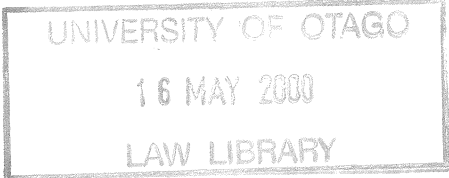


FEMINIST LAW BULLETIN

NEW ZEALAND AOTEAROA

PO Box 5071 Lambton Quay Wellington



ISSUE ONE 1995

Issn No: 1172-7977

Tautoko I te tau o te Reo Maori 1995:

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Why a Feminist Law Bulletin?

Why subscribe?

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.

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Economic Cost of Family Violence

The New Zealand Economic Cost of Family Violence Report (ECFV) was released in December 1994. The ECFV was prepared by Suzanne Snively (Coopers & Lybrand) for the Department of Social Welfare's Family Violence Unit. Loosely based on a similar study in New South Wales, the Report attempts to "provide a framework for estimating the economic cost of family violence in New Zealand."

The study is the first of its kind in New Zealand. It was commissioned by the Family Violence Unit of the Department of Social Welfare. The purpose was to increase the current information on family violence and to try and increase understanding of the economic costs and consequences of family violence.

The result of the analysis is that the cost of family violence in New Zealand is at least \$1.2 billion each year. This figure was reached by estimating the number of times family violence occurred (say one in ten families) and then estimating the direct and indirect costs of each incident.

Direct costs to victims included housing, medical services, and legal costs. Costs to Government included health care services, counselling services, funding community groups which provided family violence related services, income support services (for example, domestic purposes benefit, sickness benefit, special needs grants), and Family Court services (including Police callouts).

The \$1.2 billion figure represents more than the total amount earned in wool exports each year and nearly as much as the \$1.4 billion spent on unemployment benefits each year.

This estimate was based on the number of families that actually called the police for assistance because of violence in the home. The estimates of economic costs were even higher when the amount of family violence was increased to take account of those who do not call the police (say, five people not calling for each one that did) and a calculation for lost wages (“labour market income foregone”) was made. Using these figures the economic costs of family violence were estimated to be between \$1.2 and \$5.3 billion every year.

“Economic costs” included direct costs to women and children (such as legal costs, housing, health, lost work time), costs to Government (eg police, courts, health system, social welfare), and costs to others (eg employers losing work from both victims and offenders having to take time off work).

The Report will be a useful resource for women but also raises some challenging questions including:

- Who should bear the costs of family violence and who really does?
- How, if at all, can the cultural costs of family violence be measured?
- What are the human and social costs of violence against women and how can these be taken account of?
- Should women be compensated for the cost of violence?
- Should these costs (especially lost wages) be a factor taken into account in matrimonial

property disputes where there has been spousal violence?

- How is it that the economy can sustain this level of cost?
- What incentives are there for Government to prevent family violence?
- Is it cheaper for the state to do nothing (for example, because of the benefits to the economy of other “industries” which support and are supported by a violent culture eg movies, television, pornography)?
- What about loss of unpaid work (not taken into account in the Report)?
- What is the value of this type of report?
- What will happen to the report now?
- What further work needs to take place and by whom to make sure this research benefits the victims of domestic violence?
- What steps is the Government planning to take to reduce these costs?
- How can Government spend its money more cost-effectively?
- Should the Government be aiming to reduce costs by increasing the money going to the costs of reporting to the Police or to support agencies who assist with prevention?

More research is needed on women’s participation in the labour force and how this is affected by violence.

The Report was released in December and officially launched in February 1995. Copies can be obtained from the Family Violence Unit, Department of Social Welfare, Private Bag 21, Wellington.

Women's Fourth World Conference in Beijing

Between August 30 and September 15 1995, some 30,000 women are expected to attend the Fourth World Conference on Women in Beijing. Women from non-governmental organisations (NGOs) as well as government delegations will attend. NGOs will participate in a special forum (Forum '95), while government delegations will attend the Conference itself.

