

'SIT DOWN GIRLIE'

Legal issues from a feminist perspective

IT'S OFFICIAL

The *Australian* (2 September 1997) reports something Girlie always suspected, that judges pay out more in accident compensation to men than to women. According to a national study of more than 300 personal injury cases, the main reason for the disparity is that the judiciary assume that women will put their careers on hold to have children.

Professor Regina Graycar, the Dunhill Madden Butler Chair of Women and Law at Sydney University and her research assistant Margie Cronin, have conducted a three-year study on personal injury damages assessments. Their conclusions, in essence, are that 'in most of these cases women get less money'. The reasons discovered are that judges do not think that a woman could continue to be a high-level executive until retiring age, they take into account that a husband's work involves overseas travel, or assume that women will not resume work after an accident. It seems from the study that these sort of assumptions are not as easily made when men are the plaintiffs. The study is presently being shaped into a book because, according to Professor Graycar, 'what is really important is to look at areas of law where people assume that gender issues aren't raised'.

She has found that in personal injury assessments, courts will 'almost inevitably tell the reason why a woman is employed in paid work and that in itself is making a statement about gender'. Interestingly, 'they don't tell you why men work because that is something that men are presumed to do'.

To counter these misplaced assumptions, Professor Graycar is recommending changes in the way evidence is dealt with and two commonly posited solutions — increasing the numbers of women on the bench, and judicial education.

PLEASE EXPLAIN ...

Girlie notes with sadness that the Federal Government has still failed to appoint a Federal Sex Discrimination Commissioner following the departure of Sue Walpole. A little birdie told Girlie that there will be no permanent appointment to replace her; the position will be terminated and staff of the policy

unit of the sex discrimination division of HREOC have taken voluntary redundancy packages in protest. Further rumoured is the pulping of all reports completed by the unit. The reason given is that they are too expensive to keep. It seems that the area of sex discrimination is not high on the Government's 'to do' list. Perhaps Mr Howard thinks there isn't any?

GET YOUR OWN SUSHI NEXT TIME

The *International Herald Tribune* (29 August 1997) reported a decision of a Japanese court which is causing a sensation in Tokyo. The court ruled in favour of a 33-year-old woman who divorced her husband after he demanded that every day she cook him breakfast, press his pants and clean the house. The woman also worked full time but the husband said it was her job to do all the housework as well. The husband sued the wife claiming about \$35,000 in damages because she did not fulfill her part of the marriage arrangements. The court rejected his claim but asked her to return her wedding rings and \$8000 in gifts.

Japanese women's groups have cheered the decision, saying it is a symbol of the growing resistance of some women to the traditional Japanese marriage where men refuse to help with any housework and even expect their wives to draw their baths.

Perhaps as a result of these expectations an increasing number of Japanese women are delaying or refusing marriage. The average age of marriage in Japan for women has risen to 27 and the Government is starting to worry about a rapidly decreasing birthrate.

In the case reported, the husband demanded the wife cook him miso soup and rice every morning, do all the housework, and give him most of the money the couple needed to pay the household bills as personal spending money.

Judge Waki said in his order that it was reasonable that the woman did not want to live with her husband under those conditions.

WOMEN LAWYERS ARE DOING IT FOR THEMSELVES

Girlie is pleased and excited to announce the official launch of the Australian Women Lawyers in Melbourne at the Australian Legal Convention on 19 September. Justice Gaudron officially welcomed AWL. In a report prior to the launch, the *Australian* (17 September 1997) quoted the President of AWL, Melbourne barrister Alexandra Richards as saying: 'It is shocking to realise, but women's rights fall short of human rights in many areas of the law'. She cited accident compensation payouts and family law as two areas of concern. To counter this, the AWL has pledged to 'speak out for women in our community where Australian laws or the Australian way of life has failed women'. AWL, the first national body of its kind, has also vowed to launch test cases and use women lawyers in influential positions to seek out the 'fault zones' where the rights of women suffer in the law, and then lobby for change.

Ms Richards said that the board of AWL consists of 13 women who are 'strong and intelligent, from all areas of the law and not afraid to stand up and be counted'.

Girlie welcomes AWL and wishes it luck!

A WORD FROM ONE OF OUR FAVOURITES

Justice Kirby will be cheering the foundation of AWL if his recent speech in Sydney is anything to go by. In June, His Honour gave an inspiring and passionate talk to the Women Lawyers Association of New South Wales on the topic 'Women Lawyers — Making a Difference'. He quoted statistics from the United States which suggest that the profession there has a preponderance of women lawyers at the lower end of the legal hierarchy despite there being nearly equal men and women graduates from law school. Turning to Australia, His Honour found that we are in the same, if not a worse, position. Over the

Continued on p.255

tions in 1948 and ratified by Australia in 1949, defines 'genocide' in Article II:

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm of members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the groups;
- (e) **Forcibly transferring children of the group to another group.** [emphasis added]

The Convention confirms that genocide is a crime against humanity.

