

'SIT DOWN GIRLIE'

Legal issues from a feminist perspective

OBITUARY

This is my land: I have always said that, even as a child. The white people used to say to dad: 'That girl walks around this land as though she thinks it's hers'. Dad wouldn't say anything. He'd just walk home and tell me, 'Mrs So-and-so said you walk through this land as though it's yours'.

'It is mine, isn't it?' I would say. And he'd say: 'Yes, girl. Don't you ever forget it'.

Oodjeroo [Kath Walker], *As the Twig is Bent*, Dove, Melbourne, 1979, p.98.

THE BACKLASH

If you touch a raw nerve you're sure to get a reaction and that has certainly been the response of some members of the Australian judiciary to the issue of gender bias. Instead of making genuine attempts to redress the balance some judges have gone on the defensive denying the problem exists and accusing women of making it all up. The attitude seems to be 'I can't see you therefore you don't exist'.

Judge Wilson of the South Australian District Court delivered a 'male judge's lament' at the biennial conference of the Australian Crime Prevention Council. According to *The Australian* (22.9.93) he said: 'At a time when male judges are accused of being gender-biased, chauvinistic, lacking in understanding of women and out of touch with real life in the real world, I would like to give you a male judge's lament . . .'

If the evidence is that a male accused thumped his wife, that is necessarily wife-bashing. If the evidence is that she thumped him, that must be self-defence . . . In sentencing, if I give a man credit for having said how nice a woman looked, I'm condoning sexual harassment. If I refrain from such a credit, that is typical male indifference . . . If I'm moved emotionally by a man's plea in mitigation of penalty, I'm a sheila of a judge. If I'm not so moved, as a judge I'm an insensitive bastard . . . In everyday living, if we appreciate the female form and feminine clothing, we are sexual perverts. If we didn't notice, we are poofers.

It seems to *Girlie* that the judge's obvious confusion might be overcome by a spot of judicial education on gender bias and bias on the basis of sexuality.

The most frequently cited defence of the poor old judges is that they have been quoted 'out of context'. Take for example the Chief Justice of South Australia in his public defence of his brother Bollen of the infamous 'rougher than usual handling' case. According to the Chief and also to *The Sunday Age*, Justice Bollen is a lovable family man who has been victimised by radical elements.

Judge Bollen may well be a good family man but that's not the issue. Of more relevance is the ability of our judges to deliver impartial justice to all parties appearing before them. Judge Bollen's comments caused consternation and outrage throughout the community. Protests came from a variety of women and men and not just feminists (though naturally we put the boot in too). And even more interestingly the good Chief's own Supreme Court overturned Justice Bollen's decision and told him he had 'erred' which is the judiciary's cute way of saying 'he done wrong'. For a more detailed account see Barbara Ann Hocking, 'The presumption of not keeping up with any times: a judicial re-appraisal of Justice Bollen's comments concerning marital rape', (1993) 1 *Australian Feminist Law Journal* 152.

I CAN SEE YOU AND I DON'T LIKE IT!

On 20 September 1993 *Girlie* was an observer in the Family Court in Melbourne and she listened in total amazement as Justice Smithers soundly castigated solicitor Sue Macgregor for about ten minutes, presumably on her physical appearance. It was unclear exactly what had upset the judge before whom the good Sue had previously appeared many, many times.

On this occasion she was wearing a black skirt and matching jacket with white cuffs and collar, white patterned tights and a pair of black shoes, possibly Italian, and very swish. To the bemused *Girlie* Ms Macgregor looked terrific. The judge, however, was 'shocked' and 'distressed', 'upset', 'literally shocked', 'in a state of shock', and eventually 'recovered' and even went so far as to suggest 'Perhaps it is time I retired'.



Ms Macgregor was the instructing solicitor at the time and her client was represented by counsel. Counsel asked the judge if he would like Ms Macgregor to leave the court. His Honour conceded that it was important that she be there. At one stage in all these extraordinary proceedings the judge bemoaned the fact that if you say anything at all these days you get the popular press and 'people with radical views' who say 'oh, that's fine', but the judge said 'it' was not what he 'was used to'. This all occurred in the very week that Justice Elizabeth Evatt was conducting public hearings on gender bias for the Australian Law Reform Commission just up the road and around the corner from the Family Court in Melbourne.

Justice Smithers did not actually state what it was about Sue Macgregor's appearance which so horrified him. It is true that Sue has a red pony tail but her hair was pulled back neatly and in St Kilda, where her law offices are situated, vegetable hair dyes are very popular. However, what does it matter how she wears her hair or what colour it is? Surely that is her business and frankly Justice Smithers' taste in fashion is not exactly worth following. Most important, though, is a woman's right to work in the courts, work for which she has trained for just as many years as her brothers, without being subject to ridicule because the judge doesn't approve of her taste in clothes or her hair style. *This is gender bias*, it exists, it is blatant and it is unfair. While this particular reaction by the

judge may be thought by some to be unusual, women still face that kind of prejudice every day in our courts — as practitioners, victims, litigants, witnesses, experts and so on. And we shall continue to fight it.

