

Pride in Law – speech on launch of Sydney Chapter

Banco Court, NSW Supreme Court

20 March 2024

Justice Jeremy Kirk

Good evening all.

I have been asked to say something about my own experience in the law as a member of the LGBTQIA+ community. One thing I can say immediately is that there are many more letters in that acronym than when I was a university student, when we used to speak of the LGB, or for the more advanced, the LGBT community.

I started studying law 35 years ago, at the end of the 1980s. At that time, gay male sexual activity had only been legal in NSW for 5 years, although it had been decriminalised much earlier in my home jurisdiction of the ACT, back in 1976. In 1989 it was still illegal in Queensland, Western Australia and Tasmania. At the time, too, gay men were living in the constant shadow of HIV/AIDS.

I was back at my alma mater last Saturday, showing the elder of my two children around at the ANU Open Day. Wandering around the campus led to some reflection and just a little regret on my part, in particular, that I had not felt able to come out earlier and, to be frank, felt free to have a little more fun. That being said, I am not sure I would have got quite the same academic results that I did if Grindr had existed in the early 1990s.

One memory that comes back to me vividly from that time is going to watch the film “Philadelphia” in early 1994. The film featured Tom Hanks playing an HIV+ lawyer who was suing his former employer for discrimination. I went with my first love and another gay couple. I remember clearly a scene in which the central character is sitting with his extended family, bouncing a niece or nephew on his knee, and warning his family that the litigation could get nasty.

The reason I remember the scene so clearly, as a closeted gay man – who was nervous even being seen at a gay-themed film with the man who was in fact his boyfriend – was that I doubted the credibility of that depiction of loving and supportive family acceptance, whilst also wishing vehemently that such families could exist.

In fact, as I came to discover for myself soon thereafter, there were many such families. I bounced many nieces and nephews on my knee and subsequently came to have two children of my own with a lesbian couple. Those children were welcomed without hesitation into my family, and the families of my co-parents.

One thing my loving but concerned parents did ask me after I came out to them in 1995 was whether I really needed to be open about being gay, concerned that it might harm my legal career. I said that I doubted it would do so, but if it did, then so be it. That was so because I had resolved by then that I would not lead my life engaged in implicit, if not explicit, deception.

I can say now, standing here in the Banco Court as a member of the NSW Court of Appeal, that I don't think it did cause me any harm – or at least not in any significant way. I recognise that my path may have been much easier than it was for many of our community in my generation.

Although my path was relatively smooth, that's not to say there weren't some bumps along the way. In 2006, for example, I had been at the bar for four years. When I told work colleagues that I was going to have a child with a lesbian couple, and that we would co-parent the child together, the reaction was generally very warm. Two of the senior male and avowedly heterosexual silks in my chambers, delighted for me, had me in for drinks that night.

One of the other silks was a little more non-plussed. As I sought to explain it to him, he took out a piece of pen and some paper and started drawing a little diagram featuring me, my two co-parents, and the prospective baby, just to try to get his head around how it was going to work. "But who will be the father-figure" he asked, completely perplexed. I had thought that was obvious.

Individuals such as that – a person of good will – learn and change through interactions such as that. The combination of thousands of such interactions lead to societal change.

We heard at the commencement of tonight's formalities the acknowledgement of country and of Indigenous elders. Tonight I also want to acknowledge and pay tribute to all the elders of the LGBTQIA legal community – though may I say they are still very young looking elders – who have been so important in leading the way to changing Australia.

By way of background, at the launch of the Victorian chapter of Pride in Law last year, one of the speakers was the barrister Matt Collins. He said then that when he did his articles in Melbourne in 1993 he knew of no relevant role models in the legal profession – no out judges, or silks, or partners of law firms. That was not my experience coming to Sydney.

There were out gay and lesbian partners at Freehills when I was a summer clerk there in 1992-3, as there were at Allens and other firms. One such Freehills partner, John Taberner, was a supervisor of mine and became a mentor.

At the bar, those half a generation before me – Richard Cobden, David Buchanan, David Davies, Liz Fullerton to name just a few – were out and proud. Michael Kirby's role is well-known.

Their choice to be open, when that was a rarer and harder thing, made the path easier for those in my generation, as it was smoother again I think for those half a generation behind us, and for many half a generation behind them the experience of coming out seems to have been positively nonchalant.

The NSW Supreme Court celebrates 200 years of existence in two months time. I dare not guess when the first non-straight judge was appointed, but I suspect it was long ago, albeit for someone who could not be open about it, perhaps even to themselves.

The judicial closet doors are well off their hinges now, with many non-straight identifying judges having been appointed to all courts in the NSW judicial hierarchy, up to and including the High Court.

Of those I mentioned a moment ago, Liz Fullerton became a judge of the Supreme Court Common Law division in February 2007. One of the tribute speeches at her swearing-in noted that she had been, amongst other things, a director of the Sydney Mardi Gras Board. David Davies became a judge of the same division in June 2009, paying tribute to his partner Paul in his swearing in speech. Of my vintage, but stepping up to judicial life much earlier than Richard Weinstein or I, Nye Perram was appointed a Federal Court judge in August 2008, thanking his then partner in his swearing in speech.

Life has changed enormously for the queer community since I started my journey in the law 35 years ago. We used sometimes to speak of promoting tolerance of members of the queer community. We have moved well beyond asking for mere tolerance. Now in many law firms, in public and private sector employers, and at the bar, diversity is celebrated. And that is wonderful.

More broadly, achieving marriage equality in 2017 was an important substantive milestone, and an even more important symbolic step for Australia. But that does not mean that the road to equality and acceptance has ended in a neat and quiet cul de sac, in a marital home with clipped lawn and white picket fence.

When Richard Weinstein was sworn in as a Supreme Court judge last year, he said: "As a white, gay, cisgender male, I have diminishing diversity value. This is a good thing". I agree with him. As is implicit in that comment, there are others in the LGBTIQIA+ community who may have a harder fight than we have done, and who will benefit from organisations who support and promote the interests of all members of that community. Moreover, experience in the United States illustrates that rights once granted, even taken for granted, can be removed.

The Pride in Law website says that it "is a national association of lawyers, academics and other legal professionals dedicated to enhancing the lives of the LGBTIQIA+ community". More power to their arm in doing so. That's not just a matter of making

law reform submissions. It is also about manifesting, constantly, that it's fine – indeed great – to be out and proud. And to have some fun at gatherings like this along the way.

I am delighted to be a part of the launch of Pride in Law in NSW, and I wish it every success.