

FEMINIST LAW BULLETIN

NEW ZEALAND AOTEAROA

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Why a Feminist Law Bulletin?

The Feminist Law Bulletin:

Identifies when feminist issues arise in policy, legislative proposals, and the practice of the law:

Provides an opportunity for limited exploration and discussion of some of these issues:

Enables a general readership to gain an introduction to feminist analysis of the law.

Why Subscribe?

By subscribing to the Feminist Law Bulletin community organisations will be better prepared 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.

Contents

FLB Evaluations
Women's Access to Justice
Matrimonial Property Rights
MMP Boundaries - How women MP's are affected
Domestic Violence Bill
ACC: Regulations Review
Index to Past Issues
Bills in Brief

Women's Access to Justice

The Law Commission/Te Aka Matua o te Ture is in the process of defining the scope of a project on women's access to justice. Joanne Morris is the commissioner responsible for the project and Michelle Vaughan is the legal researcher. FLB asked them to outline what the project might involve and the work done so far and we are grateful for the following article which they prepared.

Relevant Overseas Initiatives

The Australian Law Reform Commission (ALRC) is about to release its final report on *Equality Before the Law*. The ALRC's preceding publications on this issue highlighted the difficulties that Australian women face in obtaining justice and concluded the legal system had failed them (see FLB Issue 4, May 1994). In recent years a number of United States jurisdictions have established task forces led by senior judges to examine gender bias in the courts. As well, comprehensive judicial education programmes on gender bias in the courts have been put in place in Canada, Australia and the United States. The work done in all of these jurisdictions suggests it is timely for Aotearoa/New Zealand to consider whether our women face gender bias obstacles in the operation of the legal system.

The Consultation Process

To date the Commission has focused on hearing the views and concerns of women. This process began with a series of preliminary meetings in Wellington with representa-

tives of women's community groups in late September and early October 1994.

Women at these meetings emphasised the critical importance of the process by which the project is defined and managed. As was said at one meeting, the process adopted in a project examining women's access to justice should be a role model for the outcomes it seeks to achieve. Consequently the Commission is committed to following a process which involves to the fullest extent possible the women of Aotearoa/New Zealand and those who are influential in the design, application and administration of the law.

The Commission's preliminary meetings with women have highlighted the alien nature of the law and its procedures for many, especially Maori and those from minority ethnic groups. More information on women's concerns will be gathered from a round of consultation sessions planned by the Commission for the first few months of 1995.

Apart from further meetings to be held in Wellington, it intends to travel to the other main centres and to some rural areas to discuss with women the problems they face in accessing the legal system and obtaining justice from it. Once the Commission understands the concerns of women, the project will be defined and another consultation process put in place focusing on the particular issues to be examined in depth.

The Commission is also in the process of meeting with officials in relevant government agencies. The purpose of these meetings is to explain the process that is being followed and to ask the agencies what gender issues they can identify and what work they have done, are doing or have planned on those matters.

Content of the Project

Because it is following a consultative process, the Commission does not want to preempt the content of the project. It is

aware that certain areas of law are of concern to women and affect them on a daily basis. These include domestic protection, matrimonial property and rape laws. However, the impact of the law on women goes beyond those areas traditionally considered to be "women's law" and it is thought desirable that the project take a broad approach by examining a range of legal responses to issues that affect the lives of New Zealanders. This will reveal the larger picture and that larger picture, rather than smaller pieces of it, can then provide a basis for substantive and procedural reforms.

Please Contact the Commission

The Commission wants to hear what you think should be considered in a project on women's access to justice. If you would like to be added to its mailing list and/or involved in consultation sessions held in your area or if you want to provide advice on issues or research that may be relevant to the project, please contact Joanne Morris or Michelle Vaughan on (04) 4733 453 or write to them at the Law Commission/Te Aka Matua o te Ture, PO Box 2590, Wellington.

Evaluation

The last issue of the Feminist Law Bulletin included an evaluation form. Thank you to everyone who took the time to complete and return it. There was lots of positive feedback, suggestions for improvements, and ideas for further work. Four major themes came from the evaluations:

FLB was living up to expectations
FLB was informative and stimulating
FLB covered a good range of the current legal issues for women
The use of clear, simple, and accessible language was a highlight.

