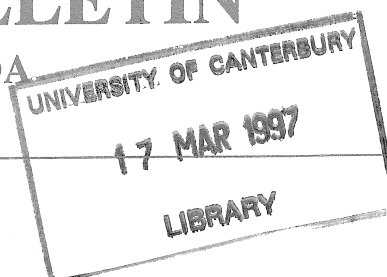


# FEMINIST LAW BULLETIN

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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. '97 Subs are now due.

## Comments to the editor

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## Contents:

|                                   |     |
|-----------------------------------|-----|
| Matrimonial Property Law Reform - |     |
| Case and Comment                  | pg1 |
| Women in Parliament               | pg2 |
| Parliamentary Questions           | pg2 |
| Judge for Yourself:               |     |
| a) New Zealand Magazines v Lady   |     |
| Karen Hadlee                      | pg3 |
| b) Domestic Violence Policy       | pg4 |
| The Coalition Agreement           | pg5 |
| The Year Ahead                    | pg5 |
| Firearms Control                  | pg6 |
| International Developments        | pg6 |

This year the Bulletin will be considering important cases, legal developments and aspects of law reform and inviting comment from women with an interest in the area. In this first issue we consider a recent Court of Appeal case on matrimonial property.

## Matrimonial Property Law Reform - Case and Comment

Case: In the case of *Z v Z*, the Court of Appeal held that the future earnings of a husband were not "property" and could not be divided under the Matrimonial Property Act 1976. The Act provides for a presumption of equal sharing of matrimonial property. However, the Court found in favour of lawyer Deborah Holling's contention on behalf of the woman, that the value of the husband's business in this case was higher as a result of its profitability. This profitability was attributable in part at least to the wife and she could, therefore, benefit, indirectly, in the increased earnings.

The Court of Appeal asked Parliament to review spousal maintenance laws and their relationship with matrimonial property law. Spousal maintenance is rarely awarded because it contradicts the 'clean break' principle in the Act. This principle requires the parties to have a clean break to their property relationship. Because the payment of spousal maintenance requires an ongoing relationship few judges have been prepared to award it.

## Comment:

Lynne Dempsey is the Policy Co-ordinator for Divorce Equity, a national group founded in 1994 which is lobbying for a comprehensive review of laws governing matrimonial property, spousal support, custody and access procedures and Family Court processes. She comments on this case:

"As a solution to redressing the post-divorce income disparity which exists between most women and men, awarding a wife an arbitrary

percentage of her ex-husband's future earnings has always been a non-starter. High legal costs and complex assessment issues would have put this approach beyond the reach of most divorcing women. The beauty of *Z v Z*, however, is that it has given instant credibility to a question once thought absurd (and unnecessary) to ask and, if raised at all, quickly consigned to the 'too hard basket', namely:

**"Should the long term economic and social costs of marriage breakdown continue to be carried by the partner (almost invariably the wife) who has foregone the development of a career while raising the couple's children and running the home?"**

Given the media exposure this landmark case received (plus the additional bonus of an Appeal Court recommendation that a review of spousal maintenance law is desirable), now is the right time to get a loud and clear message through to Cabinet. This message should remind Ministers that the previous Government failed to act on a promise to introduce new matrimonial property legislation during its term in office. With Cabinet currently setting its legislative agenda it is critical that we call on the Coalition Government to place the proposed reform of matrimonial property law on the 1997 legislative agenda for introduction this year.

Divorce Equity's February Campaign has been the circulation of hundreds of copies of a pro forma letter addressed to Cabinet Ministers urging the above. Additional pressure from lawyers and community organisations would be invaluable. It is not too late to support this campaign by sending brief letters with your views to the Ministers of Justice, Women's Affairs and/or others.

Once matrimonial property is before a Select Committee it will be possible to closely examine the issues considered by Cabinet in 1995-96 and to urge consideration of a range of other issues including: gender analysis of current and proposed laws; consideration of entitlement to a compensation based income transfer for the career sacrificing parent relating to age, length of marriage, employment experience and the needs of dependents (avoiding dependency connotations of 'spousal support' and 'maintenance'); and divorce insurance."

