

FEMINIST LAW BULLETIN

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Victimisation in New Zealand

In the last issue of the Feminist Bulletin we highlighted results of the Rape Crisis survey of clients (see Issue 4 1997, page 4). Since then, the results of the National Survey of Crime Victims and a Women's Safety Survey has been released.

National Survey of Crime Victims

This survey explored the experience of victimisation of 5000 randomly selected New Zealanders. Key finds were:

- On average one house in 14 will be burgled each year

- One woman in 16 will be sexually violated each year
- One person in five will be the victim of some type of assault (excluding threats) each year.

Women's Safety Survey

This survey aimed more specifically to explore violence against women by their male partners. The survey participants were 500 women chosen randomly from a subset of the 5000 people who participated in the National Crime Survey. Key findings were:

Psychological Abuse:

More than 40% of New Zealand women with current male partners and the vast majority of New Zealand women with recent partners experienced at least one type of controlling behaviour by that partner. Maori women were significantly more likely than non-Maori women to report experiencing controlling behaviour by their partner. The majority of women who had experienced these behaviours gave descriptions of them which were consistent with their partner's wish to exert power or control over them. Some women reported that the cumulative effects of psychological abuse was more damaging for them than the effects of physical abuse.

By way of comparison, in the Hitting Home survey of men's attitudes to violence against women, 53% of men admitted committing at least one act of psychological violence against their partner in the previous twelve months.

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Taking account of differences in survey methodology, these results indicate a remarkably similar level of reporting by men and women in this area.

Prevalence of Physical Abuse:

24% of women with current partners and 73% of women with recent partners reported they had experienced at least one act of physical or sexual abuse by their partner (most commonly being pushed or grabbed). Maori women were significantly more likely than non-Maori women to report acts of physical or sexual abuse by their partner. 2% of women with current partners and 22% of women with recent partners reported they had experienced ten or more acts of physical or sexual abuse by their partner. Maori women were significantly more likely to report experiences of multiple acts of physical or sexual abuse.

Prevalence of Physical Abuse Within the Last 12 Months:

More than a quarter of Maori women and a tenth of non-Maori women reported experiencing at least one act of physical or sexual abuse in the past 12 months. Worth noting in comparison is that in the Hitting Home survey of men's attitudes to violence against women, 21% of men admitted committing at least one act of physical violence against their partner in the previous twelve months (see FLB Issue 4 1995, Page 1).

1% of non-Maori women with current partners and 8% with recent partners were admitted to hospital as a result of partner abuse.

Strategies for Coping With Partner Abuse

Results indicate that women use a variety of strategies to cope with partner abuse including leaving their partner for a length of time, leaving their partner permanently, and talking with family and friends. Just over 10% of women who disclosed physical abuse indicated they had ever asked the Police to come to their home to deal with their partner's violence. However, of those who had, over 66% were satisfied or very satisfied with the Police response. Of particular interest was the finding that women thought the most common influences on their

partner's behaviour was the fear of losing her or counselling, rather than police or court action.

Other relevant findings were:

- Women are more worried about rape than any other crime
- 50% of women feel very unsafe walking alone after dark
- 59% of women in New Zealand are living in a climate of fear but most people surveyed (Over 90%) believe that sexual assault crimes do not happen in their area. The level of violence against women appears higher in New Zealand than in either Canada or Australia.

Survey findings are subject to a number of methodological caveats, but the researchers consider a significant implication of the surveys to be that official statistics should often be regarded as suspect as they are highly susceptible to changes in reporting and recording practices (including under reporting).

(New Zealand National Survey of Crime Victims 1996, Young, Morris, Cameron and Haslett, August 1997 and Women's Safety Survey 1996, Allison Morris, 1997)

From the Net

Webgrrls is a loose-knit international network of women which aims to provide a non-competitive environment for women using or working with the Internet. Webgrrls Aotearoa was founded by Web designer Brenda Leeuwenberg and has chapters in Auckland, Wellington, Hamilton and Christchurch. Internationally there are more than 3500 members and 80 chapters. Check out the site at <http://www.webgrrls.org.nz>

The Centre for Feminist Legal Research, which is based in New Delhi, has a site on the Internet. The Centre was established to promote women's rights, in particular, women's human rights, primarily through carrying out workshops, training and seminars for women as well as the development of feminist legal research in India. For more information contact Ratna Kapur or Shonin Ghosh at: rk.cflr@rkpslaw.sprintrpg.ems.vsnl.net.in

Government Backs Out of Human Rights Reform

In the last issue of the Bulletin we noted concerns have been expressed about statements by Ministers that the Government was considering alternatives to compliance with the Human Rights Act.

