

## REFLECTIONS FROM A YOUNG WOMAN ENTERING THE PROFESSION

— *Would a female partner quota address gender inequality  
within the New Zealand legal profession?*

**Louise Grey\***

*Although New Zealand has traditionally pioneered women's rights, the current leadership makeup of the legal profession is disappointing. The proportion of female lawyers in partnership and judicial roles has not increased as one might expect in recent years. Inspired by the popular European model of gender diversity quota targets for corporate board membership in publicly listed companies, this article poses the question: would a female partnership quota affect this desired change within the context of New Zealand law firms? The article canvases New Zealand's history of gender relations, both generally and with reference to the legal sector. It briefly explains the recent shift towards the use of formal quotas across Europe. It goes on to weigh up potential advantages and disadvantages that could result from the implementation of a quota. In doing so, it discusses some of the key reasons why I believe gender diversity has proved difficult to attain within law firm management. Ultimately, I argue that quotas would constitute a significant step towards achieving gender diversity within law firm leadership, whilst also acknowledging the limitations and difficulties with this approach.*

### I INTRODUCTION

Female lawyers are a relatively new phenomenon; it is not so long ago that “women were considered unfit for law, or law unfit for women”.<sup>1</sup> The relationship between women and the law has certainly progressed since then, but gender diversity within the profession has not developed to the equitable

---

\* BA/LLB (Hons), Victoria University of Wellington. Law Clerk, Buddle Findlay. The views expressed in this article are the author's own.

<sup>1</sup> Deborah L Rhode *The Unfinished Agenda: Women and the Legal Profession* (American Bar Association Commission on Women in the Profession, 2001) at 13.

level which one may have hoped. Global statistics regarding the proportion of women in high-ranking positions within legal institutions are, on the whole, woefully disappointing. This disparity is particularly problematic given the profession's central role in promoting the rule of law, a discourse that mandates equality for all. The issue of gender diversity has been addressed differently across various jurisdictions. Arguably the most controversial policy in this area, yet also the most "successful" so far (however that may be defined), is the implementation of mandatory gender quotas for corporate board membership across many European countries. In contrast, New Zealand has relied solely on "soft law" measures to encourage publicly listed companies to increase their number of female directors.

This article questions whether a mandatory quota system would be effective and appropriate in the specific context of the New Zealand law firm structure. It first discusses the current situation regarding diversity within New Zealand and its law firms, before explaining the format and adoption of quota systems in Europe. Secondly, it explores the potential benefits and challenges of such a scheme in the New Zealand legal climate. This article questions whether a mandatory quota would resolve the current gender imbalance, or whether other policies geared towards cultural change might be better suited. I argue that a mandatory quota system is not a 'silver bullet' for change, despite its merits and evident potential to produce statistical results. Nonetheless, it would constitute a useful stepping stone towards diversity and equality within law firms in New Zealand. As such, this should be further debated and explored by policymakers and the profession.<sup>2</sup>

## II NEW ZEALAND, WOMEN AND THE LAW

New Zealand has a proud history of female civic engagement. In 1893, we became the first self-governing country to grant women the right to vote.<sup>3</sup> This was achieved thanks to the tireless efforts of Suffragettes such as Kate Sheppard, who currently appears on the \$10 note as a testament to her courage and persistence in pursuing equality.<sup>4</sup> More recently, our country has seen various

---

2 This article is limited to a discussion of the appropriateness and potential value of a gender quota in New Zealand law firms. The question of how such a quota might be implemented in practice is outside the scope of this article.

3 Fiona Barker "New Zealand identity – politics: Kate Sheppard on the \$10 note" (20 June 2012) Te Ara – the Encyclopedia of New Zealand <[www.teara.govt.nz](http://www.teara.govt.nz)>.

