

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.

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Case and Comment

From 1 April 1997 Domestic Purposes Benefit recipients with no children or their youngest child 14 years or over must register with the New Zealand Employment Service and actively seek part-time work and/or training, for at least 15 hours per week. Sanctions will apply to those who fail to comply without good reason.

Toni Allwood, co-ordinator of the WIN on Poverty campaign comments:

"On the face of it, this sounds reasonable. Most people would say that once your child reaches 14 its parenting needs and your rights to an ongoing tax-funded benefit have lessened. Research shows most women on the DPB want to work.

Our concern is that these changes may be just the beginning of significant welfare reforms based on American models where every adult must be in paid work, and raising children is not considered a public good.

Why apply sanctions to Domestic Purposes Beneficiaries with older children? They represent only 8% of sole parents on welfare and are already those most motivated to seek paid work.

Since full employment of this group would hardly alter DPB expenditure, we believe the next move may be to lower the age of the child and enforce part-time work or training on a much larger group. This could reduce the high level of unemployment amongst sole parents, but it assumes that appropriate jobs are available.

If this is Government's intention (and it was certainly endorsed at the Beyond Dependency conference) we simply do not have the necessary low cost, accessible, flexible childcare. Many women

previously dependent on the DPB will have no option but to take on poorly paid casual jobs with awkward hours that may place children at risk.

Instead of following American workfare schemes which have moved people from welfare to various paid positions but barely altered their levels of poverty, we need to develop long term welfare reforms appropriate to New Zealand circumstances.

In the meantime WIN on Poverty has specific goals in housing, income, health, education, childcare, employment and retirement which, if implemented, would make an immediate practical difference to those on low incomes. Three goals relevant to this discussion are to:

- Set in place monitoring mechanisms to assess the extent of casual work, any increase in casual work and the conditions of employment for casual workers

- Increase the Training Incentives Allowance so that those on the DPB, Widows and Invalids Benefit have greater access to training and upskilling

- Increase the childcare subsidy to 30 hours per week for all families on low incomes."

Select Committee Update

The job of select committees is to consider legislation, scrutinise expenditure and revenue, and to undertake investigative reports. There are twelve select committees in the new Parliament as well as committees for Regulations Review, Officers of Parliament, Privileges, Standing Orders, Electoral Law and House Business. There are 36 women MPs in the new Parliament, 36% of all MPs.

Membership of these 18 committees has now been decided. A quick membership review shows that:

- There are 152 members of 18 committees (many MPs are members of more than one committee)

- Of those 152 there are 46 women and 106 men ie 30% of the membership

- Of those 46 women there is one Asian woman and 8 Maori women.

Parties Identify Current Issues for Women

The six political parties represented in Parliament were canvassed this month by the Bulletin for their views on what they consider to be the most critical issues facing women in this Parliamentary term. The Bulletin wrote to the spokesperson on women's affairs, where the party has identified one, or if not, to the party leader. Each party was asked the same three questions and asked to respond within a limit of 150 words. We have not edited the responses, except with the party's consent where the word limit was exceeded. Responses explaining why the survey was not completed have been summarised.

Questions

The following three questions were asked:

What do you consider to be the three most critical issues facing women in the current Parliamentary term?

Why do you consider these three issues to be the most critical?

What policy or legislative measures would you like to see introduced in this Parliamentary term to address these three issues?

Responses

The responses have been presented so that the response to all three questions on each issue is grouped together. Responses are given in alphabetical order of the party name.

ACT Spokesperson on Women's Affairs, Dr Muriel Newman

Dr Newman apologised for being unable to respond in time for our deadline.

Alliance Spokesperson on Women's Affairs, Phillida Bunkle

a) Eliminating the underlying causes of violence against women. Violence is the greatest cause of women's physical illness and causes the largest medical costs. Broadening education about

non-violence is essential. Women's Refuge should receive adequate on-going funding. The recommendations of the Victim's Task Force Report should be implemented.

b) Ensuring that women's work is recognised and valued and women's contribution is acknowledged adequately through support in old age. The Compulsory Superannuation Scheme disadvantages women because they are less likely than men to have good incomes and 40 years continuous work. Introducing 12 weeks paid parental leave after birth or adoption is needed to ensure women's continued employment is not jeopardised.

c) Ensuring women's health needs are met and underlying social causes of ill-health are reduced. The costs of going to a doctor and pharmacy encourage inequalities in access to health care. The profit motives of the health system must be removed and a fully funded public health system restored.

