

'SIT DOWN GIRLIE'

Legal issues from a feminist perspective

EQUAL PAY, UNEQUAL PERKS

Girlies, it's time we came to an important understanding: fringe benefits are not only about concealing unsightly forehead blemishes and flattering facial framing. There are serious issues of remuneration to consider. While you were pondering why your mousse and hairdryer attachments were losing tax exemption status in the twilight of the eighties entrepreneurial boom, boys who had never considered the advantages of 'the flick' over the 'wispy curl' look were negotiating their salary packages chock a block with the other kind of fringe benefits. We're talking bonuses, allowances, discretionary payments, non-cash benefits like cars and parking spaces and mobile phones. And that's why 30 years after equal pay for equal work became the law in Australia, women in full-time employment are still earning only 83% of what their male counterparts are receiving.

Or maybe, as the Human Rights and Equal Opportunity Commission's recently released booklet indicates, it is not a direct result of feminine preoccupation with grooming, but a lack of awareness on the part of employers about their legal obligations to provide equal remuneration. 'Remuneration' includes all aspects of pay including superannuation, bonuses and other benefits, which may have escaped the notice of those focused on ensuring hourly rates of pay for men and women are the same, while offering overtime only to men or giving bonuses based on time spent in the office, rather than on achievements. Education about these and other forms of indirect discrimination are included in the Commission's recently released booklet. Girlie recommends popping one in the boss's in-tray and getting ready for the next round of salary negotiations.

STICKS, CARROTS AND PARENTAL LEAVE

Not only are Australian working women experiencing income disparity compared with men, those employed in the private sector seem to be dipping out when it comes to paid maternity leave, as compared with women in other developed countries. The Interna-

tional Labour Organisation has released a report (*Age*, 16 February 1998) naming Australia as one of the poorest providers of paid maternity leave benefits in the world. Public servants in Australia are entitled to 12 months unpaid and 12 weeks paid maternity leave, but there are no laws governing maternity leave entitlements in the private sector. While there is nothing stopping private companies making provision for maternity leave packages for their employees, Girlie suspects that it would take a big stick like an Act of Parliament to get the topic on the agenda in quite a number of boardrooms.

Or perhaps a big carrot. In the US, which is also 'lawless' in respect of paid private sector maternity leave, the *Family and Medical Leave Act*, the first Bill signed by President Clinton in his initial term, has resulted in gains for employers. The Act provides for 12 weeks of unpaid, job-protected leave from work if an employee, or his or her child, spouse or parent is seriously ill or becomes a parent through birth or adoption. Since the Act was passed, 15 million working parents have taken advantage of the benefits of the Act and employers have found that it saves them money through reduced staff turnover and absenteeism. Women's groups and other advocates are currently urging the passage of the *Family and Medical Leave Enhancement Act* which would extend the operation of the leave benefits to companies with 25 or more employees (under the first Act, only companies with 50 or more employees were covered). To Girlie it seems like a pretty simple lesson: treat your employees with compassion and respect and everyone benefits. Who needs the sticks and carrots?

THE WORTH OF A WIFE

The *Age* (24 January 1998) reports that the thorny question of the worth of a wife has been raised in America recently. Once again there has been a fight in a divorce court over who gets what, but this time the 'what' is around US\$130 million and the 'who' is the very feisty Lorna Wendt. Up until recently, Lorna was the dutiful spouse of Gary Wendt, chairman and CEO of

General Electric Capital Corporation. During their 32 years of marriage, Lorna financially supported Gary when he went to Harvard Business



School and then supported his rise up through the American business world by performing her corporate wifely obligations in an exemplary manner. As Lorna puts it, she 'protected' Daddy-o from the stresses of family life by raising the couple's two daughters, organising the family's many moves, catering for work parties and dinners and arranging corporate balls. She was also the available companion for business trips and dinners and only once! did she plead fatigue and get out of a dinner party. It was a great shock then for Lorna to be made redundant with little warning. She explains that Gary 'handled our divorce like a business decision because that's the way his mind works'. She found notes he had made detailing his intention to end the marriage after she had arranged one last Christmas party. In his reasons for the divorce, Gary cited Lorna's refusal to play golf with him as the reason for his loneliness.

Recently a divorce court heard the case and awarded Lorna US\$20 million. Quite enough for 54-year old Lorna to spend the rest of her life swanning around in style and champagne but it is not half. Lorna is appealing the decision on the basis that she was half the family fortune accumulated during the marriage. As she figures it: 'if guys said 'Marry me, I'm worth 90 percent and you're worth 10 percent', no-one would get married would they?' She's got a point! Apparently, there are many more nervous male corporate leaders in the boardrooms (boredrooms?) of America since Lorna's case was splashed across the cover of 'Fortune' Magazine. Good Luck Lorna!

