

# An Interview with Chief Judge Antoinette Kennedy

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*This interview with Her Honour Chief Judge Antoinette Kennedy was conducted on her retirement from the District Court of Western Australia. Here we recognise her outstanding career in the law, her significant contribution to the justice system of this State, and her commitment to the advancement of women's issues.*

ANTOINETTE KENNEDY retired at the end of March 2010 following almost six years as Chief Judge of the District Court of Western Australia. Over the previous 19 years she had been a District Court judge and, all in all, gave more than 40 years of service to the law. Her Honour was a founding member of the Women Lawyers Association (as it was then known) in the early 1980s, the Association's President from 1984 until 1985 and is the current patron of Women Lawyers Western Australia. Her Honour has also served as an inspirational and highly effective leader of both men and women in the legal profession in Western Australia.

Antoinette Kennedy was born in Perth, Western Australia, in May 1945 and grew up in the suburb of Joondanna as the only child of her parents, Ronald and Alicia Kennedy.<sup>1</sup> She attended St Keiran's Catholic School which was, back then, Her Honour recalls, a very poor school 'with a playground full of dirt and dirty school shoes'. Despite her displeasure with the grubby school grounds, Her Honour does recall that life at this school was not too bad: 'Everyone was very nice and it was easy going because there was no pressure to achieve anything or to do anything'. However, she did achieve while at school – quite significantly – by being the first student from St Keiran's to gain entrance to the University of Western Australia

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1. Her Honour did not come from a professional or legal family background although her grandfather had been a bailiff in Perth: see Crown Content, *Who's Who in Australia* (2010); K Primrose, L Eddy & N Book, 'Three Women Judges' (2001) 30 UWAL Rev 114.

where she enrolled in 1963 as a law student.<sup>2</sup> In 1966, Antoinette Kennedy graduated from the Law Faculty as one of only four women in a final class of about 30 students, winning two academic prizes including the HCF Keall Memorial Prize for the top student.<sup>3</sup> Perhaps the encouragement and inspiration for her academic achievements came from her parents, and in particular her mother who – despite a lack of educational opportunities or ‘fancy ideas’ about women’s liberation or feminism – viewed education as both wonderful and very important because it held out the possibility of independence for women: ‘Being able to earn your own income was absolutely vital’.<sup>4</sup>

Her time at the University of Western Australia, Her Honour recalls, was wonderful and she mixed mainly with other law students. She didn’t particularly immerse herself in campus life or student politics, which was probably quite typical of many female students at university at that time (with the exception of Janet Ranford, who later became Janet Holmes á Court). She recollects that prior to the publication in 1970 of Germaine Greer’s *The Female Eunuch*,<sup>5</sup> women did not generally engage in student politics. However, the era of Australian involvement in the Vietnam war did make an impact upon Her Honour particularly as many of her mates, such as Gerry Packington (later to become a magistrate), were being conscripted to the war. Her Honour recalls:

We were all very distressed about that because our mates were then called up. I didn’t really know who was in the right or who was in the wrong about Vietnam but I knew that my mates shouldn’t have been conscripted and that people were going off to fight. We didn’t even know what they were fighting about so we were all pretty upset about Vietnam and about conscription. Not a lot happened on the campus. You were just upset and you sat around and talked about how upset you were, more than doing anything much about it.

Following graduation, Antoinette Kennedy was the only woman from her year to seek an articulated clerkship which, at that time, was reasonably easy to obtain. In a statement that might leave many contemporary law graduates reeling with envy, Her Honour remembers:

After the exams I went to the Dean and said, ‘Now that I’ve passed, I think I need somewhere to do my articles’. He said ‘alright’ and rang one of his mates [in a small

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2. Antoinette Kennedy completed her junior year at St Keiran’s school and then went on to Leederville Technical College where she completed her matriculation: see ‘Judge Antoinette Kennedy’ (1985) 12(3) *Brief* 5.
  3. The other prize was the Herbert H Wheatley Memorial Prize in Commercial Law: see Primrose, Eddy & Book, above n 1, 114.
  4. In an amusing anecdote her Honour recalls that her mother ‘really wanted me to learn speech and music, and I once saw a cartoon of these two teenage girls talking and one was saying all the lessons she had to go to and saying to the other one, “it’s terrible to have a mother who was deprived” and I used to tell my mother that!’
  5. G Greer, *The Female Eunuch* (Paladin Books, 1970).

