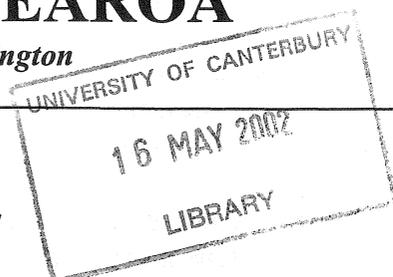


FEMINIST LAW BULLETIN

NEW ZEALAND AOTEAROA

PO Box 5071, Lambton Quay, Wellington



Issue 2 2002
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.

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Feminist Law Bulletin: the end of an era

The end of the subscription year has made it timely to think about the future of this publication. As our other work commitments have increased and our time and energy for the *Bulletin* dissipated, it has become clear that it is time for our own role in the *Bulletin* to end. Our hope is that some other energetic women will continue the *Bulletin* in some form or other. In this last issue, we take a look back over the life and times of this *Bulletin*, the only one ever dedicated specifically to feminist legal issues in New Zealand.

The *Bulletin* was born in 1993 as part of Women's Suffrage centennial celebrations, aiming to inform, raise awareness and develop a wider understanding of the impact of the law on women. The idea sprang, in part, from the then recent closure of *Broadsheet*, a feminist magazine that had closed after more than 20 years of publication. There seemed to be a need for that feminist voice to continue in some way, but with a specific focus on women and the law.

That first issue, in September 1993, was written by Dot Kettle and led with an article on "Women's Votes: the past, the present and the future" looking at the impending electoral referendum on proportional representation and issues for women that it raised. 1993 saw the first woman ever appointed to the High

This issue of Feminist Law Bulletin was written and edited by Wendy Parker, who can be contacted at wendy.parker@paradise.net.nz

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Court (Silvia Cartwright as she then was, now Dame Silvia and our Governor-General). Within 7 years Sian Elias was appointed as the first woman Chief Justice, two Maori women had been appointed as Judges, including Caren Wickliffe, the first Maori woman to be appointed to the Maori Land Court.

Looking back over the last nine years it is amazing just how many topics the *Bulletin* has covered ranging from legal writing by women, to making effective submissions, a review of the Domestic Protection Act, a Lesbian Law Bulletin in 1994, a Judge for Yourself comment on court decisions, women and legal aid, superannuation, and the Women's Access to Justice projects of the Law Commission. Remember the Code of Social Responsibility in 1995, changes to ACC, the debates over human rights legislation and the new domestic violence laws in 1994? All these and many other issues were covered during the turbulent law reform and cases of the 1990s.

An evaluation of FLB in 1996 brought the following sorts of comments from women:

"I can't think of any other publication which meets the need for women to be informed on these issues as well as FLB does. Keep it up."

"Broad ranging and couched in language which is broadly accessible – rather than legalistic jargon."

"Keeps up to date with legal trends affecting women."

Over the years a number of dedicated women have made major contributions to the *Bulletin*. In 1996 Claire Baylis and Kate Tokeley took over editing the *Bulletin* for a year and produced an excellent series of articles on, among many other things, the theory and practice of feminist legal debates, rape law reform, women's unpaid work, women in the legal profession, consumer rights, and prostitution law reform. Other contributors have included Toni Allwood in 1997 (then co-ordinator of the WIN on Poverty Campaign),

Julie O'Brien (survey of political parties on issues for women), and Wendy Parker (on issues of matrimonial and de facto relationship property law reform). Leah Whiu wrote a compelling piece on Maori women's access to justice in 1999, Bridget Caird also contributed on women's experiences of prison in New Zealand, and Jenny Fenton, Vice Chair of the New Zealand Drug Rape Trust also contributed to the *Bulletin*. Our thanks go to these and all the other women who have helped along the way for their commitment and excellent feminist analysis of legal topics of the day.

There have also been interviews with a range of people including Lana Hart, Women's Advocate at the Human Rights Commission and Justice Ted Thomas, who raised some thought-provoking questions about the conscience of the law following his retirement from the Court of Appeal in 2001.

