

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 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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STOP PRESS

ILO Supports Mothers' Rights

The International Labor Organization (ILO) has adopted a treaty on maternity protection, extending paid maternity leave from 12 to 14 weeks and guaranteeing work breaks for breast-feeding. The new treaty, which is binding on countries that ratify it, also prohibits employers from dismissing workers who are pregnant or on maternity leave, and forbids the use of pregnancy tests in screening job applicants. Mothers would be guaranteed two-thirds of normal pay during maternity leave. This convention replaces the 1952 treaty and although supported by most employers delegations it has been critiqued as being too weak by some countries in Latin America. The UK, Switzerland and Japan abstained, saying the treaty went too far. Source: BBC Online, 15.6.00.

Property (Relationships) Bill

This new Bill has been foreshadowed by the Matrimonial Property Supplementary Order Paper (SOP). Submissions on this SOP closed on 7 July 2000, almost exactly two years after submissions on the Matrimonial Property Amendment and the De Facto Relationships (Property) Bills closed. The original Bill is due to be reported back to Parliament by 1 August 2000. The new law will make major changes to the current law, some of which are outlined below.

Change of Name

The Matrimonial Property Act will be re-named the Property (Relationships) Act. The new name is intended to emphasise property, (because the main purpose of the law will be to provide protections and guidance on fair property division after relationship breakdown) and the diversity of relationships.

New Language

Major changes to the language of relationship property law will include:

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- Spouse, wife, and husband are all replaced by partner
- Marriage becomes partnership relationship
- Matrimonial property becomes relationship property
- Matrimonial home becomes family home
- Relationship property is defined as the family home and chattels, jointly owned property, all property acquired during the relationship (other than inheritances or gifts) and property acquired in contemplation of or for the common use and benefit of the partners.
- Separate property is defined as all other property that is not relationship property.

Definition of De Facto Relationship

A de facto relationship will be defined as a relationship where two people (whether a man and a woman or a man and man or a woman and a woman) are living together in a relationship in the nature of marriage, although not married to each other. This definition will include same sex couples. The relationship has to last at least 3 years before the new law will apply, although relationships which last less than 3 years may be included in limited circumstances (such as if there is a child of the relationship). Time spent in a de facto relationship prior to a marriage, will be counted for the purposes of determining the length of the relationship.

Property Sharing

Under the new Bill, the 50/50 property sharing will apply to *all* relationship property, not just the family home and chattels. This new rule will apply unless there are "extraordinary circumstances" which would make "equal sharing repugnant to justice." Many women's organisations have supported the move to divide all relationship property was equally. The current Act has a two-tier test for property

division: one for the family home and chattels and one for all the rest of the matrimonial property.

For years women have argued that treating partners leaving a relationship in exactly the same way economically is not fair, especially where the partners are not in the same position to provide for themselves or where there are dependent children. This new provision therefore goes directly to addressing the very heart of the "equality of property division is not equity of outcome" issue.

Addressing Economic Disadvantage

There are several other ways that the Bill aims to achieve equity of outcome. The new law will include some measures specifically designed to address the disparities between men and women in relationship breakdown.

The Courts will be given power to make lump sum payments to compensate for economic disadvantage caused by the division of functions in the marriage. For example a couple may agree that the woman will stay at home and look after children, while her male partner goes out to paid work. As a result of the division of those functions in the relationship, she may be at an economic disadvantage compared to her partner when the relationship ends. The new law will allow the Court to order lump sum payments to counter-balance that disadvantage. In making these awards, the Court will be able to consider the likely earning capacity of each partner, and responsibilities for on-going care of a child of the relationship.

There will also be a re-drafted power for the Courts to award maintenance for a spouse and to award this to a partner in a de facto couple. Such maintenance will be able to be paid out of property or out of future earnings. The new law will also allow the Courts to take into account the standard of living that existed while the parties lived

together. This may help judges to get beyond a miserly approach to what amounts to 'reasonable need' (a concept which in practice has been tied to benefit or income support payments). This type of flexibility in relationship property division rules, so that the context of their lives can more clearly be provided for, is exactly what women have been calling for. However, some women's groups do not think the new law will go far enough because in some respects the new law mirrors the existing spousal maintenance laws, which judges are very reluctant to use. The suggestions in submissions that there be a set of statutory principles to guide judicial discretion has not been adopted.