4 Barker, above n 3.

talented women take up prominent positions of power within its political and legal spheres.<sup>5</sup> New Zealand has been governed by three female Prime Ministers;<sup>6</sup> had three female Governor-Generals;<sup>7</sup> one female Chief Justice of the Supreme Court;<sup>8</sup> and one female Speaker of the House of Representatives.<sup>9</sup> As of 22 July 2016, New Zealand became the first common law jurisdiction to appoint an equally balanced bench of Supreme Court justices, with Rt Hon Chief Justice Sian Elias, Hon Justice Susan Glazebrook and Hon Justice Ellen France serving alongside their three male colleagues.<sup>10</sup> Our country therefore has much to be proud of with regards to gender diversity across prominent social roles. However, there is a long way to go before equality can realistically be said to exist.

Given this history, one might expect the gender balance within the New Zealand legal profession to be neutral or, at the very least, to have substantially improved over time. This is unfortunately not the case. Radio New Zealand reported last year that, for the first time, statistics indicated there were an equal number of men and women practising law.<sup>11</sup> While a noteworthy achievement, this balance took a surprisingly long time given that more females than males have graduated from law schools over the past decade.<sup>12</sup> Further, 60 per cent of law firm workers are female, yet, as of 2015, only 26 per cent of law firm partners and directors and 29 per cent of the judiciary were female.<sup>13</sup> As Hannah Brenner notes, this disparity between women in the profession and

- 
- 5 Susan Glazebrook “Gender Equality in the Workforce: A Work in Progress” (speech delivered at the Annual Professional Women’s dinner organised by the Canterbury Women’s Legal Association, 22 October 2009) at 3.
  - 6 The Right Honourable Dame Jenny Shipley, the Right Honourable Helen Clark and, currently in office, the Right Honourable Jacinda Ardern.
  - 7 The Honourable Dame Catherine Tizard, the Honourable Dame Silvia Cartwright and currently the Right Honourable Dame Patsy Reddy.
  - 8 The current Chief Justice of the Supreme Court is the Right Honourable Chief Justice Dame Sian Elias.
  - 9 Margaret Wilson.
  - 10 New Zealand Law Society “New judicial appointments welcomed” *LawTalk: New Zealand Law Society* (online ed, 13 July 2016).
  - 11 Max Towle “Equal number of female, male lawyers for first time” (2 February 2016) Radio New Zealand <[www.radionz.co.nz](http://www.radionz.co.nz)>.
  - 12 Towle, above n 11.
  - 13 Sasha Borissenko “Women and the legal profession” *LawTalk* (online ed, 5 November 2015) at 6. As of 2016, 27.6 per cent of law firm partners were female: see Geoff Adlam “Snapshot of the Profession 2016” *LawTalk: New Zealand Law Society* (online ed, 11 March 2016) at 24.

women in high-ranking leadership positions is not unique to New Zealand — this trend has been observed throughout the world.<sup>14</sup> There is also a gender split according to different areas of practice, with women making up 70 per cent of family lawyers and 63 per cent of health lawyers, and men making up 70 per cent of banking and finance lawyers and 65 per cent of civil litigation, commercial and company lawyers.<sup>15</sup> Although women are entering the law in much greater numbers than ever before, subtle bias appears to be shifting them towards more traditionally “feminine” spheres of practice that echo discourses of motherhood and caring. Men continue to dominate practice areas associated with power and money. This gendered allocation of work also functions to prevent women from entering more “masculine” areas of the law that relate more to business. Viewed holistically, these figures strongly suggest the continuation of gender inequality within the New Zealand legal profession. It is also concerning that the percentages do not significantly change from year to year. Existing reforms and policies appear to have resulted in stagnation with regards to female advancement and gender diversity within the profession.

