

'SIT DOWN GIRLIE'

Legal issues from a feminist perspective

DRESSING DOWN

Girlie is pleased to report the enlightened approach of the Family Court in Melbourne which has sought the advice of Feminist Lawyers in drawing up a dress code for practitioners appearing before the court. This follows the outburst by Smithers J reported in *Girlie* October 1993. Feminist Lawyers has advised that we don't want a dress code and that courts should not be prescriptive about what is, or is not, acceptable attire. Dress is a matter of personal choice and taste which cannot, and should not, be regulated. Feminist Lawyers concedes that practitioners, male and female, should be neat and tidy.

Meanwhile in the United States the Detroit 36th District Civil and Criminal Court has posted its new dress code on court room doors. The code bans spandex (whatever that is), see-through garments, skirts and dresses with high slits, tight-fitting outfits, skirts more than two inches above the knee, and apparel with sequins or glitter. Also banned are jeans, overalls, jogging suits, shorts, stirrup pants, T-shirts, tennis shoes and sandals. What else is left in the wardrobe? The *American Bar Association Journal* (January 1994) reports the court's Chief Deputy Administrator, Paul Kanan, as saying the guidelines apply to litigants, witnesses, spectators, lawyers and defendants not in custody. According to Kanan 'We want people to use common sense...' Courtroom security officers will remove offenders.

WHISTLE WHILE YOU WALK FREE OF CONTEMPT

In the case of *R v Powell* [1993] TLR 318, the appellant had been sitting in the public gallery of the Cardiff Crown Court when jurors returned to deliver their verdict. The appellant wolf whistled one of the jurors. The judge asked who had been responsible and the appellant, acknowledging that he had been responsible, left the court. He was arrested in the street and brought back to court where the judge found him guilty of contempt and imposed a sentence of 14 days gaol.

On appeal it was held that a wolf whistle addressed to a juror who was returning with others to deliver a verdict was potentially insulting, offensive and a serious interference with the administration of justice. However, it was also held that the penalty was inappropriate and the matter should have been dealt with by a moderate fine, or by detaining the offender until the end of the day or over the luncheon adjournment, and then releasing him with a reprimand. The appellant had already served a day in custody. No further penalty was imposed by the Court of Appeal.

Girlie cannot help but muse as to what might have happened if the appellant had whistled at the judge. She also wonders why Philip Hallen, who reported the case for the *Australian Law Journal*, found it necessary to mention that the juror was 'attractive', 'smartly dressed' and 'young'. Source: 87 ALJ 886.

NOTABLE JUDICIAL APPOINTMENTS

Christine Dawe has been appointed as Senior Judge of the new Youth Court of South Australia which begins operating in 1994. She has been a barrister and solicitor, has long experience in family law and child protection, was admitted in 1971, has been Senior Vice President of the Law Society of South Australia, Commissioner of the Legal Services Commission of South Australia, and Chair of the Adoption Board.

Christine Trenorden is now Judge of the new Environment Resources and Development Court which replaced the Planning Appeals Tribunal of South Australia. Admitted in 1981, she has extensive practice experience in planning and development law, environmental law, and administrative law. She has been a member of the Board of the Australian Centre for Environmental Law and the Natural Resources Council of South Australia.

In Victoria, which has two women County Court judges and no women on the Supreme Court Bench, Mr Kennett, the Premier, has said that judges will not be selected to redress gender imbalances. According to press reports, Mr Kennett believes the matter will be sorted out in due course when more women become QCs. Thanks for nothing, Jeffrey.

ABORTION & DEATH BY HATCH

The *American Bar Association Journal* (January 1994) reports that for 12 years the Senate Democrats have prodded Republican nominees to the federal judiciary about their views on abortion and civil rights. Now that a Democrat is making the nominations the Republicans are doing likewise with the issue of the death penalty. President Clinton's first nominee, Ruth Bader Ginsburg, in her three days of testimony, spoke at length about a woman's right to an abortion but she avoided capital punishment, an issue which has wide public and judicial support in the US. The ironically named Senator Orrin Hatch, a Republican Senator from Utah, is continuing the attack.

Although he claims not to see the death sentence as 'a litmus test' he also says the country does not need judges who look for excuses to avoid carrying it out.

Two State Supreme Court judges, Martha Craig Daughtrey of Tennessee and Rosemary Barkett of Florida have been accused of being 'soft' on the issue. Daughtrey, the only woman on the Tennessee High Court had her nomination to the 6th US Circuit Court of Appeals confirmed in late November, but not before she was attacked by conservatives. Her supporters claim she has never been opposed to the death penalty. Barkett was born in Mexico, became a United States citizen at 18 and then a Catholic nun. She is now Chief Justice of the Florida Supreme



Court. Despite attacks from anti-abortionists she easily won a retention election in 1992. She was then nominated to the 11th US Circuit Court of Appeals.

