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CHAPMAN TRIPP

Papers Presented  
at Seminar

**SEXUAL VIOLENCE -  
A CASE FOR LAW REFORM**

**by**

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**Legal Research Foundation Inc.**

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CHAPMAN TRIPP

Legal Research Foundation Inc.  
Seminar

SEXUAL VIOLENCE - A CASE FOR LAW REFORM

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## INTRODUCTION

On 27 August 1982 the Legal Research Foundation conducted a seminar entitled "Sexual Violence A Case For Law Reform". The Foundation promoted this seminar at the suggestion of Margaret Wilson, a Senior Lecturer in Law at the University of Auckland, to examine the dissatisfaction felt particularly by interested groups with the administration and the law relating to sexual offences and a demand for action.

In consequence of the seminar the Foundation is pleased to publish the instructive and challenging papers presented by Margaret Wilson and the Minister of Justice, the Honourable Mr J. K. McLay, and Dr Johnson.

It is hoped, following an expressed aim of the Minister, namely, to promote and encourage discussion and examination of these problems, that these papers will contribute towards furthering that aim. In addition to the formal papers presented there were two panel discussions held: one entitled "The Profession's View" which comprised Mr D. S. Morris Crown Solicitor, Auckland, Mr Michael Bungay Barrister, Wellington, and District Judge R. J. Gilbert of Auckland; the other, took up a topic entitled "Are The Victims' Best Interests Being Presently Served". This panel comprised Chief Superintendent Brian Wilkinson of the Police, Dr Lan Johnson a Police Surgeon who is also a Student Health Doctor and general practitioner, Julie Pettit a Senior Probation Officer in Auckland representing the Help Foundation, and Chris Bennett for Rape Crisis.

Formal papers were not sought from the panelists but discussion and interchange that followed has enabled the Foundation to publish a paper written by Dr Johnson. Like Mr Wilkinson and Julie Pettit, Dr Johnson is involved with the administration of the Help Foundation.

### THE PANEL 'THE PROFESSION'S VIEW'

The following questions were posed for both panel and audience, namely:

- a) Is the present definition of rape, namely, sexual intercourse without consent, satisfactory? Would there be any value in adopting the extended definition of sexual intercourse as in the N.S.W. Sexual Crimes (Amendment) Act (N.S.W.) 1981.
- b) Is the time-honoured warning of Judges to effect "that it is dangerous to convict on the uncorroborated evidence of the complainant" either discriminatory and offensive to women or undesirable when offences, such as culpable homicide or 'white-

collar' offences do not carry such requirement?

- c) Should there be any right at all to cross-examine a complainant on her sexual experience? Does the present right place a 'premium on virtue' or constitute an invasion of a woman's privacy? How is the discretion exercised by New Zealand Judges?
- d) Should the requirement that there be recent complaint be abolished?
- e) Would a total suppression of or closed Court situation assist?
- f) Should the term "rape" be discarded?

Not all the points were taken up but some of the following salient points were made:

- a) A consensus of opinion favoured extending the definition of rape by including the extended definition of 'sexual intercourse' as set out in Section 61A of the Sexual Crimes (Amendment) Act N.S.W. 1982, which states:

"Sexual intercourse.

61A. (1) For the purposes of this section and sections 61B, 61C and 61D, "sexual intercourse" means -

- (a) sexual connection occasioned by the penetration of the vagina of any person or anus of any person by
  - (i) any part of the body of another person; or
  - (ii) an object manipulated by another person, except where the penetration is carried out for proper medical purposes;
- (b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person;
- (c) cunnilingus; or
- (d) the continuation of sexual intercourse as defined in paragraph (a), (b) or (c)."

Such an extension would obviate the need to rely on 'attempts' and overcome the problem caused by the requirement to prove any penetration of the female labia by the male member.

- b) There was strong support for abolishing the practice of Judges to give the time-honoured warning of juries to effect:

"that it is dangerous to convict on the uncorroborated evidence of the complainant."

The thinking behind this strong objection was that implicit in this rule of practice only is the inference that women are 'second class' or unreliable witnesses. The suggestion that the retention of this rule of practice was justified on another so-called 'rule of experience' that charges of a sexual nature are easy to

make and difficult to refute was considered totally unsatisfactory. A consequence of abolition might be that it would assist the police and prosecutors in bringing charges of rape where there is no corroborative evidence of physical assault such as bruises, torn clothes, or the like. The N.S.W. legislation [Section 405C(2)] directs that the trial judge is not required by any rule of law or practice to give such a warning. That means however that depending upon the circumstances it would be open for a trial judge to give such a warning if the corroborative evidence was very flimsy in the circumstances. On this question a lawyer raised a practical point (which argument really can be used to support the abolitionist's view), namely, that no matter what criminal trial one is dealing with, whether it be murder, white collar crime, or the like, the need for corroboration in one form or another is a must before a conviction will normally be sustained. Therefore why be concerned about change? Conversely it could be said why make it a requirement in sexual offences? It may well be open to argue that the rule could still be used when dealing with cases of child-complainants. The N.S.W. Act still preserves the warning where children are complainants. Again the same arguments of discrimination etc. can be suggested. In any criminal trial, defence or prosecution can place as much weight as possible on the absence or presence of corroboration without the need to elevate it to the position of being a rule. In the case of young complainants where experience shows that sometimes quite innocently their accounts can differ from say a deposition hearing to the District Court or High Court trial, counsel for the defence would not be disadvantaged by the abolition of this rule as it would be open for challenge to be made under the heading of "credibility" without having to 'dress-it-up' in the guise of a rule of practice which is discriminatory by present standards. It is just as important to a complainant that justice should not only be done but be seen to be done.

c) There was a further strong plea to abolish the right to cross-examine a complainant on past sexual experience. It was not seriously challenged by any of the legal speakers present. Mr Bungay gave an example where it would be unjust to prohibit such questioning (e.g., where a woman claims to being raped at a house and as part of the evidence semen fluid is found on the bedclothes and there was evidence that two days before she had had sexual intercourse in the same bed and the linen had not been changed. Should it not be

permissible for questions to be put to the woman on her past conduct). In New Zealand the legislation which covers the right to cross-examine a complainant on previous sexual behaviour is Section 23A of the Evidence Act 1908 (1977 amendment). There are considerable and defined limitations upon the right to so cross-examine. There was no real call for altering Section 23A of the Evidence Act 1908, it being felt that there was sufficient restraint embodied within that Section to meet present needs. Dealing with the right to question a complainant on her sexual experience a matter was raised which is perhaps an unfortunate consequence of deposition hearings preparatory to committal for trial: there is a general practice that counsel may lead evidence or cross-examine at depositions on matters which may ultimately turn out to be inadmissible, the admissibility of which being ruled upon at the trial. How does one overcome the problem? At deposition therefore a complainant could be subjected to an unrestricted questioning on her sexual experience which may be inadmissible and so prohibited by the trial judge. The real practical problem is that most depositions are presided over by Justices of the Peace who are not trained to rule on matters of evidence-admissibility. That is a matter which perhaps could be dealt with by making it mandatory for District Judges to be asked to sit through a deposition hearing where such questioning is to be raised, or at least have the matter referred to a District Judge for a ruling in the course of a deposition hearing being conducted by Justices of the Peace.