## Women in Parliament

There are 36 women MP's in the new Parliament, 30% of all MP's. This is the highest level of representation for women in Parliament in New Zealand and is up from 20% in 1993.

Alliance is the first Parliamentary party to have more women than men in its caucus (7 women and 6 men). There are 29 Pakeha women, 6 Maori women and 1 Asian woman in Parliament. Most women were elected from party lists and it is clear that this feature of MMP has made a significant difference for women's representation, although this has not been directly translated to the new Government's Cabinet.

### In Summary:

6 Maori women representing 4 of the 5 different parties (New Zealand First is the only party without a Maori woman MP)

20 first time MP's

26 list MPs

10 electorate MP's

Christine Fletcher (national) was the highest polling electorate MP

1 woman is a Minister in Cabinet (the same as under the previous Government)

3 women are Associate Ministers outside Cabinet (under the previous Government there was 1 woman Associate Minister outside Cabinet)

A very useful resource on women in the first MMP Parliament has been compiled by Jo Fitzpatrick, Women's Co-ordinator of the New Zealand Labour Party, PO Box 784 Wellington.

## Parliamentary Questions

Will increased representation lead to greater priority for women's access to justice? Consider the following Parliamentary Question: "Patricia Schnauer [ACT] to the Minister of Justice: Given the report of the Privacy Commissioner for the year ended 30 June 1996 indicates that 23 staff were employed in the Commissioner's office, 20 of whom appear to be female, is he satisfied that this represents an appropriate gender balance in that office; if not, what steps does he intend to take to have the Privacy Commissioner rectify the situation?"

# Judge for Yourself

## New Zealand Magazines Limited v Lady Hadlee

This was a defamation case brought by Lady Hadlee about an article published by New Zealand Magazines Limited in the New Zealand Women's Weekly in January 1995. The article took the form of an interview with television presenter Anita McNaught about a number of matters including questions concerning a rumour that Ms McNaught and Lady Hadlee were having an affair. Ms McNaught denied the suggestion, saying that she had never met Lady Hadlee.

Lady Hadlee sued for defamation alleging that the essence in the ordinary and natural meaning of the words were, first, that Lady Hadlee is or was having an affair with Ms McNaught and second, that Lady Hadlee is a lesbian or bisexual.

The trial judge, Williams J, held that to allege that a woman has had an affair with another woman is plainly capable of carrying the imputation that she is a lesbian or bi-sexual. He thought that even if the reasonable person reading the article as a whole were to accept that the two women had never met, the article was open to the inference that Lady Hadlee is the sort of person who might have had an affair with another woman.

The Court of Appeal was asked to rule on the question of whether a repetition of the rumour with a mere denial was enough to counter the inference that Lady Hadlee was either having an affair or was a lesbian or bi-sexual. In other words, whether to repeat the rumour and at the same time deny it was true, was enough to counteract the "bane" or "poison" of the alleged defamation. It appears that the lawyers accepted that statements to this effect, if made, were both capable of bearing a defamatory meaning. There seems to have been no argument, and therefore no consideration by the Court of Appeal, on whether calling a woman a lesbian or bi-sexual was defamatory.

The Court held that the article could plainly not have the first defamatory meaning (the allegation of an affair) because of the clear denial that the two women had ever met. However, the Court held that the

"article makes it appear that [Ms McNaught] has been asked whether she has had a lesbian relationship with [Lady Hadlee]. Her denial is of the particular with no mention of the general .... the lack of a report by [the Women's Weekly] of a general denial on her part of conduct of that character leaves it open for the article to be taken by an ordinary reader to bear the second of the defamatory meanings [that Lady Hadlee was a lesbian or bisexual]."

