



New move to promote equitable briefing

By **Frank Neill**

The New Zealand Bar Association is developing a new initiative to promote equitable briefing practices.

The association is in the process of establishing a new committee with a sole focus on looking at gender equity.

Promoting the equitable briefing policy, which the association established in 2009, will be among the aims of the committee.

“The bar association is focused on trying to reignite this policy in a way that actually continues to lead to some significant change for women at the bar,” says Kate Davenport QC, who chaired the NZBA Equitable Briefing Policy Committee when the policy was established in 2009.

“I do think gender equity is an issue for the entire profession, not just for women, because, as in all aspects of life, society and the profession benefit from having both genders participating equally in the provision of legal services at all levels.

“It’s well established that the judiciary needs to be representative of society as a whole –and the same is true of the profession. If you don’t have 50% of your population getting equal opportunities to work at the middle and top ends of the profession then that’s a bad thing for the profession as a whole. It will lead to talented people leaving the profession.”

Policy’s aim

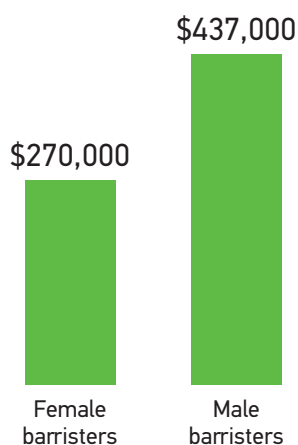
The aim of the policy, Ms Davenport says, is to try and encourage those people who brief the bar to widen the briefing pool and to make a conscious effort, when they are thinking about briefing, to think: “Who shall I send it to?” and not just send it to the same person or the same set of people again and again.

“The list of people that is being considered should include both women and men. We all are guilty of that very comfortable feeling of just sending it to those people we have used before,” she says.

“I don’t know that there’s much conscious bias, a lot of active sexism, going on any more. A lot of it is unconscious. We just use the same people we have used before. However the policy aims to make those briefing make a conscious decision to think about briefing women.

“I’ve had people say to me ‘men are more aggressive’ and what we really need

Average gross annual fees, 2014



SOURCE: New South Wales Bar Association survey, 2014

is an aggressive approach to this case, and personally I don't think that any litigation needs an aggressive approach. Litigation needs a sensible analysis of what the facts are, what the potential outcome is and the law.

"Men and women are equally capable of doing that. You may need to be assertive when litigating but the distinction between aggression and assertion is clear and I don't think that aggression is particularly helpful in litigation. Judges don't like it and other counsel don't like it.

"It doesn't win cases. What wins cases is the facts and the law and a sensible, commercial approach to the problem. However there still seems to be a barrier to women getting briefed on commercial cases.

"I think that we need to be more open about talking about these issues, which leads to change. The more we can talk, the more people think, and the more it leads to a change in the way people view their own decision-making and the control that they have about making a difference.

"Women have different skills to men but they are equally valid and useful skills when it comes to litigation and dispute resolution.

"It's still horses for courses," Ms Davenport says. "I'm not, for example, going to take on a big tax case but there will be



Kate Davenport QC, who chaired the NZBA Equitable Briefing Policy Committee when the policy was established in 2009. Photo: Andrew Coffey.

Fantastic initiative

"I think the need for our profession to reflect diversity at every level is one of the most important challenges facing us," New Zealand Law Society President Chris Moore says.

"During my time as the Law Society's President I have consistently advocated for the retention and advancement of women in the legal profession. That includes those choosing litigation as their career path whether as barristers and solicitors or as barristers sole.

"Hearing about the Bar Association's decision to establish a committee dedicated specifically to promoting gender equitable briefing practices is fantastic.

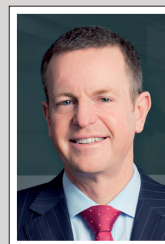
"As I enter my final weeks as the Law Society's President, it is heartening to see that the advancement and retention of women in the profession has received this major boost.

"In just the last issue of *LawTalk*, I made a plea for those of us in the profession who brief, to give women the opportunity to perform at the higher levels.

"In that column, I made it clear that one thing I was not saying was 'don't brief men'.

"What I am saying is that it is both to your advantage and your client's advantage to think creatively and with a very open mind about the appropriate skill set, experience, abilities and other attributes that would best suit the brief.

"We know from research into unconscious bias that it is very easy to view those who are similar to ourselves as being the 'best person for the job'. It requires a certain discipline or intellectual rigour to step out of that mould, but I am confident that lawyers have the ability to do this and hopefully make some excellent choices around those we trust with litigation," Mr Moore says. ■



Chris Moore



New Zealand Bar Association President-Elect Clive Elliott QC

some women out there who will be excellent at doing it.

“If I was asked how to approach briefing any new litigation then I would say – look at the barrister’s CV or website and see their recent cases and their areas of expertise. Then I suggest that if the person is to be briefed for the first time that you should meet and work out if their approach to the case fits what you want and your client needs.”

Selecting the best barrister for the brief is better for the client. It’s better for the community. It’s better for everybody, Ms Davenport says.

Pay disparity

A New South Wales Bar Association survey, conducted in 2014, showed that the average gross annual fees for male barristers was \$437,000. That compared with \$270,000 for women barristers.

The disparity in pay is around 38%, the survey showed.

“We don’t unfortunately have access to that kind of data here but I don’t imagine there would be much difference between what happens in New Zealand and what happens in Australia,” Ms Davenport says.

“There’s been quite a bit of publicity recently about the gender pay gap in New Zealand as a whole. I think it’s equally true in law.

“Some of that is because women are over-represented in areas that are funded often by legal aid – family law and some aspects of criminal law – but that’s not the only explanation. There are also men in those areas.”

The Bar Association is firmly committed to promoting equitable briefing practices, says the association’s President-Elect, Clive Elliott QC.

“It is an excellent project to be supporting. Advancing women in the profession and keeping them in the profession longer is a key task for all of us.

“This is not just about women promoting women. It is something that has to be done across the board.”

When you get greater diversity and depth at the independent bar, you get more people to call on “and therefore clients get more choice and better service,” Mr Elliott says. “So everyone wins out of it.” ■

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New Zealand Bar Association Equitable Briefing Policy

Objectives of the Policy

Equitable briefing practices maximise choices for legal practitioners and their clients, promote the full use of the Independent Bar and optimise opportunities for practice development of all counsel.

The adoption of equitable briefing practices can play an important role in the progression of women in the law, the judiciary and the wider community.

Application of the Policy

This policy is formulated for voluntary adoption by both clients and legal practitioners (including in-house counsel) throughout New Zealand.

Whilst acknowledging that the selection of counsel is ultimately the decision of the client, legal practitioners and in-house counsel exercise significant influence in making that selection.

Consistent with that acknowledgement, this policy is also formulated to take into account the role relevantly played by other counsel in its effective operation. When they are consulted by clients, briefing firms and briefing agencies with a view to engaging counsel are encouraged to include female counsel among the names of counsel they identify in the relevant practice area under inquiry.

Equitable Briefing Policy

In selecting counsel, all reasonable endeavours should be made to:

- identify female counsel in the relevant practice area;
- genuinely consider engaging such counsel;
- regularly monitor and review the engagement of female counsel; and
- periodically report on the nature and rate of engagement of female counsel.