The Inquiry's examination of historical documents found that the clear intent of removal policies was to absorb, merge or assimilate children so that Aboriginal people, as a distinct racial group, would disappear. Policies and laws are genocidal even if they are not solely motivated by animosity or hatred. The Inquiry found that a principal aim of removal laws was to eliminate Indigenous cultures as distinct entities. The fact that people may have believed they were removing Indigenous children for 'their own good' is immaterial. The removal remains genocidal.

'Bringing them Home' also found that Indigenous children continue to be removed from their families. Why did the Report come to this conclusion? (Question 5)

Although laws specifically designed to remove Indigenous children from their families were officially repealed dec-

ades ago, as far as Indigenous people are concerned their children effectively continue to be removed through the child welfare and juvenile justice systems. Due to the entrenched disadvantage and ongoing dispossession of Indigenous Australians, contemporary laws continue to discriminate against Indigenous families where raising children is concerned.

Aboriginal families continue to be seen as the 'problem', and Aboriginal children continue to be seen as potentially 'saveable' if they can be separated from the 'dysfunctional' or 'culturally deprived' environments of their families and communities. Non-Aboriginals continue to feel that Aboriginal adults are 'hopeless' and cannot be changed, but Aboriginal children 'have a chance'. ['Bringing them Home', p.453]

The Inquiry found that Indigenous children are 6 times more likely to be removed for welfare reasons and 21 times more likely to be in juvenile detention than non-Indigenous children ('Bringing them Home', pp.492-8). There are many reasons for these high rates of removal, including continuing cultural bias against Indigenous modes of parenting, inadequate and inappropriate services for Indigenous families and discriminatory treatment of young Indigenous people before the law.

There are countless reports documenting the damaging effects of removing Indigenous children from their families and communities and recommending alternative ways of dealing with the problems.² This work shows that supporting Indigenous families and communities to find their own solutions regarding their children works better than removal. Strengthening Aboriginal and Islander families and communities is far better than punishing their

children. Indigenous families and communities are entitled to raise and care for their families without fear of discriminatory institutional intervention. Indigenous peoples have the right to bring up their own children.

In July 1996 Australia's Prime Minister, John Howard, said:

I believe that Australian families not only provide the greatest source of emotional and spiritual comfort to Australian individuals but beyond that a functioning united coherent family is the most effective social welfare system that any nation has ever seen.

And the widening gap between rich and poor, much of the social disintegration of this country and much of the unemployment of this country can be traced to the disintegration of family life.³

Given the Prime Minister's reluctance to officially apologise to the 'stolen children' this statement is ambiguous and contradictory. It seems that the Government is dictating one set of values for Indigenous Australians, and another for the rest of the country.

Catherine Duff

Catherine Duff is a Sydney human rights lawyer.

References

1. First Commonwealth-State Native Welfare Conference 1937, quoted in 'Bringing them Home', p.32.
2. See for example, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Third Report 1995', AGPS, 1995 and 'Fourth Report 1996', AGPS 1996; Royal Commission into Aboriginal Deaths in Custody, National Report, AGPS, 1991.
3. The Prime Minister, the Hon. J. Howard, MP, 'Address to the 61st Annual State Conference of the National Party', Queensland, 20 July 1996.

'Sit down Girlie' continued from p.253

18 months he has sat on the High Court Justice Kirby has heard from only six women in 'speaking parts'. He estimates this to be 2 or 3% of the advocates appearing in the court. Such statistics suggest that the High Court too is a 'man's venue'.

In His Honour's view: 'it is possible that I will go through the next 18 months without seeing a woman advocate at the central podium in the grand courtroom in Canberra. More important than buildings and furniture by far is the reality of full participation in the workings of justice.' He posits the reasons for the disparity in speaking parts as — the fact that the male top performers are resistant to change; the risk that top

female advocates are quickly identified and appointed to judicial office; it is difficult to change the Bar as it is a collection of individuals rather than a monolithic corporation; the fact that the cases before the High Court are 'big league' cases and instructing solicitors are usually senior men who are not used to the concept that leading counsel may be female; client attitudes are given by some as a (spurious) reason for not selecting a female advocate as is the fact that many women interrupt their careers to raise children, and finally the 'ethos' of the Bar. His Honour noted that any group which for nearly 700 years has been comprised solely of men is bound to have inherited attitudes which may sometimes seem unwelcoming to some new entrants.

Girlie's favourite part of the talk was His Honour's hopeful statement that:

It is inevitable that the new entrants will alter the ethos and the culture of the legal profession. But it will take time. The road will often be rocky for those who set out to forge the changes. It will be a serious mistake if they sink their own personalities by copying precisely what has gone before. Women have unique things to offer the legal practice. They should not hold back from their own special contribution.

That's something uplifting to copy down and put on the wall of your office for inspiration when times get tough.

Dina Soares

Dina Soares is a Feminist Lawyer