

- 8 NOV 1999

FEMINIST LAW BULLETIN

NEW ZEALAND AOTEAROA

PO Box 5071, Lambton Quay, Wellington

Issue 5 1999

ISSN No. 1172-7977

Why a Feminist Law Bulletin?

The Feminist Law Bulletin:

- Identifies when feminist issues arise in policy, legislative proposals, and the practice of law;
- Provides an opportunity for exploration and discussion of some of these issues;
- Enables a general readership to gain an introduction to feminist analysis of the law.

Contents

Election Special: Political parties respond to report on <i>Women's Access to Legal Services</i>	1
From the Net:	3
Legislation Update	3
Australian Magistrates' Survey About Apprehended Violence Orders	5
Sexually Transmitted Debt: Consumer Credit Law Review.....	6
Human Rights for Lesbians and Gays ...	7
Maori Women's Experiences - Law Commission Reply.....	7

Election Special

The Law Commission recently released, as study paper, a report on *Women's Access to Legal Services He Putanga Mo Nga Wahine Ki Te Tika* (the study was prepared by Joanne Morris, OBE, Law Commissioner 1994 - 1999).

The report is the culmination of a five-year study into women's access to justice in New Zealand and canvasses women's experiences of access to justice across the community and from lawyers in private practice. The report also examines the current operation of the civil legal aid scheme and how it affects women. The report makes over 70 recommendations to improve women's access to legal services, including the provision of services by lawyers and community groups and improvements to both the statutory framework for, and the administration of, legal aid.

As part of the build-up to the General Election on 27 November, the Feminist Law Bulletin invited all political parties currently represented in Parliament to outline their response to the report. The responses are set out in the order in which they were received.

The Feminist Law Bulletin is written and produced by Joy Liddicoat of Strategic Legal Services, PO Box 5071, Lambton Quay, Wellington, New Zealand,
e-mail: strategic@xtra.co.nz

The Labour Party

"Labour wants the Women's Access to Legal Services report accepted as a submission when the next Parliament considers proposed changes to legal aid.

The Domestic Violence Act 1995 is a major source of increased demand for legal aid. The cuts proposed in the Legal Services bill would be disastrous for domestic violence victims and other users of the Family Court. The changes will also disadvantage women lawyers - many of whom practice in the Family Court area - and who already receive lower pay rates on average.

The Law Commission's report emphasises access to legal advice, the provision of community law centres evenly throughout the country, more legal information and education. This report must inform the incoming select committee.

We must ensure that justice is the prime aim of any legal aid service and that the needs of women and children are not considered 'frivolous' by judges or parliamentarians."

The Alliance

"The Alliance believes that *The Report on Women's Access to Legal Services* is long overdue and would work toward implementing most if not all the recommendations made. An Alliance administration would firstly, ensure that the New Zealand Law Society and Legal Services Board publicise more extensively the availability of free and low-cost legal services other than those provided through the legal aid scheme, and publicise the use and operation of the scheme itself. Secondly the Alliance would review funding for community-based legal services to ensure security of funding to meet all community needs. Thirdly it would revise the current financial criteria to increase the size of the group eligible for civil legal aid, and ensure

simplicity, consistency and equity in the administration of the scheme. The recommendations relating to the monitoring of, and the accountability for, the quality of legal services would also be implemented."

United New Zealand

"United New Zealand supports the general thrust of the report on women's access to legal services. The recommendations seem generally well thought out and constructive.

Specifically United would highlight the commitment to ensuring minority groups such as ethnic nationalities have reasonable access to sound legal services and quality information. As a truly multi-cultural party with 10 nationalities represented in its list, (and women among them), United strongly endorses recommendations contained within the report which aim to overcome barriers to communication and improve the flow of information that a diverse range of clients require.

United New Zealand will work with the Law Commission and other interested parties to ensure most recommendations in this report can be reasonably implemented. Where we had concerns about a few of the specific recommendations, then we would aim to work through these with the interested parties to find a compromise.

In closing, United reiterates its support in principle for the recommendations contained within the report."

The following parties failed to provide any response:

- National
- ACT
- Mauri Pacific
- The Greens
- Christian Heritage
- Mana Wahine

- 8 NOV 1999

From the Net

New Zealand

A partnership between the Department of Internal Affairs and 25 national community groups has led to the development of *CommunityNet Aotearoa*. CommunityNet acts as a doorway to information of use to community organisations and allows people in voluntary organisations around the country to communicate with each other. Go to: www.community.net.nz

New Zealand Courts judgments are available free over the internet via the Australasian Legal Information Institute (AUSTLII) website: www.austlii.edu.au

The New Zealand Year Book is now available for free on line at: www.stats.govt.nz

