

'SIT DOWN GIRLIE'

Legal issues from a feminist perspective

CONGRATULATIONS

Girlie was delighted to hear that Regina Graycar — prominent feminist jurist and co-author of feminist legal studies 'bible' *The Hidden Gender of Law* — has been promoted to full professor at the University of NSW.

Crossing to Canberra, *Girlie* also commends Attorney-General Michael Lavarch on his fine choice of Justice Michael Kirby as the latest appointment to the High Court. Justice Kirby's credentials for the job not only include his reputation as a distinguished international jurist and human rights reformer, he is also an *Alt.LJ* reader and supporter of *Sit Down Girlie*. (What a guy!) While many of us are still concerned that the ladies' robing room at High Court headquarters is sorely under-used and must be dreadfully lonely for Justice Gaudron, we are looking forward to reading more of Justice Kirby's 'elegant judgments' and the fruits of his progressive and considered ideas on judge-made law.

STILL FIGHTING FOR EQUAL PAY

Despite the hard-fought battles for equal pay in the 1970s, women are still being paid less than men for performing work of the same value — and the quiet war against systemic discrimination goes on. A fresh skirmish is afoot with president-elect, Ms Jenny George holding the ACTU's battle standard firmly aloft. In December the ACTU announced that it would be asking the Industrial Relations Commission (IRC) to grant equal remuneration orders against three companies which are making over-award payments of between \$12 and \$115 less to women compared with men, for similar work (*Financial Review*, 7 December 1995).

In 1994, amendments to the *Industrial Relations Act* gave the IRC new powers to make orders for equal remuneration. This arguably allows the IRC to combat gender discrimination by going beyond minimum award pay rates, where gender-based differences have largely been removed, to tackle fringe-benefits, overtime payments and other components of remuneration packages. The ACTU applications will

test the amendments and the willingness of the IRC to exercise its discretion in relation to equal remuneration orders.

The companies involved in this action — Melbourne greeting card manufacturer, John Sands, and two small Sydney manufacturers, HPM Industries and Utilux — have rejected the discrimination claim and say the different rates of pay 'could be justified objectively'. Sexism in the seventies is 'objectivity' in the nineties? An interesting back-lash.

WOMEN AND THE LAW CHAIR FOR SYDNEY UNI

Finally . . . *Girlie* is not only being told to sit down, she is being offered something to sit on. Dunhill Madden Butler gets the prize for sponsoring Australia's first Chair in Women and the Law at Sydney University. The *Financial Review* (6 December 1995) reported that their sponsorship would enable the law school to appoint 'a suitably outstanding candidate of international stature, whose responsibilities would include advising governments and courts on women and the law issues'. Mr John Churchill, Dunhill Madden Butler's managing partner, is quoted as saying that the firm's decision to sponsor the Chair 'reinforces its commitment to improving the status of women in the profession'.

Mr Churchill and his colleagues obviously have a different attitude from that of a certain other senior commercial lawyer (see *Girlie*, August 1995) to what is 'going on' in law schools these days. Rather than viewing the development of feminist legal theory as threatening and divisive, Dunhill Madden Butler consider that their support is a valuable investment for the future of the legal system and the profession.

Well, Dunhill's is setting the pace. There are plenty more law schools, and plenty of 'outstanding candidates', we just need some more comfy Chairs, (preferably with good back support).

CONFIDENTIALITY OF RAPE COUNSELLING FILES

Girlie's (periodic) prize for Prominent Person with Principles (who sticks to them, gets on national telly and is really modest about it) goes to Di Lucas from the Canberra Rape Crisis Centre. On 14 December 1995 Di was gaoled for contempt by a NSW magistrate when she refused to comply with a subpoena to produce her notes of counselling sessions with a victim/survivor of rape. The alleged rapist's lawyers were seeking to use the notes as part of the defence case in the pending trial. Di was released four hours later after agreeing to allow the relevant files to be held by the court in a locked briefcase, to which only she knows the combination, until the matter is decided.

On ABC national television (7.30 *Report*, 14 December 1995) Di maintained that she was not the only rape counsellor or woman who would have done what she did to protect the privacy of rape victims. That is undoubtedly true, but Di we commend you and your actions. On 14 December most people were too busy Chrissie shopping and gearing up for the office party to remember they had principles, much less go to gaol for them.

The case highlights the undefined status of counselling and other medical files as potential evidence in rape trials. Defence lawyers have argued that notes detailing victims' responses to an alleged rape, including feelings of self-blame and confusion should be allowed before the court in order to bolster an accused's case. This approach exploits a counselling-assisted process of healing following a rape and risks the viability of counselling centres around the country — victims cannot trust in the confidentiality of the counselling relationship if what they say behind closed doors can become part of the court file.