Girlie can only wonder why it is that judges, of all people, have the cheek to castigate women for their dress sense. These blokes have been known to wear red robes with ermine trimmings (or is it rabbit fur?) of a style not seen since Santa was a lad. They don risqué platinum blonde wigs, festooned with ringlets and, horror of all horrors, *Girlie* has even heard it said that underneath all this extraordinary garb the judges actually wear suspenders! *Girlie* is shocked, dismayed, offended and is certainly not used to this sort of thing. It's about time that judges paid some account to community standards when they dress to appear in court.

MORE BACKLASH BLUES

Former Chief Justice of the High Court of Australia, Sir Harry Gibbs, told a national legal conference in Brisbane in

September 1993 that it was 'nonsense' to suggest that the composition of the Bench should reflect society as a whole. Merit, according to Sir Harry, should be the sole criterion and affirmative action policies are 'misconceived'. Similarly the federal Attorney-General, Michael Lavarch, has said that judges will continue to be appointed on the basis of merit and excellence.

What *Girlie* wants to know is how come then we have so few women on the Bench? If merit and excellence had indeed been the basis for selection there would be many more women there. *Girlie* calls on all Australian judge selectors to stop appointing solely on the basis of gender and give women a chance to compete with the men.

OH PLEASE — NOT IN THE HOUSE!

Kathy Sullivan MP is Australia's longest serving woman federal parliamentarian. In an address celebrating the 50th anniversary of women's entry into that Parliament she said that many men won't listen to women talking about women, and often won't listen to

women at all. After a dozen years in the House she was shocked to hear that her male peers had hardly heard a word she had said. 'Nevertheless, they all *thought* they knew what I'd said — thoughts which were so far removed from reality as to be grotesque', she said. 'I was drawn to the painful and unwelcome conclusion that the mere presence of women in Parliament is not enough.' In a fine piece of political impartiality, Kathy Sullivan, who is a Liberal MP, said she found Labor MPs more willing to listen than her coalition colleagues. Indeed she had been advised not to mention women's issues because 'that was what Labor women did'. More recently Kathy Sullivan has been obliged to teach the Treasurer, John Dawkins, that it is not acceptable to address her as 'sweetheart'. The agonisingly slow but sure progress of women in the Australian Parliament has been documented in Ann Millar's book, *Trust the Women*, which has been produced by the Department of the Senate.

Phyllis Stein

Phyllis Stein is a feminist lawyer.

Southside Domestic Violence Action Group **'CHALLENGING THE LEGAL SYSTEM'S RESPONSE TO DOMESTIC VIOLENCE' CONFERENCE**

Hilton Hotel, Brisbane, 23-26 March 1994

The Southside Domestic Violence Action Group invites you to a conference entitled 'Challenging the Legal System's Response to Domestic Violence'. The focus will be on examining, developing and ratifying effective strategies for the legal system (Civil, Criminal and Family Court jurisdictions) to respond to the issue of domestic violence. The conference will address current practices and canvass the latest knowledge on gender bias as it pertains to the legal system.

Issues will include:

- **FAMILY LAW** - Rights of abusive partners to access/custody of children
- **CRIMINAL LAW** - Spousal homicide, issues of self-defence and provocation
- **CIVIL LAW** - International perspectives, effectiveness of Protection Orders, use of cross-applications

The planning committee has involved a range of consultants from various fields and the conference will provide the opportunity for different service providers to work together. It will be of particular interest to Judges, Magistrates, Lawyers, Court Counsellors, Police, Court Personnel, Legal Aid staff and workers from the community services sector. For any further information please contact Pam Godsell, c/- Women's Legal Service, PO Box 5446, West End, Queensland 4101. Fax (07) 846 1819.

STOP PRESS : LEGAL AID IN NSW

In January 1993 the New South Wales Legal Aid Commission stopped granting legal aid in most civil cases. This was the Commission's response to its budget deficit, and was the subject of editorial opinion in the April 1993 issue of the Alternative Law Journal.

As of 1 November 1993 legal aid has been restored for a number of civil matters. The decision comes after the Commission has taken steps this year to save money in other areas: lump sum funding and compulsory conferencing in family law matters, establishing 'solicitor advocate' positions and deferring payment of counsel to the successful conclusion of matters.

A number of matters remain unfunded, and of concern. There is still no legal aid for environmental matters, professional negligence claims or personal injuries. Community legal centres, successful in maintaining the focus of the injustices caused by the legal aid cuts, will continue to work towards a full restoration of civil legal aid in New South Wales.