The purpose of the Conference will be to try and get approval of a Platform of Action designed to remove barriers women face to equal participation in all aspects of life.

The major areas of concern are:

- the persistent burden of poverty on women
- violence against women
- inequality of access to education, health and related services
- inequality of access to economic structures and policies
- inequality in the sharing of power and decision-making
- a lack of commitment to women's human rights
- insufficient mechanisms to promote advancement of women
- insufficient use of the media to promote women's positive contributions to society
- inadequate recognition for women's contributions to managing natural resources and safeguarding the environment

A draft Platform of Action will be discussed at the Commission on the Status of Women which is to be held in New York in March.

Women and women's groups from New Zealand are likely to participate in the Forum for NGOs. A special committee has been established to co-ordinate this activity.

Major themes for the NGOs conference will include:

- economic power and employment,
- political empowerment,
- education and
- peaceful resolution of conflict.

The New Zealand Group can be contacted via the New Zealand NGOs Co-ordinating Committee, PO Box 12-117, Wellington.

Judge for Yourself

Recent research has shown there have been 28 cases in the courts in the last 10 years involving disputes between couples in de facto relationships. 70% of these cases were brought by women with the average length of the relationship being 7 and a half years and the bulk of contributions being non-property. On average these women received 21% of the property in dispute: (Wendy Parker, Department of Business Law, Massey University).

In this issue of FLB we look at the recent decision of *Lankow v Rose* (CA 176/93) in which the Court of Appeal has made it clear women will continue to play Russian Roulette when it comes to property division with their de facto partners.

Ms Rose and Mr Lankow had lived together for 10 years. Both had been married before. When their relationship broke down, the court heard two quite different versions of the relationship and two quite different claims to the property which was in dispute.

Ms Rose claimed she devoted all her energy to the relationship (including the remainder of her previous matrimonial property settlement) (her work included doing the books, secretarial work, generally helping with his company, helping build a house on a property owned by him, managing their tenants, and maintenance of both properties). She claimed these were important factors in the recovery of Mr Lankow's business (which was in trouble when they started living together), the couple's increased wealth during the relationship and the increase in disputed assets (from no assets at the beginning of the relationship to assets worth more than \$550,000).

Mr Lankow gave little recognition to her contributions and played down the significance of her input to the business and home. He argued she was rewarded more than she deserved by being able to live in the home they built as well as having holidays, a car and the "comfortable living" they both enjoyed. But it was impossible for the Court to compare his contributions because "he did not see fit to inform the Court of any detail" of his contributions.

In the High Court Justice Ellis believed Ms Rose. However, he only awarded her a half share of the house they lived in and joint chattels (less than a quarter share of the total property in dispute). The Court of Appeal confirmed that award and in the process made the following comments about the current law on property disputes between de facto couples:

"In the case of a de facto union, the claimant does not start from a presumptive half share but rather from nothing. A de facto claimant must demonstrate first a case for an interest and then what that interest should be By contrast with the Matrimonial Property Act regime the focus on de facto cases is on contributions to property not contributions to the partnership: of course contributions to the partnership will often also be contributions to the property. In the end the Court must assess as closely as reasonably possible what weight the claimant's contributions have had against the contributions of the defendant in the acquisition, improvement or maintenance of the property or its value."

"Legislation has not been enacted in New Zealand about property interests after the end of apparently stable de facto unions. It is a controversial field. Parliamentary caution is understandable. Without any such legislation - and possibly even with it, in cases Parliament could not be reasonably expected to cover - the Courts have to do their best to achieve justice with the available judicial instruments. These include the recognition or imposition of constructive trusts."

"There is necessarily some uncertainty. How could it be otherwise when human relationships are so variable? Legislation laying down some more hard and fast approach might be desirable... If any such change is under consideration, however, a point to be borne in mind is that the present New Zealand case law

represents an attempt to ensure justice while recognising that there is a basic difference between legal marriage and de facto union. In contemporary society it may be questionable whether, ideally, any law can do more."