- d) The consensus considered that the rule of practice relating to warning a jury about the need for evidence of recent complaint by a complainant should be abolished. The N.S.W. legislation S.405B(2) provides that where there is any questioning of the witness which tends to suggest an absence or delay in complaint being made by the complainant the Judge shall:
- i) give a warning to the jury to effect that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the offence was committed is false; and
  - ii) inform the jury that there may be good reasons why a victim of sexual assault may hesitate in making or refrain from making complaint about the assault.

Although the practices of warning that it is dangerous to convict on uncorroborated evidence and about the need for recent complaint could well be abolished as 'rules', there is nothing to stop

counsel from emphasising these matters to a jury. It therefore may be helpful to adopt the N.S.W. approach, like Section 405B(2) (which specifically directs a trial judge to tell the jury that the lack of or delay in the making of the complaint does not mean that the complaint is false) in that case and where there is an absence of corroboration. It seems reasonable to accept that would-be complainants do not go around armed or trained to make a complaint to the police, or others, the moment they are the victims of rape. A reasonable jury should be able to understand it as normal that reaction time may differ from person to person. So the overall concern may be expressed, why elevate it to a rule when it is no more than just another piece of evidence that may be given in such a trial?

- e) There was a call to abolish Section 128(3) of the Crimes Act 1961 as amended by the Family Proceedings Act 1980 which provides that no man shall be convicted of rape in respect of intercourse with his wife unless at the time of the intercourse he and his wife were living apart at separate residences. A speaker pointed to the anomalous situation of a rape charge being able to be laid against a de facto partner who lives with his partner yet not a married partner. Its retention appears to be another example of male "proprietary-right" thinking which should be laid to rest. We submit that it should be abolished. We further submit that it is discriminatory.

Finally the seminar discussions dwelt on the problem of complainant-children having to give evidence at trial. There was a suggestion that there be a guardian or lawyer appointed who could present the child's evidence on behalf of that child. This would involve a considerable change in the criminal law. In a sense it might be considered as not so radically removed from the use of the interpreter system. Certainly it is not foreign to other branches of the law where the aged and infirmed, mental patients and infants are represented by next friends, guardians or Court appointed counsel. These appointees represent persons with disabilities. They put together accounts on behalf of that person. The Courts rely on these accounts. Such a change to the criminal law is not beyond implementation and deserves examination. Overseas examples were pointed to where such a procedure is apparently in use. This procedure might equally be considered in the case of very elderly complainants.

In these remarks the Foundation has attempted to convey the mood and views of the seminar. The clear impression gained was that not only has the law failed to meet present thinking and need but also that the lawyers, the skilled technicians applying the rules governing trials involving sexual offences, did not or would not appreciate the need for change unless it advantaged his or her side.

P. T. Firmigan  
Convener



## SEXUAL VIOLENCE - A FEMINIST PERSPECTIVE

- Margaret A. Wilson

### Introduction

I proposed that the Legal Research Foundation provide a forum for the discussion of sexual violence because of the various proposals that have and are about to emerge to protect the interests of the victims of sexual violence. Although it is gratifying to see the political and administrative institutions recognise the presence amongst us of sexual violence and to acknowledge that efforts should be made to prevent it, women have learnt from history to be wary of the patriarchal institutions' solutions to the problems of women. This wariness is understandable when it is recognised that many of the problems of women are attributable to the operation of the patriarchy. While women may be wary of the patriarchal solution, they also recognise their dependence upon the political, legal, and administrative institutions to effect any positive change in the position of women. Unfortunately for most women they cannot live lives independent of the patriarchy. For this reason we are compelled to organise and participate in exercises designed to influence those who make the decisions. This forum will hopefully be an exercise of influence upon those who have the power to make decisions relating to the prevention of sexual violence. It is hoped it will also enable them to recognise that there can be no long-term effective prevention of sexual violence until there is recognition of the nature of such violence. And that the key to understanding the nature of sexual violence lies in an understanding of sexism in our society.

I also wish to state at the outset that this paper is confined to a consideration of sexual violence inflicted upon women. It is recognised that children are also subjected to sexual violence. This aspect of sexual violence is not the focus of this paper though much of the argument may prove useful to understanding the position of children as victims of sexual violence. It has also been argued that men are the victims of sexual violence, with that violence being inflicted by women and also by men upon other men. It is undeniably true men are physically assaulted, on occasions, by women. However,

to understand the nature of sexual violence is to understand that the gender of the violator is not the determining characteristic. It is not that men are inherently evil. It is the fact that, within the patriarchal system, they are assigned the role of the rulers, the controllers, the powerful.

#### Form of Sexual Violence

As I have said there have been emerging proposals on ways in which to protect the victims of sexual violence. These proposals have focused upon the forms of sexual violence. The physical expression of the violence. Those forms which have received much of the attention have been what is named domestic violence, that is, violence inflicted by men upon women with whom they share a living arrangement; rape, that is, violence inflicted by men upon the genitalia of women; indecent assault, which under our law may differ from rape only in so far as the instrument of violence is not the penis; and sexual harassment, which in its extreme form may take the form of rape, or may be continual verbal propositions of a sexual nature. I would also include pornography within the definition of sexual but will not consider this issue in this paper because of the constraints of time.