WE THOUGHT IT WAS IN YOUR BEST INTERESTS

An Aboriginal woman sought an extension of the limitation period for a tort and breach of fiduciary duty action. The plaintiff had been placed in a home for white children where she was abused and deprived of contact with Aboriginal culture. She had developed a psychiatric condition which she claimed was a result of the forced separation from her mother and her culture. The Aboriginal Welfare Board, she argued, was either negligent or in breach of its fiduciary duty to her by failing to provide her with proper care and support, and depriving her of her culture. The Supreme Court of New South Wales, in an unreported decision of 25 August 1993, refused to grant the extension of time on the basis that the plaintiff had not shown a *prima facie* case. The court said that although the policies may be seen as abhorrent today, at the time the Board thought its assimilation policy was of benefit to the Aboriginal people and there was no breach of its duty of care.

GENDER BIAS REVERSAL

Current Family Law 2(3) 1993 reports on two recent United States cases in which decisions of courts have been reversed on the basis of gender bias. The unreported decision of *Dotson v Dotson* (unreported, Kentucky Ct App., 12 April 1992) includes a test for determining gender bias in matrimonial property decisions.

TIME LADIES PLEASE

In a case involving tampons, a male representative of the manufacturer was giving evidence before the federal Administrative Appeals Tribunal to the effect that all women regularly change their tampons every two hours. A certain member of the Tribunal is reputed to have directed the Tribunal to rise because, she said, we have been sitting for at least two hours.

'BASH WOMAN WALKS FREE'

In South Australia a woman has been found guilty of manslaughter and given a five-year sentence. The woman killed her husband following his brutal attack on her because she failed to put strawberry jam on the kitchen table. The court heard evidence that the woman had been a prisoner for years and had endured many beatings from her alcohol-affected husband. Amazingly some sections of the media reported that the woman had not been punished. 'Bash woman walks free' was the strident claim of the *Herald Sun* in Melbourne (4.2.94). True, she was given a suspended sentence, but a conviction for manslaughter and a five-year sentence is not what Girlie would describe as walking free.

BAR BIAS BATTLE

The first Women Barristers Association in Australia has been formed at the Melbourne Bar. Its agenda is to break down the sexist barriers facing women barristers, to tackle discrimination and promote the work of women barristers. The association is headed by Rachelle Lewitan, a commercial barrister.

ABUSE NO EXCUSE

The media coverage of the Bobbitt case has been quite extraordinary. When Lorena Bobbitt took the knife to her sleeping husband's penis the headlines shrieked 'Feminism Gone Mad'. Of course, we have no idea whether Ms Bobbitt is a feminist or not. Feminists do not advocate taking the law into our own hands in this way but we do believe that the reasons for the assaults should be investigated. *Girlie* does, however, acknowledge that her case is not strengthened by the threat from the Ecuadorian National Women's Front to castrate one hundred Ecuadorian men if Lorena Bobbitt was found guilty.

The activities of the profiteers outside the courtroom who sold T-shirts displaying slogans like, 'Love Hurts' and boxer shorts decorated with blood stains indicate that the real interest in the case was simply sexual voyeurism of a particularly callous kind. The radio stations which played 'Bobbitt ballads' such as *Re-attach My Member* and held a 'Lorena Bobbitt Weiner Toss' were not interested in issues of spouse abuse.

In the aftermath of the Bobbitt case the press has been scouring the world for similar occurrences. The *Sunday Age* came up with three cases of mutilation of male members by their partners. One is reputed to have actually set fire to her husband's privates! The *Herald-Sun* (13.1.94), in a carefully researched comparative piece, uncovered the fact that there were at least 100 penis mutilations by women in the 1970s in Thailand and at least two in Australia in the last decade. One theory for the sudden interest in the subject is that the media enjoys using the word 'penis'. The choice of language, too, has been interesting, the most common verb being 'sliced', when perhaps 'hacked' or 'chopped' might be more realistic. The *Age* reported that a new verb 'to bobbit' has emerged. Again little interest has been shown in the abuse suffered by the women involved.

In Los Angeles, according to the *Australian* (14.1.94), a woman accused of castrating her husband with a pair of scissors while he lay in bed in a drunken slumber is to stand trial. The accused said she cut off her husband's testicles and part of his penis after years of abuse. Assistant District Attorney Larry Longo (good grief!) told reporters that spousal abuse was no defence: 'If we are to believe that every woman who was battered can cut off a person's testicles without any recourse on the part of society at large, we are going to have an awful lot of men walking around without their privates', he said. Is Mr Longo acknowledging the high rate of spousal abuse, or is he merely protecting his own private interests?

Some concerned citizens who have seen the phenomenon as a dangerous acceleration of the gender war have urged reconciliation. But, *Girlie* asks:

'put 'em together
and what have you got?
Bibbity Bobbity Boo.'

Tess Tickle

Tess Tickle is a feminist lawyer.