Lankow's lawyer said the High Court Judge had adopted (on the say so of Ms Rose) a "self serving feminist assumption" that at the end of any de facto association there was to be an automatic equal division of the home and chattels. The Court of Appeal considered this an "untenable proposition for which there is no foundation on any reading of the judgment."

Judge for Yourself:

- Ms Rose got a half share of the "family" home, but only a 25% share of the total property acquired during the relationship. Was this "fair"?
- Is it really "questionable" whether the current law could be improved?
- Do women continue to suffer the injustice of the current law because "human relationships are so variable" or is it because the law refuses to deliver justice?
- Do current attempts to "ensure justice" really reflect male views of justice compared to women's?
- Is it true that no legislation could do more than the courts are?
- Who benefits from the law as it stands?
- Whose interests would a presumption of equal sharing serve?
- Whose interests are served by a continuation of the stand off between the Courts and Parliament?

Lankow refused to supply the court with vital information about his contributions. This meant that the court had to guess the value of contributions from the basis of Ms Rose's evidence alone. Even so, the court was only prepared to award a 25% share of the property.

- What message does this send to men in other cases?
- Do decisions in these cases really turn on whether the woman is "deserving" or not?

Ms Rose left Mr Lankow in February 1990 - five years later she is still waiting for "justice." Surely the law can do better than this!

Watch this space - there may yet be an appeal to the Privy Council.

Name Suppression

Feminist issues in name suppression have been raised by recent cases such as the case in Auckland late last year of a convicted paedophile whose name was suppressed by the trial judge, although the victims thought the name should be publicised to protect potential victims. Public outrage at name suppression resulted in the order being over-turned on appeal.

These issues include:

- Name suppression is most often granted in cases of sexual or child abuse ie where the victims are women and children. In these cases, who really benefits from name suppression?
- Does name protection of the victim merely perpetuate the cloak of silence about sexual abuse or does it protect those in need of some privacy?
- What factors should influence whether or not a name is published or suppressed?
- Who should decide what the relevant factors are?

Juries

- When should the wish of the victim of the crime for either publication or suppression of their name be the deciding factor?
- How can the wishes of extended and immediate families of victims be taken into account?
- What responsibility should prosecutors have to find out what the victims views are and pass these on to the judge?
- What rights should the victim have to appeal the decision or have a say about whether or not the decision should be appealed?
- When is a victim in a good position to decide whether or not they want their name suppressed?

What is name suppression?

Name suppression is when a judge decides (or the law requires) that no one, including the media, is allowed to publish or print the name of a person who has appeared or is appearing in court.

Who gets name suppression?

Anyone can get it. Rape survivors who take their case to court are automatically given name suppression. In other cases, the person charged with a crime has to apply to the judge for name suppression. The judge then has to decide whether or not he or she will give name suppression.

When can an accused get it?

When they appear at Court, at a bail application, at the first preliminary hearing (depositions), and/or at the trial. Name suppression can also be granted after they are found guilty.

When will a judge grant it?

Usually a person does not get name suppression because the public have a right to know who the guilty person is (the "justice must be seen to be done" theory). So a Judge must be satisfied that an exception should be made in the particular case (eg the unfair effect publication of the identity of the accused will have either on a victim, the accused or members of their family). Sometime a person will have their name suppressed during the trial but not after they have been found guilty.

Not until 1942 and the war-time Women Jurors Act were women able to volunteer for jury service in New Zealand. Compulsory jury service was introduced in 1963, but women were given a blanket exemption if called up. The blanket exemption was finally removed in 1976 coincidentally the same year that new matrimonial property laws were passed.