There is a need to focus on the forms of sexual violence if the proposals for reform are largely centred on the need to reform the law. The law, is amongst other things, the expression of the decision of the state to outlaw certain types of behaviour. A person who behaves outside the law will be punished with the consent of the state through the operation of the legal process. Since the consequences for the misbehaving citizen may be serious, our legal system requires proof of guilt. This proof is derived normally from a consideration of the act performed and the state of mind of the offender. It is therefore important that the offending behaviour be clearly defined.

Much of the energy surrounding proposals for reform of the law relating to rape has been directed to defining the nature of the act that is considered rape. Is there a difference between your genitalia being violently attacked by a penis or a broken bottle? If so what is the basis of the distinction?

Should the penetration of the penis alone be one of the distinguishing characteristics of the law relating to rape? And why is penetration of the vagina any different from penetration of the anus or the mouth when defining what constitutes the act of rape? Could it be that the law regards the use of the penis and vagina as what distinguishes rape from other forms of physical assault? At the moment the law would appear to assume the use of a penis more serious than that of a bottle or knife or other instrument.

When defining the form of sexual violence for the purposes of the law, the state is expressing what element in the behaviour it considers must be punished. In the case of domestic violence, there is no specific offence of domestic violence. There is no specific recognition of the violence that may result from the domestic relationship. Protection from such violence in law comes from the general offences relating to offences against the person. Section 194 does provide for a specific offence of assault by a male on a female with a penalty of up to two years.

Proposals for reform in the area of domestic violence have concentrated upon the protection of the women from the violence rather than the punishment of the male offender. The proposals for reform are contained in the Domestic Violence Bill presently before a Select Committee of Parliament. This would seem a constructive approach and an example of the law not only providing protection for the victim by providing for the detention of the offender, but also recognising the reality of the victim's condition. That reality is that she cannot remove herself from the violence because she has no place to go for shelter and protection. The Bill makes provision for the women to obtain a legal right to occupy the household residence, in an attempt to mitigate the effects of domestic violence upon the women and children. It is to be hoped that the Bill progresses with some haste through the Parliament so it can afford some relief for the victims of domestic violence.

While then the law defines the specific offence of rape, but is concerned not so much with the definition of domestic violence but with its effects, it has yet to directly confront the third form of sexual violence I have

mentioned, namely, sexual harassment. This lack of attention by the law is not surprising. Women's organisations have been working for some years to protect women from domestic violence, and to have the law relating to rape reformed. It is only relatively recently in New Zealand that sexual harassment has been named. By this I mean that women have always been subjected to this type of abuse but have never known how to identify it and thereby embark upon a struggle to make the community recognise this form of sexual violence and to start thinking of ways in which to prevent it.

Sexual harassment is commonly associated with the workplace. Women workers have started complaining in numbers of the sexual harassment to which they are subjected by male colleagues and male superiors. I do not feel that sexual harassment is confined to the workplace, as any woman will understand who has tried to have a drink in a pub or taken her car to be serviced. In any activity where women step outside their assigned role in society, and insist upon remaining women and not honorary men, they are subjected to some form of sexual harassment.

Since, however, the objections to sexual harassment have arisen in numbers from the workplace, there has been a tendency to define the issue in terms of the workplace. Trade unions, in an attempt to protect their members from this type of treatment, have sought remedies from the law. They have sought them from the law because often women are in industries where it is difficult to organise forms of direct action. They have also sought a remedy from the law because they consider it crucial that the law recognises this behaviour and declares it unacceptable and subject to penalty or at least ensures women's jobs are not endangered by such treatment.

They have sought a remedy from the Human Rights Commission, which issued a policy statement on the issue. It decided that the concept of sexual harassment would fall within the definition of unlawful sex discrimination under s.15 of the Human Rights Commission Act 1977. Whether particular behaviour amounted to sexual harassment would be a matter of fact and degree. As some guidance on this question the Commission indicated it would be difficult to

prove that sexual harassment had "any detriment" to the woman worker's conditions of employment. There would have to be evidence of a threat, or the creation of any unpleasant working environment, and the harassment must be a serious nature and persistent, as well as being unwelcome and offensive, work-related and unreasonable in all the circumstances.

I feel there are serious problems with the Commission's policy statement but there is not time now to explore those problems. It is interesting to note that the Federation of Labour has issued a policy statement also on the question in which it has taken a different approach to the question and has recommended that sexual harassment complaints should be pursued through the s.117 (personal grievance procedure) of the Industrial Relations Act 1973. This advice may have as much to do with the foreshadowed approach of the Human Rights Commission, as it has with the inadequate remedies available under the Human Rights Commission Act 1977.

#### Proposals for Legal Reform

##### (a) Domestic Violence

The recent attempts of law reform surrounding the issue of sexual violence have all concentrated upon how the law can protect the victim, the woman. In the case of domestic violence, as I have stated, the emphasis has been moved from the violence itself to the procedures available for protection. This emphasis is reflected in the change of title to the Bills before Parliament. When legislation was first introduced last year, the Bill was titled the Domestic Violence Bill. When the Bill was reported back to Parliament it was decided to introduce a more comprehensive Bill, which was titled the Domestic Protection Bill. The non-violence and non-molestation orders in the Bill are designed for the legal system to attempt to physically protect the woman from violence, while the occupation and tenancy orders are designed to enable the woman to have access to shelter and thereby be more likely to take the steps necessary to protect herself from the violence.

(b) Sexual Harassment

Although it is too early to determine the future of legal protection from sexual harassment, it would appear, as I have stated, that it is recognised women have a right not to be sexually harassed in the workplace under s.15 of the Human Rights Commission Act 1977. The extent and effectiveness of those rights have yet to be determined, as has the right to access to the personal grievance procedure under s.117 of the Industrial Relations Act 1973.

(c) Rape

As far as rape is concerned, we have yet to see what proposals emerge from the government's officially commissioned report on the subject that is to be produced by the Department of Justice and the Institute of Criminology. The emphasis in the report, I understand, is to be upon the victim and the victim's response to the criminal justice system from the time of reporting of the rape to the verdict of the jury. It seems to have been accepted that the present operation of the criminal justice process has turned the victim into the accused and thus failed to protect the rights of women who are raped because they have lost confidence in the whole legal process.

While I am reluctant at this time to go into the details of types of reforms to the law relating to rape - that exercise would have been better conducted at the conference in Wellington sponsored by the Department of Justice and the Institute of Criminology - I shall, because this is a matter of immediate concern, briefly identify the areas in need of reform. I have already mentioned the definition of rape needs to be broadened to include instruments other than the penis, and the vagina should not be the only part of the body protected by the law relating to rape.