During the last decade we have also seen some major law changes affecting women, from new relationship property laws to paid parental leave, both of which at times seemed beyond hope of ever happening. The fact that these changes have happened says much for the flax roots advocacy of women in their families and communities and the incredible organising and lobbying power of women's voices. The *Bulletin* has also played a role in making sure that women were kept up-to-date with progress on these and many other issues along the way.

We would like to thank all of you for your support over the last nine years. We hope that you will continue to explore and advocate the issues for women in your own lives and work, with or without a *Feminist Law Bulletin*.

New Human Rights Commissioners Appointed

Five Human Rights Commissioners have been appointed from 1 May 2002.

Warren Lindberg and Michael Powles have been reappointed for a further term of five years after having been appointed last year on a short term basis until the Human Rights Act amendment had been passed. Ros Noonan remains as the Chief Commissioner. The new Commissioners are Merimeri Penfold, Robyn Hunt and Joy Liddicoat. Robert Hesketh has been appointed as Director of Public Proceedings.

Merimeri Penfold (Ngati Kuri) was a lecturer in Maori language at Auckland University for more than 30 years. She was a member of the Maori Education Foundation, the University of Auckland Marae Establishment Committee and an executive member of the Broadcasting Commission from 1989 to 1991. Dr Penfold was also a co-member of the editorial team for the seventh edition of Williams Maori Language Dictionary. She was made a Companion of the New Zealand Order of Merit for services to Maori in 2001.

Robyn Hunt is a consultant with 20 years experience in the fields of human rights and equity issues. Her focus areas have been disability and Equal Employment issues. She is President of the Council of Workbridge Inc and co-chair of the Disability Strategy Sector Reference Group. She was made an Officer of the New Zealand Order of Merit for services to people with disabilities in 2001.

Joy is, of course, the regular editor and driving force behind *Feminist Law Bulletin*. Joy's appointment is an outstanding achievement and she is one of the youngest Commissioners ever appointed. Joy brings a unique combination of flax roots community work and international human rights experience to the role. As a seasoned policy expert, human rights lawyer, internationally recognised expert on violence against women,

strategist, facilitator, trainer and feminist commentator, Joy's potential to contribute to the Commission in its recently revamped role is exciting and timely. I am sure you will join me in wishing Joy continued courage in her promotion of human rights for all.

Paid Parental Leave: law at last

After a sustained effort to get, and keep, paid parental leave on the policy and legislative agenda, the Parental Leave and Employment Protection Act has finally been amended. A government-funded scheme providing paid parental leave takes effect from 1 July 2002. This amendment is a significant step aimed at reducing the earnings gap between men and women and at allowing women to spend time with their newborn babies.

The amendment was discussed in the last issue of *Feminist Law Bulletin*. The major change during the select committee process was clarification of the role of Labour Inspectors. Labour Inspectors can help both employers and employees where there is any doubt about entitlements.

As Laila Harre, Minister of Women's Affairs, put it: "having babies is not a lifestyle choice. It is a perfectly ordinary part of the lives of most women, and should not incur financial penalties in the form of lost wages or the loss of employment opportunities."

The changes are so important that we cover the major points of the policy in this issue.

Who is eligible?

A person who has worked for the same employer for at least 12 months at the date that the baby is due, for an average of 10 hours a week.

When does the new law take effect?

For anyone whose baby is due, or is born, on or after 1 July 2002. Leave is also available to adoptive parents.

Can entitlement be shared?

Yes – all or part of a paid parental leave entitlement can be transferred to a partner, including a same-sex partner.

How much is paid?

The same as what was being earned, up to a ceiling of \$325 per week.

Can a person get the entitlement if they have already negotiated paid parental leave with their employer?

Yes. An existing arrangement can stay in place as long as it is as good as, or more favourable than, the entitlement.

Does this mean a return to work after 12 weeks?

Not necessarily. The existing unpaid parental leave provisions still apply. Unpaid parental leave of up to 12 months can be taken.

What about benefits and student loans?

