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LAWYERS WEEKLY

MARDI GRAS INTERVIEW 2015

2 MARCH 2015

LAWYERS, HONESTY AND SEXUAL ORIENTATION

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Q1.

Do you think some lawyers feel compelled to hide their sexual orientation and gender identity at work or is the legal profession becoming a welcoming place for members of the LGBTI community?

I certainly know some lawyers who continue to keep their sexual orientation to themselves. It will often be harder in the case of gender identity (transgender lawyers) and gender identification (intersex lawyers). I know some judges who think (or have thought) that such matters are entirely personal. Nothing to do with anyone else. In the past, this was a common response to the social Diktat: 'Don't ask: don't tell'. I myself observed that rule for a long time. It was what one was expected to do.

Amongst solicitors, the fear will often still exist (especially in smaller firms or employment in regional and rural Australia) that revealing one's sexuality will be a bad career move. After all, it may not be what the majority of contemporary lawyers think that matters. If those with power over promotion prefer to avoid gays, or dislike them on religious or other grounds, prudence may suggest silence. Likewise, amongst barristers, a desire for advancement, including eventual judicial appointment, may

hold honesty back. These are the facts of life. If I had been open about my sexuality before the 1970s and 1980s, I would certainly never have been appointed to judicial office, whichever political parties had been in power. We have made progress since then. But we would be kidding ourselves if we said that the whole shabby business of prejudice against gays was over.

Q2.

Have recent initiatives such as LGBTI networks and HSF's sponsorship of Mardi Gras, helped to create better workplaces or are these empty gestures?

Symbols matter in life. This week I have attended the raising of the rainbow flag for the first time at UNSW and Sydney University. I could not have imagined such gestures when I first arrived at uni in 1956. They are not empty actions. They delineate what is acceptable in the education space. Equally, it is important to send the same signals clearly in the workplace and in the broader society. I applaud HSF's initiatives. They show leadership, as can be expected from one of Australia's biggest and most successful legal firms. However, just imagine what it felt like when I was young, having no role models, conforming to the rule of silence and feeling that my real self was not welcome. It will be easier now that strong signals are being given that recognise that skills as a lawyer, advocate or judge have nothing to do with one's sexual orientation or gender identity. In fact, the law is chockablock with LGBTI members. It's possibly something to do with those early years pretending to be someone else and getting into the head of that other 'straight' person. This has probably helped centuries of gay people to be outstanding lawyers. As the code of secrecy is

dropped, it is possible that LGBTIQ people will henceforth drift away to other occupations. Merchant banking perhaps. Or horticulture? But just don't tell me that prejudice against LGBTI lawyers is over. This week it was reported in the *Sydney Star Observer* (a gay paper) that whilst some universities are welcoming to gays, others are definitely not. The report on University of Notre Dame Australia in Sydney (which has a law school) reveals that its Queer Collective claims on Facebook that it was refused affiliation by the administration. If this is so, it is unacceptable. So long as Australian universities receive public funds, they must be supportive of all students – including gay law students.

Q3.

Do you know if the Bar and judiciary have done anything recently to actively support LGBTI people in the profession?

I know that legal education for new judges now includes courses on sexuality, as on many topics unmentioned when I started. Gender for example. It is the new appointees that scoff at such things that need the instruction most. The practising profession does lots more, especially in big firms. As to the Bar, it remains a pretty patriarchal space of highly competitive individualism. I am sure that more could be done to deal with bullying, stress, depression and suicide. Research shows that this is a major problem for the legal vocation, starting in first year at law school.

As Marie Jepson pointed out in *Lawyers Weekly* this week, it is easy to have occasional events proclaiming sensitivity to LGBTI issues. But translating these into day to day action is harder whether on subjects like stress or sexuality. The two are sometimes interconnected.

Q4.

Why is it so important that employees feel comfortable being able to identify with the LGBTI community at work? Was it difficult, in your personal experience, to feel at ease and do your best work when hiding your true identity?

Only a straight person, with respect, could ask such a question. Just try to imagine the suppression on an important part of yourself. Never talk about girlfriends or boyfriends: unless with falsehoods and circumspection. Of course it was difficult. One learned the binding rules at about age 11. Centuries of lawyers followed them through, as I did. That game is over now – or should be. And especially lawyers who wield public power (like judges), if they are gay, owe it to the community, their colleagues and those who follow, to be open. Everyone gossips: lawyers most of all. It is sad to see judges, and former judges, who have remained silent. The game of shame will only end when everyone confronts this particular irrational demon. Lawyers have a special duty in this regard because it has been religion, re-enforced by law, that enforced this irrationality over sexuality for centuries. We should finish it as quickly as possible. It will be easier to do so in Australia than in most other countries.

Q5.

What is the best term to use in my article, LGBTI or LGBTIQ?

The current United Nations formulation is LGBTI. You will be pretty safe using that shorthand. But it might be best to define it when first used.