There is then the question of what evidence should be admissible at the trial. The argument usually revolves around whether evidence of the complainant's sexual relationships with the accused and/or other men should be permitted at the trial. At the moment in New Zealand it is in the discretion of the Judge whether to admit evidence of previous sexual relationships with other men.

The purpose of admitting evidence of sexual activity is to damage the credibility of the complainant. It is assumed if women have sex before marriage or sex with a man other than the husband, then it is more likely women will lie as to whether they have been raped. Since there are rarely independent witnesses to a rape, the credibility of the complainant and the accused assume a great importance. The assumption that evidence of previous sexual activity is relevant in a particular case of rape is an assumption that once a woman has ever had sexual intercourse she is more likely to have consented to future sexual intercourse. The likelihood becomes greater with the frequency of intercourse and the circumstances. Those circumstances being when women have sexual intercourse outside the accepted roles, that is, outside of marriage. The perceived need to provide for the admission of evidence of previous sexual activity to me is evidence of a perceived need to continue sexism in our community.

Apart from evidence as to sexual history, there is another rule relating to rape that needs to be abolished, and that is the requirement for the judge to direct the jury of the dangers of convicting the accused on the uncorroborated evidence of the complainant. Because, as I have stated, there is rarely an independent witness as to the rape, it is difficult to obtain a conviction unless the complainant has suffered some physical damage. This places a woman in an impossible position if she is about to be raped. If she fears for her life and decides not to struggle and risks death or maiming, she is unlikely to be able to prove later that she was raped. If, however, she struggles and escapes with her life but endures bruising, cuts, broken bones etc, she is more likely to be able to successfully make out her complaint. What is the purpose of this rule as to corroboration? It appears to stem from the myth that women are more likely to lie than men and that they are particularly likely to lie about being raped. This belief may be connected to the male fantasy that women secretly like to be raped, or the myth that they are biologically more likely to be spiteful and to be liars. There is no evidence that women are more likely to lie than men. It is also shown that evidence of large numbers of women making false complaints is suspect. Of course women have been known to

make a false complaint as men have been known to lie when it is to their advantage. To make a rule, however, that institutionalises these myths about women, is but further evidence of the sexism that pervades the institutions in our society.

One further point related to the type of evidence and direction given to the jury is that if the complainant delays in making her complaint, this may be taken as evidence against the veracity of the complainant. It is assumed that if a woman is genuinely raped, she will immediately contact the police. Since women have lost confidence in the criminal justice system, it is not difficult to understand why women frequently delay or never bother to complain to the police. Again we have an example of a sexist attitude being institutionalised into our legal system.

Much of the evidence in a rape trial is centred around establishing whether or not the complainant consented to the rape. If the complainant incurs physical injury in the course of the rape, it may be used as evidence that she did not consent because rape is frequently associated, not with absence of consent, but with the presence of force. In other words, the evidence of lack of consent is evidence of use of force. It appears to be assumed that women do not mean "no" when they say "no" to sexual intercourse and that you can only believe them if they say "no" and are also willing to endure physical harm to support their refusal. A cruel judgment on women but not too far from what happens in practice. It is difficult to see what can be done to reform the law on this point as the problems lie more in the attitudes and perceptions of those who control the criminal justice system, than in the legal rules.

One further suggestion for reform of the law relating to rape that is frequently heard, is that the complainant's identity should be suppressed and that the proceedings of the trial should not be open to the public. The reason behind this suggestion is that the ordeal of the trial and the depositions is so great for the complainant that it deters women from laying complaints. This reason is a recognition of the assumption that it is the woman on trial. as much as the accused - that somehow being raped is the fault of the woman herself



If such a practice would restore confidence in women to lay complaints it must be seriously considered. It seems again, however, that the problem lies deeper within the attitudes and practices of our society, that women should regard themselves as guilty, and any such reform should never be a substitute to attacking the underlying sexism that prevails in our community.

The final comment I wish to make on reform proposals relating to the law of rape is the extension of the crime to include rape within marriage. At the moment it is held that once a woman marries she cannot be raped by her husband while the marriage subsists. This rule has been viewed as a licence to rape within the state of marriage. The status of wife removes all protection from rape. It is argued that it would be impossible at law to prove that rape took place because of the nature of the marriage state. The only comment I would make at this stage is that such an argument reinforces the conventional patriarchal attitudes to the role of women within marriage. It is consistent however with the traditional notion that once a woman marries her status as an individual is radically changed and rights of the male partner within the marriage are considered dominant.

#### The Nature of Sexual Violence

So far in this paper I have concentrated upon the attitude of the legal system towards sexual violence. As I have stated, many of the proposals for change have been framed in terms of legal reform. While I do not underestimate the necessity for legal reform, I do submit that we need not be surprised if little will change in the incidence of sexual violence in the community if, even all, the proposals for reform are accepted. As I stated at the beginning of this paper women are now wary of legal reform leading to substantive changes in their lives because those reforms reflect what is acceptable to the patriarchal decision makers - the Parliamentarians, the judges, the lawyers, the police. If they do not recognise their sexism and attempt to introduce and enforce a new value system, little will substantially change for women as a whole.

Before there can be real change there must be an understanding, as I have stated previously, of the true nature of sexual violence. The physical and psychological violence men inflict upon women is not the same as other acts of violence. It is frequently the expression of an exercise of patriarchal power and control over the lives of women. It is a brutal reinforcement of the accepted role of women as subordinate in our society. Whether this exercise of power is expressed on an individual level through a husband beating a wife, a man raping a woman, or an employer making sexual innuendos to his female employee, or at an institutional level of the making and administration of the criminal justice system, it is still an expression of the patriarchal relationship between the sexes. It is a relationship based upon power and control to ensure the maintenance of a patriarchal system.

#### Conclusion

If there is to be a real commitment to the elimination of sexual violence in our community, it will be necessary to recognise that most of the proposals for reform have been concerned with the forms or expressions of sexual violence, and not with the causes and nature of sexual violence itself. Each reform proposal must be measured against an awareness of the true nature of sexual violence to assess whether it will represent a step upon the path to change or merely a tinkering with the rules of a system that will reinforce the sexism in our community. Although I have personally accepted the reality of the long march to sexual equality, I sometimes wonder if the march will ever end when I observe that the processes of change are still firmly in the control of the patriarchy.

