

De Minimis

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Sarah Moorhead talks law reform and the challenges facing women in law, with the MLS judge in residence, Justice Neave

Hi Justice Neave, thanks for agreeing to be interviewed for De Minimis, the law school's ...

Yes, I'm familiar with *De Minimis* — believe it or not, we had a *De Minimis* in my day, and it used to publish the most scurrilous...

Ah, yes, well, I can assure it has changed its ways, it's an upstanding publication nowadays, with not a blemish to its name... Moving right along, how did you get into law?

Coincidentally! I'd never intended to do law — I wanted to do medicine — but then in year 11 I discovered that I found science much harder than the humanities, so I started thinking about Arts, and then Mum suggested law. I did very well in my first year of law — I liked the rational, logical argument side of law: my brain worked in that way. For a while, I saw that as the major thing I liked about law, but as I got more experienced, I saw the need to supplement the understandings from law with other disciplinary perspectives, and that's when I got into law reform. Nowadays I think lawyers need lots of other skills as well. But yes, as an academic, I enjoyed the puzzle aspect so I taught conceptually difficult subjects like Property and Trusts.

These other skills for a successful modern lawyer... pray tell?

I'm very interested in the way law works on the ground, in the differences between the law as written and the law as practised. Lawyers need to be aware of the ways their practice, as well as the substance of the law, affects people. Changing the law is only a very small part of reform; it's quite easy for lawyers to keep doing the same thing as always, even though the law has changed.

Interesting; law people tend to assume — or at least, hope — that law reform is a solid path to social change...?

Well, if you define 'law reform' broadly, to include procedure and practice, and the interactions of the law with other social forces, then yes, law reform can bring about real change. But one of the frustrations is that you can get the law right and nothing much changes: it needs to be complemented by changes to institutions that affect power inequalities. For example, once — a long time ago! — I thought that achieving formal equality for women would eventuate in substantive equality. Now we know that's not true, and that we have to look at other elements of human existence that affect where

people end up.

There is, as you say, still a gap between the genders in terms of pay, seniority, etc. A lot has been written about it, most of it largely depressing for a female law student. Do you have any more positive messages?

I'm blown away by the talents of young law students, particularly women. The real issue is how to reconcile having children (if you want to) with pursuing a career. The answer has to lie in family strategies and the participation of men in caretaking. I see some hope in the fact that men are taking a greater role in caring for children, but there is still a long way to go. The other thing you have to think about is what environment and areas you want to work in, and once you think beyond working for a large law firm (and some law firms are women-friendly now, but not all of them), there are other possibilities for combining really satisfying work with family responsibilities.

Isn't that coming close to putting the onus on women to find jobs that suit family responsibilities?

Yes. Obviously we want to see structural change in society, but in the meantime... it's a bit difficult to avoid that. It's also very important for women to support each other.

You headed an inquiry into prostitution in Victoria in the 80s, one of the recommendations of which was the decriminalisation of sex work. Tell us more?

Believe it or not, the state government was worried about the planning aspects of illegal brothels — the sex work itself was illegal, but they were also very concerned about the breach of town planning regulations. I was asked to investigate how criminal laws and town planning laws among other things should change. The Inquiry made a range of recommendations, including that small businesses — one woman working alone, or with one other person — should not be subject to planning controls in the same way that other small businesses were, at the time, excepted. We interviewed sex workers, some users, looked at a lot of empirical data, and also did a lot of consultation. My ultimate view was that laws which punish sex workers do more harm than good, because the people who end up fined or in gaol are the women, not the men who use them. Sex work should not be normalised — advertising should not be allowed — but nor should we punish those involved in it, unless



they're forcing people into the industry against their will.

Many of your recommendations were implemented, in stark contrast to, e.g., those of the Commission into Indigenous deaths in custody. Why??

Luck, in part: in, for example, the Royal Commission into Family Violence, the government basically said they would implement our recommendations before we started! And it's fair to say that the more complex the problem, the harder it is to bring about change. And of course after the initial attention gained through the media and so on, people lose attention and it's hard to maintain political momentum. Community education is very important, to change attitudes. That takes time. But over my career, for example, when I started working there was no maternity leave for academics! I was involved in campaigning for that and for better childcare for students and academic staff and now these policies exist! So you've got to be patient, and take a long view, particularly with complex problems.

On the topic of your career, you managed an extraordinary jump from academia straight to being an appellate judge, without having to be a barrister — please explain?

