people into a false sense of believing that change is happening, the structural problems that give rise to discrimination are left untouched and it is only a matter of time until discrimination rears its head again. The book sends a clear message that if we are to have any hope of escaping the deeply entrenched forms of discrimination in the profession, structural change will be required, and we conduct surveys and consciousness raising without more at our peril.

III SOLUTIONS: A DISCUSSION OF PART III

Gatfield's scepticism of unveiling problems without offering solutions is not only apparent from her condemnation of the lack of change undertaken by members of the legal profession around gender issues. It also comes through from the fact that in *Without Prejudice* she takes seriously the task of exploring what needs to be done and devotes five chapters to thoughtfully setting out and analysing ways to tackle the discrimination that has a stranglehold on the profession. She espouses an array of litigation avenues for targeting the perpetrators of sexual harassment and discriminations;[51] extols the value of businesses championing women, and the costs of them failing to;[52] details how to address some of the structural problems in the profession by, inter alia, centralising the Treaty of Waitangi in the delivery of legal services, implementing new approaches to decision-making, creating flexible working practices, improving childcare support and enhancing parental leave options;[53] suggests the implementation of equal employment opportunities audits and

51 See ch 15.

52 See ch 16.

53 See ch 17.

an enhanced role for law societies;[54] details how to improve the entry into, and experience of, women in the judiciary;[55] and calls for the government to step in if the profession fails to address the problems adequately.[56]

If Gatfield's prescription for the profession had been followed over the last 22 years, I have no doubt that the profession would be in a very different position today. I am not sure, however, that we would be living in a post-discrimination world. One of the main reasons for this is that I am not sure that the structural change suggestions go far enough. As noted above, Gatfield's vision for structural change identifies several key areas that need addressing. While these measures are important, they do not address the fact that the dominant model of success in the legal profession is, as set out by Gatfield, working as long and hard as possible and billing as many hours as possible.[57] Thus, while the proposed measures make it possible for women to practise, they also make the women who utilise them exceptions, people who are outside the mainstream and who have little hope of achieving "success" as defined by the profession. It creates risks that they will be side-lined, deprived of the best and most interesting work, and devalued. The measures also do little to confront the significant hierarchies and power imbalances in the profession. These are factors that, as Gatfield recognises at numerous points in the book, are at the heart of discrimination and harassment.[58]

Concerns about flexible working practices and parental leave making women the exception could be addressed by mainstreaming the initiatives so that all people felt comfortable taking advantage of them. This is, however, far easier said than done. Just how to achieve the mainstreaming of flexible working practices and parental leave is something that feminists the world over are grappling with. One of the most successful approaches has been legislative intervention in Norway that dictates that the parental leave a couple is entitled to will be significantly reduced if both partners do not take their share of the leave.[59]

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54 See ch 17.

55 See ch 18.

56 See ch 19.

57 This is summed up very well by Helen Melrose describing the culture of the legal profession: "the main goal is to be the best, meaning the hardest working, the highest fees, the most perfect law(yer), the longest hours — five twelve hour days and a day at the weekend … It's an outstanding example of what the maleness of it is all about", as quoted in Gatfield, above n 3, at 227.

58 See, for example, at 253–254.

59 Christa Clap "The Smart Economics of Norway's Parental Leave, and Why the US Should Consider

Another approach would be to work on changing the definition of success in legal workplaces so that it moves away from long hours and high financial returns and instead focuses on creating a legal system where all New Zealanders can access justice, social justice initiatives are pursued, less adversarial forms of practice are championed, and practitioners and clients are treated respectfully and with dignity. Such a shift would require deep cultural change and a fundamental modification of the profession's values. While I am a strong advocate for such changes, waiting for them to occur is likely to damn women to another century of oppression.

If changing the values and goals of existing legal workplaces is too complex, then an alternative path would be to legitimise, support and champion the pursuit of different models of lawyering so that they become more widely available, pursued and valued. One of the most interesting parts of *Without Prejudice* is where Gatfield highlights the fact that a number of women who were forced out of private practices in the 1980s and 1990s because of gender issues opened innovative women-only practices.[60] A number of these practices strove to practise law in different ways — for example, by taking more team-based approaches,[61] and being more accessible to clients.[62] These practices took on legal work to which the women felt connected and that often made a difference to the lives of other women,[63] and explored new ways of enabling people to balance work and family life, such as having childcare provided onsite at the office.[64]

While we should work to ensure that every woman who wants to enter and succeed in mainstream private practice can do so, we should also find

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It" *The Washington Post* (online ed, Washington, 11 January 2016). In 2018, the New Zealand Law Society released a Gender Equality Charter which includes a provision that signatories of the charter will "encourage and support flexible working to assist all lawyers to balance professional and personal responsibilities". While this is promising, overseas experiences cast doubt on the extent to which a soft measure such as this will be effective.

