

# 'SIT DOWN GIRLIE'

## Legal issues from a feminist perspective

### Victoria's first

On 5 March 1996 Girlie heard reports of a big hole having been sighted in the dome of the Supreme Court building in William Street in Melbourne. Going to investigate, she discovered the cause, looking mildly triumphant and unscathed, amongst the broken glass and metal. Her Honour Rosemary Balmford had catapulted from across the road at the County Court, through the ceiling, to become the first woman to be appointed to the Supreme Court in Victoria. Congratulations Justice Balmford on this daring feat and our best wishes for the challenges ahead. (Repairs to the dome are coming along nicely, with new flexible materials being used to replace the sadly decayed spars uncovered by the incident, but which many observers of the building have long suspected was holding the ol' dome together.)

### Welcome Chi

The Victorian Supreme Court building hosted another auspicious welcome of female talent this month. The *Age* reported that on 1 April 1996, Mrs Chi Dinh, a lawyer who came to Australia as a refugee from Vietnam 18 years ago, was admitted to the Bar in Victoria. She has battled language barriers and the difficulties of combining family and study commitments to gain an Australian law degree. She is the first Vietnamese woman lawyer to be admitted to the bar of another country. Girlie offers her congratulations, and welcome to the Australian legal profession.

### Australian men saved!

Disaster has been averted by the Californian medical board that suspended the licence of Dr Melvyn Rosenstein, a Los Angeles urologist who has made tens of millions of dollars by performing and promoting controversial penis enlargement surgery. The *Australian* (March 1996) reported that huge numbers of American men have paid out around \$US6000 to have fat sucked out of their buttocks and filled into a hole at the base of (what they perceived to be) their wee willies. Unfortunately, like many recipients of breast implants, the good doctor's clients are less than

happy about the results of their operations — up to 70% of them have reported problems including: infections, open holes, lumpiness and a 'deformed look'.

The enterprising doctor was in the midst of plans to expand his practice to Australia when the medical board struck — so we will be spared his sophisticated techniques to persuade potential clients to undergo the unpleasant procedure. In the US, ads in newspaper sports pages carried large headings like: 'He's the nicest guy I ever dated, but he's just too small'.

Ms Elisa Wolfe, Deputy Californian Attorney-General, who is heading an investigation of Dr Rosenstein said that 'judging by the grievous nature of the evidence against him, we're not looking at a reprimand here, but more likely a severe punishment'. Perhaps she could devise something appropriate for the manufacturers of silicone implants, the mass media and other members of the body image police who make it hard for both sexes to love their bits the way they are.

### Down on the floor

In January, the NSW Equal Opportunity Tribunal was treated to an 'interesting' account of life on the trading room floor at the Sydney stock exchange, when Julieanne Ashton, a trader's assistant brought an allegation of sexual harassment against her employer, Bankers Trust (BT). The *Age* (25 and 27 January 1996) reported that her complaints included: being asked by male colleagues 'what about a head job?'; suggestions about 'bending her over' and her being a 'slut'. This unwanted male attention went on over a two-year period. She told the Tribunal that her manager ignored her complaints and wrote negative assessments of her work. Other witnesses before the Tribunal corroborated Ms Ashton's account. A former BT employee, Ms Connie Nicolopoulos said Ms Ashton, as a 20-year-old junior, was an 'obvious candidate' and that she knew her colleague was the butt of suggestive sexual language from some of the men 'on a regular basis'.

Another confirmed that locker-room style 'banter' and nudge-nudge jokes were a normal form of interaction at the exchange — that on Monday mornings men would often ask each other 'Did you get one on the weekend?'. However, this male witness saw the greeting as merely a substitute for 'How are you doing?' — 'It's like that male bonding thing they go on about'. Yeah, mate.

This type of behaviour seems to be prevalent in many parts of the finance sector. The *Age* also referred to comments made by Ann Sherry, the former head of the Office of Status of Women, at the Australian Financial Markets Association conference last year. She accused banks and other finance houses of accepting behaviour 'stamped out of blue collar workplaces five to ten years ago'.

She cited strippers jumping from cakes, pornographic pictures on office walls, requests for sexual favours, sexual innuendo and snide remarks about personal appearance. Wow, talented young women must be just queuing to get into such a professional and supportive work environment.

Girlie has to ask, how smart is it to defend this sort of culture? Sexual harassment can cause debilitating physical and psychological symptoms. No-one wins. When the sexual harasser is not dealt with appropriately in an employment situation, many victims are so traumatised they are forced to quit. Employers lose valuable staff members, and are liable to prosecution and negative public exposure when people like Ms Ashton have the courage to take complaints further. In this instance you'd think, as the national women's officer for the Finance Sector Union, Sharon Hutchinson commented, 'banks and financial institutions [would be] keen to project a solid corporate image, rather than be shown up as employers of vulgar yahoos who go ape at any passing woman'.

Truly amazing then, are the remarks made by Ken Farrow, chief executive officer of the Australian Financial Markets Association: '... When the market's rising, the mood is professional.



When there's a market lull, the pressure falls and people are more frivolous.' (Girlie thinks Mr Farrow may want to check the dictionary before he refers to 'frivolity' again in the context of serious sexual harassment allegations.) And even more helpful: 'The dealing room is male dominated, with a style and function not suited to the female personality'. Other commentators have pointed to the 'hideous atmosphere' of the trading room and the enormous pressure on traders to make money.

