Letters

Dear Editor,

Great publication – keep it up! I always read *Sit Down Girlie*. It's an invaluable column, well written and unrelenting. And usually it carries commentary on an issue which I've also found irksome or downright unacceptable.

The June 1993 issue of the column, looking at judicial attitudes, was no exception in this regard. The column canvasses the prevalence of such attitudes among the judiciary, and the fear that this is representative of the broader community. Too true. However, I would like to take issue with the conclusion regarding the comments by Judge O'Bryan.

The column first discusses the judge's comments about trauma not being experienced by a rape victim while she was unconscious and had her throat cut. In the next item (entitled Mitigating Factors), in the second point, the column concedes that the media jumped on and published only the most dramatic parts of the judge's remarks, and that, 'read as a whole the remarks are actually sympathetic to the victim'. Fine, so far.

However, the column then goes on to say that 'whether or not the remarks have been taken out of context, they could still have been put more sensitively'. I am unconvinced that sensitivity is relevant – it is the underlying attitude of the judge that is relevant, whether or not he can express it sensitively.

The crucial issue is the attitude underlying the fact that the judge believes that if a victim (a woman) is unconscious then that victim will not suffer the effects of whatever injury or humiliation was inflicted during the period of unconsciousness. (If one extrapolated the 'logic' of the judge's thinking, would he have considered the rapist as being merciful if, had the victim regained consciousness during the attack, he knocked her unconscious again in order to finish business?)

While judges' attitudes undoubtedly do reflect those of the broader community, an important part of the role of the judiciary must be to help educate the public and assist in the arduous process of changing attitudes. The judiciary is as much a social institution as it is a legal one. And whether or not their attitudes do reflect those of the broader community, they are unacceptable and must change. Educating judges is the least that can be done at this stage.

Jane Inglis
Sydney

Dear Editor,

The article in your June edition 'The farmer and his wife' highlighted the disadvantages experienced by many women in rural Australia. I have worked in rural New South Wales for over eight years as a social worker and if anecdotal evidence counts for anything, my observations support the claims made by Malcolm Voyce.

I have met numerous women who have separated from spouses who own a farm and I have never met any women who have secured any proportion of the farming property. Most that I have met have walked away with nothing and are unlikely to receive anything in the way of child support. Particularly in the cases where the farm has been handed down from a previous generation, the women often feel locked out of any decisions and some women feel particularly uncomfortable in their own home due to the attitudes of their in-laws, who either subtly or blatantly point out who they believe owns the property. This would not be the experience of all families obviously but I would believe that it would not be isolated.

I would also like to state that the contributions of most rural women are understated and are not restricted to domestic activity. Many women I have met have taken more or less the full responsibility for maintaining the bookkeeping and record keeping of the farm. Most women also participate in many other activities of a physical nature, so their contributions extend much further than keeping house while farmer John is away.

Finally, I would like to support the sentiments of the author with respect to the recommendations of the Joint Select Committee on the issue of property settlements re farms. It is indeed dangerous if we grant special status to the owners of rural properties as the only ones disadvantaged by such a measure would be women and their children.

Women in general in rural communities suffer from a lack of access to services including free legal services. No doubt this adds to the disadvantage which they appear to encounter in the courts.

Paul Whiting
Tamworth

Dear Editor,

While Shampa Sinha's article 'Sexual Harassment and the Common Law' (1993) 18(2) *Alt.L.J.* would have made a useful contribution to the literature 10 or 20 years ago, it is extraordinary that it focuses on the creation of a new common law tort without any advertance whatsoever to the statutory schemes currently operating throughout Australia. Most Australian anti-discrimination legislation expressly proscribes sexual harassment at work and, if not, as in the case of the *Anti-Discrimination Act* 1977 (NSW), it has been clearly recognised judicially as a form of sex discrimination. Although Tasmania, from whence Ms Sinha hails, may be the only Australian jurisdiction without anti-discrimination legislation, it is undeniably covered by the *Sex Discrimination Act* 1984 (Cth) legislation which specifically proscribes sexual harassment and makes provision for compensation.

Unfortunately, almost all of Ms Sinha's material (both case law and commentary) is American and only one Australian sexual harassment decision is referred to in a footnote via the one Australian commentary cited. It seems to me that it was incumbent on Ms Sinha to read at least some of the Australian material on the statutory proscription of sexual harassment before proposing the new tort, or was she proposing it for adoption in the United States?

Margaret Thornton
Bundoora