In addition to the data itself, qualitative evidence from female lawyers in New Zealand indicates that gender biases, assumptions and stereotypes persist within the profession. When interviewing for a job upon returning to New Zealand from a Wall Street firm, Stacey Shortall, a partner at MinterEllisonRuddWatts, was shocked at being asked how she intended to manage the competing demands of partnership and two young children.<sup>16</sup> She observed, quite rightly, that the same question would not have been raised were she a male lawyer with young children.<sup>17</sup> It is also telling that the human resources manager at Simpson Grierson believes that they will have “succeeded when [Simpson Grierson] can appoint people to roles without having to describe them as a ‘female partner’ or a ‘part-time partner’”.<sup>18</sup> It must be borne in mind that obtaining equal numbers of male and female lawyers is only part of the story; equality on a practical and realistic basis within the legal

---

14 Hannah Brenner “Expanding the Pathways to Gender Equality in the Legal Profession” (2014) 17 *Legal Ethics* 261 at 261.

15 Borissenko, above n 13, at 8.

16 Stacey Shortall “Turning the tide to make more women law firm partners in New Zealand” in New Zealand Law Society *Working towards gender diversity in New Zealand law firms: Four practical approaches to achieving change* (NZLS CLE, 2016) 30 at 34.

17 Shortall, above n 16, at 34.

18 Borissenko, above n 13.

workplace is also an important goal — if not the most important. Again, this subtle bias is pervasive within many jurisdictions. Baroness Hale of Richmond, the President and sole female currently sitting on the Supreme Court of the United Kingdom, recently criticised the ‘unconscious’ sexism inherent in the United Kingdom’s legal profession.<sup>19</sup> Further, a 2016 survey indicated that 62 per cent of female lawyers in the United Kingdom felt that their gender had hindered their career trajectory, compared to only 16 per cent of male lawyers.<sup>20</sup> The legal profession may have opened its doors to women but there remain significant gaps, both formative and substantive, in its treatment of gender diversity.

The extent of these gaps and the ways in which they might best be addressed, is currently a hotly debated topic in New Zealand. Regrettably, there is no shortage of instances where gender prejudices or disparities surface and are discussed in the media. In 2011, the chief executive of the Employers and Manufacturers Association (Northern) lost his job after a radio interview in which he complained about the number of extra sick days women allegedly take due to monthly menstruation.<sup>21</sup> Earlier this year, following litigation that had been ongoing since 2012, the Government entered into a pay equity settlement with rest home caregiver Kristine Bartlett, which widely increased workers’ salaries across the female-dominated residential care sector.<sup>22</sup> At an international level, New Zealand’s failure to address the lack of women on corporate boards through meaningful reform has been heavily criticised by the United Nations Committee on the Elimination of Discrimination Against Women.<sup>23</sup> Currently, New Zealand has only implemented a 10 per cent target for women’s representation in corporate governance, and the Government has taken no further action to promote boardroom equality.<sup>24</sup> Thus, the time is arguably ripe for radical legal and social change with respect to gender equality.

---

19 Will Gant “Law profession can’t handle talented women, says Baroness Hale” *The Independent* (online ed, United Kingdom, 14 March 2013).

20 “62% of women lawyers say gender hinders career progress” *NZ Lawyer Magazine* (online ed, New Zealand, 15 June 2016).

21 New Zealand Human Rights Commission *New Zealand Census of Women’s Participation* (Wellington, November 2012) at 12.

22 Sandra Conchie “Historic pay equity settlement lauded as massive victory” *The New Zealand Herald* (online ed, 19 April 2017); and see Care and Support Workers (Pay Equity) Settlement Act 2017, which came into force on 1 July 2017.

23 Human Rights Commission, above n 21, at 3.

24 At 3.

### III MANDATORY QUOTAS FOR PUBLICLY LISTED CORPORATE BOARDS IN EUROPE

Since the lack of gender diversity in boardrooms and firms is a global issue, a comparative analysis of remedies applied by different nations is useful. The major distinction between jurisdictions in respect of corporate boards lies in the decision to implement either “hard” law quota measures or “soft” law voluntary guidelines. Many European states have opted for the former, whilst Anglo-Saxon countries have tended towards the latter.<sup>25</sup> Legislative gender quotas usually operate by requiring a certain class of entities to satisfy a minimum ratio of females to males in high-ranking positions after a grace period of several years.<sup>26</sup> In European countries such as France, Norway, Spain and the Netherlands, that target is currently set at 40 per cent for female boards of directors managing publicly listed companies.<sup>27</sup> The implementation of board gender quotas is a relatively recent policy decision that faced significant backlash across the European Union.