Coincidentally, the issue of confidentiality in the context of rape crisis counselling had been the topic of intense discussion at a session of the National Conference on Sexual Assault



and the Law held in Melbourne only two weeks before Di got the national media interested in the issue. Conference participants heard that defence demands for access to counselling files have been on the increase in Australia and other jurisdictions. The keynote speaker for the conference, Prof. Elizabeth Sheehy, a Canadian legal academic, reported that the practice was now routine in Canada. Counselling services there had responded by shredding files and demanding legal protection for the privacy of their clients. In Australia we are waiting on a clear statement from the NSW court deciding Di's case, or some principled people in the Parliament to commemorate her brave act with some swift legislative intervention.

SEXUAL ASSAULT CONFERENCE A SUCCESS

The First National Conference on Sexual Assault and the Law — *Legalising Justice For All Women*, held in Melbourne in November, was hailed as a success by both organisers and participants. The organising committee of national representatives wanted the conference to represent the diversity of women's experience of sexual assault and the law, and from all accounts this was achieved with good measure.

When pressured for a short-list of her personal highlights of the conference (apart from the closing session which signalled that it was almost time for her to have her life back), co-convenor Melanie Heenan cited:

the inspirational papers delivered by Canadian key-note speaker Prof. Liz Sheehy and Koori academic Marie Andrews, (who has a special gift for delivering a serious message and making you laugh at the same time);

the courageous and emotionally compelling voices of the women who spoke on the panel of victims/survivors (they received a standing ovation and brought many of the audience to tears);

the heart-warming performances by *Somebody's Daughter* and the *Macedonian Women's Choir*; and

the energy in the workshops on how the law can improve victim/survivors' experiences of the criminal justice system.

The conference proceedings will be published later in 1996. Watch this space for details on how to order a copy.

THE STOLEN GENERATION

Girlie is pleased to advise that a Human Rights and Equal Opportunity Commission *Inquiry into the Separation of Aboriginal and Torres Strait Islander Children* commenced in Hobart on 4 December 1995 and moved on 29 January to Melbourne. It then proceeds to travel around the country. The Inquiry hearings are being conducted by three commissioners, Sir Ronald Wilson, Michael Dodson and an Aboriginal woman from each State and Territory. They will spend their time collecting written and oral submissions and prepare a report by December 1996. The Inquiry's aims are to inquire into the separation of indigenous children from their families; to reflect on the past relationship between indigenous and non-indigenous Australians; and to reveal the impact of government policies on the lives of the people who were removed from their families. In reaching these aims the Commission will depend heavily on the voices of the mothers, fathers, children and relatives telling their stories of personal loss and the impact on their lives, families and communities. The final report will cover what should now be done to rectify the damage caused by the separations and consider the justice of compensating those affected. It will also report on the present situation for indigenous children and, in particular, examine the welfare and justice systems in light of the principle of self-determination.

An Advisory Committee has been established which consists of indigenous people already working in this field, in the hope that this will ensure that the Inquiry will be conducted with an indigenous voice at its heart.

Here is an example of a once official attitude towards the policy of separation:

Every administration has trouble with half-caste girls. I know of 200-300 girls, however, in Western Australia who have gone into domestic service and the majority are doing very well. Our policy is to send them out into the white community, and if the girl comes back pregnant our rule is to keep her for two years. The child is then taken away from the mother and sometimes never sees her again. Thus these children grow up as whites, knowing nothing of their own environment. At the expiration of the period of two years the mother goes back into service. So that it really doesn't matter if she has half a dozen children.

[From *Telling Our Story*, Aboriginal Legal Service of Western Australia (Inc.), 1995, p.73.]

Girlie wishes the Inquiry well and hopes that it paves the way for compensation for all who suffered and continue to suffer because of protectionist welfare policies.

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

\$6.00

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5. See Hawkins, Catherine, 'Stopping the Rip-offs', (1995) 20(1) *Alt.LJ*, pp.7-10.
6. See 'Update', (1995) 3(76) *ALB*, pp.2-3.
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8. See, for example, Kupka, Karel, *Dawn of Art. Painting and Sculpture of Australian Aborigines*, Angus and Robertson, 1965; Duguid, Charles, *No Dying Race*, Adelaide, 1963, p.131.
9. Berndt, Ronald M. (ed.), *Australian Aboriginal Art*, Ure Smith, Sydney, 1964, pp.73-74.
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