Twenty years later, what do we know about women and jury service? A report is due to be released later this year by the Department of Justice which reports on the composition of juries. The report will bring together the results of a survey of juries as well as interviews with lawyers about what sort of trials were likely to be before a jury (rather than a judge) and whether lawyers try and stack the juries with favourable jurors in certain cases. The report will look at under-representation of Maori (especially Maori women) on juries. In 1993 over half the women's prison population were Maori women with most being inside for property offences (fraud, theft or unlawful taking of property).

Issues for women in this area include:

- Who elects trial by jury and for what sorts of crimes?
- Are women selected for jury service more often when women are on trial?
- How often are Maori women represented on juries and for which defendants (eg do Maori women get on juries where Maori men are on trial or not)?

Juries cont

- What are the characteristics of women who are chosen for jury service in different kinds of trials eg do lawyers like to choose likely "mothers" or "sisters" when young men are on trial?
- Why are women challenged when juries are being selected and are these challenges for the same or different reasons than men?
- Are women sitting on juries in the same numbers as men and why?

FLB will analyse and summarise the report when it is released.

Social Welfare Reform Bill

This Bill was introduced in December last year and has been referred to a select committee. Apparently the Bill is a collection of minor and technical amendments to the Social Security Act 1964. But there are important and controversial changes proposed.

Government departments do not have to comply with the Human Rights Act 1993 until 1999. This Bill will go even further and amend the law so the Department of Social Welfare (DSW) does not have to comply with the original Human Rights Act 1977 which made it illegal to discriminate on the grounds of marital status. The Bill, if passed, will mean DSW can continue to discriminate on this ground.

DSW grants different rates of benefits to married and single people (and always has) as well as providing some welfare programmes to married but not single beneficiaries. But the 1977 Human Rights Act banned discrimination on the basis of marital status. Only when the 1993 Act was passed did DSW accept they may be breaking the old law as well as the new. Instead of finally putting this right, the Bill will give DSW another four years to continue doing more of the same.

Bill of Rights Update

Last year we noted two Court of Appeal cases which opened the way for monetary compensation (damages) to be awarded when the Police acted illegally: see FLB Issue 5 1994, page 4: *Baigent v The Attorney General* and *Auckland Unemployed Workers Rights Centre*.

The Police had decided to appeal to the Privy Council against these decisions. Now this appeal has been blocked by the Government. Cabinet has told the Police to withdraw the appeal. The decision means the Baigent family and the AUWRC can proceed with their claims for damages from the Police. The decision is important because damages are likely to be a more effective remedy against the Police than present options (for example, complaint to the Police Complaints Authority or Ombudsman).

In the United States case of *Lulu Mae Brown v The Los Angeles Police Department*, Lulu Mae Brown successfully sued the Police for failing to intervene and arrest her violent partner despite repeated requests to do so. All Los Angeles Police are now required to sign an agreement with the Police Department to be personally liable for any damages claims if they fail to properly enforce state domestic violence laws.

We will watch developments in New Zealand with interest!

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Women in the Law

“Women who are lawyers are a privileged group among women. If they are not treated with equality by the justice system, then it is every women’s credibility that is questioned by the system.” New Brunswick Advisory Council on the Status of Women, June 1992.

Number of women lawyers (1980 - 1993)

Total number of practising certificates issued for lawyers (barristers and solicitors)

	Women	Men	% Women
1980	379	3637	7%
1985	613	4367	12.3%
1993	1383	4860	22.15%

Source: The New Zealand Law Society.

Number of women judges (1980 - 1993)

High Court Judges

	Women	Men	% Women
1980	0	29	0%
1985	0	30	0%
1993	1	33	3%

Law Graduates from Tertiary education (1980, 1985, 1992)

1980		1985		1992	
TOTAL	FEMALE	T	F	T	F
419	134	421	159	698	361

Source: The Ministry of Education.

District Court Judges

	Women	Men	% Women
1980	1	56	2%
1985	3	90	3%
1993	10	91	11%

Source: The Department of Justice.

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