We welcome your suggestions, comments or ideas and we intend to take on board suggestions for improvements (for example to the layout of FLB).

In the meantime, here's what some of our subscribers say about the Feminist Law Bulletin:

"I can't think of any other publication which meets the need for women to be informed on these issues as well as F.L.B does. Keep it up": Jenny Jurisich

"It's not glossy, it's simple and environmentally sensitive"

"Alert to legislation from feminist perspective": Marilyn Waring

"Broad ranging and couched in language which is broadly accessible - rather than legalistic jargon": Kris Smith, EEO Co-ordinator

"Clear explanation of legal matters and current legal issues": North Shore Branch of NZ Federation of University Women

"Allows us to become involved with issues appropriate to us": Hutt Rape Counselling Network

"Keep up to date with legal trends affecting women": Youth Law Project

"Short, pertinent summaries of issues for specified target audience"

Matrimonial Property Rights

In October 1988 a working group on matrimonial property and family protection reported with recommendations for changes to the Matrimonial Property Act and the law on property division on death. Submissions were called for but no changes to the Act were made.

The current status of the 1988 report is unclear, as is what, if any, progress has been made with considering submissions or decisions about them. The Minister of Justice recently signalled changes to matrimonial property laws were important and may be high on the Government's agenda for 1995. The Ministry of Women's Affairs ran two small consultations on matrimonial property and de facto property rights (one each for Maori women and non-Maori women) in November this year.

Before legislation is introduced, decisions on key policy issues will be needed. Some of these issues are likely to be:

How are the needs of Maori women to be addressed?

Is the "clean break" principle of property division on marriage breakdown still appropriate? If so, how should this apply where there are children involved?

Should guiding principles be stated in the Act and, if so, how should these be defined?

How can the interests of children be adequately protected?

Should property rights start at marriage rather than separation?

Should the courts have more or less discretion to decide what is "fair" (and how should this be defined)?

What improvements should be made to address the adversarial, costly, lengthy, and complex nature of the legal process?

How are the needs of women and children with disabilities to be addressed?

What steps can be taken to prevent the reduction in women's incomes after separation?

Should relationships in the nature of marriage be included in the Matrimonial Property Act and should the same rights apply?

FLB will keep you posted on developments (if any) in this important area in 1995.

MMP BOUNDARIES

MMP has meant the need to change electorate boundaries. FLB took a cursory look at the possible implications for current women MP.

Joy McLauchlin: seat disappears
Christine Fletcher: no obvious seat
Pauline Gardiner: seat is marginal
Katherine O'Reagan may well get squeezed out
Annette King and Liz Tennet seem set to look for the same seat
Judith Tizard's seat goes
Jill White's seat will be hard to keep
Margaret Austin's seat also hard to keep
Ruth Dyson's seat is hard to keep
Suzanne Sinclair clashes with Jack Elder for a seat.

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"Keeps me abreast of issues of concern to me personally and professionally": Joanne Morris

"Succinct and informative": Youth Law Project

"Material is not otherwise readily available": Jocelyn Fish

STOP PRESS

FLB held up production of Issue 6 in order to bring you details of this bill.

DOMESTIC VIOLENCE BILL

In November 1993 the Government released a discussion paper on changes to domestic violence laws. Submissions were called for by February 1994. The Domestic Violence Bill (introduced on 1 December 1994) is the result of that process. The Bill has been referred to the Justice and Law Reform Select Committee. Submissions close on 24 February 1995.

The Bill, if passed, would improve some aspects of the current law. There will be a single protection order, wider range of people who will be able to get an order, increased penalties for breach, restrictions on Police powers to bail, and education and counselling for women. Special changes are made to the Guardianship Act to address the recommendations of Sir Ronald Davison following the Bristol case.

Because the time-frame for submissions is short (and the Bill is long!) we have lined up the Bill with the original discussion paper so that you can see which, if any, of your submissions have been picked up. We also outline some of the other features of the Bill which have not been discussed before and indicate what is missing. FLB provided a brief guide to preparing submissions in Issue Two, December 1993.

