

# 'SIT DOWN GIRLIE'

## Legal issues from a feminist perspective

### THE ATTORNEY-GENERAL'S RESPONSE

In the October 1994 issue of the *Alt.LJ* Girlie published some questions for the Attorney-General of the ACT. The questions concerned amendments to several pieces of legislation which changed all references to she or he etc. to he or she etc. The Attorney has responded:

*Thank you for your letter in relation to use of non sexist language in ACT Legislation. I will explain why, in a couple of recent instances, we have engaged in what at first sight may seem the strange exercise of replacing references to 'her or his' with 'his or her', and so forth.*

*Let me say at the outset that the ACT Government takes the issue of non sexist legislative drafting very seriously, and we have been for some years now engaging in the exercise of removing gender specific language — ie. replacing 'his' with a more appropriate term. Unfortunately, the English language does not have a universally acceptable non gender specific personal pronoun. While the use of 'they' is commonly understood, it fails Fowlers English usage. Hence 'his or her' as the replacement, although wherever possible, we use the non sexist noun — thus, replace 'where the inspector is of the opinion . . . he may' with 'where the inspector is of the opinion . . . the inspector may'.*

*We have now corrected nearly all our Acts, and I would confidently say that the ACT would bear favourable comparison with the States in the percentage of our published Acts which use non sexist language.*

*In the early days of this exercise, randomly using 'he or she' and 'she or he' was tried. This led to internal inconsistencies and lawyers being lawyers, you would appreciate that an argument could arise whether 'she or he' in one section of an Act and 'he or she' in another [sic]. In order to avoid inconsistency and confusion, and in the absence of a non gender specific personal pronoun, 'he or she' (and its variants) will be used throughout.*

*There has been minimal cost. No laws will be specially addressed, but where other amendments are being dealt with,*

*the exercise of tidying up inconsistencies will be addressed.*

*I should add that, if we could find an acceptable alternative to 'he or she' etc., I would be happy to use it. I could not, of course, act unilaterally.*

*Yours sincerely*

*Terry Connolly*

Well, while Girlie applauds the ACT Government's attempts to get rid of sexist language she notes that 'what at first sight may seem the strange exercise . . .' remains strange on a second and third sighting. The reasons given for this strange exercise are that Fowler was a man and lawyers will be lawyers. Not good enough!



### CORE CURRICULA GRANTS

The Federal Minister for Education, Mr Crean has announced that three tenders to produce study materials designed to combat sexism in our law faculties have been won by women. Associate Professors Regina Graycar and Jenny Morgan have received a seed grant of \$310,000 to produce case study materials on violence and on work. Reg and Jenny are well known for their book *The Hidden Gender of Law* and their work on the Australian Law Reform Commission's *Equality Before the Law* reference. They have also been leaders in the teaching of feminist jurisprudence. Associate Professor Sandra Berns who has taught law for over 20 years and is an expert in property, torts and contract law, also received a grant to produce materials on citizenship. The *Australian* (16.11.94) quotes the Minister as saying, 'In broad terms, the case materials will make women and women's concerns more visible to law students and to those teaching them. Gender bias issues risk marginalisation if treated solely in elective topics such as Women in the Law.' Good on you Minister, well done Reg, Jenny and Sandra.

### POPE FORCES BALLISTIC NUNS INTO LAW COURTS

'Part of the reason I'm a lawyer is because I can't be a priest'. These are the

words of Sister Campbell, a nun affiliated with the Sisters of Social Service, and founder of the Community Law Center in Berkeley, California. Sister Campbell is one of hundreds of Catholic nuns who work as lawyers representing the poor and who are featured in a fascinating story in the *National Law Journal* (19.9.94). The article explores the tensions experienced by women who have

taken vows in a church which has a history of subordinating women — a history which the present Pope is determined to perpetuate — and the demands of an adversarial legal profession requiring the antithesis of 'turning the other cheek'.

Sister Mary Howard Johnstone, a Milwaukee family law practitioner, is quoted as saying:

'Part of religious life at this point in time is to stand with people who are vulnerable . . . I think you end up looking at the stereotypes — the sister bringing harmony and peace, the lawyer being adversarial — and modifying both of them in important ways'. Sister Johnstone's practice involves work with battered women. She says, 'Not only in our Church but in our society, we've been taught to forgive and forget. I see a woman who is being battered and I'm not telling her forgive and forget — I'm telling her to forgive and remember.' This process of practical reconciliation has not made the lawyer nuns any less forceful in court. Sister Campbell has been described by a Judge Duncan as 'going ballistic' and stomping out of court in response to one of his decisions.

### JUDICIAL INTOLERANCES

Judge Duncan may have been prepared to turn the other cheek when Sister Campbell went ballistic in his courtroom but not all judges are so tolerant. An assistant defender in Wisconsin, Roseanne Oliveto, has been found to be in contempt of court and fined \$250 after a judge overheard her using the word 'ridiculous' with respect to his ruling that her client start serving a gaol sentence immediately. The fine was imposed on her without affording her any of the procedural safeguards which are always given to an accused in a criminal

case. On appeal the Wisconsin appellate court affirmed the trial judge's finding. The *National Law Journal* (10.10.94) reports that the court missed the real issue — why was she not accorded due process?

Back in good old Oz a magistrate in Taree has been mentioned in the New South Wales parliament for his comments to a pregnant victim of domestic violence who had fled her home: 'Do you expect the whole world to stand on its head while you sort out your marital problems? Can't you reconcile?'