In 1993 the National Government agreed to review legislation to ensure consistency with the Human Rights Act (the Human Rights Commission was carrying out this work in the Consistency 2000 Project).

The New Zealand First/National Coalition Government has now reversed that decision, although government departments had disagreed about what should be done. The Department of Social Welfare indicated there were enough protections already and the Department of Labour argued that the current Government exemption should be extended to the Bill of Rights Act as well. Others (including the States Services Commission, Human Rights Commission, Ministries of Women's Affairs, Youth Affairs, Foreign Affairs and Trade, Pacific Islands Affairs and the Race Relations Office) considered the Government should comply with the new Act.

The Decision

In the end Government decided to stop the Human Rights Commission Consistency 2000 Project and let Chief Executives of Government departments be responsible for "managing their departments' legal risks in meeting the requirements [of the Human Rights Act]" (including the new grounds of discrimination under the Act). The decision affects three levels of legal practice: statutes (an act of Parliament), regulations (made under statutes to deal mainly with procedural matters) and departmental policies and practices (such as department manuals of practice used by staff when making decisions).

The Government has decided that existing law and regulations will not have to be changed to comply with the Human Rights Act unless they are ever amended.

However, it appears that the Act will apply to existing government policies,

unless specifically exempted. In the future these exemptions will be able to be identified either when new law is introduced to Parliament or when regulations are considered by the Regulations Review Select Committee.

A very large number of policies and practices which conflict with the Human Rights Act have already been identified by the Human Rights Commission (especially in the social welfare, health and education areas). The Government intends to exempt these policies in special legislation, because otherwise they could be challenged. The scope of these exemptions is expected to be known by the end of February 1998.

Who Will Be Most Affected?

The effect of the decision will therefore be felt hardest by those people falling within the new grounds of discrimination (namely family status, political opinion, sexual orientation, age, employment status and disability) where they are already discriminated against under current legislation. This can be seen clearly, for example, in the light of the Law Commission's consultation with lesbians as part of the Women's Access to Justice Project (we summarised this report in the last issue of the Bulletin).

Consultation with lesbians showed that the greatest barrier to lesbians access to justice was a lack of recognition of their lives in the content of the law. For example, the definition of family and whanau were not considered sufficiently wide enough to include lesbian families, and there was a lack of recognition in immigration and health policy and in social security and accident compensation legislation. Many of these definitions of family or relationships are contained in legislation and regulations, the precise areas in which the Government will not have to comply unless such legislation is amended. It seems highly unlikely that government departments will change existing legislation to comply with the Act when they do not have to.

Lesbians expressed major concerns that discrimination against them by government agencies would continue and increase if the Government exempted itself from the Human Rights Act. Such as exemption, it was thought, would

reinforce society's prejudices against lesbians and same-sex relationships.

There is a great deal of debate about whether the Government can actually exempt existing laws and practice, especially because the Human Rights Act is not the only relevant law. The Bill of Rights Act and international human rights agreements are also relevant.

It seems ironic that the Government decision was made at the same time that the New Zealand Government (including the Prime Minister) was denouncing human rights abuses in Nigeria. In addition, the decision indicates that, more than ever, the Law Commission's Women's Access to Justice Project must be supported to ensure that the excellent work done to track women's experiences in the justice system and develop proposals to address concerns (especially concerning discrimination) are followed through by Government.

Benefit Entitlement and Domestic Violence

The Social Security Act allows the Domestic Purposes Benefit to be paid to any person who has dependants (such as children) and who is not living in a relationship in the nature of a marriage. The Social Security (Conjugal Status) Amendment Bill has been introduced in response to the Court of Appeal decision in *Ruka* (see FLB Issue 5 1996). In that case (a prosecution for benefit fraud where a woman received the Domestic Purposes Benefit) the Court of Appeal said that the absence of financial support by a violent male partner, in circumstances where the woman could not leave, meant there was not a relationship in the nature of marriage (and hence there was no Domestic Purposes Benefit fraud). The new Bill is aimed at allowing an assessment of marital status to be carried out with reference to certain criteria in

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Taking Law Too Seriously

Recently reported in the Massachusetts Bar Association Lawyers Journal, the following are some questions actually asked of witnesses by lawyers during trials and, in certain cases, the responses given by insightful witnesses:

1. "Now doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?"

