

FEMINIST LAW BULLETIN

NEW ZEALAND AOTEAROA

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Hitting Home: Men Speak About Abuse of Women Partners

"Hitting Home" is a unique and important report that records the findings of a survey of 2,000 men and a follow-up survey of 200 of those 2,000 men and their attitudes to violence against women.

Over 8700 women and more than 12,000 children stayed in refuges last year. 10 women were murdered by their partner or ex-partner in 1994. Family violence is estimated to cost at least \$1.2 billion a year. When work days lost through violence are taken into account the cost could be as high as \$5.3 billion. Women's refuge's community based work is up 30% in the last year. It has been estimated that the unpaid hours of Refuge workers using the basic minimum wage comes to \$2.5 million (nearly 40,000 hours a year).

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The "Hitting Home" study is the first study of its kind in the world to look in-depth at men's attitudes to violence against women. The survey found, amongst other things, that:

- 70% of men say domestic violence is a major problem, 20% say it is a minor problem, 1% say it is not a problem at all
- 21% of men had committed at least one act of physical abuse and 53% one act of psychological abuse in the previous 12 months (equivalent life time rates were 35% for physical abuse and 62% for psychological abuse)
- 65% of men can find at least one circumstance in which they say a woman alone is to blame for being hit, 58% say that psychological abuse is okay in some circumstances and 25% say that physical abuse of women partners is okay in some circumstances
- men consider that physical abuse is caused by (the trigger of) alcohol, economic and job problems, relationship dynamics, personality, family background, general stress, and/or the woman's behaviour

- men say the way the government needs to combat physical abuse is through education, improving support services, reducing economic problems, and by punishing abusers

Some of the issues that arise from the survey findings are:

- If the stated goals of the authors are to be met ie. "we hope that this research will contribute to a growing awareness... so that New Zealanders will understand domestic abuse better and cease to tolerate it" what needs to now be done by:
 - 1) policy makers and legislators, including the Ministry of Justice?
 - 2) women working in the area of domestic violence?
 - 3) other researchers?
- What role can or should the law play in meeting the message the authors of this research delivered, namely "that we, individually and as a society, have to be responsible for changing our expectations of 'what it is to be a man' in order to reduce the abuse of women"?
- What responsibility should women take for changing the expectations of 'what it is to be a man'? What change can women make to such expectations in our society? Who has the power to name and create such expectations?

- Are women's views on what should be done to address violence against women the same or different to the views expressed by violent men themselves?
- What weight should be placed on abusive men's perceptions of what should be done as opposed to women victims' perceptions?
- Would the allocation of responsibility onto the government to improve economic and job prospects actually remove the responsibility from the individual violent person themselves?
- What degree of financial responsibility should the state assume for measures to prevent violence, such as counselling, stress management and how does this fit with the research which shows that it is more cost-effective for the state to improve resources to women and children to leave and stay out of abusive relationships?
- Are women under stress as likely to react violently to their partners as men are? If not, why not and what implications does this have?
- How will the Domestic Violence Bill help prevent reoccurrence of violence in light of the findings of this research?

Maori Women's Claim to the Waitangi Tribunal

"Pay heed and uplift the dignity, the spirit and the power of women"

In July 1993 a claim on behalf of the Maori Women's Welfare League, Maori women and the hapu of Ngati Hine was lodged with the Waitangi Tribunal. Once the research is finalised, the Waitangi Tribunal will timetable the claim for hearing.

The claim alleges, in part, that:

- 1) Maori women individually, as tribal members, family members and leaders have been systematically deprived of their just rights by breaches of Articles II and III of the Treaty of Waitangi; and
- 2) Maori women individually, as tribal members, family members and leaders have been systematically deprived of their spiritual, cultural, social and economic well-being by Crown actions and policies; and
- 3) the Crown's actions and policies have been inconsistent with its obligations under the Treaty of Waitangi to protect and ensure the rangatiratanga of Maori women as individuals and members and leaders of tribes and families.

Specific examples given were the process of appointments to the Treaty of Waitangi Fisheries Commission and the proposed abolition of the Maori Education

Foundation (since its proposed replacement doesn't carry over the requirement for the Maori Women's Welfare League to appoint one of the members).