References:

Crimes Act 1961

Evidence Amendment Act

Domestic Violence Bill

Domestic Protection Bill

Human Rights Commission Act 1977

Human Rights Commission Policy Statement on  
Sexual Harassment 1982

F.O.L. Policy Statement on Sexual Harassment 1982

Report of the Advisory Group on the Law of Rape,  
1975, (U.K.) (Heilbren Report)

Crimes (Sexual Assault) Amendment Act 1981 (N.S.W.)

Against Our Will, Susan Braunmiller

Sexual Harassment of Working Women, Catherine A. MacKinnon

"An Obstacle to Defence : 'False' Complaints of Rape"  
Kate Warner, (1981) Legal Service Bulletin 137

"Rape Victims and the False Sense of Guilt,"  
Julia Schwendinger & Herman Schwendinger (1980) Crime  
& Social Justice, 4

"For She Has No Right or Power to Refuse Her Consent"  
Charlotte L. Mitra, (1979) Crim.L.R. 558

Family Violence, ed. Eekelaar and Katz, ch.2

"Sexual Violence and Sexuality" Rosalind Coward (1982)  
June Feminist Review 10

## PAPER PRESENTED BY THE MINISTER OF JUSTICE

- Hon. J.K. McLay

Traditionally, studies of crime have been orientated towards either or both the offence and offender. In other words: the analysis of crime has been presented in terms of offences committed - crimes which have been detected and followed up - and emphasis has been placed on a description of offenders. The significant thing about this is that the victims of crime have tended to be neglected. More recent overseas studies have tended to correct this offender bias in favour of a more victim oriented approach although little work of this nature has been done in New Zealand.

Particularly in the United States of America it has come to be recognised that the conventional information about crime based on police and court records is not only inaccurate but also misleading. Experience in the U.S.A. with victimisation surveys has shown that the incidence of forcible rape in the community is much higher than might be indicated by official statistics.

This is of course consistent with the experience of Rape Crisis Centres in New Zealand. In fact it is widely believed that a large proportion of rapes are not reported to the police.

An analysis of the police records of rape complaints also presents problems. There is a considerable element of judgment and discretion in the police handling of rape complaints. Many of the decisions which the police have to make determine whether a complaint is taken further. Moreover, it must be emphasised that there are inherent difficulties involved in the prosecution of a case. Thus, the police, and consequently the court's records tend to present a one-sided view of rape as a social phenomenon; and this may well have led to the entrenchment of myths about this crime.

Paul Wilson, an Australian sociologist, has commented, "there is no assurance that we can take for granted ... that rape is basically a crime perpetrated by unmarried working class drunk young males, that because of prior acquaintanceship the victim initiates the crime and that severe damage to the victim is a relatively infrequent event"

The Rape Study:

In recent years in New Zealand pressure for change has arisen from the same impetus and heightened consciousness of the offence that is evident abroad.

I have asked for a study on rape to be carried out that will examine in detail some of the issues that are currently under discussion.

The terms of reference for the present rape study, which is being undertaken jointly by my department and the Institute of Criminology, Victoria University of Wellington, are to determine whether the law and the criminal justice system procedures should be modified to recognise the special problems encountered by rape victims and, if so, to recommend in what ways this should be done.

This does not, of course, mean that other views will not be relevant or significant. That is why so many people from such a range of diverse organisations - professional and voluntary - have been invited to contribute. Above all we must not perpetuate systems and processes that further victimise the victim - if in fact we find this to be the case. It is our task, in concert with others, to discover whether and to what extent this victimisation exists, and if so how we might correct this without at the same time jeopardising the rights of the accused person.

Having said this, I would like to turn to some of the issues involved in the problem of rape and in so doing I particularly want to place some emphasis on their significance for the victim and her experience with the criminal justice system.

Whatever the underlying and precipitating causes of rape, it is important to remember that it does not occur in a social or political vacuum. One particular aspect of rape that has been repeatedly demonstrated in overseas studies is that it is a crime surrounded by deeply entrenched myths. Many of these myths have their origins in past and prevailing attitudes - attitudes towards women and their role in society, attitudes towards the masculine

role and its connection with the dominance of the male in sexual behaviour. Others are based on a view of the offender and victim that result from prosecution processes.

We do not know enough about the views held within our own society about rape. We do know that many people have their own theories and remedies - many of these are conveyed to me as Minister of Justice (some in the most colourful language). We know that there are assumptions about the kind of people who commit rape and the kind of people who get raped. There are others about rape itself - the significance of the act and its consequences. How widespread these are and what variations upon them exist, we can only guess.

The more common myths include

- Rape is impossible.
- Women ask to be raped - they have only themselves to blame.
- Only women who flaunt themselves will be raped.
- Women don't know their own minds - they secretly enjoy rape - they pretend to resist then co-operate.
- Women lie about sexual matters - there are a lot of false complaints.
- A woman who has really been raped will tell someone as soon as she can.
- If a woman has really been raped she will report to the police.
- A woman who has been raped will be able to give clear and accurate details.
- A woman will physically resist rape; will scream and try to escape.
- Most rapes are committed late at night in deserted streets on women who go out alone.
- Rapists are psychopathic strangers, dirty old men, vicious blacks, frustrated single men and/or working class.
- Rapists are after sex, so they choose 'sexy' or 'provocative' women.

- Everyone is against rape. Society sees rape as a dreadful crime and punishes it accordingly.
- The victim receives sympathetic and understanding treatment.

In 1977 a small rape victim survey was conducted by the National Organisation for Women in the form of a voluntary - return questionnaire through the New Zealand Women's Weekly. I prefer to use this rather than to overseas material because it is local. (The results of a 1981 survey are not yet available).

This survey revealed a reality of a different kind from the current mythologies.

Of the women who were raped, 25% were under the age of 16; 4% were over 40 years old; 36% were married. Their occupations were: housewife, student, nurse, clerk, typist, laboratory technician, teacher, shop assistant, journalist.

Where were they? 19.6% of the victims were raped in their own home; 26.1% were raped in his home, 13.8% in a car; 10% in the country, 3.8% on the street, 3.8% in a park. Other places included beach, racecourse, cemetery, party, nurses homes.

In 28% of the cases, other people were present.