The Australian Commonwealth/State and New Zealand Advisers for the Status of Women have released a report, *Equal Worth: Women's Economic Status Report*. A copy of the report is available at the Ministry of Women's Affairs website: www.mwa.govt.nz/new.html

International

Useful US focused legal search engines include: <http://lawcrawler.findlaw.com> and www.law.com

The United States Bureau of Justice Statistics provides statistics about crimes and victims, criminal offenders, law enforcement, prosecution, corrections, courts and sentencing, data for analysis and a range of special topics in the United States, as well as links to related sites: www.ojp.usdoj.gov/bjs/

The Internet Lawyer, a journal on internet legal issues, is available at: www.internetlawyer.com

Thanks to the Rural Bulletin, MAF, for information on some of these internet sites

Legislation Update

LIBRARY

Human Rights Amendment Act

In the last minute rush to the end of the Parliamentary year, the Human Rights Act was amended. An earlier Bill that would have scrapped the Consistency 2000 project, failed to get passed (see Issue 1 1999, page 4).

Under section 151 of the Human Rights Act, the Act should become supreme law on 31 December 1999. This date was originally set on the basis that the Government would have responded to the Consistency 2000 with appropriate amendments to laws that were discriminatory. Since then, the Government has decided to end that project and take other steps to address discrimination issues within each government agency.

Under the new Act, this date has been extended by two years to 31 December 2001. The effect is that the current law will remain in force for another two years and existing discriminatory laws, policies or practices can continue in force.

In the meantime, the Minister of Justice will be required to report to Parliament every 6 months on progress across the state sector in resolving inconsistencies between current law and the Human Rights Act 1993. The Human Rights Commission's analysis of that report must be published with it.

Legal Services Bill

This Bill makes major changes to the current Legal Services Act. Under the current Act applications for civil legal aid are decided by District Committees made up of mostly volunteer lawyers. The Legal Services Board has overall responsibility for legal services provided under the Act.

Under the new Bill, the Legal Services Act will be completely replaced. The Legal Services Board is to be abolished and replaced with a Legal Services Agency. The new Agency will consist of up to 6 persons, all appointed by the Minister of Justice, with one appointed after consultation with the Minister of Maori Affairs and one after consultation with the Minister of Women's Affairs.

The new agency will be responsible for administration of the legal aid, duty solicitor, police detention legal assistance and other schemes established under the Legal Services Act.

A new public advisory committee is to be established to advise the Legal Services Agency on community interests. The public advisory committee member will consist of people representing women, Maori and community law centres.

Under the Bill, a listed provider, a bulk-funded provider or an agency employee could provide legal services. The proposal for bulk-funded agreements is new. These agreements will be able to be made between the new agency and any person, law firm, or incorporated body.

While the Bill makes no major changes to eligibility criteria, the Minister of Justice has said that the current criteria are under review. However, as those changes are not listed in the Bill itself, these may happen by Supplementary Order Paper (without the same public notice and opportunity for comment as other changes).

Community Law Centres will continue to be funded, but the Minister of Justice has indicated that in the long term law centres will need to find other funding to continue.

The study paper *Women's Access to Legal Services* found a number of inequities in the administration of the legal aid scheme as it

affects women. The study found that the Act limits women's choice of legal services provider (to lawyers as opposed to a diversity of community providers). Problems with the choice of lawyers for women included:

- fragmented and uncoordinated provision of legal services
- lack of long-term security of funding for community based legal services
- inadequate systems for identifying gaps in legal services available to communities of interest
- inadequate monitoring of legal services needs in communities
- legal barriers to law centres responding to unmet legal needs in their communities.

The study also found a series of defects in the current scheme that adversely affect women including:

- the erosion of eligibility for legal aid (including the low income and capital tests)
- failure of lawyers to advise on eligibility for aid
- inequity in the capital test
- no aid for advice unconnected to proceedings
- a complex application process
- uneven access to civil legal aid lawyers
- limited control of service quality
- inconsistent administration (for example, in the discretion to provide exemptions from the scheme).

The study makes a series of recommendations to improve women's access to legal aid and the administration of the legal aid scheme which are directly relevant to consideration of the new Bill.

If passed, the Bill will come into force on 1 July 2000. A closing date for submissions has not been set, but submissions should be made to the Justice and Law Reform Select Committee.

Computer Crimes

New laws to deal with computer crime seem likely following the introduction of the Crimes Amendment Bill (No.6) 1999. Three new offences are proposed:

- Dishonest use of a computer
- Attempting to dishonestly use a computer
- Reckless serious damage to a computer

Changes to other property offences are also proposed including burglary, the definition of property capable of being stolen (to include bank accounts and electronic documents), blackmail, and theft of trade secrets. The Bill will re-enact the current law that a husband may be prosecuted for theft from his wife (up until 1995 it was not possible for one spouse to be prosecuted for theft from the other).