Remedies the claimants are seeking include:

- a review of all appointments made by the Crown to organisations such as Regional Health Authorities, Crown Health Boards
- consultation with the Maori Women's Welfare League over future appointments by the Crown
- the establishment of a Commission to protect the processes of selection, recommendation and appointment to organisations of Maori representatives.

The claim is extremely significant because it seeks to address the status of Maori women as individuals as well as within their cultural and wider social context. The claim seeks to address the Crown's obligations to Maori under the Treaty - and indicates those obligations require the Crown to specifically address its relationship with Maori women. In particular the need to ensure Maori women's voices are heard through consultation, representation and participation in decision-making.

The claim is also important because it is so unique, not only in New Zealand, but throughout the world.

Appeals to the Privy Council

For more than ten years there has been talk of abolishing the right of appeal to the Privy Council and making the Court of Appeal the highest court in New Zealand (for example, the Law Commission proposed this in 1989).

Another report on appeals to the Privy Council was released by the Attorney-General in May this year. The report outlines the arguments for and against getting rid of the right of appeal to the Privy Council (but does not make any recommendation on this point) and gives four options if the right of appeal is abolished. Each of these options involves making the Court of Appeal the highest court in New Zealand

The court system in New Zealand currently has four main layers - District Courts, the High Court, the Court of Appeal and the Privy Council. The Privy Council sits in England and is the highest court in most Commonwealth countries. All other Commonwealth countries have two rights of appeal from the court which hears the case for the first time.

The options currently being discussed are:

Option 1: No right of appeal to the Privy Council and nothing to replace this.

Option 2: No Privy Council appeal but a right of appeal from the High Court with 'important' cases heard by five Court of Appeal judges.

Option 3: No Privy Council appeal but two rights of appeal from a High Court - one to a special division of the Court of Appeal and one from there to the full Court of Appeal.

Option 4: No Privy Council appeal and two rights of appeal from the High Court - one to three High Court judges and one to the Court of Appeal.

So far debate has focused on whether two rights of appeal are needed, whether the Privy Council should deal with important questions which are New Zealand based and the few numbers of cases which are appealed to the Privy Council.

Issues for women:

- Are women particularly disadvantaged by delays inherent in rights of appeal eg because the process uses up all of the money in dispute (in Rose and Lankow an appeal to the Privy Council could use up all the funds in dispute and effectively deny justice).

- Have women been well served by the decisions of the Privy Council? For example, the Privy Council's role in keeping the Government accountable to Maori; the progressive decisions on rape law (it was the Privy Council who overturned the Court of Appeal's decision that once a woman consented to penetration she couldn't change her mind. The Privy Council said she could - and if she did, it was rape if he continued).
- Is the question for women more one of adequate representation for and of women in the courts?
- Is this debate deferring or obscuring the immediate need for more resources to improve the quality of existing courts and judicial training?
- Where is women's contribution to the debate? Any decision on appeals must take into account the findings and recommendations of the Judicial Working Party on Gender Equity and the Women's Access to Justice Project.

Submissions on appeals to the Privy Council should be sent to the Attorney-General, Parliament Buildings, Wellington.

Restorative Justice

The Government is soon to release a discussion paper on restorative justice. Restorative justice is a concept - an idea about a type of process for achieving justice. There is no 'model' restorative justice system although there are some examples of justice systems which contain the key features of the idea of restorative justice.

The key principles behind restorative justice seem to be: acknowledging the injury caused by a crime (to the victim and the community), participation (by victims, offenders and the wider community in addressing the injury) and healing or reconciliation (for victims, offenders and the community). The ideas have developed from a variety of sources including victim offender mediation overseas, Maori and other indigenous cultures' justice systems and the desire to reform the current adversarial system. Examples in New Zealand include the family group conference model under the Children, Young Persons and Their Families Act 1989.