How did they react? The women were smaller than the men. Most of the women said they resisted - either verbally or physically. 33% were beaten, hit or choked.

Cases reported to the police - only 18.5% of victims reported their cases to the police. Of the 17 rapists involved, 11 were arrested and eight convicted. 59% of the rape victims considered they received unsympathetic treatment.

Who were the rapists? Only 18% of the rapists were strangers to their victims. Their attitudes towards their victims were described as: Calm and matter of fact (34%), contemptuous (25%), hostile (12%) and/or righteous (11.5%). The profile of men

involved emerged as someone in his twenties and predominantly European. A large proportion were married. Occupations ranged over accountant, driver, teacher, labourer, policeman, soldier, engineer, company manager, town clerk, unemployed.

Some of the effects of the rape experience on their lives included: nightmares, 42%; loss of self-respect, 37%; fear, 39%; hostility towards men, 30%; life affected sexually, 35%; loss of trust in male/female relationships, 34%; suicidal feelings, 36%, psychiatric care, 30%.

4% became pregnant - a figure which tends to answer the suggestion that women will "invent" a rape to explain a pregnancy.

A commentator remarked: "of particular concern to psychologists was that over a third had nightmares and a quarter had contemplated suicide with 20% seeking psychiatric care. This is a high number since only 46.8% sought any form of psychological support". 53.2% suffered in silence and wrote that they had not talked about it before answering the questionnaire."

Overseas research, including that conducted in Australia, bears out the main findings and particularly that a majority of women not only do not report rape but that many do not tell anyone about it.

This research also discredits the myth that rape is an isolated crime of sexual perversion. It shows instead that rape is one of the more common forms of violent crime. The fact that most rapes are not reported tends to obscure the true incidence.

Research has also cast doubt on the contention that were it not for learned, social controls, all men would rape. Rape is not, however, universal to the human species. Studies of rape in 'western' societies tend to suggest that instead of being the result of impulsive, uncontrolled behaviour, most rape is planned. And further, it is contended in our societies, rape is learned behaviour stemming from the kind of socialisation that encourages aggression from males and passivity from females.



Reactions to rape - the victim.

There are problems for the victim whichever way she reacts to a rape experience.

Opinions vary on whether a woman should submit to an attack or try and prevent it. Advice to women reflects this uncertainty. If she resists, she may provoke further violence. If she submits she faces condemnation on the score that it is a woman's duty to defend her honour even if this jeopardises her own safety. If she then reports the rape she will have difficulty convincing the police of the validity of her complaint and a jury of the absence of consent. Further, if she appears to be physically unharmed and even calm, this can be adduced as a further indication that her claims cannot be taken seriously.

It has been said that a woman's case is more easily proved if she has been badly beaten, if torn clothing attests to a struggle and if she is emotionally distraught. Otherwise, the victim must virtually 'prove' that she has been victimised and that her complaint is not vengeful, malicious or unfounded.

The psychological injuries suffered by victims are a matter of concern. What has been termed the 'rape trauma syndrome' or the 'rape crisis trauma' may seriously handicap the victim for some considerable time. Some respondents, for example, in the NOW survey wrote that they had not told anyone of their experience for 30 years and even with the lapse of time they were able to describe the event in great detail.

The psychological reactions of a woman who has been raped are said to be similar to the reactions of people who have experienced other sorts of crisis such as severe accidents or the death of someone close to them.

Researchers have observed a common pattern of emotional reaction which has been termed the 'rape trauma syndrome'. Three phases are usually described. These are:

1. The acute phase.
2. The adjustment phase.
3. The integration phase.

The effects of the crisis can influence the victims experience with the criminal justice system, often to her disadvantage. Her responses may be inappropriate in terms of the standard procedures for investigating and prosecuting rape cases. She may be unable to relate the incident fully or accurately. Following the assault, some victims revert to a state of dependence or helplessness. Decision-making may become an ordeal and the victim is very susceptible to pressure and highly sensitive to the attitudes and judgment of authority figures. Victims often experience feelings of guilt and assume an undue responsibility for not avoiding a dangerous situation. These feelings can be reinforced by questions about her inability to resist successfully or escape.

If the people on whom she relies within the criminal justice system are guided or influenced by some of the social myths about women's behaviour great harm can be done to her personally and to the successful prosecution of her case. Her performance as a witness can be seriously impaired.

The victim who reports a rape is at a serious disadvantage if those interviewing her have little or no understanding of her emotional state. In consistencies, lapses of memory and her demeanour can lend undue credence to a defence counsel's case.

The rape victim must contend with the rape experience and its effects with or without support.

If she reports the rape and the case proceeds, she assumes the role of complainant - the chief witness for the prosecution in criminal proceedings. Such a role can result in a number of problems for the victim, and the anticipation of these may influence her not to pursue this role. As a witness the complainant provides, in court, evidence that a rape has taken place and recalls the events of the alleged crime. Following this she is subject to cross-examination by counsel for the accused.

Prior to the Evidence Amendment Act 1977 defence counsel often adverted in cross-examination to what was considered to be largely irrelevant but highly prejudicial aspects of the complainants character and behaviour (particularly her sexual behaviour). The victim, as the prosecution's chief witness, could be intimidated and the thrust of the trial could be moved away from the accused. Arising from this was the perception that it was the complainant and not the accused who was on trial. Although the practice had been widely criticised, by the N.Z. Law Society for example, it was frequently used as a defence strategy.

The Evidence Amendment Act inserted a new section into the Evidence Act to make substantive and procedural changes in trials where the accused is being prosecuted for a rape offence. Procedurally, the section required that the court may hear evidence relating to: (a) the complainants sexual experience with persons other than the accused; or (b) her sexual reputation; only by leave of the trial judge.

The research now being undertaken will tell us how effective this legislation is or whether innuendo has replaced direct questioning or whether emphasis is placed on other aspects of the victims character in order to discredit her as a witness and thereby casting doubts upon the rape allegation.

Even with certain protections, similar to those in the Evidence Amendment Act, overseas experience has shown that one of the most striking aspects of defence arguments in sexual offence cases is the extent to which stereotypes of what constitutes typical female

behaviour are marshalled to discredit the witness and her testimony. Such arguments resort to stereotypes about how women are supposed to act in situations, comparisons are made with the way in which the victim responded, and these are used to 'prove' that her behaviour in the circumstances should be regarded as suspect. In the words of one authority, "this is a highly insidious method of argument and one that is exceedingly difficult to rebut because it proceeds from myths, not facts".