practice] and said ‘I’ve got a young student here who hasn’t got articles, will you take her?’ and the mate said, ‘Oh yes, alright’.<sup>6</sup>

Antoinette Kennedy was admitted to practice towards the end of 1968 and later moved to the well-regarded firm of Godfrey Virtue & Co where she worked with, among others, Howard Smith and Geoff Miller (both later appointed Justices of the Supreme Court) and Hal Jackson (later appointed a Judge of the District Court). However, after two years she left the practice of Godfrey Virtue & Co because the senior partner had said to her, ‘they’ll never make you a partner here’, and so she decided (without any bitterness or animosity towards them) to set up her own practice. She did so by commencing her own firm, AG Kennedy & Co, in the early 1970s. According to Her Honour, there were not many women in their own business in the city at that stage. Solicitor Vivien Payne was about the only one. Her Honour recalls that she became terribly busy routinely working day and night seven days a week. After four years she thought ‘this is ridiculous’. She sold the practice and travelled around the world for 12 months. When she returned from overseas in 1975, not wanting to work in her own firm again, she joined the WA Bar Association as an independent barrister – the second woman to do so in this State, the first being Valerie French (then Valerie Lumsden).<sup>7</sup>

Antoinette Kennedy practised at the Bar for 10 years. It was during this time that she took on a number of other roles including special magistrate in the Perth Children’s Court, referee on the Small Claims Tribunal and member of the WA Parole Board (1983–1985).<sup>8</sup> In addition she joined the boards of a number of organisations including the Catholic Archbishop’s Social Justice Commission (1983–1985) and the Women Lawyers Association (serving as President between 1984 and 1985). Some of her experience in these roles had a significant impact in further developing her views of the justice system, and in particular on issues of access to justice, which she found very useful when she was appointed as a judge. Significantly, during her time on the Catholic Social Justice Commission Her Honour led a committee undertaking a 12-month examination of the prison system in order to draft and later move a statement about prisons to all the churches. Her Honour recollects:

Because I was running the committee, afterwards I transcribed everything that had been said, prepared it into notes and circulated it. That obviously had an incredible impact on my attitudes about sentencing which I didn’t realise. In fact it was like doing a self-directed criminology course, because we had people from the prison, psychiatrists, psychologists, a whole range of people who were absolute experts on the best way to deal with people. We had prisoners come and speak to us, we had the priests and nuns who were doing the welfare work; we had family members and

6. The ‘mate’ was Ted Ellis of the Perth law firm, SE Tippet & Ellis: see ‘Judge Antoinette Kennedy’, above n 2; Primrose, Eddy & Book, above n 1, 114–15.

7. ‘Judge Antoinette Kennedy’, *ibid.*

8. Primrose, Eddy & Book, above n 1, 115.

the head of prisons come and speak to us. I mean we must have had about 14 or 15 guest speakers over those 12 months who were all intimately involved in sentencing or the prison system. I didn't realise the tremendous impact that it was having.

The apparent lack of support around this time for the appointment of women to senior positions in the law was very much behind Her Honour's involvement in the formation of the Women Lawyers Association in the early 1980s. Her Honour recalls that:

[Women lawyers] had a debate about [the Law Society representing us] and decided we weren't getting anywhere – there were no women appointed anywhere, no women partners; it was very obvious they were just on the edges and that's where they were going to be kept. Nobody was being rude, but we got sick of it. The law was well behind other areas of endeavour. It was well behind engineering and medicine, and the women just thought it was absolutely absurd.

Her Honour remembers that earlier in her life she was oblivious of the impending 'second wave of feminism' because she naively considered that there was very little, if any, discrimination against women. However, after a short time in practice, she soon altered her view and now says that 'it was just the most ridiculous thing you could possibly say!' While acknowledging that significant progress towards gender equality has occurred in the law over recent years, Her Honour is aware that many younger women today apparently shy away from the 'feminist' label or simply take for granted the feminist gains of the past. This is perhaps because issues of gender discrimination, although still present, are more subtle or less apparent than in the past. Her Honour sounds a note of warning about this:

[It's] no good worrying about the fact that young people don't worry about it, because they will suffer discrimination even if it's only when they take maternity leave and discover that if you're a woman you bear all the cost. You bear the social, physical, emotional, financial, career, all the costs are yours and if you want to go off and have a baby, that is a frolic of your own.

