

'SIT DOWN GIRLIE'

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

WOMEN'S HEALTH SERVICE AND PANDORA'S BOX

Although the Canberra Women's Health Service discriminates against men it does so lawfully. So spake the President of the Human Rights and Equal Opportunity Commission Sir Roland Wilson, in March 1992 when he dismissed complaints that the service breached the *Sex Discrimination Act 1984* (Cth). The service's health program, according to the good Sir Rolly, comes within the special circumstances exemption where services available to one sex only are lawful if their purpose is to ensure equal opportunities with the other sex.

Sir Roland found that women are significantly disadvantaged in their personal well-being and their health. He recognised the many socio-economic pressures facing women — poverty, child care, single parenthood, lower wages, domestic violence — and took account of the special problems which affect women's health. Men still don't bear children and are spared the vagaries of menopause. Thus the historic and continuing inequality experienced by women in Australian society permits special initiatives in the field of health care. Sir Roland rejected the argument that the special service for women was discriminatory because there was no similar service for men. 'It would be a strange way of meeting the unmet health needs of one sex to dismantle the services already provided to meet the health needs of the other sex', he said. Indeed. Maybe one sweet day women's services will be released from fighting rearguard actions and will be free to concentrate their energies on providing desperately needed alternative services; services which have the potential to provide a model for suitable community-based programs to improve the health and well being of the entire community — including men.

In Canada a not dissimilar ruling was made in the *Pandora* case. On 17 March 1992 the Nova Scotia Human Rights Commission decided that the feminist periodical *Pandora* had the right to exclude from publication a man's letter to the editor. Gene Keyes had filed a complaint when *Pandora* refused to publish his letter accusing the periodical of 'anti-father diatribe'. The Commissioner, David Miller, found that women are a disadvantaged group in society and that publications such as *Pandora* are justified in refusing to publish men in the interests of promoting equality and improving conditions for women. Mr Miller was not convinced by an argument put by Keyes that as a divorced father he belonged to a disadvantaged group. (Source of Canadian material, *Lawyers Weekly*, 10.4.92 p.4.)

CHOOSING JUDGES — HOW 'LOW' IS A 'LOW' PROFILE?

Why is it that the process of selecting judges is so secretive? Christin Schmitz (*Canadian Lawyers Weekly* 6.12.91) lifts the gown in a feature article on choosing judges in Canada. In 1989, a new committee-based system was introduced at the federal level to combat the public's suspicion that the existing system was secretive and led to political favouritism. However Schmitz describes the federal, judicial advisory committees, which like to keep a low profile, as positively 'shadowy'. The committees meet in secret, their members' names are never revealed and judicial appointments are never advertised. We do know, however, that they have five members, their role is to advise the Minister for Justice on the suitability of candidates, three of the five members represent the judiciary and the Bar and the other two are lay people said to represent a broader community-based interest. Members are appointed for two-year terms with the possibility of single renewal and are paid expenses only.



Guidelines are set down for potential judges who must have served a ten-year stint at the Bar and be in good standing with their provincial law societies. The key criteria for appointment are:

- proficiency in the law,
- well-rounded legal experience,
- maturity and objectivity in judgment,
- evidence of human qualities indicating receptivity to, and appreciation of, social issues arising in litigation,
- devotion to public service, and
- a capacity to exercise the larger policy role conferred on judges by the Charter (Canada's Bill of Rights).

The committees are also encouraged to give weight to all types of legal experience, including non-traditional legal practice. The federal system is quite different from that in the provinces. In Ottawa they actually advertise for judges and letters have been sent seeking applications from qualified *women*. The federal system cannot be entirely bad — the *Lawyers Weekly* reports that the Feds have just appointed their 100th woman judge.

Meanwhile a New York State task force has warned that the State's judicial election process may violate the federal *Voting Rights Act* and has issued a plan to increase the number of women and minority judges on the bench. Watch this space for further details.