I'd chaired the Victoria Law Reform Commission for five years; I think I was approached on that basis. I'd given a lot of speeches criticising the low number of women on the bench, so I suppose I was taken at my word! I was nervous, but I think I would have been more nervous if I'd been taking a trial judge position.

Continued page 2



Justice Neave interview continued...

Appellate judges deal with legal issues and legal argument — something I'd been doing for a long time. I also knew that I could make decisions. Some people are very good at legal argument, but find it hard to make the call. I knew I wouldn't agonise too much. The other thing was that I knew I'd be sitting with other judges, so I was reassured insofar as I didn't know very much about procedure — though that's not outside the realm of human comprehension.

It was partly luck, but also you have to be prepared to grab opportunities. You have to think, to make yourself think, "Oh yes, I can do this." And then, you'll find that you can!

That is a truly lovely thing to hear as a third-year student faced with an array of career paths, all of which seem unobtainable, including the ones I don't even think I want very much anyway.

I think when you're in your 20s, you agonise a lot about decisions that turn out not to matter all that much. I think a decision you make now probably won't have as big an effect on your life as you think it will.

You mean the subject I choose to fill my final elective won't dictate my destiny?? The decision to clerk or not to clerk won't open up or close forever the doorway to success??

It won't! You're going to live a long time! You'll probably have 3-4 career changes within the law or outside it, and you'll learn transferrable skills from all the experiences you have along the way, and that's the way it should be — the days when you went to a firm and stayed there until you retired are gone, thank goodness.

On the topic of future pathways, in honour of

all those students in the grips of clerkship applications, I have one final question: tell us an interesting fact about yourself that we wouldn't find out from your CV or cover letter?

HAHAHA what a terrible question. Ahh, I would say I've had a very fortunate life and had lots of interesting and varied experiences, for which I'm very grateful.

I feel like I could find that out from your CV...

Well, I don't have any strange hobbies if that's what you're after.

Well, with my attempts at paparazzi journalism thwarted, do you have any final messages for the student body?

Think broadly about what the law can enable you to do. When I think about people I studied with, or past students, and where they've ended up — they've had really diverse and interesting careers, and have taken opportunities that might have seemed a bit out of left field, which have opened up a whole world. So don't be frightened! Don't be too anxious!

Sarah Moorhead is a third-year JD student

The Quirks and Perks of Law School Spaces

Alice Kennedy

I've been at the law school some time now, by which I mean the exact same length of time as any other second year JD student. I want to say that I know this place back to front but that wouldn't be true, especially because I still get confused between the Mezzanine classrooms and those on the Ground Floor. Nonetheless, there are quirks and perks of the law building which I adore and would very much like to share with you.

The Cheapest Coffee: Level 2 Coffee Machine

The Level 2 coffee machine is the best-kept (and possibly the only) secret level two has to offer. This is where I go when I badly need a dose of caffeine and am too lazy to make the trek down two flights of stairs to Porta Via. For a lowly \$2 you can get a caffeine fix that almost tastes like coffee. In terms of options, there is no substantial difference between the cappuccino and latte, but the mocha is a real standout. And, if you prefer your coffee plain, I have found that spiking the long black with extra sugar makes it taste a little bit less like desperation. Finally, while I highly recommend the Level 2 coffee machine, please do not attempt to branch out and sample the so-called chai latte. It tastes like a rancid little cinnamon bun pooped in your mouth.

I was told in passing that it is possible to get free coffee from Level 6. As it happens, the 'free' coffee (and tea) on Level 6 is not actually free. It is only for masters students. You should only attempt getting coffee from Level 6 if you feel daring, have your own cup and are willing to risk being told off.

The Level One Student Lounge

This entire area is a mystery. For example, why are lunches regularly stolen from the communal fridge, but nobody steals the decks of cards from the lounge? For that matter, why are there chess pieces, but no chessboard? Is that a metaphor for something?

Mysterious as it is, the level one student lounge is best understood as prime napping real estate. It is one of the quietest places in the law building, acting as a sort of musty-smelling oasis where exhausted students can often be seen snoozing on one of the sofas. If you ever want some peace and quiet or a pleasant space for a nap — this is where you should come.

The Study Spaces on Levels 5 and 6

Every semester, the law building receives an influx of non-law students during the SWOTVAC period, which puts space at an unpleasant premium. This process is as inexorable as the complaints that surface on either the JD Facebook Pages or articles in student publications.