Labour Spokesperson on Women's Affairs Dianne Yates

a) Childcare. Labour's policy is to raise the standards in early childhood education and care centres; significantly increase early childhood education session subsidies until the Before Five objectives are achieved; ensure childcare subsidies continue to be available for up to 30 hours per week for parents in education, employment or training and up to nine hours in other circumstances.

b) Superannuation. Of concern to all women in the paid and unpaid workforce, with and without partners. Labour is against a compulsory contributory scheme. A paper by Susan St John outlines several reasons why the proposed scheme does not appear to benefit women.

c) Matrimonial Property. Revisions of this law have been promised for years and there seems to have been little progress towards an actual piece of legislation. Labour's Judith Tizard has lobbied continuously for legislation and she and I have also agreed to present the Divorce Equity petition on this matter to Parliament.

Minister of Women's Affairs Christine Fletcher

Mrs Fletcher responded that she had a broad vision for the Ministry of Women's Affairs during the current Parliamentary term and saw criti-

cal issues for women within a wide social framework. Her preference was to be interviewed on the subject. She offered to provide a written statement for the Bulletin but was unable to do so to meet our deadline.

New Zealand First Women's Affairs spokesperson Ann Batten

a) The survey into unpaid work because it will have consequences for all policy particularly that which impacts on women. The policy measure for the valuation of unpaid work was written into NZ First policy in August 1996 and negotiated by me into the coalition document. No legislation is required - just \$2 million which was agreed to.

b) Superannuation savings because of the impact it will have for women's security in retirement. The referendum along with public debate has been processed already. Legislation will proceed from that if the public approves the scheme.

c) Matrimonial property legislation because of the compensation to women from spouse's future earnings. The legislation for Matrimonial Property is already drawn up and is waiting to proceed into the House. I would like to see this proceed as soon as possible.

United New Zealand Leader Peter Dunne

a) Superannuation. The superannuation debate is again before Parliament and the public. There are merits in both arguments for compulsory and voluntary schemes. However, women may be adversely affected either way. There needs to be a very public focus and education campaign for women and legislation needs to address the issue for women.

b) Changes to social welfare/work for dole. Legislation must be carefully considered to ensure that barriers to women's re-entry into the workforce are removed and that will require a re-think of childcare and allowances - perhaps tax breaks.

c) Pay equity. Women continue to trail men in the salary stakes. It is now time to revisit the issue of pay equity. Government should carry out a study across say, 100 occupations, and have an impact report prepared on pay across that group.

This article was prepared by Julie O'Brien.

From the Net

A new feature of FLB is highlights from the Internet. Many groups and individuals don't have the resources or time to go surfing for feminist legal issues, so let us do it for you!

This issue we focus on our friends in the USA (the best users of Web Sites we have found with an estimated 5 million current users of the Web and predictions of 18 million women online by the year 2000):

Affirmative Action

A big issue over there! The Feminist News Archives (www.feminist.org/news/newsbyte/aprindex97.html) notes the following recent happenings in 1997:

- April 25 - Clinton Advocates Bill Against Job Bias Toward Lesbians and Gay Men

- April 24 - Harvard president Leads Fight to Save Affirmative Action

- April 21 Court refuses to Hear Appeal of Job Bias Claim in Affirmative Action Program

- April 15 - Department of Education Rules Texas Universities Must Not Use Affirmative Action

- March 26 - Clinton Administration tells Texas Schools to Aggressively Enforce Affirmative Action Programs

- And in January Connerly created a National Organisation to End Affirmative Action!

Same Sex Marriages

Remember the issue FLB did on the Hawaiian test case which legalised same sex marriages last year? Feminist News (www.feminist.org/news/newsbyte/samesex.html) updates show the Hawaii House as banning same sex marriages on 24 January, 1997, and the Mississippi Governor as following suit with a denunciation of same-sex marriages on 13 February. Mississippi became the 17th state to ban same sex marriages with Washington state poised to become the 18th. Mississippi Gov. Kirk Fordice who signed the law banning same-sex marriage, denying recognition of such marriages performed in other states, and excluding same-sex couples from the benefits of marriage (such a health insurance), is recovering from an election day accident in which his car

turned over on his way home from lunch with an unidentified woman while his wife was out of town.