HIGH COURT HIJINX

Friday the 13th of February was certainly a lucky day for Heather Osland when her special leave application was heard in the High Court sitting in Melbourne. *Girlie* was one of more than

100 girlies (and some boys) who filled the court to hear the application made by Dr Jocelyn Scutt on behalf of Osland. Osland was convicted of the murder of her less than pleasant husband, Frank, after a trial in October 1996 before His Honour Mr Justice Hedigan in the Bendigo Supreme Court. At the trial, evidence was given of the 13 years Osland endured as the wife of a man who displayed classic 'battering man syndrome' and of the fact that she fell within the classic symptoms of the 'battered woman syndrome' (BWS) or 'battered woman reality' as Dr Scutt fearlessly described it to the High Court. Osland's defence counsel, Felicity Hampel and Jane Dixon, ran the defences of self-defence and provocation

in the trial and attempted to link them to BWS. Osland's son, David Albion, was charged and jointly tried with his mother as he had clubbed his stepfather with an iron bar after his mother had drugged his dinner. The jury could not agree on their verdict in relation to David so he was re-tried and subsequently acquitted of the murder. His mother meanwhile was sentenced to imprisonment for 14 years and 6 months with a non-parole period of 9 years 6 months.

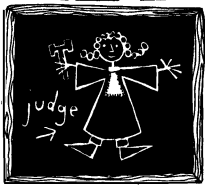
She appealed her conviction and sentence in the Court of Appeal of the Victorian Supreme Court without success. Her application for special leave to appeal to the High Court before Justices McHugh, Gaudron and Gummow

was granted, much to the joy of the supporters of the 'Free Heather' campaign who filled the courtroom, and of her all-woman legal team of Helen Delidis articulated clerk, Sue Wakeling solicitor, Hilary Bonney junior counsel, and Dr Scutt.

The next step for Osland is the appeal which will be heard some time after April. It is anticipated that the appeal will focus on the inconsistencies in the verdicts between the two accused as well as the way in which the BWS evidence should shape the appropriate directions given by trial judges on the issues of self-defence and provocation. *Girlie* will keep you all posted!

Effie Davitt

Effie is a Melbourne-based feminist lawyer.



LEGAL STUDIES

The Constitutional Convention was held in Canberra on 2-6 and 9-13 February 1998. Popularly elected delegates from each State and Territory along with government-appointed delegates discussed their ideas for constitutional reform and for an Australian Republic. An article on the Convention can be found on pp.2-5 in this journal.

Questions

1. What are the major arguments put forward for Australia becoming a republic? In particular, why is it no longer appropriate that the Queen of England remain Australia's head of state?
2. If Australia were to become a republic what would be the advantages and the disadvantages of having a popularly elected President? Should such a President have the power to dismiss the government? Why?
3. Will constitutional reform jeopardise Australia's system of democracy?
4. From your observations of the Constitutional Convention, and from your own experiences, what are the major issues facing young people in the process of constitutional reform? Were they adequately ad-

ressed by the Constitutional Convention?

5. Indigenous Australians are calling for recognition and protection of their rights in the Constitution. What form, if any, should such recognition take and what would be the advantages and disadvantages of each of these options? Discuss in particular the suggestion for a constitutional preamble.

Discussion

1. There have been calls for the drafting of a Bill of Rights as part of the process of constitutional reform. What is a Bill of Rights? Should Australia have a Bill of Rights? Why? Discuss the advantages and disadvantages of such a codification of rights. What kinds of rights should such a document include — consider economic, social and cultural rights as well as civil and political rights. Should a Bill of Rights be enshrined in the Constitution? Why?
2. Aboriginal and Torres Strait Islander peoples have demanded that their distinct rights, like the right to native title and rights to culture and heritage, be recognised in the Constitution as well as their status as Australia's First Peoples. Many

people have rejected this statement claiming that such recognition will damage Australian sovereignty and cause division. Discuss.

Research

Research constitutional reform in another country such as Canada, Norway or South Africa. Consider in particular:

- how the rights of the country's citizens are protected under the relevant constitution, if at all; and
- if the relevant document contains provisions particular to any group within a country such as women, indigenous people or ethnic minorities.

Debate

Australia in 1998 is a very different country to the Australia of 1901. Although changing the Constitution might make the document more symbolic of Australia's identity in 1998 symbolism is not a good enough reason to change a system that has worked so well for so long.

Catherine Duff

Catherine Duff is a Sydney human rights lawyer

The issue of the republic and constitutional reform will be looked at in further depth in the April edition.