If you would like to avoid the tension and struggle for a space in the library, I encourage you to explore the other levels of the law building. Levels 5 and 6 in particular have been opened and reserved for law student use as recently as last SWOTVAC. The rooms have two advantages. Firstly, they are spacious and less stuffy than the library. Secondly, some of them are home to spectacular sunsets. When you're studying, there's nothing nicer than a room with a view.

The Asian Vending Machine

If you like Pocky, eel-flavoured snacks and ChocoPie then you're in luck, because the Level One Asian Vending Machine has you covered. Ambiguous fruit chews? Check.



Canned coffee? No sweat. You can even buy a drink called Pocari Sweat if you're feeling adventurous.

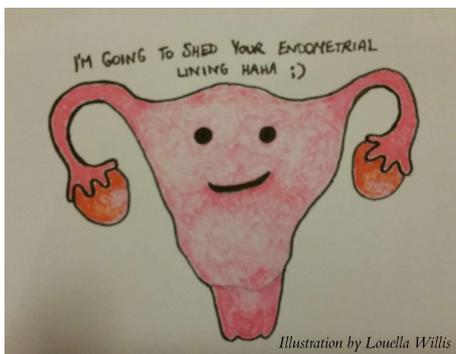
Most importantly: Hello Panda has made a comeback to the vending machine. While this is exciting news for everyone who enjoys faux-chocolate filled cookies, I feel compelled, based on my own experiences, to warn against this temptation.

The reason is simple. If you purchase a packet of Hello Panda you run the serious risk of it jamming in the machine. This happened to me in my first year. Not to be outdone by a box of cookies, I attempted slamming my fist on the machine to make the Hello Panda! move. This might help you. What you really should not do, is buy a second box of cookies in the hope of dislodging the first. I attempted this and the second box also became stuck, taunting me. In a last ditch attempt to salvage my sugar fix I 'gently' rocked the machine and (I was later told) startled a class of Principles of Public Law students. Sorry. I was hungry at the time.

If you feel bound and determined to buy Hello Panda and this happens to you, I think your only option is to calmly resign yourself to failure and go purchase a Snickers from one of the other vending machines. Failure tastes pretty good.

Alice Kennedy is a second-year JD student

How to Study When Your Uterus is Trying to Kill You



Katy Hampson

Firstly, I would like to clarify that not all women have periods, and not all people who have periods are women, and my choice to write about this topic in this week's issue of *De Minimis* is not meant to imply otherwise. That being said, periods are probably affecting half the law school at various times of the month, and this needs to be addressed. Periods, period pain and the fact that your body is biologically set up to be a baby incubator at some point is, for most women, a depressing fact of life. Looking back to our teenage years, perhaps we were a bit excited at first to begin the menarche, but after a very short time the reaction turns into: "Is it really like this forever? Am I just supposed to carry on with life while this shit is going on?"

That is what we learn to do. Keep calm and carry on, because nobody is going to let you slack off just because something totally normal and natural is happening to you. You can take reasonable steps to improve the

situation. But even if you do take the contraceptive pill, chow down on every single pain killer you are allowed to mix together, exercise and take magnesium you still might feel like you are being kicked in the gut, experience throbbing headaches, bleed like a Russian princess (ruining your nice underwear and white bed sheets) and feel like crying, just because.

Despite experiencing this for at least two days out of the month, there is no rest allowed in our schedule. If every person were experiencing this we'd surely get more support.

Medical science hasn't shown much interest in solving the problem that plagues this significant portion of the population demographic. Ten percent of them will be suffering from endometriosis, a condition that makes every symptom of menstruation worse and for which there is no known cure. Until the day medical science decides to put in a serious effort to eliminate the uncomfortable symptoms of periods we should be allowed, if we want, to get a day or two of rest. A day to lie in bed with a hot water bottle, not sit in class trying desperately enough to pay attention to remedies while our uterus distracts us from the dull pain with a stabbing one.

At a minimum, we need to record lectures for people who skip class because of period pain. It would also improve things immensely if we dispensed with the charade of periods as taboo and not to be spoken of in polite conversation. People should feel

comfortable to bring their wheat heat pack to class and microwave it in the break. We don't have a women's room, so the LSS could have pads and tampons on hand in case of emergency. People should be made to feel they do not have to dress up to university just because they are doing law. Go ahead and wear those comfy baggy "period pants" that don't squeeze your mid-section. Let's make it normal to have a vent with your peers about how you're struggling a bit today.

Our society in general and law school in particular is so focused on productivity and excellence. We need to value ourselves and others intrinsically, even if their body is making them not so productive right now. You personally might be perfectly functional on your period. But the pressure on us collectively to soldier on because this is just "how life is" is not helpful.

