

# 'SIT DOWN GIRLIE'

## Legal issues from a feminist perspective

### PUT YOUR PLACARDS AWAY (FOR NOW)

Girlie didn't have the sound recording device set up in time to record the thunderous sigh of relief emitted from numerous quarters when the Superclinics case settled out of court (see the DownUnderAllOver column in the October issue of *Alternative Law Journal*). The highly publicised tort action was looking to be a landmark in this country's human rights record, with parties lining up at the door of the High Court to get their amicus curiae (friends of the court) stamps. The Australian Catholic Health Care Association and the Australian Catholic Bishops were weighing in against the Abortion Providers Federation of Australasia and the Women's Electoral Lobby to argue over whether key State Supreme Court rulings which allow widespread availability of abortions should be overruled.

Before the news of the settlement broke, Girlie was busily packing the loud hailer for the trip to Canberra and thinking up snappy right-on slogans for her placards, pondering the irony of the situation — a case about 'wrongful birth' rather than the 'wrongful death of an unborn' was stirring the long-stilled pot of legally tolerated abortion. And the often uncomfortable meeting between the 'objectivity' of legal reasoning and the personal belief systems of the law-makers was quite clearly on show. As Kirby J was compelled to excuse himself from the case (he was on the bench when the matter was heard by the NSW Court of Appeal), the Chief Justice had the deciding vote on whether the case should be opened up to argument from parties other than those to the proceedings. When he announced that he knew some of the bishops seeking leave to be heard (and with a name like Brennan and a son in the priesthood), we had more than a glimpse of underbelly poking out from beneath the CJ's cloak of impartiality.

But, hey, it's summer, and all cloaks and bets are off on Superclinics. Though it could be worth keeping an eye on the progress of MCCOC (Model Criminal Code Officers Committee of SCAG [Standing Committee of Attorney's General]). Their current discussion pa-

per on nationally uniform criminal laws for non-fatal offences against the person (Chapter 5 in their series, released in August 1996) contains a proposal for abortion (some might argue about its status as a 'non-fatal offence') that is modelled on the provisions currently in force in the Code States. If this were taken up, it would mean a somewhat less favourable situation (for those of pro-choice persuasion, that is) than the current state of play in NSW and Victoria under the common law. It might not be a placard and loud hailer job just yet — get those submissions in to MCCOC — but keep them somewhere handy.

### SOMETHING WORTH SHOUTING ABOUT

Ms Jan Wade, Attorney-General for Victoria got up in Parliament recently and gave her second reading speech for the *Victims of Crime Assistance Bill 1996* — a bill that she asserted is 'far more responsive to the needs of victims'.

One major feature of the bill is a proposal to set up a Victims Assistance Agency to refer victims of crime to appropriate services and to co-ordinate resourcing of those services. OK, sounds pretty responsive to the needs of victims.

However, another feature of the Bill is the proposal to abolish the pain and suffering component of crimes compensation claims and to allow the Crimes Compensation Tribunal to direct how other awarded 'assistance' can be spent. Sounds very responsive to the needs of the Victorian Liberal Government's aggressively economically rationalist agenda. Victims will be allowed to recover pain and suffering type compensation direct from offenders, but only where a conviction has been recorded and the judge or magistrates decides it is appropriate. Think of it — you're lucky enough to be one of a tiny proportion of victims whose offender has been caught, prosecuted and convicted and you're given the go-ahead to go back to a civil court to fight over money. Thanks, Jan. Even if you take the alternative of assigning the State your right to sue the

offender, you'll get back only what's left after the legal costs are covered and the Tribunal has been paid back whatever it's already 'assisted' you with. Better hope you're raped by a millionaire.

Jan wants to replace pain and suffering payments with a voucher system for five counselling sessions, with more available if you want to make a further application — and feel up to exposing yourself to the stress-free environment of the Tribunal which, under the new legislation, will have counsel assisting it, presumably to argue against what it considers to be unreasonable payments of assistance. Sounds very responsive to the needs of lawyers struggling to make a living since legal aid cuts hit.

A coalition of individuals and organisations concerned about how these and other proposals contained in the Bill will affect victims of domestic violence, rape and incest has formed to oppose its passage through Parliament. For details call Maggie Troup or Donna Stuart on (03) 9642 0877.

### BETTINA'S WORLD

For Sit Down Girlie readers who are denied access to the widely syndicated works of Ms Bettina Arndt, one-time 'sexologist' and vocal critic of feminism and its inhuman effects on the lives of ordinary men, this issue of the *Alternative Law Journal* offers a free introduction to 'Bettina's World' — a world that, on the surface bears a striking resemblance to the shared reality of many thinking, caring average Australians, but on closer examination (actually not that much closer, just a few paragraphs in), Bettina's World starts feeling a little (to use a technical term) 'weird'.