Relationships Ended when a Partner Dies

The new laws will also allow de facto and same sex partners recognition if a partner dies, with or without a will.

Contracting Out

Partners will still be free to contract out of the new law and have their own property agreements. However, the Court will be able to overturn agreements where giving effect to them would cause serious injustice.

When will the New Law Apply?

The new law will, if passed, come into effect on 1 June 2001. The new law will not apply to de facto relationships the end before 1 June 2001. However, the law that will allow partners to contract out of the Act will come into force on 1 January 2001, so that those people who want to will have time to contract out of the Act before it comes into force.

Notes: Thanks to Wendy Parker, Massey University, for information about the SOP. A new group, Women's Equity Network, has been established to provide a discussion forum about the new law and other issues. Contact the Network at: kip@clear.net.nz see also *From the Net* in this Issue).

From the Net

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The Internet had more than 140 million users by mid-1998 and by 2001 it is expected to have more than 700 million. The benefits of this unprecedented ICT (Internet communication technologies) revolution are enormous, but inequitably distributed, with developing countries experiencing a new type of poverty, namely, poverty of information. So, how do women figure in ICTs? According to the UNDP Human Development Report 1999, men already dominate the new info-tech world:

- women account for only 38% of users in the USA, 25% in Brazil, 17% in Japan and South Africa, 16% in Russia, 7% in China and 4% in the Arab States.
- This trend starts early: in the USA, five times as many boys as girls use computers at home and parents spend twice as much on technology products for their sons as they do for their daughters.

The gender gap is already glaringly large and, if this trend is not halted or if the process is allowed to continue gender-neutral, women will fall further behind in the knowledge and information society of the future. ICTs can:

- empower women through allowing networking by smaller players such as women NGOs.
- enable small to medium sized businesses owned by women to present and sell their products through the Internet (e-commerce).
- allow for interactive teaching and long distance education adequately supported by radio and multimedia packages, i.e. videos, suitable also for women with disabilities.
- impart new employable skills, particularly for young women, to improve their career options.

For more info see: <http://www.un-instraw-gains.org>

From the Net continued

New sites and group of interest on the Internet:

kjp@clear.net.nz

WENinNZ is a discussion forum for women who want to share ideas and information about women and justice issues. The forum has been set up by Divorce Equity and is designed to be a space to share news, views, resources, ideas and strategies and to organise effective lobbying, political action and media coverage to promote the interests of women. Current concerns include the proposed Property (Relationships) Act; the proposed reviews of the Guardianship Act and the Family Court (sparked by the defeated "Shared Parenting" bill); custody and access ideology. If you are interested in joining WENinNZ email, send an e-mail to kjp@clear.net.nz.

<http://www.cybergrrl.com/fs.jhtml?/views/dv/>

CYBERGRRL SAFETY NET

This site provides an updated domestic violence awareness section with new links to United States state, national and international resources, plus education and professional sites.

AVIVA Women's World-Wide Web FREE Monthly Webzine

<http://www.aviva.org>

<http://www.ffq.qc.ca/marche2000>

World March of Women, delivering millions of signatures to the United Nations to demand an end to Poverty and Violence Against Women.

Date: October 17, 2000

Venue: UN, New York, U.S.A

Contact: E-mail: communication@ffq.qc.ca

<http://www.wwwomen.com>

This is a search directory for women with a community focus, and includes many international links to a wide variety of subjects.

Beijing +5: Special Session of the UN General Assembly

As a follow-up to her article in *Issue 2, 2000*, about the Beijing +5 Special Session of the General Assembly in New York, Tania Pouwhare, reports on her experiences at the meeting.

"For the week of June 5-9, women's NGOs and governments gathered at the United Nations (UN) Headquarters in New York City for the Special Session of the General Assembly entitled "Women: 2000: Gender Equality, Development and Peace for the Twenty-First Century". The purpose: a forum for member states to the UN to review the world's progress on the Beijing Platform for Action (BPFA), discuss obstacles and challenges to the implementation of the Platform, renew their commitments to the BPFA and set goals for the following five years, to be reviewed at Beijing +10, 2005.

