

*Miscellaneous Paper 9*

WOMEN'S ACCESS TO LEGAL ADVICE AND REPRESENTATION

*A consultation paper*

## **The Law Commission**

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Law Commission Miscellaneous Paper 9

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## WOMEN'S ACCESS TO JUSTICE: HE PUTANGA MO NGA WAHINE KI TE TIKAI

The scope of this project has been determined after extensive consultation with New Zealand women. At meetings and hui all around the country and in written and telephoned submissions, thousands of women have described to the Commission their experiences with the law and identified the ways in which their expectations or needs have and have not been met. It has been made clear that for a great many New Zealand women "access to justice" means ready access to quality legal services and procedures. That quality is measured to a significant extent by the responsiveness of legal services to clients' social and economic situations and cultural backgrounds.

The project team is focusing on four major areas in its report to the Minister of Justice which is due at the end of 1997. These areas are:

- access to legal information,
- the cost of legal services,
- access to legal representation and advice, and
- the education of lawyers.

Three consultation papers have already been produced: *Information About Lawyers' Fees* (NZLC MP3), *Women's Access to Legal Information* (NZLC MP4) and *Women's Access to Civil Legal Aid* (NZLC MP8).

Research is now underway on several topics within the remaining areas and further consultation papers will be made available in the first half of 1997. These will include a paper presenting the findings of the consultation process with Maori women, and papers on Lawyers' Costs in Family Law Disputes and Lawyers' Education.

This paper has been prepared by the project team for the purposes of consultation. The paper does not contain Law Commission policy nor does it necessarily reflect the views of the Law Commission. The Commissioner responsible for this project is Joanne Morris.

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## SOME WOMEN'S EXPERIENCES

“How do we choose a lawyer who will represent us well? We just don't know who is the right lawyer for us. I rang a lawyer for help and the secretary said she would get him to ring me. He didn't even bother to contact me.” – *Transcript of hui held with Maori women in Rohe 2*

“I think that if there are a lot more Pacific Island lawyers out there perhaps I would feel more comfortable. The difference is between telling secrets to a stranger and telling your secrets to somebody that you might feel comfortable with and I know that I would feel more comfortable with one of my own people/culture.” – *Report on Consultation with Pacific Island Women 11*

“The women felt that although lawyers may feel they are explaining things often the language is such that the women do not understand what is being said. This means they fail in some cases to be in a position to predict what the long term results of a decision will be. Sometimes they have agreed to arrangements without understanding what is inherent in that decision eg, guardianship rights. Sometimes lawyers assume a basic understanding of the law on the part of their client that just is not there. One woman said that after she had asked a question once and not understood the reply she felt too dumb to ask again.” – *Submission 29*

“In some situations there has been a lack of recognition of the emotions women tend to express more openly than men and often feel more strongly. This is usually ridiculed, ignored or played down. Often this emotion is directly related to the stress the woman is feeling. This approach is unsatisfactory. There is also a lack of recognition given to the lack of confidence women feel when involved in a legal dispute and particularly when coming out of a 'failed' relationship.” – *Submission 58*

“A very upsetting process in marriage break-up is the often condescending attitude of the young lawyer – often a woman – who is appointed to cases through legal aid. Many women feel they are treated as 'simpletons' and their comments and requests are often ignored. A common reply to women who related the behaviour of the male partner is often 'He is such a nice man, he wouldn't do that' and the lawyer often becomes one more hurdle for the woman to deal with. While it is understood that there must be communication between lawyers of both parties many women feel a decision is often reached in the back room and the woman has no input into the outcome. Often the feeling is it is for the expediency of the lawyers concerned and not for the good of the family.” – *Submission 257*

## PART 1 – INTRODUCTION

Barriers to ready access to justice can come in many forms. They include cost, cultural barriers, language difficulties, time delays, non-availability of information, and incomplete understanding between those providing legal services and their clients. If these barriers to access to the law and to resolution of disputes are not minimised, the overall framework of justice will come into disrepute, and so pose a significant threat to social cohesion.<sup>1</sup>

1 The Commission's consultations on the subject of Women's Access to Justice attracted a large number of women whose experiences with the legal system led them to believe they had been unfairly treated by the law or its processes and agents. The great majority of the women who attended more than 100 hui and meetings held throughout New Zealand or made written and telephoned submissions to the Commission spoke about barriers they had experienced obtaining legal services appropriate to their needs.<sup>2</sup> This paper examines the barriers women experience when trying to obtain legal advice and representation. It focuses particularly on the lack of choice of legal services and shortcomings in the communication skills of those providing legal advice and representation, usually lawyers.