On this basis the Court of Appeal ruled the second meaning should be allowed to be put before a jury so that it could decide whether the words actually did bear that meaning. The Woman's Weekly magazine has since agreed to pay damages to Lady Hadlee in an out of court settlement.

## Judge for Yourself

Since the enactment of the Human Right Act it has been illegal to discriminate on the grounds of sexual orientation.

☐ What, then, is the defamation in calling a woman a lesbian or bi-sexual?

☐ Is the use of "lesbian" or "bi-sexual" as an alleged defamatory term really a comment on the perceived 'normal' role of heterosexual women and their general value in society?

☐ Is there a concern this case will undermine the effectiveness of the Human Rights Act by implying that it is permissible to treat differently women who might be or who are lesbian or bi-sexual?

☐ Does this case point to the need for New Zealand to have anti-vilification (hate speech or incitement to hatred) laws similar to those in Australia?

## Judge Comments on Domestic Violence Policy

A Hamilton District Court Judge, Judge Robert Spear, recently criticised Police policy which directs prosecution with the charge male assaults female where a man is arrested in a domestic violence situation. The judge said, "I have no doubt that the Police at Hamilton are being quite irresponsible when they level this serious charge at all men who are charged with assaulting their partner."

The case involved a man who was charged following an incident where he had threatened his partner with a broken plate. The man had already attended a Hamilton Abuse Intervention Project course to learn anger management. In discharging the man without conviction, the Judge considered the man was able to control his anger:

"Every indication is that while you became very angry at the complainant, you were able to manage your anger and control it to the point that you did not physically abuse her. I consider the consequences of a conviction would far outweigh the criminality of your actions. "

The judge considered the policy was discriminatory because "in situations where both male and female were charged with assaulting each other, the female would be granted bail and the male locked up because of his gender."

Police defended the policy which has been developed over the last few years as Police have moved to change their approach to policing incidents of domestic violence.

### Judge for yourself:

- ☐ Is the charge of male assaults female too harsh where a person has threatened another with a weapon?
- ☐ Do the Judge's comments indicate that psychological violence is less serious than physical violence?
- ☐ Is prosecution on a male assaults female charge appropriate where there has been a previous attempt to prevent violence that has failed?
- ☐ Does "discrimination" occur if a man is placed in Police custody for a male assaults female charge, when the Crimes Act does not have a charge of female assaults male as a direct counterpart to that charge?
- ☐ Should the circumstances of the case be taken into account on sentencing, rather than used to justify a lesser charge?

One of the main criticisms made by the Busch Report on Domestic Protection (1992) was that judges would undermine the law by applying their own interpretations of it, thereby sending a clear message to perpetrators that violence was not serious. Do these comments indicate that, after five years, changed Police policy, a High Court Judge's inquiry, public consultations by Government which the judiciary was involved in and a brand new Domestic Violence Act (which in many areas remove judicial discretions for this very reason) that judges have yet to move with the changes in domestic violence policy and treat domestic violence seriously?

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# The Coalition Agreement

In the next issue of the Feminist Law Bulletin, we will canvass some of the political parties women's spokespersons on issues for women in this Parliamentary term. In the meantime, the full text of the National and New Zealand First Coalition Agreement on Women's Issues is reproduced in for your easy reference (please note that this is an exact text copy - MWA refers to the Ministry of Women's Affairs):

## "Policy Area: Women's Issues

### Statement of General Direction

Parties affirm their commitment to the MWA That greater participation of NGOs in women's policy development be supported and encouraged

Parties are committed to the National Cervical Screening Programme

Parties are committed to the introduction of the National Breast Screening Programme over the next three years to cover all women aged 50 to 65.

### Key Initiatives of Policy

Agree in principle to establishing a Parliamentary Officer to be known as the Women's Commissioner, whose role would be one of advocacy in co-operation with the Ministry of Women's Affairs

Evaluate the effectiveness of the Equal Employment Opportunity Trust in terms of progress being made in advancing pay equity and consider whether any further non-legislative initiatives are required to progress the closing of the pay gap.