2. "Was it you or your younger brother who was killed in the war?"

3. "How far apart were the vehicles at the time of the collision?"

4. "You were there until the time you left, is that true?"

5. "How many times have you committed suicide?"

6. Q: "So the date of conception (of the baby) was August 8th?"

A: "Yes."

Q: "And what were you doing at that time?"

7. Q: "She had three children, right?"

A: "Yes."

Q: "How many were boys?"

A: "None."

Q: "Were there any girls?"

8. Q: "How was your first marriage terminated?"

A: "By death."

Q: "And by who's death was it terminated?"

9. Q: "Doctor, how many autopsies have you performed on dead people?"

A: "All my autopsies are performed on dead people."

10. Q: "All your responses must be oral, OK? What school did you go to?"

A: "Oral."

11. Q: "You were not shot in the fracas?"

A: "No, I was shot midway between the fracas and the navel."

order to stop benefits being paid to people who are living a relationship in the nature of a marriage. Violence is not to be taken into account in assessing whether there is a relationship in the nature of a marriage. In addition, no one factor is to be given any greater weight than another in determining whether such a relationship exists. In addition, financial interdependence need not be established for such a relationship to be found to exist.

The Bill will allow an emergency benefit to be granted to those women who are "deprived of the ability to decide whether, or how, to escape from the violence . . ." The emergency grant will last for six months, during which time the women will be expected to leave the violent relationship.

The Bill is to apply retrospectively to all decisions made by the Department of Social Welfare.

Submissions on the Bill close in early November 1997.

If you are making a submission, judge for yourself:

How does this Bill fit with the Domestic Violence Act 1995, the New Zealand Government Statement of Policy on Family Violence 1996, and the Family Violence Protocols 1996? A tremendous amount of work has been done over the last ten years to address issues of inter-agency co-operation and a co-ordinated approach to domestic violence. Does the Bill cut across these initiatives?

How likely is it that a woman "deprived of the ability to decide how to escape from the violence" will seek help from the Department of Social Welfare to leave the relationship? If it is unlikely, is the Bill fundamentally flawed?

How will Social Welfare staff assess whether a woman is so "deprived" due to the violence? "Battered woman's syndrome" is a matter that the Courts require independent expert evidence on. How likely is it that officials, no matter how well-meaning, will be able to make this expert judgment at the desk front.

Experience of the National Collective of Independent Women's Refuges shows that women may take years to leave a partner who is violent. On what basis has the

time-frame of six months been set for an emergency benefit grant?

What mischief or problem is the Bill really addressing? Officials have been concerned about cost escalations and increased benefit fraud since the Ruka decision. But there is absolutely no evidence that such an escalation has occurred.

If the Government wished to provide more support to women wishing to leave a violent relationship, is this the best way to do so? Are there better ways?

Does the Bill really address the point that the Court of Appeal made in Ruka, namely, that a situation where there is violence and no emotional or financial interdependence does not amount to a "relationship in the nature of a marriage?" In other words, is the Department of Social Welfare going to decide that in circumstances similar to the Ruka case, there would be a relationship in the nature of a marriage?

Does the Bill raise the question of whether there is a need to introduce a single unit of entitlement based on need, instead of continuing to offer benefit entitlement based on assumptions of financial dependence?

How can the interests of children be protected?

What possible justification can there be for making the Bill retrospective?

Will women really be any better off under the Bill, or is the Bill really intended to give greater scope to take benefits away from women?

New Video - Kids in Court

The North Shore Women's Centre has produced a new resource in conjunction with the Children and Young Persons Service, for children in court. "Kids in Court" is a 15 minute video aimed at the children witness and was created to educate children and their families about some of the issues they will face when going to court. Copies and further information are available from the Centre, PO Box 40-106, Glenfield, Auckland or by e-mail women.ctr@ix.net.nz

Sexual Harassment in the Defence Force

In 1995 a Defence Report showed that 49% of Navy personnel believed sexual harassment was a problem. Earlier this year the Human Rights Commission received complaints of sexual harassment against 13 naval personnel from a young woman navy rating. The Commission's finding that the complaints upheld were subsequently reviewed by the Defence Force and charges laid against 11 navy personnel.