Take the recent three-part feature on the impact of family break-up that appeared on 12, 14 and 15 October in the *Age* in Melbourne and the *Sydney Morning Herald* — a classic example of how Bettina's World can insidiously lure unsuspecting readers into a confusing vortex of uncontextualised statistics, authorita-



tive quotes from 'important' individuals (around some of whom the vague whiff of misogyny clings suspiciously) and sometimes well-disguised emotive claptrap.

In Bettina's World of separation and divorce, 'the woman has all the power, the man almost none'. There is 'overwhelming evidence' that that power is 'exercised unreasonably' and that the Family Court has conspired to make legitimate 'tactics used to deny non-custodial parents contact with their children' and provide vindictive ex-wives with 'an armoury of weapons' to ruin men's lives. Men are 'stunned' by revelations that their wives no longer love them and, like lambs to the slaughter, stumble blindly into the traps set for them at the Family Court. The court 'rarely show(s) sympathy' for these helpless creatures who are also 'forced to pay' child support 'under a formula seen by many as unduly harsh and unreasonable'. In Bettina's World sexual abuse of children exists only as 'maliciously used false accusations'; domestic violence is 'a powerful new weapon' in the battle to keep men out of their children's lives; and restraining orders 'are being dished out in Magistrates' Courts like lollies at a kiddies' Christmas party' to be utilised as a 'powerful component in the divorce arsenal'.

Some lucky couples in Bettina's World have escaped the evil clutches of the Family Court and have managed to behave in a respectful way towards each other following a marriage break-down. Bettina gets pretty excited by this and suggests that one woman who has been particularly nice to and supportive of her former husband (and his new wife) should be given a prize for 'civilised behaviour by an ex-wife'. Well yes, I suppose in Bettina's World it is unusual to come across a nurturing woman of strength and integrity, and in a realm where her sisters are responsible for wreaking havoc on the male half of the population, her rare status should be acknowledged.

Readers who have never been to Bettina's World but who may have had some contact with the Family Court or been personally involved in a family break-up may be feeling a little disoriented. Try adjusting the dial to enhance the shades of grey that have somehow been erased from the black and white picture Bettina's World is broadcast in.

Girlie has tried changing the channel or completely tuning out when Bettina's

World comes on, but sometimes, like the trashiest of soaps, it's dealing with issues close to one's heart (in this case the operation of family law in Australia) and it's hard to ignore. And like trashy soaps, Bettina's World reaches a large audience and has a devoted following. One that may find it more difficult to hear the words of people like the Chief Judge of the Family Court, Justice Nicholson. At a launch of a 10-year study into the impact of separation on men (reported in the *Herald Sun*, 7 November 1996) he denied institutional bias against men in the Family Court and spoke instead about 'males not coming to terms with divorce'. 'You've got, 10 years down the track, people still feeling considerable bitterness and largely blaming their former wives for the break-up of the marriage.'

It's a complicated business — and it's not improved by creating a major platform for the viewpoints of only a particular selection of participants. Nor does it help to draw the battle lines and define the warring sides on the basis of gender. Unfortunately Bettina's World can spill out into other realities and have just this effect. Girlie heard of one such occurrence at an editorial meeting at the *Sydney Morning Herald* when the prominence to be given to Bettina's family break-up features was being discussed. Should it get front page coverage or not? The meeting was divided: the women said 'no', the men 'yes'. Guess where the feature ended up. Just who is living in Bettina's World??

## FAMILY LAW FIRST

Girlie is pleased to report that a case in the latest volume of the Family Law Reports (*In the marriage of W and L Doherty* 20 Fam LR 137) demonstrates that the Family Court is indeed taking domestic violence seriously. (Headline from Bettina's World: Man Gets Really Raw Deal on Property Settlement At The Hands Of Evil Family Court.) The Full Court upheld the trial judge's assessment of the equal contributions of the parties made in the course of their relationship, including the consideration that the violence and aggression of the husband towards his wife 'may well have increased [her] contributions as homemaker and parent as a result'. The trial judge referred to the husband's drinking habits and to the physical violence and aggression he exhibited towards his wife and children and found that although this behaviour related to a relatively short period of time towards the end of the marriage, it served to

increase the wife's contribution to maintaining the family unit, and diminish the husband's.

The court has acknowledged in a very real way that violence is not a valid way to resolve matrimonial conflict, it's a crime — and in future property settlement disputes, the ol' cliché may have some teeth (crime doesn't pay).

## SOME WOMAN TO WOMAN ADVICE

The *National Law Journal* (26 August 1996) noted that a defendant received some unusual advice before her guilty plea in Ohio. Common Pleas Judge Shirley Strickland Saffold told Katie Nemeth that: 'Men are easy... You can go sit in the bus stop, put on a short skirt, cross your legs and pick up 25. Ten of them will give you their money... If you don't pick up the first ten, then all you got to do is open your legs a little bit and cross them at the bottom and then they'll stop.' Judge Saffold made the comments when fining the 19-year-old defendant \$200 for misusing a credit card. The Centre for Women Policy Studies and the National Organisation for Men have called the remarks sexist and insulting to men and women. Girlie is still trying to figure out what it all means!

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