Paid parental leave is treated as income. A leave payment will have the same effect as income for people receiving family assistance or a benefit. For example, a benefit will be abated at the same rate as if the entitlement was income. Student loan repayments are required as the entitlement crosses the student loan income threshold.

With thanks to *Panui*, Ministry of Women's Affairs, April 2002.

Paid Parental Leave: working it out on the web

A step-by-step process that allows women and their partners to work out their specific entitlement to paid parental leave is available on the Department of Labour website: <http://www.ers.dol.govt.nz/parentalleave/>

Feminist Law Bulletin spoke to the designer of the on-line paid parental leave calculator Susan Iverson of CG Computing about the challenges and rewards of the project.

Susan, can you briefly explain how the calculator works?

The enquirer (a woman, her partner or her employer) fills in a set of questions (e.g. how many hours a week do you work?, when is your baby due? etc.) and the calculator will produce a 1 to 2 page sheet outlining the entitlement to parental leave, entitlement to any payment, the reasons for that entitlement, what action should be taken next (including links to relevant forms/letters) and other important information.

The results page is tailored to the enquirer so employers are given information about their employee's entitlement and about their responsibilities as an employer. A woman will find out what unpaid leave she is entitled to and what level of payment she will receive. She will also be told what date she needs to apply for her leave by and have a link to a sample letter to give to her employer.

What was the most challenging aspect of designing this on-line tool?

Turning the complexity of the legislation into a workable calculator. Trying to find the correct balance between:

- keeping the set of questions as simple as possible
- making the results page as simple as possible and as tailored to the individual enquirer as possible
- ensuring that the results pages were legally correct
- keeping the number of separate paragraphs required to build the results page to a minimum
- keeping the programming logic as workable as possible

was a real challenge as these priorities were often in competition with each other.

And the most rewarding aspect?

Knowing that I have contributed to making information about this important legislation more accessible to women, their partners and

their employers. I hope that the calculator will help woman access parental leave and the parental leave payment. I believe that paid parental leave is an important right for women and contributing to woman knowing about their rights is important to me.

What are some of the benefits of providing information in this way?

There are three aspects to this. Firstly by having information on the internet it makes access easier. It means that those people with computer access can access this information whenever they want to. They can also access it privately without having to contact someone else. It also means for employers that they can look it up any time they want, can download the forms and letters as required rather than requesting them or having to have a set in the filing cabinet.

Secondly is the method we have used here. Rather than just having a document which people can read we have tried to personalise the information. This means that the program is taking the information provided and interpreting it for the person rather than them having to read and comprehend a document and then interpret it themselves.

Thirdly we have made the results page printable and able to be emailed so that someone else (e.g. ERS Infoline or a midwife) can run the calculator and print the results out to give to someone else.

Are there other ways that people can get information and advice?

Yes information has been provided to unions, midwives and employers to help assist employees in accessing parental leave. The ERS Infoline (0800 800 863) is able to provide advice to callers. Some radio advertising is also being planned on iwi and Pacific Islands radio and Mai FM. There is also other information available on the website in addition to the calculator.

Has the website proved popular so far?

Yes figures for the first week showed that 9,500 people had gone to the parental leave part of the ERS site. Of those around 4,500 had used the birth mother calculator, 1,500 had used the partner calculator, 850 had used the employer calculator and 75 had used the adoptive parent calculator. I think this a fantastic response and indicates to me that mothers in particular have been wanting some private, easy way to find out their entitlement.

What kind of data can be collected from the calculator and how could it be used to refine and improve paid parental leave policy?

Firstly I should emphasise that no personal data is collected anywhere on the site. However we will be able to collect data on the range of responses to the set of questions for everyone who generates a results page. This will let us see how many women/partners who are using the calculator are not entitled to leave/payment and why. This will help inform the debate about any future changes to the policy. While information will be collected by Inland Revenue about successful applicants they will not have information about those women who were not eligible and we are hoping to use the calculator pages to help fill that gap.

DPB and Widows Benefit Reforms: Update

In the last issue of *Feminist Law Bulletin* the evaluation of the policy of work-testing domestic purposes beneficiaries was discussed.