Battered Women's Syndrome

The Californian Supreme Court has ruled that abused women can claim self defence for acquittal in cases of murder or attempted murder (rather than merely trying to have a murder charge reduced to manslaughter). In a unanimous ruling the court held that because the evidence of battered women's syndrome may help the jury understand the circumstances in which the defendant found herself at the time of the killing, it is relevant to the reasonableness of her belief. Self defence was successfully claimed by Fay Johnson who shot her husband five times in July 1995 after 25 years of mental and physical abuse. Johnson spent 21 months in jail until her acquittal (The Nando Net, 1997, found via www.feminist.org/news/newsbyte/april97/0409.html)

Violence Against Abortion Clinics

Key findings of a 1996 US Abortion Clinic Violence Survey Report (www.feminist.org/cvsurveys/1996/cvsurvey2.html) include:

- Almost one third of clinics reported one or more severe types of violence, including death threats, stalking, bomb threats, bombings, blockades, chemical attacks, invasions, arson and arson threats during the first seven months of 1996.

- Violence was especially severe in Arizona, California, Colorado, Illinois, Michigan, Minnesota, New York, Ohio, Oregon, Pennsylvania, Texas, and Wisconsin.

- Law enforcement response is related to violence levels. Clinics which reported excellent law enforcement response experienced lower levels of violence than those which characterised law enforcement response as poor.

- One in ten clinics during the first 7 months of 1996 turned to the courts for relief from clinic violence. Less than half actually won protections.

- Clinics with buffer zones reported far larger decreases in every type of violence than clinics without buffer zones. Approximately one third of clinics are protected by buffer zones.

These zones have been upheld by the Supreme Court (in *Schenk v Pro-choice Network of Western New York*, 19 February). The zones and the right of clinic personnel and patients to wave off anti-abortion "side-walk counsellors" within these zones was upheld.

Workfare (Work for the Dole)

Labour leaders in the USA are demanding that the millions of welfare recipients headed into the workforce receive at least the minimum wage. Officials fear that if labour laws do not protect 'workfare' recipients, state and local governments will use them to replace existing job-holders more cheaply (The Washington Post, 20 February 1997). These are the same concerns being raised by New Zealand opposition politicians and trade unionists to the Government's work for the dole proposals.

Women's groups have protested Clinton's signing of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Three top officials on welfare policy in the Clinton Administration have also resigned in protest of Clinton's signing the bill. One of those officials did a study showing the new welfare law would throw one million children into poverty.

One women's group, the Feminist Majority, noted that approximately half of the women on welfare are victims of domestic violence who are fleeing for their lives. For these women and their children welfare may be the only means of escape.

In an attempt to recognise the relationship between domestic violence and poverty, Clinton last October urged states to increase services to women who are victims of domestic violence: "As we help families move from welfare to work, we must ensure that they remain safe from violence in their homes and are given the support they need to achieve independence." (www.feminist.org/news/newsbyte/october96/1004.html and www.feminist.org/research/report/83_seven.html)

700 Years

Its true! Serial Rapist Sean Mitchell received the longest ever prison sentence handed down in Los Angeles of 700 years, 4 months in prison and an additional 11 consecutive life sentences.

Optional Protocol to CEDAW

In the previous issue of the Bulletin we noted that the question of an optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women was being considered by the Commission on the Status of Women in March. This article looks at CEDAW, the optional protocol, and advises of progress at the March meeting.

What is CEDAW?

CEDAW is a Convention which sets out the basic rights of women in addition to the rights enshrined in other international human rights treaties. CEDAW deals with anti-discrimination laws, women's development and advancement, affirmative action, maternity protection, sex roles and stereotyping, traffic and prostitution of women, political and public life, rural women, women with disabilities, education, employment, health, economic and social life, equality before the law, marriage and family law, and violence against women.

How did the Protocol Develop?

CEDAW has never had an effective complaints mechanism although there was some discussion of this when the Convention was being prepared in the late 1970's and early 1980's. The issue was raised because compared to other international human rights documents, CEDAW has relatively weak compliance mechanisms (parties are simply required to report periodically).