Amongst the (approximately) 10,000 others in attendance, the Aotearoa New Zealand delegation (which I believe is one of the largest) to the meeting included both NGO and government representatives.

Delegates from NGOs were: Jacqui Te Kani, Māori Women's Welfare League; Martha Coleman, Coalition for Equal Value, Equal Pay; Jan Logie, YWCA; and Tania Pouwhare from the National Collective of Independent Women's Refuges.

Liz Gordon, Alliance MP; Anne Tolley, National MP; Judy Lawrence and Deborah Te Kawa, Ministry of Women's Affairs; Areta Kopu and Sou Chiam, Human Rights Commission; and Patti O'Neil, and Mark Ramsden, Ministry of Foreign Affairs were joined by Ambassador Powles and Sarah Patterson from the Permanent Mission to the UN (based in New York), as the

government's delegates.

The Minister of Women's Affairs was unable to attend the Special Session and deliver Aotearoa New Zealand's speech to the General Assembly. Liz Gordon delivered the speech on her behalf. On several occasions, her speech was interrupted by applause!

As well as being able to attend the Plenary sessions and the negotiations, the NGO delegates from Aotearoa were able to access the many NGO workshops, discussion panels and caucuses (which were really well run considering it would have been a logistical nightmare). Being part of the official delegation was extremely beneficial because it enabled us to access UN forums, which would not have been available otherwise, although access to information was difficult at times. This allowed Jaqui, Martha and Jan and myself to participate in and observe a number of interesting process.

The NGO Indigenous Women's Caucus (IWC) brought together Native women from Europe, the Americas, Africa, Asia and the Pacific who met everyday of the week long meeting. The caucus presented opportunities for women to network, raise awareness of the issues facing indigenous women in their countries, share analytical and practical tools (aptly termed alterNATIVES) and celebrate our survival, resistance and visions for the future.

Some of the issues raised at IWC included the retention and promotion of our native languages, millennium land grabs by governments and corporations, displacement, the exploitation of women and children, the economic exploitation of natural resources, the ongoing effects of colonisation and self determination. The lack of indigenous women in official delegations to the meeting, and at decision making levels, was noted as a primary concern, particularly by the two Māori women at the caucus. Only four of the

women at the caucus (of over 100) were part of official delegations (these women who were privy to the negotiations were able to update the IWC). In the survey of New Zealand NGOs presented to the Minister of Women's Affairs in May, Decision Making was a Critical Area of Concern deemed to be of primary importance by Māori women, with a particular emphasis on how the privileged continue to block progress for the least privileged.

While we shared similar herstories as colonised peoples, the issues and analyses varied greatly. However, on the basis of our shared experiences and concerns, the Indigenous Women's Caucus was able to develop and sign off the Declaration of the International Indigenous Women's Forum which made 14 international level recommendations to governments and the United Nations including:

- The adoption of the Draft Declaration on the Rights of Indigenous Peoples;
- Recognising our diversity through the consistent use of "Indigenous Peoples" throughout the UN;
- Recognising of the impacts of the World Bank, the International Monetary Fund and the World Trade Organisation on Indigenous Peoples;
- The call for governments to honour commitments made at Beijing;
- Ratification of CEDAW and the Convention on the Rights of the Child;
- Immediate moratorium on the patenting on all forms of intellectual property;
- The eradication of Indigenous women's poverty;
- The development and implementation of education programmes in full partnership with Indigenous Peoples;
- The active and effective participation of Indigenous women in decision making;
- Full access, without discrimination, to all health services including traditional medicines and health practices;
- Full and equal participation in preparation to and at the meeting proper

of the World Conference on Racism, Xenophobia and Other Forms of Discrimination;

- Addressing the displacement of Indigenous Peoples due to armed conflict, development aggression and other factors; and
- Addressing the proposals in the Beijing Declaration of Indigenous Women which remain unaddressed.

