

'SIT DOWN GIRLIE'

Legal issues from a feminist perspective

MAKING HONEST WOMEN OF THEM

It's not just Mum and Dad and great auntie Ethel urging people to 'go on, tie the knot, get yourself hitched, let's see a ring on that finger ...' Victorian legislation governing the use of IVF technology bans unmarried couples from the fertility treatment program. *The Age* newspaper (5 March 1997) reported that the Human Rights Commission has effectively declared the legislation to be discriminatory under federal law, when three women in *de facto* relationships brought a case, having been refused treatment at IVF clinics. Two of the women and their partners compromised their positions on marriage and 'did the right thing' in order to receive the treatment. The third stood firm and went interstate.

The Commission found that the clinics had contravened the *Sex Discrimination Act 1984* and ordered them to pay compensation to the women — for emotional stress and suffering, and in the third woman's case, expenses for travelling interstate for treatment. This is an unfortunate result for (at least one of the) clinics, whose attitude seems to have been that 'marital status is irrelevant to a couples' suitability for IVF', they were 'just following the rules'. In order to avoid prosecution under the State law, they are forced to continue refusing treatment to unmarried women, until the Parliament sees fit to update the Act.

In the wake of the Commission's ruling, the State Government has 'pledged to review its ban on *de facto* couples using IVF' (hopefully this includes looking at the situation for lesbian couples seeking to use IVF). Girlie also hopes this pledge is acted on a bit quicker than the one successive Victorian governments have made about fixing up *de facto* status in the *Testators Family Maintenance Act*. In the meantime, pragmatists who have formerly shunned official vows, might just shock themselves by taking the advice of Mum, Dad and great auntie Ethel.

[See article on this subject on pp.126-129 of this journal. Ed.]

DOWN ON DE FACTOS

More bad news for those whose special loved one is not also their lawful wedded spouse. *The Age* (5 March 1997) reported that legislation passed in early March means the Department of Immigration will be able to avoid certain provisions of the *Sex Discrimination Act*, and favour married couples over those in *de facto* relationships, when considering migration applications — a move that clearly signals the Federal Government's willingness to reward those who toe the traditional line over those who favour an 'alternative lifestyle'.

The Opposition, Democrats and Greens united to vigorously oppose the Government's move to exempt itself from anti-discrimination provisions which will result in foreign citizens who wish to join their *de facto* partners in Australia, having to prove they have lived together for a year overseas. Married couples will not have to provide this evidence of their commitment to each other. They have a bit of paper with an official stamp to do it for them.

As a resident of Victoria, Girlie is disappointed but not surprised to observe the Federal Government's use of legislation to put itself beyond the law that applies to everyone else. Jeff now has this technique down to a fine art. However, she is increasingly saddened by the demonstration of intolerance of alternatives to the nuclear family. Where does this system of rewards for traditional arrangements leave those whose experiences have given them compelling reasons to avoid repeating earlier mistakes. And what of people in same sex relationships who do not have the option of legalising their commitment with an official stamp?

700 YEAR SENTENCE FOR SERIAL RAPIST

Fans of the compulsory cumulation of sentences for serious sexual offenders (we have a few here in Victoria, not many of them on the bench who actu-

ally have to apply these rules) have long argued that 'judges are too sensible' to hand out 'ridiculous' sentences, despite this being open to them under the sentencing legislation. That has been the case here so far, where judges seem to have retained the memory of the doctrine of proportionality (the punishment should fit the crime) despite the politician's attempts to get them to forget it in specified cases.

Not so in California. The *LA Times* (1.4.97) reported that Judge Robert Perry gave Sean Mitchell, a serial rapist convicted of 98 counts of rape and associated crimes committed against 15 women, a prison sentence of 700 years, 4 months, and an additional 11 consecutive life sentences.

The list of Mitchell's crimes is truly horrible, and as one of his victims said 'For him to go to prison will be like going on vacation, after what he put us through', however, this sentence makes you wonder about Judge Perry's ability with arithmetic and whether cryogenics was involved with the equation. Girlie is glad sentencing rape offenders is not on her daily 'To Do' list but suggests a reasonable compromise between the 'lock 'em up for 700 years approach' and the 'slap 'em over the wrist with a wet tram ticket method' (adopted by some sentencers) could be the go.

LUCKY BRITS

Girlie was pleased to see that Tony Blair and his New Labour Party was elected to power in the recent British elections. Even more exciting was the fact that the Prime Minister's wife is an independent woman. Cherie Booth is a QC with a thriving practice and tons of attitude. Maybe she encouraged Tony to place five women in the Cabinet. Imagine that . . .

CLONE ALONE

Perhaps we can soon clone the parliamentarians we want. The *Herald Sun* (4.3.97) reports that hundreds of people, mainly women, have approached the Scottish genetic engineering team



who recently made a sheep clone, Dolly, and requested that they be cloned.

The head of the team, Ian Wilmut, has warned that it is 'absolutely vain to clone yourself ...' and stated that any ethical fears about cloning were 'entirely justified'. Dammit, *Girlie* was going to give Ian a call. What interests *Girlie* about the cloning issue is that the procedure, which can create a new life from a single cell, does not require any biological input from the male of the species. The ramifications for gender relations are enormous!

FROM THE COAL FACE AGAIN

Girlie wonders how much work has to be done before some members of the legal profession's attitudes will ever change. Recent reports from the courts reveal these gems ...