Regarding her own experiences of discrimination Her Honour recalls that the period immediately after she was appointed to the District Court in March 1975 was difficult. Her Honour did not feel particularly welcomed or supported by some of her fellow judges of that time in the District Court, 'although there were a few judges who were really very supportive and they became great friends as well as great colleagues'. These days she enjoys good relations with all her fellow judges – of both genders – and that has probably contributed to her staying so long in the job. Her Honour believes that one of the reasons she may have experienced those early difficulties was that she was 'ahead of them' (ie, some of the judges) in her understanding of the sentencing process and the effects of incarceration. This was due to her involvement with the Archbishop's report on prisons immediately before she came onto the Court.

Regarding the continuing lack of women among the senior ranks of the legal profession and in court appointments, Her Honour agrees that the imbalance is still there. She also concurs with a recent suggestion from Australian Women Lawyers that female barristers, although appearing in cases in numbers which generally reflect their level of participation at the independent bar, are not being briefed as often as men in more complex matters.<sup>9</sup> Her Honour has no doubt that Australian Women Lawyers is correct to suggest that this translates into fewer opportunities for women to gain seniority and reputation which, in turn, could put them on a more even footing with their male colleagues for promotion or judicial appointment.<sup>10</sup> Related to this, Her Honour points to the very obvious differences between apparent levels of confidence, and even self-esteem, between male and female practitioners. She states:

The difference is so obvious in court. [Men] are so confident and they don't care if they don't know. It makes no difference to them, they don't care what you say to them. Whereas women worry about it, they want to get it right, they want to get it perfect. That's why you hope that if there were more women around, women would become more confident. Women tend to think that because they don't think the same way as men, that they've got it wrong; whereas they haven't got it wrong, it's just different. So there's a lot of self-doubt and a lack of self-esteem among the women that just does not exist among the majority of the male lawyers.

As a final note on this theme of equality of opportunity for women practising in the law, Her Honour does believe there is some scope for more flexible work practices for female magistrates or judges, but she also states:

It becomes difficult if you're in a trial that runs over. So perhaps you could have an arrangement where you work a week on then have the next week off, or something of that sort, to accommodate more time at home with family. It has been talked about and in some places it is available but we've probably not thought about it enough.

Her Honour acknowledges, however, that maintaining anything resembling a 'normal' work-life balance is a challenge given the demands of judicial office (particularly for judges with young children).

I was interested in any views or observations Her Honour might be willing to share about the experience of women as either offenders or victims of crime and whether

9. O Perkiss, *Australian Women Lawyers – 2009 Court Appearance Survey*, Press Release (4 December 2009).

10. In 2009 the WA independent bar consisted of 31 women (representing 16% of total barrister numbers) and nationally women comprised 19% of the total number of barristers: see Law Council of Australia, *Court Appearance Survey* (2009). There is also a finding that the appearance time for male barristers is on average one hour longer than for female barristers (approximately one-third longer) and further that the private law firms, which are mainly comprised of men, in contrast to government agencies, prefer briefing men.

there are still issues of unequal treatment of such women within the legal system. Her Honour had this interesting comment:

Yes I do; and I think a lot of this is to do with juries. Juries reflect the community. And so a woman who commits an offence offends twice – she commits the offence and she also falls below the standard acceptable for a woman. My experience with juries is that often they would give a man a sympathy vote, when really there was enough there to convict, but we won't convict as he's gone on with his life, or a whole range of broad-brush, sympathy-type reasons why a man would be acquitted but it never happens with a woman. I have never seen it with a woman. I've always thought women are harsher on women and women victims as well.... A much higher standard is expected of women than of men, there is a lot more forgiveness for men than for women on either side.