Given the effects of the rape experience on the victim, such tactics are highly damaging to her self-confidence and engender a reaction to the legal process itself.

The focus of attention on rape and the sense of urgency that has come about through research, surveys, and from political pressure has produced many changes in the way criminal justice systems overseas have responded to the problem of rape.

Many of the changes effected to date have been largely procedural; though reform of rape laws has now gained some momentum. Basic to the matter of legal reform is a recognition, as an Australian Criminologist noted, that: "Laws alone do not necessarily effect a change in peoples behaviour. New rape laws will not by themselves change the deep-seated public attitudes about sex roles and behaviour which account for many of the problems associated with this crime". I share that view.

It would nevertheless be naive to presume that the laws themselves did not embody some of these deep seated public attitudes for laws are not created in a vacuum. For this reason they should be scrutinised carefully to see whether there is relevance to today's needs. Moreover, there is a special obligation on those of us who are connected with the law and for others involved in decision making processes to be among the first to submit our own attitudes to close scrutiny.

Procedural changes may, in theory, be easier to introduce but again underlying attitudes must change if they are to be effective.

I would like to mention two points that are of concern to those who see the fears in them as obstacles to rape convictions. Both are, in a special sense, also linked to the area of the myths mentioned earlier.

1. Rape laws and the relevant literature have been dominated by fears that false rape charges might result in the conviction of innocent men. False complaints are particularly feared in rape cases because of the assumption that many women are hostile to men, amoral or that they can induce conviction solely on the basis of fabricated reports. The motives for such false accusations are said to be: shame, protection of another person, blackmail, hatred, revenge, malice or notoriety, fantasy. Bearing in mind the vital principles of innocence until guilt is proved, and of the burden of proof resting on the prosecution, if those complaints were substantiated by fact they would be well grounded. However in fact they are largely not capable of being substantiated.

The disincentives to report rape and the rigour of criminal investigation and legal rules should make such motives and actions extremely rare. There has been no rigorous research or analysis of these assumptions and yet they retain their currency. Such fears, one prominent American authority notes 'have produced and sustained laws and attitudes that seek to protect the innocent from unjust rape, rather than to protect women from rape'.

2. Associated with the assumption that women make false rape charges, is the belief that it is difficult to defend against a charge of rape. Lord Chief Justice Hale's dictum that rape is a charge "easily to be made and hard to be proved, and harder to be defended" expresses those fears. He is still quoted extensively by legal writers and the reservation is still expressed in many addresses by defence counsel and even in some judges summings up to a jury.

## RAPE IN MARRIAGE

Lastly, there is the issue of 'marital rape'. Whether this will emerge as a priority for change remains to be seen. It is however, a subject that has concerned the women's movement and others who point out the obvious anomalies with regard to the personal rights of married women. Certainly I have no fixed or firm view on the topic.

The traditional common law position is that a husband cannot be guilty of raping his wife. The justification for this rule was that, as part of the marriage contract, a wife agreed to submit to the sexual and other demands of her husband. The rule is anchored in the period when wives were viewed as chattels belonging to their husbands and when their rights to own property or conduct other affairs were very limited.

A number of English Court decisions since the second world war have eroded this common law stance. The direction taken has been to remove the immunity of husbands in cases where court orders such as decrees nisi for divorce, separation arrangements and injunctions are in force in respect of the marriage. Overall these decisions have been characterised by a strong degree of caution.

In New Zealand, the Family Proceedings Act 1980 amended s.128(3) of the Crimes Act to provide that no man may be convicted of raping his wife -

Unless at the time of the intercourse he and his wife were living apart in separate residences.

In the debates on the issue in South Australia this aspect was said to have 'generated far more heat than any other aspect of rape law reform, presumably treading on many sensitive male toes'.

Two years after the rather qualified reform in South Australia, there were only two complaints lodged. None of the flood of complaints expected were received, none of the vindictiveness predicted and no cases of blackmail or fraud. The question being asked is 'does this mean that there are no rapes in marriage or is it simply the case that women are not prepared to bring such complaints to the notice of authorities?'

The question has been of special interest since studies have established that there is a substantial 'dark figure' of rape in marriage. Interviews with lawyers, shelter workers and women about their experiences revealed that women who seek refuge do so because of domestic violence which included forced, non-consensual sexual intercourse and a range of other physical brutalities. The true extent of domestic violence in Australia, as in New Zealand, remains concealed.

The reasons for the lack of recourse to the law are therefore not entirely clear.

A prominent criminologist commented "The rape in marriage reform in South Australia demonstrates how an apparently highly contentious criminal law can, in practice, ultimately be implemented in society with scarcely a ripple". In the end, most of the debate revolved around ideology rather than about substantive matters. The fact that the Swedish legislation passed in 1965 produced similar results and few prosecutions would suggest that some of the fears that had been expressed were groundless.

Whether any perceived difficulties outweigh what some regard as the anomalous and anachronistic idea that married women are in a different position from non-married women is a question that should be addressed. I expect the report I am to receive in a few months will canvass this issue - and certainly I reserve my judgment on the issue until that is received.

Many would agree that some improvements are needed in the way that society in general and the criminal justice system in particular treats the victim of rape. As I have pointed out, rape is a crime surrounded by deeply entrenched myths based on past and prevailing attitudes. Many women are justifiably impatient of their strength and tenacity. There is now a growing realisation that to tackle the problem of rape effectively, we need to start at a level where societal attitudes can be modified.

In the meantime, through discussion, consensus and informed opinion, it may be possible to identify shorter term measures that will relieve the situation of the victim without prejudicing the rights of an accused or pre-empting possible longer term solutions.

I have mentioned on several occasions that any changes that come about will be the result of a proper appreciation of the gravity of the problem of rape, the advice I receive and public opinion. If there are definite pointers to particular areas of change, I hope that these can be introduced promptly. It would however be short-sighted and indeed harmful to move precipitately without a full appreciation of any need for further refinement. Any change must also have a degree of public confidence and support if it is to be effective.

The necessity for avoiding piecemeal responses is underlined by a writer commenting on the South Australian reform of the laws relating to rape. Who said:

In retrospect it is to be regretted that the government did not undertake a review of the law wide enough to allow a total reconceptualisation or categorisation of the crime of rape, or attempt to bring about a more far-reaching congruence between the nature of the offence and its causes, the politics of its incidence, and the laws relating to it.

