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## Why a Feminist Law Bulletin?

The development of law and its application in society is constantly changing. Women often lack both information about those changes and an analysis of what those changes mean.

The Feminist Law Bulletin aims to provide that information and analysis.

It aims to inform, raise awareness, and develop a wider understanding of the impact of the law on women.

The Feminist Law Bulletin:

- identifies when feminist issues arise in policy, legislative proposals, and practice of the law
- provides an opportunity for limited exploration and discussion of some of those issues
- enables a general readership to gain an introduction to feminist analysis of the law.

"To name is to reveal and this, in itself, is already a form of action."  
Simone de Beauvoir.

## Women's Votes: *the past, the present, the future*

Electoral law is fundamentally important to women. It defines who can vote, determines what our votes mean, and designates the system of representation.

This year we celebrate 100 years of women's franchise in New Zealand. In the same year the referendum on electoral reform will determine New Zealand's system of representation - an event just as significant as winning the right to vote. Some of the questions that women may want to consider, discuss, raise with candidates, or find out more about include:

- ▷ is the real question not *how* candidates are selected, but *who* selects them?
- ▷ which system will make parties accountable for the candidates they choose?
- ▷ will there be any incentive for the candidate selection process under FPP to change (as some MPs have been suggesting) if MMP fails to get the required support?

- ▷ is the real question not the number of women in Parliament but the quality of representation of women's interests?
- ▷ which system will enable parties to represent national groups (such as women) effectively?
- ▷ under which system will "minority" and special interest groups be represented rather than secondary to issues of the day?
- ▷ which system will allow the diversity of women to be reflected in party representation, policies, and the political process?
- ▷ can any system operating in a patriarchal society work effectively?
- ▷ will either system result in change to the patriarchal nature of our society?

Further information on the merits of different systems of representation can be found in the Report of the Royal Commission on Electoral Reform 1986 (available at most public libraries).

To continue to receive your copy of the Feminist Law Bulletin complete the subscription panel on the back of this issue.

## Judge for yourself...

Earlier this year an Auckland High Court Judge said: "once one comes to assess the compensation for a second incident of sexual abuse the compensation is likely to be a lesser sum...because the claimant at the time of the second episode of sexual abuse was already a partially disabled person."

Research, however, has found a greater delay in recovery and a higher level of trauma amongst women who suffer a second incident of sexual abuse.

Judge for yourself:

- ▷ do you consider sexual abuse survivors "partially disabled"?
- ▷ is sexual abuse ever "an episode"?
- ▷ do you believe women should get more or less compensation for a second incident of sexual abuse?

(See *F v Accident Compensation Appeal Authority* (HC 63/93, 27/4/93); Sorrenson et al, *Repeated Sexual Victimization Victims and Violence*, Vol 6, 1991, 299).

## Laws made by or for women?

*The Feminist Law Bulletin will critique selected bills and Acts and the process by which laws are made. This first edition examines women's involvement on select committees.*

The voices of women must be heard, understood, and play an important part in this key decision making process.

Women's representation on select committees is one way to achieve this.

### The current representation of women on select committees.

A number of members of parliament sit on more than one committee. If you look at the 70 MPs who are members of select committees, only 11 are women (15.7%).

When you look at the total of 123 positions on select committees, only 17 are filled by women (13.8%).

Only 1 of the 19 select committees is chaired by a woman.

Of those 19 select committees, women are not represented on 9, namely:

- Broadcasting of Parliament
- Commerce
- Foreign Affairs and Defence
- Officers of Parliament (including Office of the Ombudsman, Privacy

and Environment Commissioners)

- Planning and Development (including conservation and environment)
- Privileges
- Regulations Review
- State Enterprises
- Transport

Women MPs are doing their fair share of select committee work (only 16.5% of all MPs are women). Despite this, there are too many important select committees where women are not represented. This information raises the following questions:

- to what extent are the views of women incorporated where women are not represented?
- how and by whom is the membership of select committees determined?
- is it equal representation that is important or the quality of representation?
- how would a different system of Parliamentary representation affect representation on select committees?

### *Health Information Privacy Code of Practice 1993 (Temporary).*

This is an important Code for women. It is one of the first codes issued under the Privacy Act 1993. It recognises that collection and storage of health information raises issues of confidentiality and sensitivity. Because of this the Code is more stringent than the Information Privacy Principles contained in the Privacy Act.

The Code was developed urgently because of the passage of the Health and Disability Services Act. Consultation, as required under the Privacy Act, was predominantly carried out with those who would have to implement the Code (eg the old Area Health Boards, CHE establishment units). Women are encouraged to provide the Privacy Commissioner with feedback on its implementation. Two Complaints Officers have been appointed in both Wellington and Auckland.

Further information about the Code and the complaints process can be obtained from the Privacy Commissioner, Private Box 466, Auckland 1.

