

# 'SIT DOWN GIRLIE'

## A column featuring local and international legal issues from a feminist perspective

### 'GET YOUR ROSARIES OFF MY OVARIES'

'I have a uterus and I vote' and 'Get your rosaries off my ovaries' were some of the messages carried by an estimated 750 000 women who marched in support of a woman's right to abortion in the United States during April 1992.

The case of *Roe v Wade* has been dramatised in a video which, in *Girlie's* humble opinion, is essential viewing. The film tells the story of 'Jane Roe' who attempted suicide after being prevented from having an abortion. It also features the women who fought the court case which led to the historic Supreme Court ruling. Jane Roe, to use the words of the movie 'really did something for all of us'.

In 1992 abortion is back on the agenda as a very hot political issue. In Ireland an injunction preventing a 14-year-old rape victim from leaving the country to have an abortion was lifted following intense local and international concern. The Irish Supreme Court has ruled that abortion should be allowed in limited circumstances — if there is a risk to the mother's life. Evidence given by a psychologist indicated that the girl would commit suicide if prevented from having the abortion. The new ruling takes Ireland to a similar situation to that which prevailed in the United States prior to the case of *Roe v Wade*. Ireland's Catholic bishops have expressed dismay at the ruling and say the courts of law cannot permit abortion in any circumstances. The Law Reform Commissioner (Ireland), a father of 12, was sacked from his office in April 1992 after making anti-abortion comments. None of these men, of course, will ever have to personally experience the dilemma of unwanted pregnancy even if they are raped. The matter is now to be put to a referendum.

In the United States abortion will be a key issue in the election and appointment of judges. The *National*

*Law Journal* (2 March 1992) reports that forces on both sides of the debate have vowed to make the forthcoming Texas judicial elections the target of political action. Texas is one of nine states which has never repealed its old abortion law following *Roe*. If the Supreme Court overturns *Roe* the battle will centre on Texas because the other eight states have either no judicial elections pending, or their judges are appointed rather than elected. Anti-abortionists have said that if *Roe* is overturned they will be pressing state courts to implement the 1898 provision that outlaws abortion except where the life of the mother is in danger. Pro-abortion groups support *Roe* but if it goes they want the state courts to hold that the 1898 law is repealed by implication. This means judges would need to be in sympathy with the view that statutes passed since *Roe* should be seen as the dominant state position.

The Dallas based anti-abortion group, Texans United For Life (TUFL), distributes 700 000 voter guides each judicial election year endorsing anti-abortion candidates. This year over half of its budget will be devoted to judicial elections. The group has named individual judges which it 'would like to take out' because they are suspected of supporting pro-abortion rights sentiments. Justice Mauzy who is one such judge says:

They target me whenever I run for election, and I win every time. As a citizen I think questions of this kind are legitimate political questions for candidates in all branches of government. This is a democracy and I support the election of judges.

### BLOCKADES

The 21 October 1991 issue of *National Law Journal* includes a feature article on the issues to be considered by the US Supreme Court on blockades of abortion clinics. 'Operation Rescue' has targeted women's health clinics. The purpose of the demonstrators, according to



City Attorney, David Lasso, is not only to blockade the clinics but also to overwhelm the judicial system. He sees a Federal Court injunction, rather than state remedies as the answer to ensure protection of the constitutional and statutory rights of women seeking the services of the clinics.

### RABBINICAL RULING

Naomi Feigin of Women for Women reports that in November 1991 the Chief Rabbi of Haifa ruled that a violent husband will be gaoled if he continues to refuse to give his wife a divorce. This is the fifth time in the history of the state of Israel that such a ruling has been given. Naomi works with the Haifa Shelter for Battered Women which is the only such shelter in Israel and which caters for Jewish and Arab women. The shelter is supported with funding from groups outside Israel and is always short of money so please keep it in mind when feeling generous.

### TASK FORCE NAMED

The Canadian Bar Association has appointed a Gender Equality Task Force chaired by former Supreme Court of Canada Justice Bertha Wilson. The Group's mandate is to study parental leave policies, the advancement of women, flexible working hours, alternative working arrangements and the elimination of gender bias. Australian women eagerly await similar task forces in the Australian Bars.

### ONTARIO LAW SOCIETY REPORT

The Law Society of Upper Canada has produced a report entitled 'Transitions in the Ontario Legal Profession'. It reveals that there have been some improvements for women lawyers but they still face more discrimination, lower pay and fewer career opportunities than their male colleagues. It recommends that the Law Society should encourage further improvements by encouraging

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firms to be creative in job sharing, alternative partnership arrangements, flexible hours and generally striving to improve the position of women in the profession.

