

# 'SIT DOWN GIRLIE'

## Legal issues from a feminist perspective

### TALES FROM THE COAL-FACE

#### Part one — on the hill

■ Promises, promises, broken promises. The Labor Party's national president, Barry Jones, predicts that there will be fewer Labor women in Federal Parliament after the next election, despite a quota system designed to increase the proportion of women representatives (*Age*, 28.8.95). The reason, ironically, lies in the quota system itself. The 1996 federal election is the last chance for aspiring male candidates to win endorsement before the quota system is activated and women are given priority as candidates. Although the process has been slow in starting, Mr Jones was 'reasonably confident' that Labor would fulfil its aim of retaining 35% of winnable seats for women by 2003 without the need for intervention. Girlie would like to see that!

■ A similar policy designed by the British Labour Party to increase the number of women in the Commons in England provoked a violent reaction in some constituencies according to the *Guardian* newspaper (1.4.95). In an article entitled 'Blood on the carpet as sisters advance', the policy of all-women shortlists for vacant seats was criticised by a male would-be candidate after he was prevented from putting himself forward. The target for the British Labour Party is 50% of all marginal seats and 50% of all seats where current members are standing down. One Labour woman noted 'the real problem is changing the culture of the party'. Sound familiar?

■ Getting there might be tough for some women, but playing politics once elected can be even tougher. *Time Magazine* (25.9.95) reported that Deputy Yeugenia Tishkovkaya was actively involved in attempting to break up a skirmish between members in the Russian Parliament. While Girlie is a bit sceptical about Ms Tishkovkaya's chosen method of dispute resolution, her efforts need not have provoked either the physical or verbal attack she received from ultra-nationalist leader, Vladimir Zhirinovskiy. After choking her, punching her in the head and pulling her hair he claimed that the Deputy 'got into the fight only because she

wanted to get closer to male bodies'. He also asserted that 'such women dream of being raped, but no one will ever come near them'. After a public outcry, Zhirinovskiy is being prosecuted for 'extreme hooliganism'.

■ Back in Australia, Senator Jacinta Collins, has been breaking down some old barriers and without resorting to fisticuffs. The *Age* (20.9.95) reported that she has been braving the rough and tumble of Australian style politics, taking her three-week-old baby boy into the Senate chamber. Way to go, Senator.

#### Part two — the Bar

■ In an update on the 'serious problem' of sexual harassment at the Bar in *Jolly Old England* (Girlie, June 1995) The *Guardian* newspaper reports confirmation of unacceptable behaviour by male barristers towards their learned sisters, this time from an English Bar Council Working Party. It found that sexual harassment of junior women barristers was commonly perpetrated by 'pupil masters' — senior barristers to whom new barristers are 'attached' for two, six-month terms. In the same week, the chairwoman of the UK Association of Women Barristers, Barbara Hewson, claimed in the *New Law Journal (NLJ)* that women bar students are regularly offered pupillages in return for sex. However, she noted that there are very few complaints made to the Bar Council about sexual harassment, despite the fact that its prevalence was clearly hampering some women's progress at the Bar. In order to remedy the situation, Ms Hewson called for the adoption of anti-harassment procedures by heads of chambers, the Inns of Court and a fast track procedure to be initiated by the Bar Council.

Nigel Pascoe, QC proposed another solution to the problem of 'disgraceful behaviour' in the same edition of the *NLJ*: a more informal approach with each chambers, delegating a member to receive complaints and to tell the harasser to stop. This procedure would, he hoped, bring the offending barrister 'quietly into line', as he would be 'hor-

rified to be described in public as a menace'. Rather!

■ Regretfully, it seems the 'disgraceful behaviour' may not only be occurring in the 'mother country' (from whence so many of our great legal traditions spring). Back at home in Melbourne, one chap at the Bar *has* unfortunately been described in public as a menace. The *Age* (30.8.95) reported that a senior QC was under investigation for 'stalking' a female barrister. The report notes that the police are investigating the matter and have yet to charge him under the State's new stalking laws.

Whether or not the Victorian Bar Council attempted, and failed, to bring the suspected offending barrister 'quietly into line', it should be congratulated for creating internal rules relating to sexual harassment and vilification. The rules were circulated on 26 June 1995 to all members of the Bar and establish a mechanism for conciliation of complaints, principally through two conciliators, Jane Patrick and Ron Castan, QC, who are now available to hear complaints of offending conduct.

### RAPE LAW REFORM ROUNDABOUTS

■ In Italy legislation dealing with the crime of rape was last amended during the Fascist regime in 1936. According to an article in the *Guardian* newspaper the last 'hot humid Italian summer' saw a rash of violent sexual crimes committed against women, and public debate has been re-opened on whether the parliament should finally get around to updating the law. Leading public lights such as the Prime Minister, Mr Lamberto Dini, and the Pope (neither known for radical law reform positions involving the rights of women) have spoken about the urgent need for 'tougher measures' to be enshrined in the statute book in relation to rape. Currently the offence is defined as one against public morality, rather than against the person (i.e. mainly women and children). Successive parliaments have attempted to introduce a Bill dealing with the prob-



lem, but obviously the right of Italian women to sexual autonomy does not enjoy national acknowledgment, and none have succeeded in getting a vote on it. Really . . . just do it.