However, there were objections from countries at the UN to including a complaints mechanism for this Convention as opposed to "serious international crimes" such as apartheid or racial discrimination. The objections reflected the prevailing attitude that discrimination against women is not as serious as other forms of international rights violations. Individual members of CEDAW did raise the question of an effective complaints mechanism but nothing was really done until the 1990s.

Non-governmental organisations had consistently expressed concern about the lack of ways to ensure CEDAW was adhered to. NGOs consistently demanded an optional protocol which would set out a specific complaints procedure. The NGO campaign was effective and an expert group of law experts developed a draft at Maastricht in 1994. The CEDAW Committee then prepared an outline of the desirable features of a protocol which was essentially the Maastricht draft (the Committee could not simply adopt the NGO draft, but did the next best thing).

Why is it an "Optional" Protocol?

Countries which have signed the Convention would have the option of agreeing to be subjected to the complaints procedure.

What is in the Draft Protocol?

The draft protocol would allow complaints by individuals or NGOs as well as an inquiry procedure by the CEDAW Committee. The inquiry procedure would allow the Committee to carry out investigations without the need for a complaint to be made first.

Relevance to New Zealand

The protocol would provide an international avenue for non-governmental organisations concerned about violations of the Convention. If adopted in its current form, NGOs would be able to take complaints either as organisations affected by violations of the Convention or on behalf of individual women in New Zealand.

A recent High Court case which ruled that legal aid must be available for cases to United Nations complaint forums, makes the optional protocol a more realistic option for women in New Zealand concerned about aspects of New Zealand's compliance with the Convention (such as over paid parental leave).

Progress at the March Meeting

New Zealand's Dame Silvia Cartwright, one of a group of independent international experts voted on to the Committee for the Status of

Women, attended the March meeting of the Commission as a resource person on behalf of the CEDAW Committee. The Committee reports to the Commission, which in turn reports to the General Assembly of the United Nations. Dame Silvia answered questions about aspects of the draft protocol under consideration. These questions were from representatives of Governments and were largely directed to the need for a protocol.

Extensive deliberations took place at the March meetings and, by United Nations standards, excellent progress was made. The entire draft was worked through, but there are a number of major issues which remain unresolved. These issues include a range of technical and substantive matters such as:

- who may complain
- procedural matters
- what evidence is admissible
- the requirement to exhaust remedies in their own country
- justiciability - can the rights be adjudicated on or judged at all?
- time limits for complaints
- the status of Committee decisions
- relationship to other complaints mechanisms

Next Steps

The Commission on the Status of Women will consider the Maastricht draft again in March 1998. The New Zealand Government has adopted a neutral stance on the question of the protocol and has been opposed to it in the past. If the remaining issues are resolved at that meeting, the draft could be forwarded to the General Assembly by the end of 1998. Countries would then be able to sign the optional protocol from 1999 onwards.

Sex with Force

Recent research in Adelaide, has found that 31% of young men believe it is acceptable to force young women into having sex - particularly where a woman had had sex with the young male before, allowed him to touch her body, or where they had been going out for a long time.

Source: Sydney Morning Herald, 23 April 1997.

Superannuation

As this is one of the most important issues facing women this year, subsequent issues of FLB will summarise the developments as they are made public. The story so far...

Winston Peters has announced plans to hold a postal ballot referendum in September 1997 on the question of voting for or against a particular compulsory superannuation scheme. Details of the proposed scheme remain sketchy.

Submissions on the empowering legislation closed on 1 May. The Ministry of Women's Affairs developed a checklist of principles to show whether women are being disadvantaged by a super scheme (report of Christine Fletcher, Minister of Women's Affairs speech to CTU in *The Independent*, 24 April 1997)

During the period the Select Committee heard submissions, women's organisations called for the word "compulsory" to be added into the question on the ballot paper, Winston floated the idea of entrenching the legislation (requiring a 75% majority of MPs to subsequently overturn it or make amendments), and MPs from just about every party signalled they wouldn't consider themselves bound by a low turnout at the referendum.

Women from across parties are joining together to make sure that women are fully informed on the debate and to encourage women to say no at the ballot. Helen Clark (Labour), Katherine O'Regan (National), Judith Tizard (Labour), and Joy McLauchlan (National) have already met and future meetings involving more women MPs are planned.