In response to Ms Ashton's allegations, BT did not attempt to dispel the lewd image of human exchange on the trading floor. Rather, the *Age* reports, BT's counsel argued that 'Ms Ashton took part in the boys-will-be-boys fun and games on the trading floor and had no basis for complaint, being treated no differently from the men'.

The case is part heard and will conclude in April 1996. Girlie is waiting to learn whether the Equal Opportunity Tribunal was as unimpressed by this argument as she was.

## Death row

The *Australian* (17 January 1996) reported that Guin Garcia, on death row in Illinois, USA, had 'a sense of peace' about her impending execution by lethal injection. She maintained that she 'deserved to die', having suffocated her 11-month old baby and subsequently killed the husband she married while serving a 10-year sentence for the child's murder. Death penalty opponents were reported to be less than calm about the decision, working furiously to have her sentence stayed, despite her plea for them to 'stay out of [her] life'.

Guin's position has also been confronting for feminist lawyers and activists engaged in the debate about legal defences for battered and abused women who kill. Guin was orphaned and sexually abused by her uncle before she was six. According to her lawyers, she made her decision to kill her child when she learned welfare authorities were planning to foster her daughter with her grandmother, in the house where her uncle still lived. She shot her husband after he had physically, sexually and psychologically abused her.

Last year Guin decided to drop all appeals — the forum in which argument in her defence may have been heard about her having battered woman's syndrome, post traumatic stress disorder, or that she responded 'normally' to the abuse (provocation) she had suffered.

The Cook County Jail chaplain said Guin's decision not to go ahead with appeals had brought her 'more tranquillity than she had ever had in her troubled life'. Not so for those outside concerned about Guin and what her case represents. Should Guin's choice be respected (she can make her own choices, that's what feminism is about), or questioned (she can't make a valid decision about her future in her powerless position)? And the multi-layered debate will no doubt continue — with Guin as an unwilling participant, as Illinois Governor, Jim Edgar, has stayed her execution with a last-minute clemency decision.

## Misplaced gallantry

Girlie recently heard a story about a female member of the bar who did her best to defend her client at an appearance before a magistrate in country Victoria. She did not count on being hampered by a force beyond her control — old fashioned gallantry.

Her client had been charged with using indecent language, but had been very drunk at the time and couldn't recall the exact words he had used. He did assure her though, that they couldn't have been indecent (he wasn't that kind of guy). The magistrate heard the prosecution's case without the actual words the accused was alleged to have used being mentioned. They were written down and handed to the magistrate. The defence barrister was forced to ask the magistrate to reveal the relevant utterance. He refused, saying they were not fit for a lady's ears. Our heroine argued that she would be making a submission that the words were not, in fact, indecent. The magistrate told her he would entertain no such submission, and, gallant to a fault, said (words to the effect of), 'You may take your seat, Miss X. I can assure you of the indecency of your client's language and, I'm afraid, that I am compelled to find him guilty.' The exact nature of her client's conduct seems destined to remain one of the mysteries of her legal career.

## Sporting nightlife

In early February, Melbourne newspapers were full of headlines about Wayne Carey. For those unfamiliar with the reason for Wayne's newsworthiness, he is, according to the *Sunday Age* the 'most valuable player and most inspirational captain' of the North Melbourne Australian Rules footy team. Unfortunately, during the 1995 Grand Final Wayne had a bad day and only scored

one goal, and he and his team mates ultimately lost. Like real men they went out to drown their sorrows in the night-clubs along King Street. By nine o'clock the next morning, Wayne and his mates had had a few. He approached a young woman on the street, grabbed her left breast and said 'why don't you get a bigger set of tits?'. For this 'indiscretion' Wayne was charged and ultimately pleaded guilty to indecent assault. The magistrate gave him a good behaviour bond and released him without conviction or fine, saying Wayne had done a 'bucketful of work for the community'. (Girlie is offering a prize for those who can guess this magistrate's favourite sport.) Outside the court Wayne said he was sorry if his actions had offended anybody and that he just wanted to get on with the footy now. (Another prize for anyone who can work out who Wayne might have offended.) Wayne's sponsor, Nike, issued a statement to the media that they intended to continue to support Wayne despite his brush with the law. Well done Nike — *just blew it!!*

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*References from Legal Education p.79.*

## References

1. Smith, S., 'The Case of Springvale Legal Service', in D. Neal (ed.), *On Tap, not on Top: Legal Centres in Australia 1972-1982*, Legal Service Bulletin Co-op Ltd, 1984.
2. Campbell, S., 'My Learning Friend: Students in Court' (1993) 67 *LJ* 914.
3. Approx. 75,000 separate client records have been created over the last 22 years and 35,000 of these are now indexed using Paradox software.
4. See also Note 3. The Office of Legal and Family Services (LAFS) administers legal aid for the Commonwealth. Since 1990, LAFS has sought to require community legal centres around Australia (now numbering over 100) to standardise and computerise their data. The stated intention is to permit more precise targeting of legal aid, based on demographic trends made clearly accessible for the first time by this material. Building on an earlier program developed for Victorian legal centres by La Trobe University, the new National Information System (NIS) will eventually produce useful material but it is a passive program with no 'pro-active' case management features. The SLS version provides this capacity.
5. Current access 'themes' at SLS are police assaults on ethnic youth, legal professional complaints processes, family violence advocacy and environmental/planning law changes in Victoria.
6. For example, a resident campaign against PCB pollution in a declared toxic industry zone near SLS.
7. For example, a long series of submissions to government in order to remove control of lawyer complaints processes from the Law Institute of Victoria.