Review current child care policies to better integrate existing services and reduce barriers to women seeking financial independence.

Resource violence prevention and education programmes within schools and the community

Funding increase to EEO Trust, on basis of

\$2:\$1 Government/Private Sector subsidy.

Funding of Maori Women's Development Fund is assured for continuation

That a business plan for a time use survey is almost completed. Whether there is a funding shortfall is not yet clear. Both parties agreed this was a high priority.

### Fiscal Implications of this Policy Agreement

Increase in funding required not yet quantified:

(a) Women's Commissioner - \$1M pa

(b) Possible increase for Women's Ministry

(c) Survey of unpaid work/time use - up to \$2M

Could range from \$0s to \$4M over 3 years depending on decisions taken in future budget discussions.

(All additional funding proposals subject to being considered within the agreed spending policy parameters)

### Legislative Implications of this Policy Agreement

If a women's Commissioner is established, legislation would be required."

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## The Year Ahead

We will continue to canvass a full range of feminist legal issues this year. Watch especially for:

- Law reform for women in the new MMP environment, especially Select Committee work programmes
- Case law developments
- Judicial training in gender issues in May
- Changes to the Domestic Purposes Benefit and other welfare support for women
- "Strengthening Families" policy initiatives in the new Government's first Budget
- Progress with the Law Commission's Women's Access to Justice Project



## Firearms Control

Recent events at Raurimu, where five people were shot dead and six were wounded by a lone gunman, have highlighted the issues of regulations of firearms. In the aftermath of events at Raurimu, the Government indicated the current review of gun laws will take account of those events. The Independent Review of Issues Relating to Firearms Control in New Zealand was established last year following a number of firearms deaths, including the shooting of several Police constables. Submissions were called for and are now being considered by the Review Team. Issues being considered in the review include

- the use and distribution of military style semi-automatic weapons
- registration of all firearms (rather than registration of each firearms owner)
- secure storage of firearms
- the appropriate length of the firearms licence before renewal is required (currently 10 years)
- criteria for a firearms licence to be issued
- standards for advertising firearms
- resources and priority for Police control of firearms

Last year Parliament agreed (by a majority and following a conscience vote) to make revocation of firearms licences and seizure of firearms automatic where a protection order has been made under the Domestic Violence Act.

### Another Parliamentary Question

"Patricia Schnauer [ACT] to the Minister of Justice: Further to question for written answer No.157, 1996/97, and bearing in mind recent public criticism from the business community that the Judiciary lacks an adequate understanding of economic issues, will he recommend to the Judges that improving the economic understanding which they bring to cases, as part of continuing education, is at least as great a priority as improving their understanding of gender-equity issues?"

## International Developments

### CEDAW

In March 1997 the United Nations Commission on the Status of Women will be considering a proposal to add an optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Her Honour Justice Silvia Cartwright is a New Zealand member of the CEDAW Committee. CEDAW is the most comprehensive international legal document on women's rights and was ratified by New Zealand in 1985.

The optional protocol would allow individuals, groups and organisations (such as community groups) to make complaints of discrimination directly to the CEDAW Committee rather than within their own country. The optional protocol would also allow the Committee to initiate its own enquiries into serious violations of CEDAW.

We will continue to advise progress with this protocol and its possible implications and uses for New Zealand women.

### Survey of Violence Against Women in Australia

A recent study, Women's Safety Australia 1996, has shown that over 1 million women across that country have been kicked, punched, shot at, scalded, suffered miscarriages and, in some cases, killed as a result of violence by their male partners. The study involved interviews with 6300 women which were then weighted and extrapolated to apply to the 6.9 million women over the age of 18 living in Australia.

The survey showed that despite the violence, only 20% of women complained to police and only 10% of women who were sexually assaulted reported the attack. The survey also showed that women were at risk of violence both at home and at work and in licensed premises.

A Victimisation Survey is planned for New Zealand. This survey will include a Family Violence sub-survey, but no specific survey of violence against women.