60 Gatfield, above n 3, at 224–230. She also draws attention to the fact that there is a long history of New Zealand women lawyers going out on their own and carving out new fields of practice for themselves. For the most part, including in the 1980s and 1990s, women ventured into new avenues of practice because they were shut out of, or significantly stifled in, the mainstream.

61 Frances Martin "Partners want to offer value" *The Evening Post* (Wellington, 12 August 1992) as cited in Gatfield, above n 3, at 227.

62 At 225.

63 At 226.

64 At 228–229.

ways to advance alternative forms of legal practice that suit the lives of women. It is highly likely that many such practices will also have a commitment to representing those unseen by the traditional system as many of the women-only practices in the 1980s and 1990s did. We are at a point in history where there is a desperate need for these sorts of practices. The legal system and legal services in New Zealand are broken: the amount of legal aid available is woefully low,[65] and many people in the country are unable to access legal assistance either because of the extortionate cost,[66] or because they live outside the main centres where lawyer shortages are endemic.[67] Innovative firms that dare to venture outside the mainstream and find new ways of delivering services and meeting the needs of the community should be lauded and supported, not viewed as fringe enterprises in the profession. Gatfield makes the important point that the sorts of alternative practices that emerged in the 1980s and 1990s are risky to set up and raise a host of financial challenges.[68] There is a real need for resources, support and recognition to be given to those seeking to experiment and find different models so that they not only get off the ground but thrive.

In putting forward these thoughts, I am keenly aware that they are woefully under-developed compared with Gatfield's detailed and considered solutions. I hope, however, that they will provide an opening for further research, discussion and consideration alongside the fully crafted ideas that Gatfield proposed in *Without Prejudice.*

IV MISSING CONVERSATIONS

While *Without Prejudice* covers a vast array of material, there are gaps in the work. Most significantly, the project does not explore the experiences of Māori women lawyers in great detail. Gatfield acknowledges this omission and expresses regret for it. She explains in the opening pages of the book that although initial research uncovered evidence of Māori women being impeded by discrimination on the basis of race as well as sex, Māori women's stories

65 Adam Goodall "Judges have been Talking About the 'Justice Gap' Crisis for Years" (1 November 2017) The Spinoff <www.thespinoff.co.nz>.

66 Goodall, above n 65.

67 See, for example, Andrew Ashton "Lawyer Shortage Biting Hawke's Bay Practices" *The New Zealand Herald* (online ed, Auckland, 5 February 2018).

68 Gatfield, above n 3, at 218–219.

are missing because she was not able to develop a Māori-controlled research methodology that met the approval of Māori women lawyers.[69] She also acknowledges that the book does not focus on the "concerns of lawyers with disabilities or who are … lesbian, gay or members of another ethnic or cultural minority in the profession" and records the need for comprehensive further research and analysis of these members of the profession.[70]

I would add to this list of omissions that the book does little to explore the experiences of women from other sexual minorities and lower socio-economic backgrounds. Gatfield does discuss at numerous points in the book that the vast majority of female lawyers, like their male counterparts, are drawn from the middle and upper classes. It would, however, be interesting and useful to hear the stories of those who did not come from privileged backgrounds and to consider some of the challenges and structural barriers they face in the legal profession.

There is an urgent need for intersectional work to be undertaken so that our understanding of the experiences and concerns of all women, not just white, middle class women, are understood and addressed. The forms of harm and discrimination to which women are subject are multi-faceted and compounded by one another. Efforts to address discrimination that focus exclusively on gender and block out other discriminatory treatment fail to see, let alone have any hope of stamping out, a multitude of harms that affect women on a daily basis.

One further area where there is scope for more work is for those with a theoretical bent to delve into the issues at play and apply theoretical lenses to them. Although the book is clearly informed by a deep understanding of feminism and feminist literature, it is not explicitly theoretical. The lack of heavy theoretical content is highly appropriate in this book and makes it accessible to a wide audience. However, in future projects, bringing a more direct theoretical lens to bear on the position of women in New Zealand's legal profession may well be quite productive for opening new avenues for consideration and ideas for transformation. It would be especially interesting to see postcolonial feminist and neoliberal theories applied to the gender and discrimination issues which are so prevalent in the profession.

69 At xiv.

70 At xix.

V CONCLUSION

Notwithstanding its lack of intersectionality, *Without Prejudice* contains important information and ideas for those grappling with the status of women in the legal profession today. It provides a deep understanding of the problems that embroil many women in the profession and what generates those problems, as well as providing well thought through, practical pathways for structural change. It is essential that we read and consider Gatfield's work if we are to turn the profession around and ensure that we are not having the same conversations in another 20 years' time, or worse, in 2096, two centuries on from when women were first admitted to practice.