If we view this as something we should just ignore to be productive we are ignoring the big picture. People who go through a lifetime of painful menstruation may at some point literally produce a life with their body. We have paid maternity leave for people because, like it or not, they are experiencing their reproductive system not caring what they wanted their body to feel like or do right now.

Having your period is a horrible, weird annoying teaser of that every month. So give us some bloody slack.

Katy Hampson is a third-year JD student

Suggestions on Gender (and Other) Imbalances

Anna Belgioro-Nettis

First: congratulations *De Minimis* for acknowledging the gender imbalance in your writers. It was brave to highlight that less than 38% of your writers last semester were female, although over 50% of your audience are women. That step of acknowledging an issue is essential to reflecting on it and solving it.

There is imbalance regarding many aspects in our law school (and wider) community – sexuality, race and disability to name a few. What is however particularly striking about the women imbalance is that we are not a minority. As *De Minimis* mentioned and I have researched, female students have made up approximately 55% of our cohort for at least the last eight years.

I've spent a significant part of my year researching the gender imbalance in another area of law school: representative leadership, specifically in the President position of the Melbourne University Law Students' Society (MULSS). Here's a snapshot of what I found and what I'd suggest as a way to solve gender (and other) imbalances (the full article is being peer reviewed for November publication – stay tuned!):

Let's address the issue as soon as we can: much

of the research into gender imbalance in the law focuses on the working legal community. There are well-established statistics that most law graduates are females yet women fill less than 25% of the law's senior positions. And there are many initiatives like the Victorian Bar's *Quantum Leap* that address the shortage of female leaders in the workforce. But there is much less focus on the preceding issue of gender imbalance in leadership or other areas in law school. I encourage everyone to start documenting that, and set up initiatives that focus on issues of imbalance already here at university.

Reframe how we talk about areas with imbalance: what are the first words you think of when I say "leader"? Strong? Decisive? Commanding? Dominating? How about generous? Reflective? Soft? Facilitative? If we reframe how we approach areas of imbalance – whether in the articles we expect in publications, or the people we expect in leadership positions – it opens up the door to diversity and defying stereotypes. Not just for women, but for anyone that doesn't fit the dominant mould.

Don't worry about the competition – worry about why you care: in areas of imbalance, someone else is filling that leadership spot or writing

that article. If we want to increase the representation of under-represented groups, it inevitably means decreasing the representation of over-represented ones. In a nutshell: if you're in that under-represented group, you'll need to compete. Structures such as quotas, diversity mechanisms and policies can help, but unfortunately a lot of the work still rests with you. So my advice? Don't let competition change your mind! If you truly want that opportunity, don't think about who else is going for it. Think about how much you can contribute if you do get that chance.

Seeing is believing: my research into Victorian law student society Presidencies highlighted what a difference seeing a woman in the role made to other women considering nomination. Thinking about this can help when you're going for an opportunity with an imbalance you can fix. You have the chance to not only improve the imbalance in your time – you can transform that imbalance for all those that might consider it after seeing you there, and believing they can be there too. So go for it! And help us get that much-needed balance.

Anna Belgioro-Nettis is a third-year JD student and President of the Law Students' Society

CHARTER CHECK™ | *the legal low-down on Rio 2016*

Olympia Ward

Are you enjoying your Olympics? Are you cheering at every flip, jump, throw and splash? Are you accumulating an Olympic amount of catch-up reading as a result of Usain Bolt (sue him...I dare you)? Well, have I got the solution for you! Revise your legalese interpretation skills and enjoy Channels Seven's attempts at coverage, at the same time!

I bring you, the Olympic Charter. The Games have inspired Media commentary on sexism, discrimination, inequality and inability-to-run-an-Olympics but as law students you know better than to ponder the morality of such issues, we have something better. We have a Charter of Rules and policies directed at these very problems, we have...THE OLYMPIC CHARTER.

Let me start you off: there was this photo of two Beach Volleyball teams trumpeted as an example of the power of the Olympics to bring people of starkly different cultures and nations together.



The International Volleyball Federation stated they relaxed the rules to open up the game to women from different backgrounds. The new rules grant an exception to the regular 7cm or shorter bikini bottom requirement on the basis of religious or cultural beliefs.