Although a number of Member States have their own quotas in place, the European Union’s proposed Directive in 2012 has not yet received Council approval due to the inability of Member States to agree upon a workable approach.<sup>28</sup> The proposed Directive would apply to large publicly listed companies within the European Union. It is likely to only mandate that, where two candidates of equal standing are being considered for board appointments, where one is female and the other male, the female’s application must be preferred.<sup>29</sup> The current draft also envisages a 40 per cent target for female directors to be attained by 2020 for publicly listed companies, however, this provision lacks ‘teeth’ as there are currently no substantive penalties in place for non-compliance.<sup>30</sup>

---

25 Michael Adams “Board Diversity: More Than a Gender Issue?” (2015) 20 *Deakin Law Review* 123 at 150.

26 Paul Lansing and Sitara Chandra “Quota systems as a Means to Promote Women into Corporate Boardrooms” (2012) 38(3) *Employee Relations Law Journal* 3 at 3; and Siri Terjesen, Ruth V Aguilera and Ruth Lorenz “Legislating a Woman’s Seat on the Board: Institutional Factors Driving Gender Quotas for Boards of Directors” (2015) 128 *J Bus Ethics* 233 at 234.

27 Adams, above n 25, at 141.

28 European Commission “Proposal for Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures” (Brussels, 14 November 2012, COM(2012) 614) <<http://ec.europa.eu>>.

29 Danielle Myles “Will Europe’s women on boards quota work?” *International Financial Law Review* (online ed, 15 November 2012).

30 European Commission, above n 28, at 5; European Commission “Gender balance on corporate boards:

Although not universally accepted, quotas have quickly become an established policy mechanism within the arsenal of democratic states in respect of publicly listed companies. Moreover, Susan Franceschet and Jennifer Piscopo have recently argued that the scope of quotas is both broadening (covering a more extensive range of social activities) and deepening (expecting a higher statistical degree of equality).<sup>31</sup> Since it appears that quotas are becoming increasingly popular as a means of securing diversity, it is worth weighing up their merits and asking whether New Zealand — which has not yet engaged with the use of gender quotas — should consider doing so. This question is considered below in the context of law firms.

#### IV MANDATORY QUOTAS FOR LAW FIRMS IN NEW ZEALAND?

Quotas have an important advantage in comparison to ‘soft law’ reforms in the context of law firms:<sup>32</sup> by design, a gender quota would have the effect of increasing the number of female partners in New Zealand law firms within a relatively short period of time. Quotas are frequently criticised for being “drastic”<sup>33</sup> and “blunt”,<sup>34</sup> but their statistical impact as a ‘fast track’ towards equality cannot be discounted.<sup>35</sup> Peta Spender theorises that quotas have a positive impact upon women’s representation in the workplace in three ways — descriptive (empirical), substantive (greater voice regarding policy direction) and symbolic (role modelling).<sup>36</sup> Quotas are therefore valuable as a tool to address empirical inequalities by accounting for social disadvantages. In addition to their ability to achieve results, quotas may also enhance the functioning and effectiveness of the entities they are applied to. Scholarship

---

Europe is cracking the glass ceiling” (Brussels, July 2016) <<http://ec.europa.eu>>; Vanessa Knapp “EU directive would not impose mandatory gender quotas” *Financial Times* (online ed, United Kingdom, 16 January 2014).

31 Susan Franceschet and Jennifer M Piscopo “Equality, Democracy, and the Broadening and Deepening of Gender Quotas” (2013) 9 *Politics & Gender* 310.