There are several issues for women in the regulation of computer crime. Typical issues for women include safety (in many cases it can be difficult to clearly identify the sender of information), receiving and dealing with offensive or pornographic material, and harassing e-mails.

It is not clear, for example, whether bombarding a person with hundreds of "hate-mails" (thereby clogging up their computer system) would amount to "damage" to a computer under the proposed new law.

No closing date for submissions has been set, but the Bill must be reported back by 30 June 2000.

Submissions should be made to the Justice and Law Reform Select Committee, Parliament Buildings, Wellington.

New South Wales Magistrates Surveyed on Apprehended Violence Orders

The New South Wales Judicial Commission recently conducted a survey of New South Wales Magistrates who often issue apprehended violence orders or personal violence orders (AVOs and PVOs). The equivalent orders in New Zealand are protection orders under the Domestic Violence Act 1995 and orders preventing stalking under the Harassment Act 1996.

Throughout the survey the magistrates' replies demonstrate frustration, reflection, bewilderment, irritation and ideology about dealing with AVO and PVO cases. In general terms, the magistrates agree that AVOs are valuable and effective, especially in domestic violence. However, the magistrates consider that the court system needs reform to protect the integrity of the AVO.

Magistrates were also asked to comment on the following statement as it applies to domestic violence:

"It takes two to tango in any relationship."

Here is a sample of some of the replies received:

"Sounds like sexist male rubbish."

"Women cause a lot of problems by nagging, bitching and emotionally hurting men. Men cannot bitch back, for hormonal reasons, and often have no recourse but violence."

"Blame (if relevant) is never black and white. The purpose of orders is protection not punishment."

"Yes – one to be the aggressor, the other to be the victim. What about violence to young children in the home – haven't they learnt to tango yet?"

"A dominating male, because of size, rage, violence, overcomes all other family members and an analogy of a dance is missing the point."

In NSW, as in New Zealand, AVOs are on the rise, from 39,960 complaints in 1997 to 49,611 in 1998. So too, in Victoria there were 10,891 final orders in 1995-96 and 11,402 in 1996-97.

Almost all those Magistrates surveyed (90%), believed AVOs were sometimes used as a tactic by parents fighting over children. However, the Magistrates considered the main "abuses" of the AVO and PVO system occur in disputes between neighbours, not in domestic violence cases.

Sources: NSW Judicial Commission, Apprehended Violence Orders: A Survey of Magistrates.

B Lane, "She Made Me Do It", The Australian, 31 August 1999.

Sexually Transmitted Debt: Credit Law Review

The Ministry of Consumer Affairs has begun a major review of consumer credit policies and legislation.

This is a significant area of the law for women who may face discrimination when seeking credit. Women may also incur credit obligations for or on behalf of other family members, such as partners or children. The phenomenon of "sexually transmitted debt" is used to refer to debts that women end up liable for when their male partners leave them and cannot be

found by creditors or that they refuse to repay. The review will look at:

- Problems with the current law, which can be unfair to consumers in some situations. For example, if a consumer pays back a hire purchase contract early, the creditor still gets unearned interest as well as 10% of any rebate.
- Difficulties with enforcement action against unfit creditors.
- The difficulties in finding the law which is spread over a range of different statutes.
- How the law on consumer credit should apply. For example, should the laws apply to anyone (including companies) that borrow up to a set amount, or should the laws apply depending on the purpose for which the money is borrowed (for example, for household goods)?
- How can consumer credit laws be made more understandable? For example, what information should lenders get?
- What remedies should there be for consumers and how should the law be enforced?
- What issues are raised by the advent of electronic commerce?

An initial discussion paper, *Setting the Scene*, was released in September 1999. This paper discussed the purposes of the review, the current legislative framework, and the goals of consumer credit law. Discussion papers on the application of credit law, disclosure, redress and enforcement and a set of miscellaneous issues are due to be released in February, March and June 2000. The Ministry intends to have its recommendations finalised by mid-2001.

For more information about the review contact the Ministry at PO Box 1473, Wellington or from its website at <http://www.consumer-ministry.govt.nz>

Human Rights for Lesbians and Gays

The Ministry of Justice has released a discussion paper, *Same Sex Couples and the Law*. The paper poses a series of simplistic questions about legal recognition of same-sex relationships.

However, there is little or no context or background to assist in considering those questions. A separate document (a background paper) is available from the Ministry, although it is difficult to read the two of these together because the options for policy approaches is not clear (for examples of different policy approaches see Issue 3, *Feminist Law Bulletin* 1999, page 6).

Questions asked include:

- What are your views about same-sex couples being able to marry?
- Do you think same-sex couples should have the same rights as opposite-sex couples to jointly adopt children?
- What are your views about same-sex couples being able to be joint parents of a child born from an assisted reproductive procedure that they both agree to?
- What are your views about same-sex couples and opposite-sex couples being assessed in the same way for income support purposes?

