

FEMINIST LAW BULLETIN

NEW ZEALAND AOTEAROA

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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 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.

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Women's Advocate Appointed to Human Rights Commission

Lana Hart is the newly appointed Women's Advocate in the Human Rights Commission. The *Bulletin* recently interviewed Lana about her new role. Lana says that the position of Women's Advocate in the Commission is new and followed from the former Government deciding not to appoint a Women's Commissioner. Instead, the Human Rights Commission was given some funding to advance the human rights of women through the position of a Women's Advocate.

"My own background has been really varied. I have worked both in New Zealand and overseas for many years in promoting women's rights issues. I started out in the Chicago AIDS Foundation, then became a sexual harassment awareness trainer for community and student groups, staffed the Job Problems Hotline." Later Lana lived in a small Ugandan village, which was suffering an AIDS epidemic working on disease prevention and sex education with local schools and groups of women. In New Zealand, Lana worked with the Women's Refuge movement, serving on the Auckland Refuge Collective and helping

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crisis line. "This job really seems to bring together many of the issues I have worked on in the past," she says. "Working for an organisation which has challenged the discriminatory practices of patriarchy for 23 years feels like a really good fit."

Lana says that the role of the advocate is to be a reference point for women's groups, assisting and supporting them in their delivery of services that improve the lives of women. The focus of work initially will be a Sexual Harassment Prevention Week and conducting gender analysis training for the Commission. "I will also be working to produce a series of leaflets addressing rights issues for women at different stages of their lives. An important area of my work will be consulting women's groups, iwi organisations and other groups who have an interest in women's rights," she says.

Lana Hart can be contacted at the Human Rights Commission, PO Box 6751, Wellesley St, Auckland Tel 09 375 8639 or phone 0800 4 YOUR RIGHTS (496 877)

New Zealand to Ratify Optional Protocol to CEDAW

The Prime Minister and the Minister of Women's Affairs marked International Women's Day by announcing that New Zealand will adopt the United Nations Optional Protocol to the Convention on the Elimination of Discrimination Against Women (CEDAW).

Ratification would recognise that the Committee on CEDAW – the body that monitors compliance with the Convention – can receive and consider complaints from individuals or groups within New Zealand. The Committee would then be able to request the New Zealand to take "interim

measures" to avoid possible irreparable damage to the victim or victims. Complaints can only be lodged where domestic remedies have been all been used.

Although legislation is not needed for ratification, the Optional Protocol will need to be tabled in Parliament and considered by a Select Committee, before ratification can happen. The time-frame for select committee consideration is not yet known.

Evaluation of the Law Commission

The Attorney-General has announced an evaluation of the Law Commission. Sir Geoffrey Palmer is to carry out the evaluation, which includes consideration of the usefulness, strengths and achievements of the Commission. The review will involve interviews with members of the Commission and seek the views of those individuals and representatives of institutions most closely connected with work of the Commission. The review will also consider:

- how many of the Commission's reports have led to parliamentary enactments
- what the Commission has produced since it has been in existence
- whether the Commission has it achieved its statutory objectives and how these stand up in the light of experience
- to what extent the Commission's work programmes are organised in accordance with the Government's legislative priorities
- what skills, experience and qualifications are desirable in the Commission including the Commissioners themselves

The review is due to be completed by 30 April 2000.

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Legislation Update LIBRARY

Employment Relations Bill

This Bill will repeal and replace the Employment Contracts Act 1991. The Bill makes substantial changes to the current law including:

- Providing for freedom of association through voluntary membership and prohibitions on undue influence in employment arrangements relating to the choice whether to join a union.
- Requiring employment relationships to be built on good-faith bargaining
- Setting out procedures for collective agreements and bargaining
- Requiring employees to be union members if they want to join a collective employment contract
- Allowing employees to join a collective contract at any time
- Giving new employees time to consider whether they want to belong to a union by requiring them to be covered under the terms and conditions of the collective contract, where there is one, for 30 days
- Providing for employment relations education leave
- Setting out personal grievance and problem resolution procedures, including the establishment of nation-wide mediation services
- Authorising employee strikes or employer lock-outs only where the parties have been negotiating for at least 40 days
- Extending protection to some workers who are currently classed as independent contractors (employers will be required to look at the reality of the relationship in terms of employer control and direction, rather than the technical job title)
- Establishing an Employment Relations Authority to resolve problems in a speedy non-adversarial way

The Bill has been referred to the Employment Relations and Accident Insurance Legislation Select Committee and submissions close on 3 May 2000.

