Two contenders have reluctantly come forward for the Labour crown: the shadow Chancellor John Smith (a 54-year-old Scottish MP from Labour's Right) and Bryan Gould (a New Zealand born moderate with some Left support). The larger unions with 40% of the vote at the electoral college attempted to pre-empt the vote by 'bouncing' the party into choosing Smith before any other viable contender could assemble sufficient support. This strategy appears to have at least partly succeeded; an early conference has been called and unions (so they say) will not "have time" to ballot their members before the event, thus allowing union leaders to cast a block vote for their candidate.

Neither candidate for the leadership has as yet outlined his analysis of the defeat or a future policy orientation. Gould has criticised Smith as one of the "architects of the defeat", arguing that his alternative budget was not attractive enough to hold voters. He has also implied that Smith would be hostage to the unions and unprepared to make changes. Meanwhile, Gould has been cagey about his own intention doing what they were doing before they were interrupted by the intrusion of the complaint. Wilson found that the services are discriminatory under the Sex Discrimination Act, but that they are exempted, either by Section 32 (which permits "services the nature of which is such that they can only be provided to members of one sex") or Section 33 (the so-called "affirmative action" or special measures section). Thus, the women's health services in the ACT are lawful, and so, presumably, are similar services around the country. The complainants did not lodge an appeal.

Clean Bill of Health

It took months. Women's health workers were deflected from their important constructive tasks to fight a defensive battle for the survival of the services, and for the survival of women's health centres all over the country. There were four days of hearings, hundreds of pages of evidence, submissions and transcripts. Distinguished witnesses presented affidavits and gave evidence defending women's health initiatives. Three barristers, four solicitors and numerous public servants from the ACT and the Commonwealth applied their expertise to the matter.

No one knows how expensive it has all been.

Finally, the President of the Human Rights Commission handed down his judgment in April in the discrimination case against women's health services in the ACT, reported in ALR's last issue ('The Body in Question', ALR 138). The bottom line—quite literally—of Justice Wilson's decision was that he found "all the complaints unsubstantiated. They are therefore dismissed". All the effort produced no positive advance, nor could this case have ever produced any improvement in anyone's well-being. It resulted simply in legal legitimation for women's health services to continue
best addressed through special, targeted services. Furthermore, it confirms that it is not unlawful to fund or deliver such services. However, even though supporters of women's health services won, they cannot completely relax. More effort is required if Australia is to protect its unique and precious heritage of community-based women's health services, which constitute a vital part of its overall network of community health services. Three issues in particular remain on the agenda.

1. Public and private discussion of the matter revealed widespread ignorance among both women and men as to the activities of women's health services. The public interest aroused by the case provides an opportunity to set the record straight, to inform people of what would have been lost if the complainants had succeeded.

2. The Sex Discrimination Act is currently under review by parliamentary committees. The relevant sections of the Act need to be amended so similar actions are more difficult in future. Women have been successful in seeking remedies for discrimination through the courts, and it is therefore essential that the Act is revised so that it can serve more effectively its original intention: to eliminate discrimination against women.

3. Men working positively for improvements in men's health have not been assisted by the action. The case has, however, focused attention on ways that men's health— as well as women's health— may be inflected by gender, although discussion around the case has tended to imply that there is, somehow, a masculine equivalent for every women's health concern. Perhaps the case will prompt a fuller exploration of how many health concerns and risk factors could be addressed more effectively if we recognise their gendered character, and develop better understandings of the distinctive and different patterns of women's and men's health needs.

DOROTHY BROOM is the author of Damned If We Do: Contradictions in Women's Health Care (Allen & Unwin, 1991).

Donations to the Canberra Women's Health Centre, to help defray the expenses of the case, should be sent to the Centre, PO Box 1492, Woden, ACT 2616.

No Legal Refuge

Cases in which women kill a violent partner or ex-partner are relatively rare in Australia and yet they have a profound effect upon legal and cultural representations of domestic violence.

Throughout the 1980s public campaigns around cases such as those of Violet and Bruce Roberts in NSW, Beryl Birch in Queensland and the so-called axe murder case in South Australia were significant in putting the issue of domestic violence on the political agenda. They were also successful in gaining some legislative reforms. In NSW for instance, changes to the legal requirements for the defence of provocation, the removal of the mandatory life sentence for a murder conviction and the introduction of new legislation concerning domestic violence were all significant outcomes of such campaigns.

However the actions of women who kill a violent partner are still poorly understood, and they are more likely to be depicted as an expression of evil or as due to mental illness or psychological dysfunction than as justifiable actions undertaken in desperate circumstances. Courts have not interpreted the existing defences available to such women in a sympathetic manner.

The defences available to a charge of murder include self defence, provocation, insanity and/or diminished responsibility, and automatism. Each of these defences possesses a basic rationale as to when a killing will be justifiable or excusable. All of the defences rely, in the application of legal doctrine to the facts of the particular case, on commonly held standards. This is manifested formally by the incorporation of standards of 'reasonableness' or 'ordinariness' against which the individual accused's behaviour are to be measured. However, these allegedly neutral standards are founded upon the experiences and perceptions of white, middle class men.

Battered women are diverse individuals caught up in unique situations. Nevertheless they share in common a culture of violence, fear and a lack of power. They also share the fact that as women, women who kill, and women who have been subject to abuse within their relationships, their life experiences and perceptions do not neatly coincide with the doctrinal rules, the communal norms, or the conceptual categories that comprise and underlie the defences of murder.

One mechanism which has been used to bring woman battering to the attention of the courts, usually in the context of explaining the behaviour of a woman defendant who has killed a violent man, is the 'battered woman syndrome' (BWS). It does not constitute a separate defence, but is used in conjunction with other defences. Such syndrome evidence has been widely used in the United States over the past decade.

Ironically, though, while BWS has arisen as a response to the inadequacies and limitations in prevailing law and legal practice, it may serve to reinforce those very problems. The BWS does not challenge legal and cultural stereotypes about women and about woman battering. Rather it reconstructs and accommodates women's experiences to fit the requirements of existing legal doctrine.

BWS was first accepted in the Australian court in May 1991. The South Australian Court of Criminal Appeal ruled that a trial judge erred in not allowing expert testimony concerning BWS to be put during the trial of two women for the false imprisonment and assault occasioning grievous bodily harm of a third woman. The women argued they had not been party to inflicting the violence, and in addition they had acted under duress. That is, they claimed that they were in fear of the likely violence of the man named Hill.