Similar sorts of questions are asked about tax credit entitlements, eligibility for legal aid, division of property on relationship breakdown, custody and access to children, inheritance issues, and accident compensation.

A Conference on European and International laws for Legal Recognition of Same-Sex Partnerships was held in London in July 1999. Proceedings from the Conference (see <http://www.kcl.ac.uk/kisschools/law/>)

show that many countries are finding new and innovative ways to end and prevent discrimination against individuals on the basis of their sexual orientation.

For example, the French National Assembly recently passed the Civil Solidarity Pact Act. The law, which was passed by 315 votes to 249, allows couples (whether heterosexual or same sex) to enter into a civil pact (agreement). The pact is binding and can be registered at a local court. Partners to such a pact commit to mutual assistance and are jointly responsible for debts relating to the household. Provision is also made for taxation, tenancy, and immigration matters. The new law introduces formal equality as between heterosexual and same sex couples who are not legally married.

Information on these international developments may assist in submissions on the discussion paper, which are due by 31 March 2000.

Maori Women

The lead article in the last issue of the Bulletin was by Leah Whiu, Lecturer in Law, Waikato University, *Maori Women's Experiences Reinterpreted?* The article was a commentary on the Law Commission report, *Justice - The Experiences of Maori Women - Te Tikanga o te Ture - Te Matauranga o nga Wahine Maori e pa ana ki tenei*. The following is a reply to that article by Denese Henare, Law Commissioner.

"Leah Whiu is my kinswoman of the Ngati Hine and Ngapuhi peoples. I share Leah's passionate commitment to the Treaty of Waitangi. Our tupuna have always kept faith with the Treaty and reminded us to:

"Hold fast to the Treaty of Waitangi and contribute to converting both the Crown and government to instruments of service worthy of our support."¹

E mihi ana ki a koe e Kotiro i roto i nga whakawhanaungatanga.

Maori women's experiences were not reinterpreted by the Law Commission. With the exception of one quotation to introduce Chapter 1 and on the advice of the Maori Committee to the Law Commission², Maori women's comments were not used in the text of the report in order to avoid allegations of interpretation or reinterpretation. Maori women's comments stand alone (see Appendix A).

There are four major points in the article which warrant reply. First, the Law Commission is a law reform agency established by the Law Commission Act 1985 to undertake the systematic review, reform and development of the laws of New Zealand.

That is why the Report is primarily addressed to justice sector agencies which have failed to meet the needs and respond to the values of Maori women. Other Law Commission responses to the experiences of Maori women include: Alternatives in Prosecution, Custom Law, Juries, Coroners, Adoption, Defendants who are Victims of Domestic Violence and the Family Court.

Secondly, the Law Commission did not receive Maori women's stories. The consultation hui were audiotaped and a series of excerpts from recordings of the transcripts were collated by the researcher who conducted the hui. These transcripts were destroyed prior to my appointment to the Law Commission.

A section of the Maori women's comments collated by the researcher are appended to the Report. In any event, it is debatable whether the Law Commission is an appropriate body to tell Maori women's stories. Some Maori women questioned whether the Law Commission should be involved in the project at all.

Thirdly, many agencies saw Treaty principles as lawyerly notions, to be found

in decisions of the Waitangi Tribunal and the Court of Appeal. What the women saw as the relevant principles were simpler, namely that the Treaty promised that:

- the values of Maori must be respected and protected (the Article II promise); and
- Maori should form part of the new society and feel as much at home in New Zealand and its institutions as other New Zealanders (the Article III promise, reinforced by the preamble to the Treaty of Waitangi).

Fourthly, the Law Commission considers that there are two sources of law within the legal system. First, the rules derived from England which include the role of Parliament and the courts; and, second, the values derived from Maori custom recognised by the common law. Both are the subject of the Crown promises to Maori in the Treaty of Waitangi. This dual system of law continues to evolve. The Commission will continue to perform its role to ensure that the principles of law are consistent both with current values and the Treaty of Waitangi."

Footnotes

1 The late Sir James Henare addressing a meeting of Maori clergy at Waitangi in September 1983.

2 Rt Rev Bishop Manuhua Bennett ONZ CMG, The Honourable Justice E T Durie, Dr Mason Durie, Mrs Whetu Wereta, Judge Michael JA Brown and Archie Tairaoa.

Feedback

We value your feedback and views on ways to improve the Bulletin. For example, you might like to see more information on particular issues, or less information and more in-depth analysis. If you have any ideas, comments or suggestions, about what you would like to see in the Bulletin, please write to us at PO Box 5071, Wellington, or send an e-mail message to strategic@xtra.co.nz