32 For example, by way of training initiatives, more extensive mentoring programmes and voluntary diversity targets.

33 Adams, above n 25, at 139.

34 Lansing and Chandra, above n 26, at 4.

35 Éléonore Lépinard “For Women Only? Gender Quotes and Intersectionality in France” (2013) 9 *Politics & Gender* 276 at 276.

36 Peta Spender “Gender Quotas on Boards – Is It Time for Australia to Lean In?” (2015) 20 *Deakin Law Review* 95 at 112–113.

relating to this link is mixed; some studies indicate positive trends in economic performance following the implementation of the European board quotas,<sup>37</sup> while others suggest a more neutral, or even negative, correlation.<sup>38</sup> Recent research appears to highlight a certain proportion of board gender diversity, approximately one-third, at which company performance improves at a measurable rate.<sup>39</sup> While this should not be the primary consideration by which the appropriateness of a quota is judged, it is relevant given that corporations and firms are profit-driven, private entities with obligations to their stakeholders. The financial implications associated with a rapid change in leadership diversity are therefore important.

At the same time, a gender quota in the context of law firms will have limitations. Statistical equality between female and male partners would be a significant step towards gender equality amongst law firm leadership. However, one does not necessarily lead to the other. Quotas carry the risk of tokenism and cannot address persisting social assumptions that affect equality in a more subtle manner. Providing the keys to the castle may well be of limited practical effect; Judith Resnik concludes, “women are women and are seen as women, no matter what their formal or actual powers”.<sup>40</sup> Put another way, merely addressing empirical disparities between women and men only skims the surface of gender stereotypes and resulting inequalities. It does not question the deeply rooted social norms that have shaped firm and board membership into male-dominated spheres of private activity. The lack of female representation in these areas is no accident, but is rather a consequence of socially constructed ideas of femininity. Female lawyers face a catch-22: either they are “too feminine” and are dismissed as weak and ineffective, or they are “not feminine enough” and are disparaged for being bossy and aggressive.<sup>41</sup> The underlying discrimination

---

37 Adams, above n 25, at 131 and 133.

38 Lansing and Chandra, above n 26, at 4; Human Rights Commission, above n 21, at 7.

39 See for example, Miriam Schwartz-Ziv “Are All Welcome A-Board: Does the Gender of Directors Matter?” (paper presented to The Hebrew University of Jerusalem and Harvard University, 2011); and Jasmin Joecks, Kerstin Pull and Karin Vetter “Gender Diversity in the Boardroom and Firm Performance: What Exactly Constitutes a ‘Critical Mass?’” (2013) 118 *J Bus Ethics* 61. Note, however, that there is limited consensus as to the extent of the impact of gender diversity on firm output: for a different perspective, see Lissa Lamkin Broome, John M Conley and Kimberly D Krawiec “Does Critical Mass Matter? Views from the Boardroom” (2011) 34 *Seattle University Law Review* 1049.

40 Judith Resnik “Asking about Gender in Courts” (1996) 21 *SIGNS* 952 at 972.

41 Deborah L Rhode “From Platitudes to Priorities: Diversity and Gender Equity in Law Firms” (2011) 24 *The Georgetown Journal of Legal Ethics* 1041 at 1051.



women face in corporate workplaces may explain the negative results of a recent survey carried out in the United Kingdom, in which 47 per cent of participants did not believe quotas would effectively address gender imbalances within Magic and Silver Circle firms.<sup>42</sup> While a statistical movement towards equal representation provides a better starting point, gender reform must go deeper and tackle the underlying social inequalities that deter women from attaining leadership positions in New Zealand law firms.

