

# 'SIT DOWN GIRLIE'

## Legal issues from a feminist perspective

### THE BAR AGAIN

*Girlie* wouldn't want to be seen as having any pet topics but some of those boys at the bar keep on keeping on . . . This month *Girlie* spotted a sign, typed and stuck up in the lift of the barrister hideaway in Melbourne, Owen Dixon Chambers. It read: 'Sexual Harassment Office. If you want to be sexually harassed please come to our office now.' At least one of the signs was ripped down by an irate *girlie* who asked the men in the lift with her if she had mistakenly arrived at a boy's school! The 'win a few, lose heaps' game of snakes and ladders for women at the bar continues.

### GETTING THERE

*Girlie* congratulates Jennifer Coate who was recently appointed Senior Magistrate in charge of the Victorian Children's Court. Jennifer is a former school teacher and private practitioner, and is presently a magistrate. She will take up her new position in December.

Still on the judicial front, we haven't yet struck gold and seen back to back appointments of women to senior judicial posts around the country, but in October, 156 judges and magistrates *did* attend the Australian Institute of Judicial Administration 'Eureka 1995 — Justice and Equality' three day conference in Ballarat in Victoria. The conference focused on gender and judging and was attended by mostly Australian judges who participated in the facilitated workshops and panel discussions on topics including women and economic power, language and gender, sexual assault, domestic violence. The aim of the conference was to educate judges to be sensitive to another (female) point of view and many speakers were from other disciplines, such as the social sciences. The conference was also attended by Canadian legal academics and judges who have been involved in judicial education initiatives for many years and were able to tell our Australian judges a thing or two about gender sensitivity. Look out for a new improved judge coming soon to a court near you!

Unfortunately judicial understanding of gender issues (or even some plain commonsense) is still sorely needed,

going on a recent ruling of Judge Hume of the District Court in South Australia. The *Sunday Herald Sun* (24.9.95) reports that His Honour presided over a rape case in which he ruled that there was insufficient evidence that the 14-year-old complainant had not consented to sex with a man she had met briefly that night. The court was told the girl was initially 'drunk, obviously affected by cannabis and vomiting blood, holding her stomach'. She was in the bedroom at a party when she told the accused to 'f...off' and then fell, hitting her head on the bed. She was unconscious for some time and woke to find that the accused had removed her clothes and was lying on top of her having sex. After the judge's ruling, the jury acquitted the accused of the rape charge, and found him guilty instead of unlawful sexual intercourse (on the basis of her age).



titled 'Contested Adoption Pushes the Hot Buttons' the *NLJ* (29.5.95) reports that the court found in favour of a white lesbian lawyer (M.H.) who sought to adopt a 5-year-old African-American boy who had been her foster child. The judge found that it was contrary to the child's best interests to return him to his great-aunt who had also sought his adoption after the State declared his mother unable to care for him because she suffered from schizophrenia. The Court found that the love of M.H. had transformed the child from a silent and troubled boy to a talkative, happy chatterbox, and that the 'gender issues' would not create a problem for him. *Girlie* was thrilled to read of a decision that turned on the facts rather than false assumptions about the abilities and suitabilities of gay parents.

### QUEER COURT HAPPENINGS

American gay rights lawyers have suffered a setback in their efforts to eliminate discrimination against people on the basis of their sexual preference. The *National Law Journal* (29.5.95) reports that the US Circuit Court of Appeal upheld a Cincinnati city charter amendment that prohibited the Cincinnati City Council from passing ordinances which shield gays from discrimination in employment, housing and other areas. The amendment was established by a voter referendum and was upheld by the Court of Appeal on the basis that 'homosexuals cannot constitute a protected class because they are defined by conduct not status'. Similar anti-gay rights measures have already been passed in Florida, Oregon, Colorado and Ohio. A prominent gay rights lawyer, Matthew Coles, told the *NLJ* that the recent loss may not be a major setback because the US Supreme Court is soon to review a similar case that was settled in favour of gay rights. Keep your fingers crossed!

In the District of Columbia Court of Appeal another decision involving gay rights, this time involving adoption, has aroused strong reactions. In an article

### GIRLS WITH ATTITUDE

In Canada, the *Globe and Mail's* 'Report on Lawyers' takes a different slant on representing lesbian couples in adoption cases. It profiles young women lawyers working in large corporate law firms in Ontario who have been taking on 'socially relevant' pro bono litigation. As well as same-sex adoptions, the lawyers' projects include developing practices in the area of civil sexual assault and institutional survivor compensation, disability discrimination and violation of artists' free speech.