You may recall that the study exposed deficiencies in the case management of people subject to work-testing measures. The evaluation also found that for some parents, even where financial gains were experienced, the cost of working outweighed the benefits due to the tension of managing the competing demands of home and work.

The study revealed only partial success and some problems in the work-test policy. Many of the issues uncovered by the research are addressed in the Social Security (Working Towards Employment) Amendment Bill, currently before the House.

The bill abolishes the work-test regime from 26 August 2002 and replaces it with a new model of enhanced case management. While a beneficiary will no longer be automatically required to be available for part-time or full-time work depending on the age of their youngest child, a Working Towards Employment Plan will be developed. This aims to tailor work plans to individual situations, including addressing any constraints on workforce participation.

When the bill was before the select committee in late April, a number of community organisations expressed concern about the degree of power the reforms gave to Case Managers. Some submitters labelled the reforms, "work-testing under another name".

From the net

www.pathway.hrc.co.nz

a new bilingual teaching resource from the Human Rights Commission in line with the NZ Social Studies Curriculum

www.magenta.nl/crosspoint

an international anti-racism directory to over 2000 NGOs in 113 countries

www.maorilandcourt.govt.nz

lots of information on the Maori Land Court and on-line lodging of enquiries

http://tepuna.natlib.govt.nz/web_directory/reo-subject.htm

an updated list of Maori websites from the National Library

www.happywomanmagazine.com

a satirical look at women's magazines

<http://www.sosig.ac.uk/vts/lawyers/index.htm>

a free web-based tutorial on Internet Information for Lawyers

http://lsb.co.nz/general/pdfs/LawAccess_2001.pdf
a catalogue of pamphlets, booklets, posters, videos, resource lists and other material which provides information on law-related topics. A large document with everything from animal welfare and agriculture to Treaty of Waitangi and youth issues. Also available in hard copy free from the Legal Services Agency. info@lsa.govt.nz

E-Research for New Zealand Lawyers

This book, by law librarian Bethli Wainwright, takes a comprehensive look at the myriad of research tools available on the internet. It is a perfect (and discrete) tool for anyone who wants to become familiar with what is out there and how to use it effectively.

The book discusses the basics, like how to frame a search; traps for young players, like unconsolidated series of statutes, as well as tips for more advanced users. There is a chapter on free on-line resources as well as a thorough discussion of pay-to-use legal databases. The focus is on New Zealand sources, including a purview of government sites, but key overseas sites are also covered. Statutes, case law and other sources are all discussed.

E-research for New Zealand Lawyers is published by Butterworths and retails for \$67.50.

Family matters

A review of Family Court processes is underway by the Law Commission. Comments on the discussion paper (*Family Court Dispute Resolution*, Preliminary Paper 47) closed on 2 April 2002 and the final report is due to government in August 2002.

The discussion paper contains a lot of information about the Family Court, including a chapter on the history of the Court. Another

chapter usefully brings together a number of family-related statistics including demographic changes and provides a helpful snapshot of New Zealand society. Certainly much has changed since the introduction of a specialist Family Court in 1980.

One (but not the only) motivating factor for the review was pressure brought to bear by father's rights groups about their dissatisfaction and accusations of gender bias within the Family Court. While there is no sense of capture by these interest groups in the discussion paper, their continued interest in the progress and outcomes of the review make balanced and considered input into the review vitally important. Complacency could cost dearly so stay informed about the progress of this report.

This term of parliament has seen a number of significant family policy changes, such as the introduction of paid parental leave and the acknowledgement of economic disparity created by the division of labour within relationships in the Property (Relationships) Act. Further changes are in the pipeline. For example, the review of guardianship provisions (and indeed the whole concept of guardianship) continues. Defining parenthood is set to be the major family policy concern of the next few decades.

A full legislative agenda and the altered priorities of an election year may yet see the progress of family law reform slowed.