The Bill compared to the discussion paper:

There will be a new stand-alone protection order to replace non-violence and non-molestation orders

Cohabitants (whether legally married, de facto, or same sex), household and family members, and people who have a "close personal relationship" will be able to apply for a protection order. A

"close personal relationship" depends on the nature and intensity of the relationship, the amount of time spent together, where and what the parties usually did, but there is no requirement for a sexual relationship.

The Police will not be able to apply for orders, but a person (including a child) who is unable or afraid to apply for an order can have some other person make the application for them.

The grounds for protection order will be amended so that the court can look at a person's behaviour "as a whole" and consider whether it amounts to domestic violence.

No mandatory arrest in all cases of breach - it remains a question of Police policy whether to arrest or not

A final protection order will remain in force until it is discharged by the court

The court will be able to take into account the following matters when deciding whether to make a protection order: whether the behaviour of the respondent is minor or trivial or whether it forms part of a pattern which indicates protection is needed
whether the respondent is likely to carry out any threats
the perception of the applicant of the nature or seriousness of the behaviour
the effect which the behaviour is having on the applicant or child

An attempt to use plain English

The prohibited conduct has been widened to include physical and sexual abuse, intimidation, psychological

abuse, persuading another person to harass the applicant, watching, loitering, preventing and hindering access, following, and making contact (eg by telephone or mail)

Penalties for breach of a protection order have been increased to a fine up to \$5,000 or imprisonment up to six months

A protection order is suspended where the protected person and the respondent "with the free consent of each" live in the same house and revives if they later live apart. The phrase "resumed cohabitation" has been replaced by "live together", though this is not defined.

No Police bail of arrested offenders - they will only be able to be bailed by a Judge in the first 24 hours.

Mutual protection orders will only be possible where the respondent applies for an order and there are grounds under the Bill to make one

It is not clear whether Police will be given power to serve occupation and tenancy orders, or what other amendments might be made to the Domestic Protection Rules

Ancillary orders relating to furniture remain largely unchanged

Temporary orders will become final if no action is taken by the respondent within three months from the order being made

The Courts are given powers to impose special conditions, including conditions about exercising access rights to children

No changes are proposed to the law on privacy of proceedings

No amendments to the Evidence Act 1908 are proposed

Respondents will be required to attend counselling unless there is good reason not to.

Penalties for failing to attend counselling have been increased to \$5,000 fine and up to six months imprisonment.

Women will be able to request counselling for themselves or their children
A woman will not be required to attend joint counselling with a respondent (but joint counselling is not prohibited and it is unclear when it might happen)

Information on applications under the Bill eg Family Court files will not be available to a District Court on sentencing for offences arising from breach of a protection order

A new offence of aggravated breach of a protection order is proposed.

Where a person has been convicted on at least 2 different occasions of breach of a protection order within the previous 3 years, they will be liable to imprisonment for up to 2 years (failure to attend counselling will not fall into this category).

There are new provisions to allow enforcement of protection orders overseas

Other new features:

An objects clause is included setting out the objects of the new Bill, but there is no mention of stopping domestic violence or preventing it from happening

For the first time there is a definition of "domestic violence", but this definition does not acknowledge or address the causes of domestic violence

The protection order will have standard conditions (such as not physically or sexually abusing, threatening or damaging property, intimidating or harassing) and special conditions (for example, about how access to children is to be exercised).

New privacy provisions will allow people with protection orders to prevent disclosure for up to five years of information which is likely to disclose their whereabouts with complaints to the Privacy Commissioner possible

It will be possible to have a support person or group of people in court when the application for a protection order is made

If the respondent is in court, the Judge will have to explain to him the purpose and effect of the order, the consequences of breach, how the order can be discharged and give him a copy of the order

Special provisions for cases involving violence in custody and access proceedings are introduced. There will be a presumption that a person who has been violent to a child will not get custody unless the court is satisfied the child will be safe. Where an allegation of violence is made, an investigation of the truth of the allegation will be needed and, if found to be true, orders about

custody, access and supervised access made. Costs of supervised access will have to be met by respondents.