## THE MOST EXCLUSIVE OLD BOYS

The December 1991 issue of *Labour Research* notes that in England just one in 26 judges are women. This amounts to a miserable 4%. Four-fifths of the 527 judges surveyed by *Labour Research* were educated at Oxford or Cambridge. The most recent appointment to the all powerful House of Lords was one Lord Justice Browne Wilkinson — appointed, like all English judges — by the Lord Chancellor following secret internal investigations within the legal profession. Not quite the way they do it in the USA where at least everyone hears what's going on.

*Labour Research* found that there are fewer senior female judges than there were five years ago, there is no change in terms of privileged backgrounds enjoyed by today's judges and surprise, surprise, judges are not getting any younger. One hundred and sixty-five of England's judges are over 65 and nine of the ten House of Lords judges are over 65. Six of the ten House of Lords judges came from families which were titled or were 'otherwise exceptionally privileged'. All attended public schools (England's cute way of describing what we term private schools) and all but one went to Oxford or Cambridge. The unfortunate Lord Bridge whose father was a Commander in the Royal Navy missed out on Oxford because of 'the War'. (*Labour Research* does not say which war — but it must be a very old one.) The baby of the House of Lords is 61 years old. Now *Girlie* does not object to some judges being senior citizens, but *all* of them is surely a little excessive. Oh, by the way, all judges of the House of Lords are men but not all have hyphenated names.

In 1991 the Law Society commissioned two reports on discrimination in judicial appointments. Sally Hughes' report *The circuit judge* —

*a woman's place*', found that a woman's chance of getting a seat on the Bench has declined since the 1970s. The Law Society reports claimed that the present system of appointments is discriminatory because there was a bias towards appointing barristers rather than solicitors. Appointments from the ranks of solicitors would give an opportunity of appointing judges with a more diverse background.

The claims of discrimination caused the Lord Chancellor to take a most radical step. He commissioned a barrister to prepare a legal opinion. Curiously the opinion supported the view of the Lord Chancellor that no discrimination exists.

## GIRLIE'S WOMEN OF THE MONTH

Congratulations to the ten women ordained as priests of the Anglican Church. The ordinations took place on 7 March 1992 after the Supreme Court of Western Australia rejected an application for an injunction to prevent the ceremony taking place. The Archbishop of Perth, Dr Peter Carnley, who conducted the ordination ceremony told the congregation:

Today we are peeling away the sickly, yellow, faded, silver-fish ridden wallpaper with which the church has surrounded itself and imprisoned women for centuries past in its benign and perhaps well-meaning determination to confine them by role.

Not all male church leaders are in sympathy with the good Archbishop. His counterpart in Brisbane, Archbishop Peter Hollingworth, has attacked the Movement for the Ordination of Women (MOW) calling them an unrepresentative fringe group who do not have the interests of church unity at heart. He is quoted in *The Age* (10.3.92) as saying:

You have to consider the issue of justice to women, and the issue of good order and unity in the church. It is an extraordinarily difficult task to hold those things together.

Archbishop Hollingworth's comments are puzzling given his proven commitment to social justice issues over the years and his work for the disadvantaged. Dr Janet Scarfe,

national president of MOW, has pointed out that women are massively disadvantaged in the church but Archbishop Hollingworth can't and won't make the connection. Perhaps there *is* something in the water in Queensland?

## AND ON THE OTHER HAND.

Queensland is way ahead of some other States where judicial appointments are concerned. Margaret McMurdo, Queensland's first woman judge was appointed to the District Court bench in January 1991. Helen O'Sullivan was made a judge of the same court in April 1991 and on 2 April 1992 Margaret White was elevated from Master to Justice of the Supreme Court, Queensland's first woman Supreme Court judge.

## LEAD BALLOONS

The Federal Court of Australia has ruled that in some circumstances women can be excluded from working in the lead industry because of possible health dangers. In March 1992, Mr Justice Davis decided that to ban women from the industry who were neither pregnant nor breastfeeding does not breach the *Sex Discrimination Act*. The decision permits women to be banned from the workplace if they *might* be pregnant and thus putting the foetus at risk. In the judge's opinion, excluding women 'by reason of danger of lead to the unborn foetus' is not discrimination on the basis of gender but on the basis of health. In the United States it has been held that women who are fully informed of the lead risks cannot be excluded from working in the industry. Both decisions miss the point — the workplace should be safe for all workers.

## QUIZZICAL JUDGE NAMED

The answer to the quiz in the February issue of *Alt.L.J.* is Mr Justice Michael Kirby, President of the New South Wales Court of Appeal, brilliant Australian jurist and regular reader of *'Sit Down Girlie'*.

**BETH WILSON**

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