Shared Parenting Bill

ACT MP Muriel Newman has proposed this Private Member's Bill.

The Bill would introduce a presumption that joint physical custody of children be shared "50/50" where parents separate. The Bill would change the current law on guardianship and custody, which makes the best interest of the child the paramount consideration. New concepts of joint legal and physical custody would be introduced.

The Bill also introduces the concept of "parental alienation," which is defined to mean:

"having the effect of denigrating or degrading a parent involved in custody issues, to the relevant children in custody."

New offences relating to frustrating access by any means, including "parental alienation", false allegations of sexual abuse, and false allegations of domestic violence will also be created. Penalties include a fine of up to \$1000, costs, and in the case of a custodial parent, "downgrading of joint custody rights to non-custodial status, or the removal of custody rights" (clause 8).

As a Private Members, not Government, bill, Parliament must vote by a majority to introduce the Bill and send it to a Select Committee. At this stage it is not clear whether there are sufficient MPs who support the Bill for this to happen.

See also the article in this Issue on a review of similar provisions in the Australian Family Law Act 1995.

Undertakings in Domestic Violence Cases Causing Concern

The Family Law Section of the New Zealand Law Society has reported concerns about the growing use of undertakings in lieu of protection orders in cases of domestic violence. It appears that undertakings are being given where an interim protection order has been made and a hearing is scheduled for a final order. In some cases undertakings that the violence will stop are being accepted in lieu of final orders.

Those working with victims of domestic violence are concerned about the use of such undertakings, which are not legally enforceable and do not offer the same legal protection as an actual Court order. For example, there are no criminal consequences for breach of an undertaking. If an interim protection order expires, the limitation on firearms use is also lifted. In addition, undertakings in domestic violence cases will generally need to be seen in the context of what may be a history of broken promises by the abuser.

The Family Law Section is considering developing guidelines on when such undertaking should be given, if at all. Submissions should be sent to: Kim Nichols, Family Law Section Secretariat, PO Box 5041, Wellington or kimn@nz-lawsoc.org.nz

Same Sex Discussion Paper

The deadline for submissions on this discussion paper has been extended from 31 March 2000 to 30 April 2000. Submissions should be sent to the Ministry of Justice, Private Bag 180, Wellington.

From the Net

New Zealand

www.community.net.nz

Includes information on events, jobs and news specifically for community groups in New Zealand.

www.brookers.co.nz

Includes Court of Appeal judgements which are available for free

International

<http://www.guerrillagirls.com>

Guerrilla Girls: The Guerrilla Girls are a US based group of women artists, writers, performers, film makers and arts professionals who fight discrimination.

www.cyberangels.org

CyberAngels: Non-profit group devoted to assisting victims of online harassment and threats, including cyberstalking.

<http://www.haltabuse.org>

Women Halting Online Abuse (WHOA): Founded by women to educate the Internet community about online harassment, WHOA empowers victims of online harassment and develops voluntary policies that systems administrators can adopt to create an environment free of online harassment. Website resources include a safe-site and unsafe-site list to enable users to make informed decisions, and information about how users can protect themselves against harassment

<http://www.lawcrawler.findlaw.com>

This site is US based and includes link sites to locate law in a wide range of countries.

<http://www.usdoj.gov/criminal/cybercrime/cyberstalking.htm>

This site contains a US Federal report on cyberstalking, including analysis of how this problem affects women compared to men.

Review of Australian Family Law Act

Professor Reg Graycar a Commissioner in the New South Wales Law Reform Commission and leading Australian feminist, recently visited New Zealand. During her visit she highlighted a recent report on a review of the Family Law Reform Act 1995. This Act made major changes to Australian law about custody of and access, to children based on similar changes in the United Kingdom in 1989. Under the 1995 Act, parents had to settle disputes about children's issues by entering into a parenting plan and submitting this to the Court. The new law was based on the concept "parental responsibility."