Violence "by way of correction towards a child" will be excluded in these cases. This exemption raises the issue of violence against children and section 59 of the Crimes Act 1961 (which permits the use of force) and seems to contradict the earlier parts of the Bill which do not refer to violence which is of a "correctional" nature!

Legal aid - there is to be no charge on property of applicant or any requirement to make an initial contribution, but for those women who do not qualify for legal aid, they will still have to pay to protect themselves from domestic violence

What's missing

There is no power for the court itself to order firearms be handed in to the Police. Instead the protection order would get sent to the Police for them to decide about revoking any arms licence. This could mean delays where firearms are used before Police have acted

No presumption of arrest by the Police

No changes to powers to report proceedings in Family Courts

No significant changes to the criminal law or procedures in District Courts where violent offences are prosecuted (eg victim support services for women)

We will keep you posted on the progress of this Bill in 1995.

Bills in Brief

Children Young Persons and Their Families Act 1989:

The proposal for mandatory reporting of child abuse will not go ahead after the select committee recommended it be dropped.

Crimes Amendment Bill:

This bill deals with child sex tours, theft by a spouse, and female genital mutilation. The Bill proposes that sexual offences against children which, if committed outside New Zealand which would be a crime if they happened here, be able to be prosecuted in New Zealand. This is designed to deal with concerns about New Zealand men sexually abusing children in other countries.

Under the Crimes Act 1961, a man cannot be convicted of theft if he steals from a woman he is married to (unless they are living apart). This bill will change the law so that a spouse can be charged with theft of his or her spouse's property.

The bill will ban female genital mutilation.

The closing date for submissions on the Crimes Amendment Bill to the Justice and Law Reform Select Committee is 10 February 1995.

Penal Institutions Amendment Bill:

This Bill, which paves the way for private prisons, has now been passed (see FLB Issue 1 September 1993, page 4).

Social Security Amendment Bill.

The Social Services Select Committee has released a report recommending the wide powers of the Department of Social Welfare to obtain information about beneficiaries from doctors, banks and others be repealed.

This report was presented to Parliament and the government is required to table its response in Parliament in February 1995.

ACCIDENT COMPENSATION: REGULATIONS REVIEW

The ACC scheme has an inherent gender bias because it covers accidents (which mostly affect men) but not illness (which is more likely to affect women). Because of their generally greater responsibility for unpaid work, women tend not to receive compensation for loss of earnings in greater numbers than men (non-earners do not qualify for this type of compensation). The removal of lump sum payments for compensation also had a greater impact on women because this was mostly paid to non-earners (predominantly women).

Women's care-taking role in society (whether as mothers, partners, or daughters) tends to result in a larger number of women becoming responsible for caring for people who have had accidents. The current review of the ACC regulations is important for women, therefore, because the regulations provide for entitlements to social rehabilitation (including home-help and attendant care) and counselling (particularly for sexual abuse).

Earlier this year, the Government appointed a panel to review the ACC regulations. The move came after criticisms by community groups of the new scheme and the findings of the Regulations Review Committee of inadequate consultation in the preparation of regulations. The panel's terms of reference were very tight - it was only a review of the

regulations, not the Accident Rehabilitation and Compensation Insurance Act 1992.

The panel reported in August 1994 following a round of public consultation in some of the main cities. The central finding was that the 1992 Act set up a regulatory scheme that was too prescriptive. This meant it did not allow enough flexibility or discretion for the Act to work for the people it was intended to. The panel recommended moving away from the present 41 sets of regulations, to a set of administrative guidelines or codes of practice. These would be developed and published by ACC, after consultation with interested parties. The aim was to allow individual case managers more flexibility to meet the needs of particular cases.

The panel made a strong call for consultation with Maori and Pacific Islands communities. A series of recommendations for specific amendments to regulations was also made, including a simpler independence allowance test, the right to capitalise independence allowance payments, special provision for persons with head injuries, legal costs for reviews, introducing a work capacity test, re-writing forms in "plain English", and making home help more widely available.