Following the lodging of the complaints with the Commission the New Zealand Defence Force invited the Commission to submit a proposal for a cultural audit in respect of its programme for gender integration. The result is an independent audit of gender integration in the NZDF. The work is being carried out by Dr Clare Burton, an Australian researcher who has done similar work in Australia.

The audit aims to identify the policies, philosophy and practices which underpin the NZDF's progress towards the integration of women at all levels. In doing so it aims to identify any cultural, social and institutional barriers which impeded the progression of women on a merit basis. The audit will cover the three services (army, navy and airforce) as well as civilian staff and Defence Headquarters. The NZDF employs approximately 12,000 people of which 2,000 are civilians.

Problems have continued during the audit, such as recent embarrassment over a planned Navy "Father's Day" female striptease event which was cancelled when information about it was made public.

What factors might influence women's treatment in NZDF?

Women's overall value in the Defence Force is likely to be fundamentally linked to the fact that the most highly prized or valued aspect of military service (service in combat) is reserved for men only by law. This may give a particular nuance to the value of women's work in the Defence Force that is not felt to the same extent elsewhere. By its very nature, military service has been a way in which men

have defined themselves and their worth in society as different from women's. Challenges to this are likely to be very threatening.

In addition, sexual harassment in the Defence Force raises some issues that are quite unique to the environment. For example, issues of power and control are influenced by the regimented nature of command and accountability. To prepare for military experience, personnel are expected to be totally disciplined and have respect for authority. This can make complaints of harassment very difficult to make.

Defence personnel may also be totally unable to get away from the harassment, unlike civilians who at least get to go home at the end of the day. In addition, given the low number of women in the Defence

Forces, a woman may face harassment from a number of different sources (both superior and junior personnel).

To address some of these issues some parts of NZDF have been carrying out sexual harassment training under the new sexual harassment policy. An 0800 number has also been established for complaints.

The outcome of the audit will be incorporated into a report for the NZDF prepared and delivered by the HRC. A final report is expected at the end of April 1998.

Legislation Update

The Statutes Amendment Bill (No.2) makes various amendments to a number of different Acts. Included is an amendment to the Credit Contracts Act to require disclosure of information to guarantors. This is a particularly important which affected women who go as guarantors for children or partners. The Disputes Tribunals Act is amended to increase the jurisdiction from \$3,000 to \$7,500. The Domestic Violence Act is to be amended to allow payment of fees for programmes for protected persons and respondents. The Victims of Offences Act is also amended to allow the victim of an offence (including a dead victim's family) to be notified of a parole hearing. Notification of parole hearings may be especially important for women who are

victims of violent crimes (or parents of child victims) who wish to be able to protect themselves or their children.

The Child Support (Minimum Annual Rate Waiver) Amendment Bill will allow the minimum rate of \$10 per week to be waived "where it would be unjust and inequitable in the extraordinary circumstances of the case" for payment to be required. Given that over 50% of contributors make only the minimum payment this move seems likely to further undermine women's confidence in the Act.

The Community Magistrates Bill establishes a new class of officer, to be known as a Community Magistrate, to exercise jurisdiction in certain criminal matters in the District Court. Community Magistrates cannot be lawyers, police officers, or government department employees who work in the Courts. The explanatory note to the Bill indicates that the purposes of creating this category of judicial person are to

- increase community involvement in the justice system;
- relieve pressure on the District Court by reducing delays and backlogs; and
- to target the expertise of District Court Judges effectively so that their skills will be reserved for those cases that require it.

The Community Magistrates will be able to deal with matters which involve applications for bail and remands, defended and non-defended minor fine-only offences, preliminary hearings of indictable offences and sentencing for minor offences.

The law currently provides that preliminary hearings in sexual violation cases must be heard by a District Court Judge as a way of protecting complainants. The requirement to have a District Court Judge preside over such hearings was introduced because of concerns at the lack of legal training of Justices of the Peace and the inappropriateness of their behaviour (such as allowing cross-examination of complainants) at those hearings.

Government departments say the Bill is not intended to let Community Magistrates hear these cases.

Submissions close on 28 November 1997 and should be made to the Justice and Law Reform Select Committee.