The report released in 1999 shows there has been a marked increase in the number of contested applications for contact orders since the reforms. The number of litigated disputes arising out of breaches of parenting orders has also increased. Professor Graycar noted that many of these applications have been brought by unrepresented contact fathers, many are without merit and are used as a mechanism to harass the resident parent with much Court time being wasted in dealing with them.

The study also found that the reforms had not achieved the expected results for several key reasons. First, there was no evidence that children were being harmed by the law and practice governing custody and access.

Second, the majority of calls for reforms had come from fathers' rights groups who claimed that the legislation and the Family Court discriminated against them (these claims were not supported by the evidence which showed that the Family Court actually made orders in favour of fathers at twice the rate of those made by consent).

Third, the Act was based on the proposition that there was a need to encourage parents to share their parental responsibilities after separation to assist in children's adjustment.

However, this proposition was not based on any uncontested research information. In fact, the research evidence that was available established that there were a range of different factors that affected children's adjustment after parental separation. These factors included the custodial parent's financial circumstances and the level of communication and conflict between the parents, rather than the single factor of shared parent-child contact.

The study also showed that the new laws were affecting women's ability establish their lives after separation. For example, there had been an increase in applications for the return of a resident parent who has relocated without the consent of the contact parent, and for injunctions to restrain a resident parent from moving. It also appeared that in some states it was difficult for some resident parents to obtain permission to move.

There were also concerns about the relative weight to be given to domestic violence cases before and after the new laws. The report found that interim orders refusing contact were more difficult to obtain after the Act came into force, despite allegations of domestic violence and this was attributable, at least in part, to greater weight being given to the principle of parental contact. In New Zealand, the Guardianship Act makes a presumption that contact will not be permitted until it can be shown that the child will be safe.

The report is a timely reminder of the need to ensure that family law reform is based on well-tested empirical research, rather than response to untested rhetoric. Copies of the report are available at: <http://www.law.usyd.edu.au/Research/FamilyCourt.html>

Time Use Survey

The first national New Zealand Time Use Survey has been completed and initial results provide some interesting information about how New Zealanders spend their time.

Time use surveys provide information on what people do with their time, what proportion of time is spent on economically productive activities, leisure pursuits and personal care. They are a method of recording who is doing work in the formal and informal sectors. Information can also be collected on who respondents are doing these activities for and where they are doing them.

The value of time use information lies in the fact that time is the ultimate resource and, unlike other resources, time is shared equally by everyone. There are 24 hours in every person's day, so comparative analysis of time use begins with the same starting point for everyone. Time can be converted into money, goods and services through work. Time is also required for the consumption of goods and services. Analysis of time use therefore offers an overview of both production and consumption.

The Survey is important because information from it can be used to assist in the analysis of Government policy initiatives, particularly as these might affect women.

In addition, time use information can be used for legal analysis such as valuation of women's unpaid work in claims for compensation resulting from personal injury.

The findings of the New Zealand Survey show that for those people in full-time work, on average men spent 8.7 hours per day on paid work and women spent an average of 8 hours per day on paid work. For those in

part-time work, both men and women on average spent 4.6 hours in paid work. Overall, women spent more time than men doing "productive work," which includes both paid and unpaid work.

However, significant gender emerged in comparing men and women's unpaid work. The Survey showed that women on average spend twice as much time as men in activities such as meal preparation and other household work, and almost three times as much time as men looking after other people in the home. For men and women the most common type of unpaid work for people outside the home is caring for a child.

The Survey also revealed that Maori women and men on average spend more time per day than non-Maori on care-giving for household members, unpaid work outside the home, and participating in cultural and religious activities.

These statistics will complement information available from other official surveys such as the census and the Household Labour Force Survey. They will provide new information on patterns of work including multiple part-time jobs, the times of the day when people are working, how much time is devoted to work-related education and training, and the interactions between paid work, unpaid work and leisure.

There will be a wide variety of uses available, including using time use information about women and men to inform the development of policies and programmes in all government. Results from the Survey are available from Statistics New Zealand, <http://www.stats.govt.nz/>

See also Robin Fleming and Anne Spellerberg, *Using Time Use Data: A history of time use surveys and uses of time use data*, Statistics New Zealand Feb 1999 Wellington, New Zealand