However, the report had no analysis of the issues for women. The different issues for women (compared to men and children) in the social and vocational rehabilitation regulations were not identified. As a result there was no identification of how these issues might be addressed. It is unclear how the changes proposed would benefit women (if at all). There is no discussion of the need for a specific consultation with women. The crucial role of women in making the ACC scheme work (largely through their unpaid work) was not acknowledged.

General questions raised by the review include:

Are the issues for women the same now as they were when the ARCI Act was passed? If not, what are the differences?

Would greater discretion at the administrative level (ie Case Manager) benefit women?

What safeguards should there be to ensure discretions are not used arbitrarily?

How can women's access to information about entitlements be improved (eg how will codes of practice be updated and distributed)?

How can advocacy for women be improved?

What key principles should guide changes to the regulations and how should these be defined?

Some more of the comments about FLB

"Material presented concisely": Jocelyn Fish

"It's an easy way to keep up with legal issues": Pat Rosier

Index to Past Issues:

Overviews/In brief

Women's Votes: the past, the present, the future: Issue One 1993
Health Information Privacy Code : Issue One 1993
The Law in 1993 - What Women Lost and Gained: Issue Two 1993
The Law in 1994 - upcoming issues: Issue Two 1993
Gender Bias or Sexism: Issue Two 1993
Victims - Pilot Court Assistance Officers: Issue Two 1993
International Year of the Family: Issue Three 1994
What makes a complaints procedure effective?: Issue Three 1994
Prohibited Grounds Under the Human Rights Act 1993: Issue Three 1994
Legal Issues for Lesbians in 1994: Lesbian Law Bulletin February 1994
Bill of Rights Act and the Human Rights Act: Issue Four 1994
Sentencing Purposes: Issue Four 1994
Sentencing for Rape Guidelines: Issue Four 1994
De facto property rights education campaign: Issue Four 1994
Women on Select Committees: An Update: Issue Four 1994
Women and the Legal Aid Dollar: Issue Four 1994
Judge for Yourself: on legal aid and non-molestation orders: Issue Five 1994
Types of Alternative Dispute Resolution: Issue Five 1994
Remember Suffrage?: Issue Five 1994

Articles

A Women's Bill of Rights?: The New Zealand Bill of Rights Act 1990: Issue One 1993
Legal Writing by Women: Issue Two 1993
The Making of a Judge: Is a Judicial Appointments Commission Necessary in New Zealand? Issue Three 1994
Human Rights Act 1993: Can the Government still discriminate? Lesbian Law Bulletin February 1994

Lesbian Mothers and the Courts: Lesbian Law Bulletin February 1994
Gender Bias: The Australian Experience: Issue Four 1994
Asset Testing: Issues for Women: Issue Four 1994
Superannuation: to benefit or not to benefit? : Issue Five 1994
Assisted Reproductive Technology: Issue Five 1994
Alternative disputes resolution: Issue Five 1994

Case notes

Compensation for sexual abuse: F v Accident Appeal Authority: Issues One 1993
De facto property rights: F v B: Issue One 1993
Judge for Yourself: various sentencing decisions: Issue Two 1993
Bill of Rights and exemplary damages for sexual abuse: P v P: Issue Two 1993
Relevance of lesbianism to credibility: R v R: Issue Three 1994
The Good, the Bad, the Ugly: Incest sentencing in the Court of Appeal: Issue Four 1994
Property settlements: Issue Four 1994
Compensation under the Bill of Rights, Baigent, Auckland Unemployed Workers Rights Centre: Issue Five 1994

Submissions/Bills

Laws made by or for women: Representation of women on select committees: Issue One 1993
Penal Institutions Amendment Bill: Issue One 1993
Making Effective Submissions: Issue Two 1993
Health Information Privacy Code: Issue Two 1993
Domestic Protection Act: Issue Two 1993
Freedom from Discrimination The Human Rights Act 1993: Issue Three 1994
Finding your way around the law reform process: Issue Four 1994.
Citizens Initiated Referenda and Petitions: Issue Five 1994.