There are compelling reasons for trying to improve the existing criminal justice system, particularly because of how badly it treats women. However, some of the **key issues for women in**

proposing changes to the current system are:

- Are there dangers in seeking to colonise dispute resolution processes from one culture and use these for another (such as when there are inadequate cultural infrastructures or an inappropriate infrastructure)?
- Can restorative justice work for women in a patriarchal society? What concepts of restoration might be used to address the inherent inequalities between men and women in society? How might restorative justice reinforce women's current unequal place in society?
- Will restorative justice simply seek to treat victims of crime (including women) better and, if so, will it be truly effective for women?
- Will dealing solely with issues of violence against women in designing a restorative justice model deal with all the issues for women or is a much more comprehensive understanding needed? Gender itself creates an imbalance of power - both structurally and individually: women are not as powerful as men in NZ society. Violence does not create this power imbalance, but does magnify it many times (through focusing on issues of power and control, fear of crime and how this changes women's

perception of their right to go about their daily lives without fear).

- Will the move to restorative justice jeopardise the work to address the formal court system's ambivalence about cases involving women's rights (and especially women's right to be free of violence) just when women thought they were making some progress with improving the current system?
- Will restorative justice simply displace current issues of access to justice with a whole new set of problems/issues for women?
- Would it be better to try and develop a whole new system that was truly based on equality?
- Will restorative justice models act on prejudices that would not operate in courts to the same degree because of legal safeguards (eg hard fought for minimal protections for women such as rules about cross examination on prior sexual history and corroboration)?

The Government must recognise the risks for women in 'handing over justice' to the 'community'. In attitudes to women it has often been Parliament that has led the way in defining standards for women because the views of the wider community have changed more slowly.

Mental Health

FLB was asked to give an outline of what happens when a person is found not guilty on the grounds of insanity or unfit to plead.

A person who is under a disability can be found *unfit to plead*. This means that the nature of the disability means that the person is not capable of forming the understanding needed to plead guilty or not guilty.

A person can be found not guilty of *insanity* if he or she was suffering from some disease of the mind sufficient to mean they couldn't understand the nature of the act they did or of knowing what they did was wrong.

There are four options for what happens to people in both these cases:

- 1) they can be ordered to be detained in a psychiatric hospital
- 2) they can be detained in a hospital as a patient
- 3) they can be immediately released (this hardly ever happens)
- 4) if they are already in prison serving another sentence they can be left to carry on the existing sentence.

There is no set time limit on how long a person can be detained in a

psychiatric hospital. But the courts can set a minimum period of detention (eg half the maximum sentence that the person could have received). There are regular reviews of the person to see if their condition has changed.

If the person is no longer under a disability and has been detained as a special patient, they can be brought before the court again for trial or held in a hospital as a patient and discharged in the ordinary way. The status of the person found unfit to plead can not be changed without the agreement of the Minister of Health and the Attorney-General.

If the person is acquitted on account of insanity and the court orders their detention as a special patient their status as a special patient can only be changed by the Minister of Health. If the court orders detention in hospital under a treatment order the person can be released in the ordinary way.

Procedures for detention and release are complex but a summary of these (including a flow chart) can be found in the Law Commission Report No.30 "Community Safety: Mental Health and Criminal Justice Issues."

Juries: Update

Trial by Peers? The Composition of New Zealand Juries, Department of Justice, 1995

This Report found:

- fewer Maori will appear on jury lists (jury lists are drawn up once a year from the Electoral Roll and at the time of the survey it was found that about 27% of Maori were not enrolled on the Electoral Roll compared with about 17% for non-Maori)
- Maori women were underrepresented in the pool of potential jurors
- Women in general were underrepresented in the pool of potential jurors
- The pool of potential jurors did not represent all eligible groups in society: the younger age groups, women, in particular Maori women, and five occupational groupings were underrepresented
- Juries actually chosen for trials were not representative of the jury pool: men were underrepresented, as were the over 50 year olds, Maori men (due to prosecutions' challenges), and there was also a lower than expected proportion of manual workers and unemployed people
- Juries weren't representative of the populations in the jury

districts from which they were drawn: Maori men, amongst other groups were under - represented.

Jurors on abuse cases

Prosecution and defence lawyers were asked to explain how they decided whether to challenge a potential juror in a sexual abuse case.