# A Women's Bill of Rights?

*The New Zealand Bill of Rights Act 1990:*

*monitoring developments, analysing cases, reviewing literature.*

We took a brief sample of 138 cases decided since the New Zealand Bill of Rights Act 1990 was passed. We found that only 14 cases involved women as parties. Of those 14 cases, two involved women as civil respondents. In four of them women were charged with male partners. In the remaining 8 cases the women were defendants to criminal charges.

A closer examination of all the cases revealed that by far the majority involved criminal offending such as murder, rape, sexual violation, sexual assaults (including indecent acts on children), other assaults, robbery, and theft. A large number of the other criminal cases were excess breath alcohol prosecutions. The survey indicated that the Bill of Rights was invoked by men in a significant number of cases where they faced criminal prosecution for offences against women and children.

This is consistent with a 1989 analysis of cases under the Canadian Charter

of Rights and Freedoms 1986 (upon which the New Zealand Bill of Rights was modelled). That analysis showed that half of all cases brought by men were to defend themselves against criminal charges (mainly sexual offending). They were successful in striking down legislation because, for example, it was not gender neutral, thereby escaping conviction. That analysis also showed that men used the equality provisions of the Charter three times more often than by women and had a success rate double that of women. The equality provisions were used to enable men to access social security benefits.

The New Zealand experience is that there have been few, if any, cases brought by women under the equality provisions of the Bill of Rights.

This may come as no surprise to those who would argue that the rights and freedoms contained in the Bill of Rights Act reflect predominantly male values.

On this analysis the Act is

seen as fundamentally flawed in terms of the protection it can offer women.

There may be a range of reasons for the large number of cases involving men such as

- the disproportionate number of male offenders
- the barriers women face to adequate and appropriate legal advice
- the lack of knowledge about the Bill of Rights and what it is designed to achieve (both among lawyers and among women generally)
- the fact that the courts remain a male domain.

This preliminary analysis of the Bill of Rights suggests that it has yet to achieve anything meaningful for women.

At a similar stage in the Canadian experience researchers noted that "women are initiating few cases, and men are using the Charter to strike back at women's hard-won protections and benefits."

(See Brodsky and Day, Canadian Charter Equality Rights for Women, 1989).

## Why subscribe to the Feminist Law Bulletin?

**Feminist Law Bulletin will be a bi-monthly publication. It will keep you in touch with the pace of change and identify issues in the law worthy of your attention. By subscribing to the Feminist Law Bulletin, community organisations will be in a better position to make informed and comprehensive comment and submissions. Policy makers will have ready access to a feminist analysis of proposals. Lawyers will be assisted in their development of a feminist legal analysis.**

**Without the Feminist Law Bulletin you may miss or overlook issues - issues that everyone needs to be aware of. We are all affected by law - we all need to know about it. The Feminist Law Bulletin will make sure you do.**

## Penal Institutions Amendment Bill

Women in prison are largely ignored. They make up a very small proportion of the prison population. They are generally easier to manage. Men continue to make the vast majority of decisions about prison management.

Women in prison do not have to remain the forgotten few. In theory at least, the Penal Institutions Amendment Bill, by paving the way for private prisons, provides an opportunity for prisons to be established and run by women for women.

The bill sets out the standards and requirements for contracts between the Secretary for Justice and those wanting to run private prisons. One of the proposed important safeguards is the appointment of prison monitors. Without specific gender requirements for these monitors this safeguard may not be effective for women.

Prison staff who are committed to the concerns

and needs of inmates are an essential part of the protection of inmate's rights. Staffing policies of private prisons will have to comply with those of government run prisons (such as EEO and cultural policies). In light of recent events, it seems clear that these provisions alone will not provide sufficient protection for inmates.

Public focus on the bill has concentrated on the issue of private prisons. Other important aspects have largely been overlooked. For the first time, strip searches of inmates will be expressly authorised by statute. A strip search includes a visual examination of a person's pubic and anal areas. It does not include an internal examination. Women inmates will have to be strip searched by women officers and no male officer or other inmate can be present. The bill authorises rub-down and scanner searches of visitors (including politicians!)

## De facto property rights?

Of constant surprise is the number of women (and men) who believe de facto relationships of two years duration are covered by the Matrimonial Property Act 1976 (and therefore entitled to the presumption of 50-50 property sharing).

A recent High Court case held that although the parties believed that a de facto relationship of two years would entitle them to share equally in their property, this did not mean that the women could rely solely on their joint belief of the law to get a 50% share of the property (despite their 14 year relationship). However that belief was relevant to the extent to which they shared in the property and, in this case, established her an interest of 1/3 in the house. This case, and others like it, highlight women's need for accurate, clear, and accessible legal advice and information.

(*F v B* (CP 75/91) Dunedin, 16/7/92).

Feminist Law Bulletin is produced by C. Dot Kettle with assistance from lawyers with experience in working with women, community organisations, and the Parliamentary process.

*We welcome your comments, suggestions and ideas.*

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