Judicial Appointments

While we await developments in relation to a judicial commission which would appoint judges, the Minister of Justice has announced a new way of appointing District Court Judges. A new Judicial Appointments Unit based in the Ministry of Justice will run a confidential list of names of candidates who meet the statutory requirements for appointment to the District Court. Potential candidates will be identified from people who have expressed an interest (by completing a form) or who have been nominated through other agencies including the judiciary, legal professional groups such as the Maori Law Society and women's lawyer's associations, universities, government departments and community law centres.

When a vacancy arises the Chief District Court Judge and the Secretary for Justice select an initial shortlist of candidates from the register. These candidates will be scrutinised by consulting "key people" such as the Solicitor-General, judges, the New Zealand Law Society and referees. Shortlisted candidates will be interviewed by the Chief District Court Judge, Secretary for Justice and possibly the Minister of Justice. The Minister will then decide the appointment and advise Cabinet.

It remains to be seen whether this new system will increase the diversity of judges and increase the number of women judges so that the judiciary is more representative of the community. Less than 20% of District Court Judge are women. While the pool of possible candidates is likely to be widened (women lawyers' associations are encouraging as many women as possible to put themselves forward) it appears those actually making the decisions to have stayed the same.

The criteria for appointment are not clear. Nor is it clear whether there have been any changes to these criteria. For example, what weight is to be given to community legal experience in a particular area as opposed to private practice experience?

The extent of change to the process for appointment is also unclear. For example, is there now an equal employment opportunities policy in the appointments process (lawyers have recently expressed concern at the lack of representation of Maori and Pacific Islands judges). Other questions include, what steps can be taken to review the appointment process?

We will continue to monitor judicial appointments over the next year to see whether there are any significant changes. Expression of interest forms can be obtained from the Judicial Appointments Unit, Ministry of Justice, PO Box 180, Wellington.

Naming Sex Offenders

The Minister of Police is investigating whether police should be able to warn community members about convicted child abusers if they represent a threat to children. The move follows concern at the ability of the Police to notify the public of sex offenders who have been released from prison. The British police have a code of conduct which allows them to warn community leaders of the whereabouts of convicted child sex abusers. The British code preceded the launch of a national British register of about 9000 convicted sex offenders.

Meanwhile in the United States, a law allowing notice of sexual offenders to be given to be made public was upheld in New York. The Court rejected the argument that such notice constituted extra punishment of offenders who had already served time for offences.

The law allows a statewide 0800 phone line where members of the public can learn the precise whereabouts of rapists and other sex criminals once they leave prison. Information includes the offender's name, age, address, criminal history and any special conditions imposed on parole. Photographs will also be available. 50 States now have laws requiring sex offenders to register with law enforcement agencies when they are released from prison and 46 states have passed laws that provide for public notification.

What are the concerns for feminists in this debate?

Many women's organisations favour release of sex offender information on the

grounds that a woman's right to know the extent of risk to herself or her children (and to be able to take steps to protect herself) should be the main consideration.

Publication of the offender's details might make sure that offenders do not re-offend by making sure everyone is watching what he is doing and by allowing adults to warn children. In addition, the New Zealand victimisation survey findings indicate that most people who suffer sexual assault or violence know the person who attacks them. It is highly unlikely a person would volunteer the information that they are a sex offender, so that publication of information may be the only way to check out a new neighbour or family friend.

However, some consider that publication of the offender's details might mean that offenders are not able to re-establish their lives in privacy and that this might increase the risk of re-offending. Publication might increase the chances that a person thinks they have no chance of rehabilitating and therefore nothing to lose in re-offending.

We will watch closely any new developments in this area.

More From The Net

New Zealand Law related Internet sites include:

Government Print New Zealand Statutes: A full text version of New Zealand Acts and Regulations which can be browsed for free:

<http://www.knowledge-basket.co.nz>

Department for Courts: Information on the structure and function of the Department and the court system; information on jury service; the Maori Land Court and the Waitangi Tribunal:

<http://www.govt.nz/courts/>

District Courts Homepage: A directory of District Courts (locations, addresses, telephone numbers and sitting details). Includes information on District Court Judges, their home courts and courts normally served by the circuit. Also provides links to other courts and legal resources:

<http://www.law.auckland.ac.nz/court/dc/dchome.htm>