Washington's Commission on Judicial Conduct has charged District Court Judge Alan Hutchinson with misconduct because he told two people who came before his court seeking to change their names on the grounds that they had completed gender reassignment surgery that the surgery was 'immoral;' and 'evidenced a mentally ill and diseased mind'.

## HARASSERS GET IT IN THE HIP POCKET

Sexual harassers in law firms beware! A jury in San Francisco has awarded \$7.1 million in punitive damages against a partner in the megafirm Baker & McKenzie. The award was made following prolonged harassment of a legal secretary by Martin Greenstein, described by *National Law Journal* as a 'man of the old school'. Mr Greenstein's schoolboy antics have cost the firm 10% of its capital. Australian firms would do well to take note and follow the path now being taken in United States' law firms which are hastily introducing anti-sexual harassment policies. The *National Law Journal* (19.9.94) reports that 'the verdict makes it clear that law firms must, if they have not already done so, implement clear, easily followed policies. A pretty statement of aims won't do.'

## QANTAS TO COUGH UP

Imagine having a job where your appearance, from your toenails to your weight to the last hair on your head was strictly regimented. Those were the conditions endured by women flight attendants working for Qantas prior to 1983. In October 1994, Qantas was ordered to pay \$200,000 in damages for sexual discrimination against five flight attendants. They, and 70 others, were found to be victims of sex discrimination. The New South Wales Equal Opportunity Tribunal upheld a joint complaint that women flight attendants had been denied promotional opportunities, and encouraged to retire at 35, problems not experi-

enced by their male peers. The Tribunal also found that a deed of release signed by 71 women flight attendants in 1984 which was designed to stop them seeking damages was null and void. The Tribunal is yet to determine amounts payable to the other women. The claim was founded on the fact that Qantas had ignored the sex discrimination law which came into effect in 1977. Qantas flight service director Anne Oeding told the *Australian* (28.9.94) that women flight attendants had been treated as second-class employees who were given the most menial work to do. Qantas began recognising that it too was subject to the law of the land in 1983. Ms Oeding's subsequent promotion to flight service director and the promotion of other women has countered the fallacious old argument that women flight attendants were unfit for higher duties. The case makes it clear that it is not simply good enough for employers to implement procedures to prevent future discrimination, they must also remedy the effects of past discrimination.

## QUOTAS AND VOTERS

During September 1994 the press featured coloured photographs of a jubilant Joan Kirner and other Labor women who had won a major victory by forcing their party to agree to the pre-selection of women in 35% of safe seats by the year 2002. At the ALP conference, where the policy was announced, jubilant women streamed into the room cheering and throwing streamers to a standing ovation. The Prime Minister, Paul Keating, and the Minister for Health, Carmen Lawrence, were presented with bouquets. Keating, a recent convert to feminism, has described the policy as a 'defining moment in Australian politics'. Not all the blokes are happy. Some ALP men are said to be in trepidation of losing their own seats and the federal opposition has attacked the policy as 'tokenism, patronising and a step back for women'.

The coalition's spokesperson on Women's Affairs, Judi Moylan has said: 'The criteria for entry into parliament for men and women should clearly be based on merit and their ability to do the job. Imposing a quota system is a reverse form of discrimination. Women of Australia do not need to be patronised and marginalised in this way' (29.9.94). Keating and the Labor women remain unrepentant. The Prime Minister became so enthusiastic that on 8 November 1994 he made 'pleas' for women and Aborigines to have more of a role in local government. Local government, he said, has

20% women representatives but this is far too low. He has urged local government to introduce procedures to ensure women's representation which 'is about keeping faith with our democratic and egalitarian traditions'.

Meanwhile Susan Ryan and Dame Margaret Guilfoyle were photographed together at the *Women and Power Conference* in Adelaide (*Australian*, 11.10.94) and described as 'pioneers'. These two women from opposite sides of politics were united in their desire to see more women in Cabinet. Dame Margaret, ex Liberal Senator said: 'Unless there are women in Cabinet [they] won't have the effect on policy development and implementation that they would if they were part of the Cabinet structure in which the decisions and policy direction are made'.

Sweden currently has the world's highest proportion of women female parliamentarians with 40.7% elected in July 1994.

## SMile?

In Copenhagen the national prosecutor is considering taking a sadist to court. A 30-year-old woman physician described by the *Herald-Sun* (9.11.94) as a self-confessed masochist, telephoned for police assistance on 26 July. They found her in an apartment naked with her hands and feet cuffed and with bleeding cuts on her thighs. She accused the owner of the apartment of violent abuse and attempted rape. The man, a sadist, said he believed her resistance was part of their sado-masochistic game. The Justice Minister is quoted as saying; 'Regardless of sexual preference every human being has the right to say stop when the act is developing in an unacceptable way'. Demonstrating a different belief system to some of Australia's judges the Minister said, 'A no is a no'. The national prosecutor was asked to intervene following decisions by state police and state prosecutors to drop the case. They claimed it was dropped because of the difficulties in proving abuse or attempted rape considering the sado-masochistic elements of foreplay. Denmark's sado-masochists then organised a lobbying group called SMile to have the matter pursued because otherwise: 'It would mean that a perpetrator could do anything to a masochist and then excuse himself by saying he thought the victim wanted it'.

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