By a defence barrister to a [female] prosecutor in a committal proceeding:

Let's get this over and done with so that you can go to the beauty parlour or do whatever it is that you girls do ...

From a [female] magistrate to a [female] applicant for crimes compensation for injuries suffered after a gang rape:

Why are you wearing overalls now? Is it to make yourself look unattractive to the opposite sex?

Girlie is trying hard not to get too depressed!

MAIL FROM OTHER MACHOLANDS

The Philippines

A recent article in *The Earth Times* (13.4.97) discussed the battles being fought by women in the Philippines to improve their status. In 'Women Fight Uphill Battle in Macholand', Daniel Shepard writes that the rule of 'machismo' is still firmly entrenched despite the efforts of feminist Filipinas. He notes that there is still an image of the Filipina being docile and that those interested in achieving change often work through subterfuge and manipulation. There is a lot to be done as, presently, there is no alimony and no divorce law, rape is categorised as a crime against chastity rather than against the person and an attempt to introduce marital rape was defeated. Congresswoman Oreta was interviewed by Shepard and said that when the marital rape bill was mooted in the

Congress, some of her male colleagues opined that a woman had a duty to subject herself to her husband's wishes. One Congressman apparently stood up to say that for Muslims one of the commandments is for a woman not to neglect her husband's needs! Wonder where that is written? Interestingly, a bill on sexual harassment was passed.

Afghanistan

A report from Kabul, Afghanistan (*Philadelphia Inquirer* 8.5.97) has made *Girlie* sure she will not be holidaying in that part of the world for a very long time. Taliban religious police have stepped up their patrol of the city to ensure that the strict rules of the Taliban are being met by Kabal residents. Under the Taliban, men must grow beards, women cannot work outside the house and must be covered from head to toe in cloaks called burqas, and girls cannot go to school. All that sounds bad enough but the Taliban also bans the use of paper bags and plastic wrappings!

WARNING TO VICTORIAN READERS

If you are a Victorian reader, *Girlie* would like to remind you that the system of crimes compensation as you know it is about to be radically changed. The *Victims of Crime Assistance Act 1996* is an ironically named little piece of legislation that comes into force on 1 July 1997. Its main effect is to remove any cash compensation for pain and suffering inflicted by a criminal act and to replace it with an award of assistance for 'reasonable counselling services' actually incurred or likely to be incurred. In s.8(3) there is a provision in 'exceptional circumstances' for an amount to be included to a victim for other expenses incurred or likely to be incurred, to assist the victim's recovery from the act of violence. *Girlie* met with the Attorney-General to express her concern that victims of sexual assault and domestic violence will be adversely affected by the proposed legislation. She was told that the exceptional circumstances clause will 'hopefully' be used by magistrates to help these victims obtain some money to buy a new bed, move house, go on a holiday or do whatever they need to in order to feel a bit better about the trauma they have experienced. *Girlie* hopes so too! In case, the magistrates don't use the exceptional circumstances clause in this way, please tell any potential crimes

compensation applicants to get their applications in by 30 June 1997.

Sal Vation

Sal Vation is a Feminist Lawyer.

LEGAL EDUCATION COLUMN

The next issue of the *Alt.LJ* will see the return of the Legal Education Column. Contributions to this column are welcomed. Enquiries as to the suitability of material may in the first place be made to the Column Co-ordinator, Chirs Field on tel 03 9613 8364. Manuscripts should be sent to the Editorial Co-ordinator, *Alternative Law Journal*, c/- Law Faculty, Monash University, Clayton, Victoria 3168.

Parker article continued from p.125.

References

1. Garner, Helen, *The First Stone*, Picador, Sydney, 1995. Page numbers in brackets in this article refer to this book.
2. Leser, D., 'Generational Gender Quake', *Good Weekend*, 18 March 1995, pp.30-9, at 34.
3. Garner's arguments are not novel. They are rudimentary forms of more scholarly arguments about the limits of formal legal justice in resolving disputes and restoring relationships. See for example, Auerbach, J., *Justice Without Law?* Oxford University Press, New York, 1983; Cragg, W., *The Practice of Punishment: Towards a Theory of Restorative Justice*, Routledge, London, 1992; Merry, S. and Milner, N. (eds), *The Possibility of Popular Justice*, The University of Michigan Press, Ann Arbor, 1993.
4. See Daly's 1992 analysis of the Clarence Thomas-Anita Hill congressional hearings in which she makes a similar point: Daly, K., 'What would have been justice?', remarks prepared for the plenary on sexual harassment in the Thomas hearings, Law and Society Annual Meeting, 27-31 May 1992.
5. Pybus, C., 'Cassandra Pybus reviews Helen Garner's *The First Stone*', (May 1995) *Australian Book Review* 6-8, at 6.
6. Summers, A., 'Sold Out' *Sydney Morning Herald*, 4 April 1995, pp.13-14, at 13.
7. Mead, J., 'When it comes to sex and power, Garner doesn't get it', *The Australian*, 21 September 1995, p.114.
8. Mead, J., 'First Stone pushes the panic buttons', *Sydney Morning Herald*, 21 September 1995, p.15.
9. Leser, above, p.35. Mead's anger was understandable; she claimed she had been split into seven different characters in Garner's account, none of them very sympathetically portrayed: Mead, above, ref.7.
10. Garner, H., 'A story that needed to be told', *The Australian*, 9 August 1995, p.11.
11. Garner, above, ref.10.