Lea Nicholas-MacKenzie, from the Assembly of First Nations (North America) stated that:

“First Nations women must have a visible and meaningful presence at the meeting, in order to ensure their voices are heard. An important objective will be to secure a permanent mechanism for participation in the ongoing review process and any other process which will affect the lives of Indigenous Peoples.”¹

We were also reminded, especially when you consider how few Indigenous women were part of official delegations, that “...we should not put our faith in the UN system because this is still run by governments which colonized us and still are re-colonizing us. We should rely on ourselves, the wisdom of our elders, the energies of our youth, and our spiritual relationship with the Earth and all creation”.²

The call for “full and equal participation of Indigenous Peoples and their organizations” through the establishment of a Permanent Forum on Indigenous People’s Issues was expressed as recommendation three of the Declaration of the International Indigenous Women’s Forum.³

¹ Nicholas-MacKenzie, Lea. 2000. *Beijing Platform Deals with Health, Poverty, Education of Indigenous Women*. *First Nations Messenger*. 2(3):07.

² Tauli-Corpaz, Victoria. 2000. *Is There Hope for Indigenous Women in the United Nations? Women Action*. 06/06/00:11.

³ *Declaration of the International Indigenous Women’s Forum*. Adopted at the Special Session of the General Assembly by the participants of the International Indigenous Women’s Forum. 09/06/00. New York City

At the Preparatory Committee meeting held in March, the NGO Indigenous Women’s Caucus recommended 36 paragraphs in the Outcome Document where references to Indigenous women should be included. During the delegation briefing prior to the meeting in New York, the New Zealand government expressed their commitment to ensuring that Indigenous women were included in key Critical Areas of Concern. In the final Outcome Document, there are nine references that are particularly relevant to Indigenous women:

1. Women experience discrimination due to their status as being Indigenous (Introduction);
2. Some countries have implemented training and education programmes specifically for Indigenous women (Paragraph 6); and
3. Women face barriers to justice and the enjoyment of human rights due to Indigenous status (Para. 21).

Actions to be taken by governments included:

- 1 Addressing barriers faced by Indigenous women in accessing and participating in politics and decision making (Para. 100e);
- 2 Addressing the impact of violence against Indigenous women and implement appropriate effective programmes and services with full voluntary participation of Indigenous women (Para. 103g);
- 3 Promote sustainable development support and ensure poverty eradication for Indigenous women (Para. 110a. bis.);
- 4 Take effective measures to remove the obstacles for the realization of the right of peoples to self determination (Para. 122b);
- 5 Develop education and training programmes with the full voluntary participation of Indigenous women (Para. 128h); and

- 6 Indigenous women should have equal access to capacity building and training to enhance participation in decision making (Para. 129d).

The general feeling gauged from the various NGO caucuses was that certain countries were attempting to dilute the Outcome Document and stall negotiations. Rather than moving forward with the BPFA (this was continually stressed by several governments including New Zealand), considerable time was spent ensuring that language already adopted at Beijing and in other conventions (such as ICPD) was retained. One South African MP stated:

“It doesn’t seem to be about how we go forward, but how to ensure we do not go backwards. If it’s watered down, this assembly has no right to adopt it”.⁴

While NGOs wanted a strong Outcome Document that could be used to lobby governments, Devaki Jain, (feminist economist, writer and activist) questioned the effectiveness of such (government centered) international forums to advance women’s rights and development when vital indicators appear to describe women’s status as worsening. Jain posed the vital question, on the tip of NGOs’ lips, “will this conference result in a bigger gap between rhetoric and action?”.⁵

Another primary issue discussed at the NGO Working Session, and which NGOs continued to discuss and strategise over throughout the meeting, were the restrictions on NGO access to the UN Building and negotiations of the Outcome Document, which some NGOs felt was a deliberate ploy to further marginalise NGOs and dis-enable

and minimise lobbying. However, this was refuted by the United Nations who stated that they tried to accommodate such large numbers as best as possible. Lack of opportunities to directly participate in the process continued to frustrate NGOs, some of whom had no access to their country’s delegates or updates on the Document’s (particularly the contentious issues) progress other than via public (and delayed) mediums such as the internet. Numerous articles on NGOs frustrations, at being left out of the loop, appeared in NGO daily papers such as Women Action, Flame and Earth Watch. Jain described her observations of the changes in ‘women’s conferences’ over the past quarter century, which “[t]o some extent...could be called the bureaucratisation of the women’s movement”. The “bureaucratisation of the women’s movement”, Jain argues, has changed the roles of NGOs which, in many instances, have been converted from “activist to archivist”.⁶