The key issue preventing women from seeking partnership at the same rate and age as men can be traced back to a clash between the inflexible, fast-paced nature of corporate law firms and New Zealand's social attitude towards the role of women as mothers and primary caregivers. Law firms traditionally foster a culture of "workaholism"<sup>43</sup> that involves long days at the office, on-call capacity in the evenings and weekends, and a proliferation of social functions to maintain client relationships. As one of the oldest professions, the legal profession has been resistant to contemporary changes to the nature of work, thus flexible, part-time working arrangements are less common than in other sectors in New Zealand. The need for the profession to shift in this regard is evidenced by the fact that the desire for flexible working arrangements was one of the major findings of Natalya King's recent survey of approximately 300 New Zealand lawyers.<sup>44</sup> Further, in Sarah Taylor's recent Law Society-funded report, Taylor identifies a "pool of untapped talent" made up of legal professionals in New Zealand who are able to contribute through an alternative practice model but lack gateways to making this a reality.<sup>45</sup> This "work/work" culture is damaging in and of itself.<sup>46</sup> However, it becomes even more so when coupled with a problematic set of social assumptions regarding the freedom of choice for women. There is a strong discourse operating within New Zealand culture that designates decisions regarding work/life balance

---

42 *NZ Lawyer Magazine*, above n 20.

43 Margaret Thornton and Joanne Bagust "The Gender Trap: Flexible Work in Corporate Legal Practice" (2007) 45 *Osgoode Hall Law Journal* 773 at 801. This culture has been enhanced by the noticeable movement towards running law firms as profit-driven businesses, since the corporate world is similarly difficult for women to take up leadership positions within.

44 Natalya King *Raising the Bar: Women in Law and Business* (Thomson Reuters, 2014) at 112.

45 Sarah Taylor *Valuing Our Lawyers: The untapped potential of flexible working in the New Zealand legal profession* (New Zealand Law Society, 2017) at 7.

46 Thornton and Bagust, above n 43, at 778.

as the responsibility of individual women.<sup>47</sup> This rhetoric carries with it the implication that stay-at-home mothers have consciously chosen to leave work to raise their children. It is problematic to endow women with this ‘freedom of choice’ mantra, given that women leaving the legal profession to pursue motherhood are also influenced by gendered conditioning, favourable maternal leave legislation, gender pay inequity, biological imperatives of childbirth and intersectionality challenges.<sup>48</sup> Responsibility for this underlying issue should not be placed upon individual women themselves. As this contributes to the low ratio of female to male partners, the onus should be placed upon law firms and the state to correct the underlying issue through positive change. There is also an associated ‘maternal wall’ which disadvantages women regardless of their ‘choice’, since even their childbearing potential is likely to affect recruitment and promotion decisions.<sup>49</sup> While a quota would increase female visibility in high-ranking legal positions, this avenue for reform alone cannot address the multitude of fundamental gender norms driving inequality within the profession.

Some would argue that specific considerations arise in the New Zealand context which render the concept of a gender leadership quota questionable. One of the main objections to mandatory quotas is the issue of merit. Judith Resnik notes that suddenly, when converted from an informal hiring practice into a legal requirement, American public opinion shifts and gender quotas become controversial.<sup>50</sup> A similar attitude has been identified in Australia<sup>51</sup> and in the United Kingdom, where the Lord Chief Justice, Lord Judge, recently dismissed the possibility of using affirmative action to appoint a greater number of female judges to the bench as “insulting” to women.<sup>52</sup> This stigma around quotas is also very much a part of New Zealand culture, as evidenced by the public stances of even the most politically influential Kiwi women. Speaking extra-judicially, Justice Glazebrook prefaced her call for gender reform in

---

47 See for example, Andrew Stevenson “You can’t force women to be the CEO” (9 August 2016) Stuff <[www.stuff.co.nz](http://www.stuff.co.nz)>.