On the subject of the prevalence of family and domestic violence in our communities, particularly in indigenous communities, and whether the criminal justice system can adequately address such issues, Her Honour said:

There's a limit to what the law can do and, as I've said before, the community has really asked too much of the criminal justice system as an instrument for controlling human behaviour. The reality is that governments could do things about this; it's too easy for politicians and the media to talk about what the law ought to be doing. The law can only do little things, it can only do one part and they want it to do everything. It can't do everything.

Moving on to Her Honour's reflections upon her judicial career, she points to the success of judicial case management introduced for criminal cases in the District Court as her most significant achievement. As many seasoned practitioners in the criminal law will know this has resulted in a staggering reduction in the time taken between committal and the final disposition of criminal charges. That time reduced from 76 weeks in September 2004 to almost 20 weeks at present – representing an incredible improvement in the delivery of justice in anyone's books.<sup>11</sup> Her Honour also points out that they have worked very hard at the District Court to have matters proceed on their listed day so that judges are not sitting around dealing with lengthy pre-trial arguments or preliminary issues when a trial is due to commence.<sup>12</sup> Her Honour is also very proud to have presided as Chief Judge over the period which saw the re-location of the District Court to the new building in 2008. However, she comments that 'we have to keep seeking improved resources as the State is still growing and the demands upon the system are still growing'. In

11. On this theme Her Honour has recently remarked (rather amusingly) that if you're stuck next to a Chief Judge at a dinner and can think of nothing else to say to him or her ask them about the state of their court lists and 'they'll burble on endlessly like a baby with a buttered rusk!': A Kennedy, 'Equality Before the Law' (Speech delivered at the Duxton Hotel, Perth, 10 March 2010).

12. In this regard one male Senior Counsel (originally from another jurisdiction) has recently commented to the author that the Chief Judge has done a 'brilliant job' because Western Australia is about the most efficient jurisdiction in Australia due to the pre-trial listing system and s 98 CPA hearings which ensure that almost all trials commence when they are supposed to.

perhaps her strongest statement of all during this interview, Her Honour made the following comments about the resourcing of the courts in remote regions:

There has been a complete failure of successive governments to make improvements in the infrastructure spending for courts. I sometimes think that this is because courts are such an easy target for politicians that they blame us for the crime rate and so we're unpopular with the community. Therefore you don't have to do anything for the courts because they have made us unpopular, which I don't think is right or fair, but they have, and so they don't have to do anything. It's a disgrace that there aren't proper rooms for victims, and I'm not even talking about offenders now, I'm not talking about judges or even lawyers, I'm talking about victims. There are no proper remote rooms, no proper ways of keeping victims away from the people they're accusing, no proper ways of keeping them away from the families of the people they're accusing. The people in the North-West are living in third world legal conditions.

Her Honour is also keen to see the continued success of measures that might reduce the burden of work upon the justice system; for example, the new Centralised Committal System that operates at the Perth Magistrate's Court and brings the parties together to discuss whether an indictable matter should proceed to trial or not. This type of measure typifies the aims of the recently formed Criminal Strategic Justice Forum of which Her Honour has been an inaugural member.

As to whether Her Honour has any 'unfinished business' at the District Court or in the law she says:

No. I do worry about my little court. Obviously I want it to go on and be successful and so I can't let go to some extent, but I've got to let go and I will let go. I will not be breathing down my successor's neck. I've said on the 26 March, I turn out the light, I walk out the door and I will not be expressing opinions, trying to interfere, thinking I could have done better or anything like that. So there's not really any unfinished business. I would have hoped that women would have done even better in this period of time and I certainly hope that my court goes on in the same way.

As the interview drew to an end I asked Her Honour about any plans she might have for her retirement. She willingly and enthusiastically spoke of catching up on sleep, catching up with friends, going to outdoor films, travelling to Europe, learning Italian and Theology and generally doing some interesting things she has not been able to do enough of because of the demands of what she describes as 'the best job in Perth'. As a final remark, by way of an anecdote, Her Honour said that she aspires to follow the example of a young girl she remembers who was a receptionist at Bar Chambers for 10 years and abruptly decided to quit her job there at 25 years of age. When asked whether she had another job, she responded, 'No'. When asked what she intended to do, she responded: 'I'm going to hang loose!' Her Honour is very much looking forward to 'hanging loose' for a while and enjoying the rest and relaxation from it all.

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