This is what some of the prosecuting lawyers said:

"several [prosecution] counsel commented that in a case where an adult was charged with sexual indecencies on young children, they liked to get men on the jury. They found that defence tended to challenge men off on the assumption that women were more critical and aware of children's faults"

"in a sex trial I like to get a reasonable proportion of males"

"based on a stereotype you have, the category of the RSA bloke ... you wouldn't want him on a rape case where the young women's been out drinking and, you know the scenario"

"women were often harsher judges of other women than were men"

"might challenge off middle class women whom he considered would tend to be harsher on a complainant from a different lower class background"

This is what some of the defence lawyers said:

"tend to exclude young women from sitting on sex offence cases"

"In sex cases I find the best jurors are older women, they seem to be very careful in sex cases and seem to be pretty free of bias. Older men want to protect and younger women can be very feminist you know, and I find older women very good on sex trials"

"young female jurors would tend to side with a young female complainant"

"If you get a sex trial, if you've got a complainant who you know is a teenager, and you can see the young women there, they're going to look at your guy and he's developed two horns and a tail, you know. He just doesn't have a show"

"I think that in many occasions the conduct of the girl, if there's any sense that she might have cooperated, you'll get an understanding of that from the women, ten times before the men will. So in that regard I might go for a middle aged woman who looks like she's got a good old common sense background to her, that she looks like a mother, that she knows what sons and daughters are, and she, you know she's not going to have the wool pulled over her eyes"

The court staff observed that:

"in child abuse cases, defence counsel would often try and obtain a predominantly male jury and use a gender based argument when summing up the case... 'would you like to be convicted on the evidence of children'"

How do juries get selected?

1. Jury lists drawn up once a year by NZ Post Electoral Rolls Centre from (essentially) persons aged 20 to 65 years currently registered as electors. The lists are compiled from names randomly selected by a computer from within a jury district (which is within 30 kilometres to the court). People in prison are removed from the list.

2. Each time a jury panel is needed the Registrar randomly draws a sufficient number of names from the list and summonses those people to attend for jury service on a particular date.

3. At Court the jury will be 'empanelled'. Jury cards, each containing the name of a potential juror, are drawn from the ballot box by the Registrar in the presence of the potential jurors, the defendant, the Judge, Court staff, and the lawyers. As the jury card is drawn from the box, the name is read out, and the potential juror makes her or his way to the jury box.

4. The lawyers have the right to challenge a potential juror from the time a name is read out until the potential juror is seated in the jury box. Both the prosecution and defence lawyers have a list of the juror's names, addresses and occupations. Both lawyers have the right to six challenges without cause. They also have the right to unlimited challenges if they can convince the Judge that a potential juror has a bias towards one of the parties to the trial.

5. The registrar continues to draw names from the box until 12 jurors are seated in the jury box.

Who decides if it is trial by jury or not?

The accused has the right to choose trial by jury in certain types of cases (basically where the accused is charged with a crime punishable by more than three months imprisonment). The victim has no say in whether it is a jury trial (or on the types of people they want to see on the jury).

**Law Commission Project:
Women's Access to Justice:
He Putanga mo nga
Wahine ki te Tika**

The Law Commission are calling for public submissions on women's concerns with the legal

system and ideas for change. The Commission's original list of four 'C' themes has grown to eleven. The Commission says these themes run through women's unsatisfactory encounters with the legal system. Each theme is meant to describe in one word an important reason why women feel that they are not treated justly by law.

The Commission's themes are:

cost, culture, credibility,
caregiving, connectedness,
community, confidence,
communication, choice,
conditioning, and control.

According to the Commission, these themes relate to the difficulties of accessing the legal system and deficiencies in legal procedures and legal services.

Send your submission to:

Women's Access to Justice
Project

He Putanga mo nga Wahine ki te
Tika

Free Post 56452

Law Commission: Te Aka Matua
o te Ture

PO Box 2590

WELLINGTON

The closing date for submissions
is 31 March 1996.

For further information contact
the Law Commission phone 04
4733453.