Subscriptions for 1997 are now due

We value your continued subscription to the Bulletin and have kept our subscription rates at the same level as previous years although please note this now includes GST. If you have not already done so, please renew your subscription (and let us know if you have changed your address) by forwarding us the panel enclosed together with your cheque or request for an invoice.

A Visit to the Privy Council

Kathy Ertel, a partner in Wellington law firm Luckie Hain, was counsel in the recent Maori fisheries case which went to the Privy Council last year. Kathy kindly agreed to provide us with some of her personal observations of a visit to the Privy Council:

"In November of last year the Maori Fisheries debate came before the Law Lords of the Privy Council. The Privy Council sits in London and is New Zealand's highest appeal court. Fifteen lawyers travelled to London to represent the six parties to the proceedings. Of that fifteen, six were women and three of those were Maori women. This was probably the first time that any Maori women had appeared before the Privy Council.

Although wigs and gowns have disappeared from New Zealand courts, lawyers are required to formally robe when appearing before the Privy Council. For me, the absence of formal wear in New Zealand has not made the heart grow fonder. The Law Lords themselves do not wear formal robes, I might add.

On the surface, mainly due to the layout of the courtroom itself, the Privy Council felt more informal than most New Zealand courts. Formality lurked nearby, however, when the hierarchy of counsel, namely which one had become a Queen's Counsel first, became an issue at the outset of the case. I must say, though, that the sensitive manner with which these very important Maori issues were dealt with by the Law Lords was admirable and appreciated by those involved in the case.

I also discovered some quaint customs still in vogue in certain London Clubs where women are permitted to enter only by invitation and only if they are wearing dresses or long skirts. Trousers, it seemed, lead to some confusion, although who would suffer from this confusion remained unclear to me.

I do not, here, wish to enter the debate on whether to abolish the Privy Council. However, appearing at the Privy Council will be one of the highlights of my career."

Protections Removed Overnight

Kindergarten teachers and their supporters have expressed outrage at the Government's introduction and passage of an amendment to the State Sector Act which removes the State Services Commission from kindergarten teacher pay negotiations. Debated under urgency, the bill was not referred to a Select Committee and the public had no opportunity to make submissions. The law was passed on 30 April by 69 to 50 votes. The NZEI fears the move will drive down pay rates, lead to the privatisation of kindergartens, and end up forcing parents to pay fees.

1996 Report on Judiciary

Chief Justice Sir Thomas Eichelbaum in the second report of the Judiciary believes the current spotlight on the selection of Judges, their backgrounds, and their attitudes is healthy. "The community needs to be assured that selection processes are appropriate, that the makeup of the Judiciary is acceptable, that the arrangements for training and ongoing judicial education are satisfactory and that there are sufficient mechanisms for accountability". In noting that only three of the current Court of Appeal and High Court Judges are women, Sir Thomas said "I regard it as a matter of urgency that in all the courts there should be a better gender mix and a greater ethnic mix than at present".

The Report updates the work of the Judicial Working Group on Gender Equity. The two day seminar on gender equity to be held in May 1997 will involve the whole judiciary. "Awareness of gender equity issues in the judicial system is expected to be an ongoing element in the induction and professional development of the Judiciary" and be part of the work of the Institute of Judicial Studies.

Rape Crisis Awareness Week

This issue goes to print during Rape Awareness Week. The theme for 1997 is "No More Sexual Violence: ma te wahine, ma te whenua, ngaro ai te tangata". Issue 8 of the National Office of Rape Crisis Newsletter, NOUS, reports that "Rape Crisis believes that the low rates of conviction and reporting of sexually violent crimes are a direct result of the way society treats survivors of sexual violence. Last year there were 809 convictions for criminal sexual offences. The conviction rate was only 59% in cases of sexual violence, almost 10 per cent less than for other cases".

Spousal Non- compellability rule questioned

Women's Refuges have expressed concern over Judge Harvey's call for the law protecting wives and husbands from testifying against their spouses to be repealed. Judge Harvey has called for the repeal because he believes the rule allows wife-beaters to escape justice by threatening the wife against giving evidence. Women's Refuge National Spokeswoman while supporting his aim of ensuring batterers are held accountable expressed concern about the real fear battered women have about giving evidence. Rather than the focus being on the individual woman, we needed "good systems in place in terms of the police and how the justice system treats women, so that all those structures hold men accountable".

Domestic Violence Orders

The projected number of applications for a full year is in excess of 7,000!