EVALUATION OF VIOLENCE

In the land of Oz the effectiveness of court intervention orders will be tested in a study by the National Committee On Violence Against Women which is expected to report by the end of this year. Anecdotal evidence has suggested that women have been beaten and killed because intervention orders were either not granted or not enforced. In the

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meantime, a national meeting of the Australian Police Ministers Council has moved to make intervention orders enforceable throughout Australia. The present system puts all the onus on the victim of violence to initiate proceedings and to persist throughout the prosecution process. Recent government responses have continued in the tired old vein of increasing police powers. Women's groups have consistently argued that police already have all the powers they need, it is a lack of willingness to use them that is the problem.

WIN SOME . . . LOSE SOME

Successes

Congratulations to Jenny Coate and Beth Wilson, members of Feminist Lawyers. Jenny has been appointed Victoria's 13th woman magistrate and Beth has been made President of the Mental Health Review Board.

Disappointments

In Birmingham, Alabama, a court appeal has held that blocking access to an abortion clinic does not constitute gender bias. An identical case is currently before the United States Supreme Court. The Birmingham bench was deeply divided but the majority found that blocking access is motivated by disapproval of abortion and does not 'spring from an animus directed at members of the female gender'. Judge Phyllis A. Kravitch had a different view:

The majority's insistence that operation rescue opposes a 'practice' that has nothing to do with women brings abstraction to a new level of absurdity. It is impossible to sever the link between abortion and gender. Only women become pregnant and only women have abortions. For too long women have been invisible in much of the law. The majority now erases women from pregnancy, childbirth and abortion as well.

STATISTICS

The United States Victim Centre has reported that nearly 1900 women are raped every day in the United States and 683 000 a year. In Philadelphia

the Supreme Court has ruled that rape suspects cannot compel counsellors to testify in trials about private conversations with rape victims. In overturning a superior court ruling the Supreme Court said revealing the confidential conversations in court would undermine trust and interfere with therapy.

WAVE THE FLAGS

The United States Patent and Trademark Office has refused to register the logo of the Old Glory Condom Corporation because of its political content. The logo features an unfurled flag-like condom and the words of the Old Glory pledge: 'We believe it is patriotic to protect and save lives . . . A portion of Old Glory profits will be donated to AIDS related services'. According to the Trademark Office the American flag is sacrosanct and to link it with sexual activity would scandalise most members of the public. The Company has appealed the decision (*National Law Journal* 17.2.92). Perhaps Paul Keating could set a world first by adopting a sexy flag for the Australian Republic featuring a safe union between Jacks and Jills?

FOETUS FEATURES

The *National Law Journal* 24.2.92 features a report on attempts to use child abuse laws to prosecute women said to have damaged their fetuses. It seems the Kentucky Court of Appeals has 'reluctantly' overturned the conviction of the first woman gaoled for 'prenatal child abuse'. The interestingly named Judge R.W. Dyche III found it 'morally reprehensible' that the woman had taken the prescription pain killer Oxycodone when she was eight months pregnant but he was unable to uphold her conviction because the state child abuse legislation fails to mention a foetus. The woman had already served two years for possession of drugs and possession of drug paraphernalia and the Kentucky Court has sent her to the lower court for re-sentencing. Florida is the only State where an appellate court has

upheld a conviction of a woman for child abuse because she consumed illegal drugs during pregnancy and that case is now before the US Supreme Court (see *State v Johnson* 77831). In five States, the appellate courts have upheld the actions of 'welfare' agencies who have seized new born infants found with drug substances in their urine. In nine States attempts have been made to pass legislation to include prenatal substance abuse in the definition of child abuse and two States, Florida and Minnesota, have already done so.

AUSTRALIAN FEMINIST LAW JOURNAL — CALL FOR CONTRIBUTIONS

Australian feminist jurisprudence has clearly come of age with the birth of the *AFLJ*. The first issue will appear in February 1993 and the collective responsible informs *Girlie* that the journal aims to promote feminist analysis of legal issues and to provide a forum for women writers. Articles with an academic focus will be published but shorter articles and comments in a less formal discourse are also sought. Contributions from a range of disciplinary backgrounds are required and it is hoped that individuals and groups not associated with academic institutions will also contribute. The journal will include articles, comments on current issues, casenotes, book reviews and letters. Enquiries should be directed to AFLJ, PO Box 4337, University of Melbourne, Parkville, Victoria 3052.

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