48 For example, cultural expectations and the inability to pay for childcare.

49 Shortall, above n 16, at 33.

50 Resnik, above n 40, at 970.

51 Adams, above n 25, at 124.

52 Louisa Peacock “Law firms have ‘unconscious bias’ that stops women from getting promoted, says senior City lawyer” *The Telegraph* (online ed, United Kingdom, 24 May 2013).

the legal profession by assuring her audience that: “I am not to be taken as advocating quotas but there should be a commitment on the part of everyone to try and increase participation.”<sup>53</sup> In 2015, the then-Minister for Women, Louise Upston, commented: “I do not believe in quotas ... we require a change of culture, where women are promoted and paid based on merit, not gender.”<sup>54</sup> These examples are symptomatic of a deeply rooted belief within New Zealand society — described by the Human Rights Commission as “one of the nation’s most cherished myths”<sup>55</sup> — that everyone deserves a “fair go”,<sup>56</sup> meaning an equal opportunity regardless of differing backgrounds. Succeeding solely on the basis of merit is highly respected and praised by New Zealanders, whilst affirmative action is considered to create inequality by bestowing an unfair advantage upon a particular social group. It is therefore almost certain that the imposition of a gender quota in any sector of the New Zealand workforce would be highly polarising.<sup>57</sup>

The argument that affirmative action undermines the abilities of women and minority groups because it does not promote individuals on the basis of merit does not withstand closer scrutiny. As Dr Ana Gilling explains, the concern is that quota-based recruitment decisions would send New Zealand women the message that, “[y]ou are just there because you have breasts, not because of merit”.<sup>58</sup> Without discounting this negative potential impact, she goes on to warn that ‘merit’ is not in itself a neutral term. In the context of the legal profession, merit goes hand in hand with the notion of the “ideal lawyer” who is traditionally male and not the primary caregiver.<sup>59</sup> In her view, quotas address this existing gender imbalance and merely place women on an equal footing with men, who have an existing social advantage. Traditionally, men have a dominant social standing and are not burdened with caregiving duties. In the legal profession, men are advantaged by both of these traits, as well as the existence of old boys’ networks which favour candidates known

---

53 Glazebrook, above n 5, at 9.

54 Borissenko, above n 13, at 11.

55 Human Rights Commission, above n 21, at 7.

56 At 7.

57 For a recent analysis of the pros, cons and (low) likelihood of the business sector adopting a quota system, see: Annick Masselot and Timothy Brand “Diversity, Quotas and Compromise in the Boardroom: Tackling Gender Imbalance in Economic Decision-Making” (2015) 26 NZULR 535.

58 Borissenko, above n 13, at 11.

59 At 11.

to them and who are most similar to them.<sup>60</sup> The prevalence of shoulder-tapping is particularly pronounced in New Zealand due to its relatively small size, which gives rise to an unusually high level of interconnectivity within the legal profession.<sup>61</sup> Additionally, Emilio Castilla's research points towards a correlation between performance-based incentive schemes and higher pay inequities between advantaged and disadvantaged groups.<sup>62</sup> Castilla's business case studies suggest that employers' reliance on the notion of merit may, in fact, negatively affect diversity within firm leadership and management. The merit argument therefore should not constitute an insurmountable barrier to the existence of a gender quota for New Zealand law firms. What is needed for such a measure to meet with social acceptance is a shift in mindset towards a view of quotas not as offering women a special advantage, but as merely mitigating men's traditional advantages to place both genders on a level playing field in terms of "merit".

Clearly, it is overly simplistic and artificial to imagine a direct link between gender quotas and diversity within law firms. Diversity does not begin and end with one's gender. Rather, it encompasses a wide range of life experiences and characteristics such as class, ethnicity, nationality, disability and age. A major limitation of quotas is that they cannot sufficiently take intersectionality into account. Judith Resnik points out this tension by noting, although we "cannot assume that all women or men share the same experiences", change via legal reform requires a certain level of simplicity and categorisation.<sup>63</sup> This may render individuals facing multiple grounds of disadvantage too complicated to address,<sup>64</sup> and is a pertinent concern in the New Zealand legal landscape, particularly at present. Other dimensions of diversity, in particular age, ethnicity and nationality, all pose significant challenges for the professional advancement of individuals in the New Zealand legal profession. Therefore, the achievement

---

60 Rhode, above n 41, at 1053; and Spender, above n 36, at 102.

61 For an example of the interconnectedness of the New Zealand legal profession, see *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 72, [2010] 1 NZLR 35. This is a landmark judicial review case involving apparent bias.