It is interesting to note that the Attorney-General's Department in South Australia is now contemplating a study such as we are undertaking.



In this address I have not mentioned any specific suggestions or canvassed particular options since to do so would pre-empt the research that is now being done. I hope that a range of issues and problems have been and will be aired at this seminar and that discussion on them will be a further contribution to the widespread participation that I have invited.

## RAPE AND THE NEED FOR LEGAL REFORM

- Dr Lannes Johnson

As the only medical person on the panel, it appears that my responsibility is to speak more to the victim and the effects of sexual assault on **her**, rather than to speak **against** the rapist or male chauvinists generally. Thus I wish to confine my comments to sexual violence only - not get drawn into discussion of women's rights, sexist attitudes in New Zealand, male chauvinism, etc. They are other issues and should not cloud this issue.

Rape as I see it, is a major crime because its effects on the victim can be permanent, or at least long-lasting. It is also a crime which offends deeply the sensitivities of a civilised society. Murder, by definition, has a permanent effect on the victim. Kidnapping, an invasion of family with physical and psychological violence, can scar the victim permanently. Rape, a sort of sexual kidnapping, is a profound invasion of person, and family too, which demonstrates the rapist's inability or inadequacy, or care or respect to fellow members of his society.

### ROLE OF THE POLICE DOCTOR:

This is simple. There is no confusion as to our role:  
 (1) to act for the police as an objective examiner and provide unemotional forensic evidence;  
 (2) to act as a doctor and help the victim.

In Auckland, before the establishment of the HELP CENTRE (which Julie Pettit will explain in more detail), the police doctor functioned only in the former role. The latter, the care of the victim, was impossible except by referral back to the family G.P. - not ideal as :

- the G.P. often not trained;
- the family too embarrassed;
- inevitable delays;
- sometimes no G.P., etc.

There are agencies available to help victims but these seemed unco-ordinated and not available to police cases (often the most brutal rapes). Thus the police doctors, mostly Dr Bill Daniells, initiated a committee to establish a rape crisis centre where:

immediate care, medical and psychological  
 long term care and follow-up  
 statistics, collection and dissemination of information  
 family help and advice  
 education and training of personnel

are co-ordinated in one official centre and patient help is available 24 hours a day to any victim of any sexual assault.

One disadvantage of our centre, is that it is not located in a suitable part of the National Women's Hospital - where more facilities are available, both for care and for better collection of evidence (sperm motility etc.). Our Auckland Hospital Board, in their extreme wisdom, and after many approaches by the Committee, refused to assist HELP in any way. My advice to other areas is to insist that the local hospital be involved, both with premises and with nursing staff. We need to get more professional in the treatment of sexual assault victims - and HELP goes a long way towards that.

#### SOME POINTS TO MAKE:

Care of the victim and apprehension of the offender, are not mutually exclusive. The better the **immediate** care (sympathetic environment, no pressures, washing and clean clothes after examination, etc.) the more reliable the history and testimony. It has been shown overseas that apprehension rates go up when a comprehensive rape crisis centre opens, and that a delay of one hour before the definitive police interview, makes no difference to apprehension.

#### ADVANTAGES OF AN OFFICIAL CO-ORDINATED CENTRE:

##### 1. Advantages to the doctor:

Forensic police doctor work is extended to caring for the victim - facilities away from the cells.

##### 2. Advantages to the police:

Better evidence in individual cases, allows retraining and forming new attitudes to rape. Long term statistics.

##### 3. Advantages to the victim:

Obvious care, etc. Costs met by Accident Compensation Commission, etc. Protection from secondary mental rape by defence lawyers, etc. by "protection" with the counsellors.

##### 4. Advantages to society:

Centre for education and information, to encourage changing attitudes, e.g. that the victim is not on trial.

QUESTIONS:

Warren Young asked "Would written evidence suffice? Would psychological testing of the victim (e.g. Trauma scale) and lie detector information be acceptable evidence to prove credibility prior to Court appearance?"

It seems to me that in a post Freudian so-called sophisticated society, we could be far more intellectual and scientific in our approach to collection of evidence.

It seems that there is a tendency by police and lawyers to indulge in concrete thinking and to decide major issues on minor points, which brings me to -

The Question of Penetration:

It is always annoying to be cross-examined on this; to me its not so much the penetration of the vagina that is important, but the degree of penetration of cerebal cortex. How much scarring up there rather than the lacerations down below. I believe our definition of 'rape' must be changed to include any penetration of the genitalia and body orifices by any object used by the offender. Why do we consider the hymen important at all ?

REGARDING THE NEW SOUTH WALES LAW REFORM:

Where the degree of violence used determines the category of sexual assault and thus the degree of penalty. This worries me; how can one objectify "violence". e.g. What is more violent -

A young girl raped after a Sunday school outing, who faints and suffers no physical damage but who requires years of psychiatric help later; or an Upper Queen Street lass who stoutly resists and gets thumped up with lots of bruising etc. but who says later, as she lights a fag, "Its all in a day's work" ?

Who is going to measure the violence, and **what sort** are we going to measure ? Is the onus on the doctor to state the degree of violence used ?

I was once asked by a defence lawyer "You stated small lacerations around the vagina, doctor. Do you mean little violence was used ?" I answered that to bring about even small lacerations with a blunt object such as most men have, indicates considerable use of violence. Again, black and white thinking "objectifies" the victim" rather than sees her as a person.

In the case where extreme violence is used, and this is not uncommon, and the victim is lucky to escape with her life, then surely it is rape plus attempted murder. My point is

that rape (proven) is rape and that violent rape is rape plus added violence. It is not a different entity from rape without violence. All rape is violent !

Rather than changing the law now, although I've indicated I believe in some major changes, I would rather see money available for major research into:

1. the statistics of rape;
2. the psychopathology for the rapist;
3. a comparison of methods of victim treatment;
4. a treatment programme for the rapist;
5. a comparison of long term effects of rape, between the two major groups :-  
     those that make a complaint and see it through the court appearance; and  
     those that don't but still seek help from trained counsellors.
6. an analysis of the effects of rape between the different ethnic (social) groups - this means different things to different societies, and in New Zealand we have to deal with different societies.