■ In Australia over the last 15-20 years State and Territory governments have given varying amounts of attention to the task of reflecting up-to-date community standards in their rape laws and procedures dealing with the treatment of rape victims. The most recent efforts in this area have been part of the joint Commonwealth/State project to develop a model code of national criminal laws by the year 2001. In 1993 the Commonwealth Office of the Status of Women commissioned a report by consultants, Jenny Barga and Elaine Fishwick to promote informed debate about the options for national sexual assault law reform. The report examines the history of sexual assault laws in Australia and outlines the implications of different approaches taken in each State and Territory. The Model Criminal Code Officers Committee (known appropriately[?], in this instance, as 'M-cock') is preparing an Issues Paper and has called for submissions on the report and related matters. (For copies of the report and information about the cut-off date for submissions, contact the MCCOC Secretariat c/- Criminal Law Division, Robert Garran Offices, National Circuit, Barton, ACT 2600).

Of course, all this effort to achieve nationally uniform legislation assumes that such legislative initiatives result in changes actually occurring in the courtroom. Unfortunately, this may not be a safe assumption given the way the courts have dealt with the legislative abolition of corroboration warnings in sexual assault cases. It used to be the case that judges were required to warn juries that it was dangerous to convict on the uncorroborated evidence of an alleged victim, as she was assumed to be one of an inherently unreliable class of witnesses (who presumably also enjoyed speaking about intimate body parts and acts in front of a room full of strangers). Most Australian jurisdictions now have legislation that leaves it up to judges to decide whether a warning is necessary, or requiring judges *not* to give such a warning, *unless* they believe it is '*in the interests of justice*' to do so.

The High Court has considered the question of corroboration in sexual assault cases twice since the State and Territory legislatures have intervened

on the matter: *Longman v R* (1989) 168 CLR 79, a case involving allegations of sexual abuse of the complainant by her step-father 25 years before she reported them; and *M's case* (1994) 76 A Crim R 213 dealing with alleged sexual assaults of a 13-year-old girl by her father. The majority judgments in both cases, reinforce the duty of trial judges to warn juries about the danger of acting on the uncorroborated evidence of an alleged victim of sexual assault 'whenever necessary to avoid a perceptible risk of miscarriage of justice arising from the circumstances of the case'. (In Victoria, the High Court's approach has been followed by the Court of Criminal Appeal, see *Omarjee v R* (unreported, 11 April, 1995.) Re-enter: The Corroboration Warning.

Trial judges are reportedly being faced with ever increasing numbers of cases involving adult survivors of child sexual assault and young incest victims, encouraged to report by national campaigns to 'speak out'. Many trial judges and others involved with sexual assault matters, know that corroboration worthy of the court's notice in these sorts of cases is as rare as the proverbial chicken dentures.

And as for the ravages of time on the memories of these women and children as to what colour their nighties were, whether it was a movie on the telly or a video, and what they had for breakfast on the days in question . . . Girlie was lost, madly scrambling for the dictionary to see if 'relevance' had suddenly changed its meaning and was thankful to read the dissenting judgement of Mary Gaudron J in *M's case*. Well . . . Girlie hopes MCCOC can work out what 'in the interests of justice' means and come up with something natty to put in that magic Model Code.

## SEXUAL ASSAULT CONFERENCE

Make sure you don't miss out on registering for the First National Conference on Sexual Assault and the Law — Legalising Justice for All Women. It will be an important forum to have a say about the development of a national model criminal code for sexual assault laws, and for ensuring that our future laws are more geared to providing justice for all women — even those who wear 'mini skirts' and who don't raise the 'hue and cry' immediately. For details, contact Melanie Heenan at the Project for Legal Action Against Sexual Assault on tel 03 9416 1518.

## ON NOTICE

That familiar national refrain 'Mate, I was soooooo pissed . . .' may not be so popular if Australia follows the lead of Canada with its recent amendment to its Criminal Code. On 15 September 1995 a new law came into force so that self-induced intoxication can no longer be used as a defence to crimes of violence, including assault and sexual assault. The Canadian Minister for Justice, Allan Rock said in a government press release 'The law creates a standard of care that would be breached by anyone who becomes extremely intoxicated and who causes harm to another while in that state'. Have you got that mate? It's not on to have a few too many and tomorrow ask 'Did I really do that?'.

## IN HIS MOTHER'S FOOTSTEPS

In August the American Bar Association Journal reported a first: a son following his mother onto the bench of a US Circuit Court. The article indicated that there had been 'a fair number of fathers and sons, some brothers and cousins, but never a mother-son situation . . . A mother-son team has been all but impossible because of the historical exclusion of women from such high posts in the profession.' Girlie extends congratulations to Judge Betty Binns Fletcher of Seattle. You've not only beaten the ol' historical exclusion but obviously done a fine job as a judicial and parental role model.

## NEXT ISSUE

Look out for Girlie's first legal celebrity interview with newly-appointed member of the Family Court, Justice Linda Dessau.

Prue Dent

*Prue Dent is a Feminist Lawyer*

A collection of all the  
'Sit Down Girlie'  
columns is available  
for

\$6.00

Contact: Julie Malikovic  
tel: 03 9544 0974  
fax: 03 9905 5305  
email: J.Malikovic@law.monash.edu.au