From the House

At the time of writing there are no bills open for public submissions. Although select committees that meet their own deadlines are rare, these are the dates on which a number of select committee reports are due. Look out for forthcoming reports on:

- Tertiary Education Reform Bill (due 20 May 2002)
- Volunteers Employment Protection Bill (due 26 May 2002)

- Assisted Human Reproduction Bill (due 31 May 2002)
- Health and Safety in Employment Bill (due 4 June 2002)
- Social Services (Working Towards Employment) Bill (due 17 June 2002)
- Prostitution Reform Bill (due 29 November 2002)

Life as we know it: Career Progression and Development in the Public Service

The lack of diversity in candidates applying for Chief Executive positions within the public service was explained in the findings of a recent survey which found the work/life balance just a tad lopsided. Worried about the dearth of women applicants for Chief Executive jobs, the Commissioner for State Services decided to find out what was going on throughout the sector.

The survey was conducted by a questionnaire sent to 13,000 public servants in late 2000. Responses were received from 6,500 employees (a reasonable response rate for this type of survey). Participants were asked about their perceptions of the work environment and career progression opportunities.

Women make up 56% of the public service. They earn, on average 17% less than their male counterparts and have less chance of fulfilling their career ambitions.

The State Services Commissioner, Michael Wintringham, admitted that the public service was not living up to its family friendly workplace reputation, with female survey respondents with family responsibilities in particular noting that maintaining the balance between work and home was a "constant juggle". One quarter of all of those surveyed said that their concerns about achieving that balance had stopped them from applying for higher-level positions.

Is it any wonder when three quarters of those surveyed said they worked more hours than they were paid for and one in five said they worked at least an extra ten hours a week?

The survey does not bode well for all of those parents set to return to the public service after taking their paid parental leave from July onwards. However, it was noted that flexible work options and family friendly work practices provided a competitive advantage in today's labour market, both in attracting and retaining staff as well as enhancing their productivity on the job.

Although both male and female employees noted commitments to family, female employees were more likely to make career adjustments and daily changes on the basis on family responsibilities.

Despite a long history of equal employment opportunities initiatives in the Public Service, more than one in five (21%) of respondents felt that they had been treated less favourably because of a personal characteristic, notably gender. Unwelcome behaviour that had intimidated, offended, or humiliated was experienced by 34% of respondents, mostly in the form of remarks, jokes and communications that were considered to be offensive. While only 2% or less reported having experienced any one of the behaviours categorised as sexual harassment behaviour, "bullying" was described as an "emerging concern".

Another interesting finding was that women managers tended to respond to the survey along the same lines as their male counterparts. Their responses mirrored those of male managers and contrasted with the responses of non-managerial women in all but a few areas. This masculinisation of senior women has been discovered in other studies and says a lot about what we value and about one way of surviving in the workplace. As women managers comprise 40% of managers in the public service, this is an important issue.

Gender pay gap in the Australian legal profession

A report on the 2001 Annual Practising Certificate Survey from Victoria, Australia, praises the narrowing of the gender pay gap for legal practitioners. Around 2850 practitioners completed the survey which was sent out with renewal of practising certificate forms.

The survey indicated that women were staying in the profession longer. Their income had increased 12.7% since 1999, while the income of their male counterparts rose only 1.4% over the same period. However, the average income of full-time male lawyers was \$A17,700 greater than the average full-time income of female lawyers, showing that there is still some way to go before pay equity is achieved in the Victorian legal profession (and elsewhere). Seventy-five per cent of female practitioners surveyed worked as employee solicitors.

A slight decrease in hours worked per week was found, with women lawyers working, on average, 5.8 hours less per week than male lawyers worked. Women were also more likely than men to take time out for family commitments.

With thanks to Law Institute Journal, February 2002.

Forthcoming conference

The Social Policy Research and Evaluation Conference 2002

2 and 3 July 2002, Convention Centre, Wellington. Hosted by the Ministry of Social Development. Registration \$150.

www.msd.govt.nz/keyinitiatives/conference

Keynote speakers: Dame Silvia Cartwright, Linda Tuhiwai Smith, Tui Atua Tamasese Efi, Dr Sandra Nutley and Prof David Ellwood.