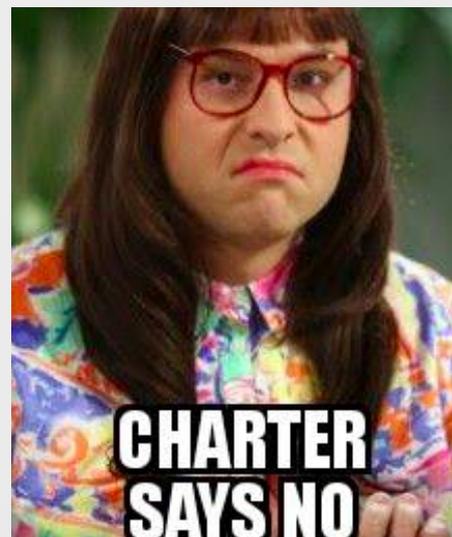
So women can wear a hijab or a bikini. Let's just run a quick CHARTER CHECK™.

Section 2 of the Fundamental Principles of Olympism (no...I didn't make that up) states that 'Olympism' is "concerned with the preservation of human dignity." How do we define dignity? The ability to choose how much of your body is on display at globally televised event? Being treated equally regardless of sex or religion?

Further down the Charter you'll find a

section entitled 'Mission and Role of the IOC' (provision 7) stating to 'encourage and support the promotion of women in sport at all levels and in all structures with a view to implementing the principle of equality of men and women;'

You'll find the male beach volleyball players enjoy the full coverage of board shorts and a singlet. It seems women must garner attention both from fans and sponsors with sex appeal rather than a killer serve. So Volleyball uniform regulations - do they pass the CHARTER CHECK™?



How much fun are you having already? Let's try another one.

Mack 'the Knife' Horton. All round legend. Blind as a bat (fun fact). Wins Australia's first Gold Medal in Rio. Disses Chinese Swimmer. Busy guy. In case you actually were doing your readings and totally missed the controversy, Horton expressed his disappointment that Sun Yang, a member of the Chinese Olympic Swimming team, had been allowed to compete despite having failed a drug test earlier in the year.

The Chinese officials weren't too thrilled and in return accused Horton of "bad manners". So not sure whether you're #TeamMack or #TeamYang? Time for a CHARTER CHECK™.

Section 8 of the 'Mission of the IOC' is "to protect clean athletes and the integrity of sport" The word here is 'clean'. Both athletes tested clean and clear for Rio. There's nothing in the Charter about athletes who once-tested-positive-but-now-are-really-sorry-and-it-was-probably-just-that-extra-panadol-can-I-still-come-to-the-Olympics-pretty-please.

The Charter refers sanctions for positive tests to the World Anti-Doping Code. Like the Charter, the Code doesn't have a blanket ban on athletes who test positive. So once a drug cheat, always a drug cheat? CHARTER CHECK™ says all is forgiven.*

Still not convinced CHARTER CHECK™ is for you? Maybe a rapid fire round of 'Is this problem Uncomfortable or Unolympic©?' will change your mind:

Sewage in the water at the Sailing venue?

Sections 8 and 9 of the IOC's Mission "encourage and support a responsible concern for environmental issues" and "to encourage and support measures relating to the medical care and health of athletes" Countries bidding to become a host city "must submit to the IOC a legally binding instrument [stating they] will comply with and respect the Olympic Charter.", including the above provisions.

However, there is no specific requirement about the 'quality' of the arenas, rather this is at the discretion of the IOC.

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Empty seats in the arena due to "money grubbing IOC"? Section 10 of the IOC Mission, "oppose any political or commercial abuse of sport and athletes"

Section 2 of 'Olympic Properties'; "The Olympic Games are the exclusive property of the IOC which owns...all rights relating to (i) the organisation, exploitation and marketing of the Olympic Games, and (iv) the broadcasting, transmission, retransmission, reproduction, display, dissemination, making available or otherwise communicating to the public, by any means now known or to be developed in the future"

... "any means now known or to be developed in the future"? even Marty McFly couldn't find his way out of this one, the IOC own the Olympic games, ticket, media and all its glory.

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#HanherGate. German Twins both competing in the women's marathon hold hands and cross the line together, they are then broadly accused of seeking publicity and "trivialising" the Games rather than competing in true 'Olympic Spirit.' Section 4 of the Fundamentals of Olympism "The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play"

Well...it doesn't get more "mutual" than crossing the finish line with your twin.

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So remember boys and girls, you are overqualified for a morality debate when it comes to controversy at the Olympics. It's time to upgrade your viewing from layman to lawyer with CHARTER CHECK™.

Olympia Ward is a first-year JD Student.

* For Sun Yang at least... for now