A sexuality panel brought together women working in sexual and reproductive rights and health areas to discuss the continuing issue of women’s sexuality remaining the primary site of women’s oppression, such as women’s access to contraception and abortion, rape, including the systematic use of rape as tool of war, sexual coercion, the regulation of women’s sexuality, femicide, incest, child sexual abuse, obligatory heterosexuality and the persecution of and violence perpetuated against lesbians and women perceived as being lesbian. That most of the contentious issues in the Outcome Document revolved around sexual and reproductive rights only served to demonstrate that women’s autonomy and self determination over their sexuality, and right to live free of sexual coercion and violence, continues to be blocked by fundamentalism, the privileged and the holders of patriarchal power.

⁴ South African government delegate Pregs Govender, ANC MP and Chair of the Portfolio Committee on the Improvement of the Quality of Life and Status of Women in South Africa, quoted in Björk, Malin and Sonja Boezak. *Will We Want It If We Get It? Women Action*. 08/06/00:01.

⁵ Le Roux, Gabrielle and Sonja Boezak. *25 Years of Journeying - From Mexico to Beijing+5. Women Action*. 05/06/00:01.

⁶ Ibid.

Negotiations of the "sticky" issues continued into early morning. Case in point - the ever controversial references (of which there were 3) to sexual orientation (it seems that the introduction of the term 'lesbian' then may be light years away). On the morning of Friday 9 June, 2am, no consensus had been reached regarding the inclusion of 'sexual orientation' in the introduction, which was a paragraph that acknowledged women's diversity. There appeared to be three camps of opinion (excluding those countries who did not intervene in the negotiations and whose opinion I cannot comment on):

1. Those who wanted sexual orientation included (JUSCANZ - the cluster including New Zealand, the EU, South Africa and Cuba);
2. Those who wanted the reference deleted (Many of the G77 countries from the Middle East, the African continent, some Latin American and Asia Pacific countries); and
3. Those who believed the entire paragraph (which contained references to other forms of diversity such as Indigenous women) be deleted if no consensus could be reached.

Group two appeared to be most vocal with the largest number of interventions. They argued that sexual orientation was not in the BPFA so there was no need to comment. Indeed, some delegates had difficulty saying sexual orientation and would refer to it as 'that issue'. When the EU intervened and stated its support for the inclusion of sexual orientation, NGOs (who were able to access this meeting of the Whole) cheered. A Syrian delegate intervened, asking for security to be exercised and the NGOs removed. From this point on, NGOs were conspicuously quiet!

Those from category one (JUSCANZ interventions were led by a New Zealand delegate) argued that this reference was factual, in that it described women's

realities, and that although sexual orientation was not included in the BPFA, the Platform was a starting point from which to move forward.

Despite ardent efforts for sexual orientation to be included, of which New Zealand played a key role, the references were lost - as was predicted - leaving me to ponder if the same tactic will be employed at Beijing+10/20/30/40? Will women's rights negotiations continue to be influenced by significant numbers of men? Will women's bodies continue to be subject to control, persecution and pillage despite international forums such as the UN? I'm picking yes on all accounts, for the meantime, but I believe that there is light at the end of the tunnel. Despite the jet lag, I returned feeling encouraged by the work and integrity of women here in Aotearoa whose unwavering commitment continually inspires me, the other women, particularly the young women, I was fortunate enough to meet in New York, and the few progressive governments. After all, the hand that rocks the cradle, rocks the world.....

And finally, on Saturday, June 10th, the unedited final outcome document was adopted by the Plenary of the Special Session."

This is just a small selection of the issues and a Women's Information Network meeting, to disseminate information about Beijing +5 to NGOs, will be held at the Council of Trade Unions' meeting room, 7th Floor, West Block, Education House, 178 Willis Street on July 18th at 12.30pm. For more information, contact:

Tania Pouwhare, The National Collective of Independent Women's Refuges, PO Box 11 074, Wellington. Ph: 04 802 5078, Fax: 04 802 5079, E-mail: tania@refuge.org.nz

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