

# 'SIT DOWN GIRLIE'

## Legal issues from a feminist perspective

### A call for safety

A new initiative in Northern Virginia and Maryland has seen free cellular phones being distributed to high risk victims of domestic violence. The phones are programmed to dial only the police and various domestic violence hotlines. So far 40 phones have been distributed under the 'Call to Protect' hotline and similar programs are in operation in other States. The first woman to receive a phone used it on the first day and her abuser was arrested.

While *Girlie* has nothing but praise for the initiative, she is a little uncomfortable with the fact that the phones are only being distributed to those women who are willing to go through with a prosecution. While it is understandable that the police are looking for ways to encourage convictions, it does nothing to break the cycle of fear experienced by those women unwilling to report their abusers. Additionally, *Girlie* hopes that the response to these calls is more constructive than anecdotal evidence suggests many responses to domestic violence calls are.

### Don't mention the war

Further to an item in the August edition, *Girlie's* thoughts are with US abortion activists, who were devastated by the murder on Remembrance Day of Dr Barnett Slepian in New York. Dr Slepian was shot by a sniper through his kitchen window and was the victim of the fifth sniper attack on abortion providers in the New York area in four years. The attacks have always taken place on or around Remembrance Day as pro-life groups have selected this as an appropriate day for 'remembering the unborn'.

In response to the attack, US Attorney-General Janet Reno has met with representatives from almost 20 different abortion rights groups to discuss the ongoing violence experienced by clinics and doctors providing safe abortions for women. The representatives want law agencies to share information about clinic violence suspects in an effort to prevent any further tragedies.

### Kicking judge

For those *Girlie* readers bemoaning the state of our judiciary, spare a thought for our English counterparts who for years endured the antics of the infamous 'kicking judge'. Justice Sir Jeremiah LeRoy Harman earned his nickname when he was caught on camera kicking a taxi driver in the groin. The judge later explained that he had mistakenly thought he was kicking a press photographer.

Justice Harman also had a talent for endearing himself to women in his court, criticising female counsel when their hair was not tucked completely behind their wigs and on one occasion telling a female witness who wished to be addressed as 'Ms' that he had 'always thought there were only three kinds of women: wives, whores and mistresses. Which are you?'

Justice Harman's most infamous talent, however, was for delayed judgments, taking two years to deliver judgment in a tax case which had taken just two days to hear. He was finally undone when he took nearly 20 months to deliver a decision which revealed that he had forgotten many of the relevant facts and a significant part of the evidence, largely because he had lost his trial notes. Counsel for the plaintiff in that case had asked numerous times for a ruling and had even considered taking out life insurance over the judge in case he died before handing down his decision. Hearing the case's appeal, the Court of Appeal ordered a retrial and said 'a situation like this must never occur again'. The Lord Chancellor said he shared the Court's opinion and accepted the resignation of Justice Harman who will retire on a full pension of \$138,000 a year.

### True love and the High Court

Many *Girlie* readers would have been pleased when a few months ago, the High Court held that Jean Garcia did not have to meet her obligations under guarantees she made for her husband's business. While reaching their decisions through different avenues, all six

members of the Court held that the guarantees should be set aside. *Girlie* respectfully suggests, however, that despite the case involving a decision to free a woman from guarantees she made with respect to her husband's business, this case is not necessarily a major blow in the war against sexually transmitted debt.



Fraught with what the Court perceived as difficult politics, the decision walked a tightrope between acknowledging the imbalance of power experienced by women and insisting that many women were in a position to make their own financial decisions at the twilight of the 20th century. The Court also negotiated the rather treacherous terrain of emotional relationships, acknowledging that the complexity of a marital or familial relationship is such that people will often disregard independent legal advice. Additionally, it recognised that a spouse's explanation of a transaction will often be incorrect or incomplete without any suggestion of duplicity or intimidation — a reflection, said the court 'of no more or less than the trust and confidence each has in the other'. This has been met with some cynicism from surprising corners, an article in a Melbourne weekly advertorial commenting in passing that 'only the High Court of Australia, it seems, believes in true love'.

Gaudron, McHugh, Gummow and Hayne JJ eventually found that despite Mrs Garcia presenting as a professional, 'intelligent and articulate lady', she had not fully understood the effect of the transaction (i.e. that her home was being used as security) and that the bank officer had not fully explained the transaction to her. Less was made, however, of the trial judge's finding that Mr Garcia had insisted that Mrs Garcia knew nothing about finance; and that the Garcias' marriage was in trouble, therefore making it likely that Mrs Garcia would have done what she could to preserve it. An examination of these pressures and a discussion of the ways in which women often take responsibility for relationships may have assisted

the Court in understanding why so many women still find themselves in a situation such as this, although *Girlie* acknowledges that the High Court is not necessarily the most convenient forum for these discussions.

While questions such as these were touched upon, it is *Girlie's* understanding that the decision in *Garcia* did not particularly rest on considerations of sexually transmitted debt, but rather whether one party had fully understood the import of the transaction. This makes Justice Kirby's rather detailed exposition somewhat surprising.

Justice Kirby was especially concerned with the implication from this and previous case law that married women were at an automatic and special disadvantage. The Court having thoroughly examined what is known as Dixon J's rule in *Yerkey v Jones*, Kirby J pointed out that even in *Yerkey v Jones*

the majority had said that it was an outdated idea that married women were incapable at law. He insisted that if the principle of a special equity were accepted it should not just apply to married women as this was an 'historical anachronism'. He noted that 'the capacity of a married woman to deal with her property freely as a 'feme sole' is long established' and argued that it was much more pertinent for the Court to look at the relationship of cohabitees or emotional dependants than to treat marriage itself as a suspect category.

Justice Kirby is well known for his fondness for formal equality and while many women would rather fancy themselves as a 'feme sole', *Girlie* respectfully suggests that it is fatal to deny the systemic factors at work which have meant that women, and often married women in particular, agree to courses of action which leave them

disadvantaged. This is especially the case considering the law's penchant for insisting on the privilege of people (invariably women) to jeopardise the home they share with their partner and family for the sake of a business in which they frequently have no involvement. Of course it is also crucial to acknowledge that women not only have the capacity to make their own financial decisions but frequently bear the responsibility for managing their family's budget in the face of limited resources. It is a difficult path to negotiate and *Garcia* may well not have been the most appropriate case in which to do it. It is *Girlie's* fervent hope that the opportunity presents itself to the Court in the near future and that the law takes a step further in understanding the contradictions and complexities which govern women's lives.

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