62 Emilio J Castilla "Gender, Race and Meritocracy in Organizational Careers" (2008) 113 *AJS* 1479; Emilio J Castilla and Stephen Benard "The Paradox of Meritocracy in Organizations" (2010) 55 *ASQ* 543; and Emilio J Castilla "Gender, Race, and the New (Merit-Based) Employment Relationship" (2012) 51 *Industrial Relations* 528.

63 Judith Resnik "'Naturally' Without Gender: Women, Jurisdiction, and the Federal Courts" (1991) 66 *NYU L Rev* 1682 at 1694.

64 Resnik "Asking about Gender in Courts", above n 40, at 976.

of women's equal representation within law firms does not correlate to the achievement of diverse representation. Éléonore Lépinard reflects upon the impact of the French boardroom gender quota and concludes that the reform has noticeably favoured wealthy, white women and has not assisted those with multiple grounds of social disadvantage.<sup>65</sup> While it is difficult for quotas to promote the cause of intersectional disadvantaged groups, a female leadership quota could be one aspect of a broader policy addressing diversity in the legal profession to avoid the promotion of one group at the expense of another.<sup>66</sup>

Another critique of gender quotas as a tool for the promotion of diversity is that these targets may perpetuate and reinforce traditional stereotypes. The argument is that the implementation of a quota to achieve a certain ratio of female to male partners in law firms is somewhat dangerous in that it defines gender diversity according to the orthodox binary framework of male and female. As Donald Nicolson aptly puts it, quotas "use the very categories that anti-discrimination campaigns seek to render socially irrelevant".<sup>67</sup> By extension, quotas only advantage those who identify with, and perform the appearance and behaviour associated with, the female gender. They exclude another severely underrepresented group from the higher echelons of the law: individuals who identify as gender variant.

Quota systems have their limitations and cannot hope to address the vast inequalities apparent within legal institutions. On balance, however, taking a substantial step towards remedying the imbalance of male to female partners within New Zealand law firms is certainly more desirable than continuing to rely on "soft" measures, which do not appear to be stimulating meaningful short term or long term change.

## V CONCLUSION

It is disappointing that gender equality has not yet been attained within New Zealand law firms, especially given our history as a pioneer in the advancement of women's suffrage. This article has explored several key reasons

---

65 Lépinard, above n 35, at 283–284.

66 A less divisive middle ground might be to specify a 1:1 gender ratio for firm leadership, the model favoured by some firms because it does not act to 'disadvantage' men but merely to promote equal leadership.

67 Donald Nicolson "Affirmative Action in the Legal Profession" (2006) 33 *Journal of Law and Society* 109 at 120.

which have contributed to this lack of progress. While there are a number of ‘soft law’ options for attempting to remedy this position, this article has focused on mandatory gender quotas due to this policy’s empirical results across European corporate boards. I have argued that quotas, though not a fully comprehensive solution, have real potential to effect significant change. Much as it would be desirable for meaningful reform to come from within the profession and via less radical means, it is undeniable that current ‘soft law’ measures in this area do not go far enough and have not brought about the extent of change we might have anticipated. While not a ‘silver bullet’ or a perfect solution, the implementation of gender quotas within law firm leadership would constitute a significant and meaningful step towards equality. Those who make, argue, interpret and enforce the law have the unique ability to significantly influence the future direction of our country. Therefore, it is of vital importance to ensure that, going forward, New Zealand has a diverse range of legal thinkers at its helm. As a young woman entering the profession, I want very much to see the achievement of gender equality and gender diversity during my career. My article is not intended to provide an easy answer as to how we might get there — but my hope is that it will spark and encourage much needed discussion in this area.