Despite the amount of unbillable hours these cases represent, the firms involved seem to have cottoned on to how they benefit as well — working on cases that challenge the boundaries of legal thinking produces more skillful lawyers who are more valuable to the firm. It also draws better talent to the firm and keeps them there. Laura Pawlitzka, who successfully represented three lesbian couples in their attempts to adopt children, said, 'It's the most interesting thing I've done in nine years of practice'. Gary Luftspring, her managing partner, summed it up from the firm's point of view: '... challenging

cases bring out the best in them . . . It creates a good feeling. If your lawyers are happier, they are more productive and they'll make more money'. Thanks Gary, just keep employing the girls with attitude.

## INTERVIEW WITH JUSTICE LINDA DESSAU

In the August 1995 edition of the *Alternative Law Journal*, *Girlie* had the pleasure of announcing the transformation of Linda Dessau, Magistrate, to Justice Dessau of the Family Court. In this edition we bring you the inside story of her amazing makeover, in what is the first in a semi-regular series of interviews with *Girlie*-appeal legal celebrities.

### 1. *What qualities are you most pleased to have brought to the Family Court?*

That's a difficult question because it forces an immodest answer. Nevertheless, I would be delighted to be regarded as fair minded and showing common-sense. In addition, I am pleased to bring to the court a wide range of court and life experience. In this regard, my years in the Magistrates Court have exposed me to a wide range of people and a wide range of problems.

### 2. *What would you most like to achieve during your appointment?*

There is much I would like to achieve, from various perspectives. In relation to each case, I would like to be a good judge. In relation to the bigger picture, I would like to remain actively involved in court listings and delay reduction, gender awareness and mediation.

### 3. *Have you found anything about the job that would justify the argument that there is a dearth of women qualified to fill senior judicial positions?*

No. I was asked many questions along these lines on my appointment. I don't believe there is even the need for a debate about 'affirmative action'. There is no question that there are many excellent, well-qualified women for judicial appointment.

### 4. *Have you got any tips for newly-weds?*

I don't believe for one moment that just because I have become a judge of this court, I suddenly have all the answers to a successful marriage. If I ever form that view, I would be very worried that I had fallen prey to misplaced piety.

### 5. *How does a Family Court judge wind down after a hard day on the bench?*

She rushes home to attend to her own more immediate family responsibilities. The dual role of parent and professional is always onerous and involves a great deal of juggling to ensure that everyone and everything receives the requisite attention. On the other hand, the joy of involvement in family activities is a wonderful and relaxing distraction.

### 6. *Do you miss the Magistrates Court?*

Yes and no. I am enjoying the new challenge of this job, but that is not to say that I have anything but the greatest affection for the work, and respect for my former colleagues in the Magistrates Court. No other court is quite like it. After all, it's the court which touches most people in the community. Magistrates Courts are busy, thriving places which deal with every aspect of real life drama. Generally, the work is performed with great compassion, fairness and the appropriate humour. The variety of that work is wonderful.

### 9. *What advice would you give our Girlie readers who are aspiring to a spot on the bench?*

I think this is a very healthy development that people can begin to see a potential career path in the judiciary. My advice to readers is that if they do aspire to a 'spot on the bench' that they no longer need to slavishly follow a traditional path towards that end. To the great benefit of the community, judges are now being drawn from diverse backgrounds. In my view, a broad base of experience can only make someone a better judge. Lawyers should not be shy of changing career paths from time to time. They should feel confident that the exposure to different areas of practice provides not only good professional experience, but essential life experience. This includes practising in another jurisdiction. For example, I worked for almost three years in Hong Kong. I found that time invaluable to experience different people, different interests and different legal systems — working as I did with lawyers from all over the Commonwealth. Similarly, my time in America last year looking at delay reduction in criminal justice systems provided me with an opportunity to open my mind to North American court systems in a way that stimulated

me to consider afresh the changes that would improve our system.

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6. Hathaway, James, *The Law of Refugee Status*, Butterworths, Toronto, 1991.
7. per Toohey J at 407; see Mason CJ at 389, Dawson J at 398 and McHugh J at 429.
8. See Otto, Dianne, Morgan, Wayne and Walker, Kristen, 'Rejecting (In)tolerance: Critical Perspectives on the United Nations Year of Tolerance', (1995) 20 *MULR* 190.
9. See ref. 6 above, p.v, citing the Executive Committee of the UNHCR Program Conclusion No. 39, 1985.

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## References

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2. Human Rights Commission, Report 20: *Complaints Relating to the Protest at Pine Gap, November 1983*, Human Rights Commission, Canberra, 1986; Harrison, Kate, 'What Did You Do In the War, Mummy?' (1983) 8 *Legal Service Bulletin* 132; Ronalds, Chris, 'Anzac Day and the Aftermath' (1983) 8 *Legal Service Bulletin* 133.
3. Lawson, Damien & Ruby, Felicity, *Capsicum Gas: Should the Police Have Another Weapon?*, Coalition Against Repressive Police Equipment and Training, Melbourne, 1994. Contact CARPET at PO Box 222, Fitzroy 3065.