2 The criticisms voiced by women about their access to user-friendly legal services may seem to be at odds with the recently released New Zealand Law Society *Poll of the Public*.<sup>3</sup> That poll, conducted by telephone with a representative sample of 500 randomly selected members of the public, 250 women and 250 men, found that most had a very positive perception of the lawyers whose services they had engaged. In particular: 93% of the public agreed that their own lawyer was professional, 90% found their lawyer to be reliable, 84% said their lawyer understood their situation, 79% agreed that their lawyer explained things well and 89% agreed that their lawyer was competent in the job that they did (14–15).

3 The *Poll of the Public* reveals that the three most common matters for members of the public to consult lawyers about are property transactions, making a will and borrowing money/arranging finance (20). It also shows that only 4% of adult New Zealanders had ever consulted a lawyer in relation to family violence, 16% in matrimonial matters, 10% in custody and access matters, 4% as witnesses in criminal matters and 3% as defendants in criminal matters (20). The *Poll of the Public*, with 21% of its sample with a household income of less than \$20 000, found that one third (32%) of New Zealanders mentioned that there had been a time when they could have used a lawyer's help but did not seek it (61). Cost was the major factor for those who chose not to use a lawyer, with 56% saying they did not consult a lawyer because of the cost (62). Cost was also more of an issue for women, with 66% of the women who chose not to consult a lawyer mentioning cost as a reason for not getting help, compared to 49% of men (62).

4 While the New Zealand Law Society *Poll of the Public* interviewed a representative sample of the New Zealand population, the far greater number of women who spoke to the

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<sup>1</sup> *Ministry of Justice – Briefing Paper for the Minister of Justice* (October 1996) 14.

<sup>2</sup> At the time this paper was published the Commission had received approximately 500 written and telephoned submissions in response to its call for submissions. Approximately 300 submissions were received from individual women and community groups and 200 from individual lawyers. Further comments were received from 60 Pacific Islands women in a *Report on Consultation with Pacific Island Women* prepared for the Commission by Ida Malosi and Sandra Alofivae and from approximately 100 lesbians in a *Report on Consultation with Lesbian Women* prepared for the Commission by Strategic Legal Services. The Commission has also received further submissions on the consultation papers *Information About Lawyers' Fees* (NZLC MP3), *Women's Access to Legal Information* (NZLC MP4) and *Women's Access to Civil Legal Aid* (NZLC MP8). The Law Commission has also held numerous meetings with lawyers in Auckland, Hamilton, Rotorua, Christchurch, Invercargill, Nelson, Wellington and Hastings, at District and New Zealand Law Society level and with members of the judiciary and government officials.

<sup>3</sup> *Poll of the Public – The New Zealand Law Society* (MRL Research Group, Wellington, February 1997).



Commission did so because they had negative experiences of some aspect of the legal system. The great majority of the women told the Commission that resort to the legal system was, for them, a luxury which they would only contemplate in a crisis. As a result, the matters for which most had sought legal assistance arose from a family breakdown, when protection from family violence, the resolution of a custody and access dispute and/or a division of matrimonial or de facto property was required. Less commonly, women who spoke to the Commission had been involved with the legal system as a witness to or a defendant in criminal matters.

5 The over-representation in the Commission's consultation of women who had resorted to the legal system only in connection with family and criminal matters is consistent with the findings of a recent Canadian study:

Many of the [legal] problems [women experience] have to do with their current or past relationships. Single-parent mothers, and some women who still live with their husbands, need legal assistance for family law matters such as separation or divorce, division of matrimonial property, child custody and access and support payments. . . . Women also need assistance as victims of crimes of violence. . . .<sup>4</sup>

6 The Canadian study also found that low income people, a group in which women are over-represented in New Zealand,<sup>5</sup> have a great but unmet need for civil law services. A major cause of this need is that many low income people are so badly informed that they do not know or believe they have any rights.<sup>6</sup> The Commission's consultations suggest that this problem also exists in New Zealand. While women described barriers to obtaining legal services in connection with particular types of matters that they could not avoid becoming involved in, family breakdown and criminal matters, the barriers described may also apply across a much broader range of legal matters where people are currently unaware that they have legal rights to protect and enforce.

7 A working definition of legal advice for the purpose of this paper is:

*law related information provided to a person that explains how the law and legal processes apply to that person's particular situation.*

Legal representation for the purposes of this paper means:

*advice to and advocacy on behalf of another person in a proceeding before a court or tribunal in which the person is a party.*

8 Clearly both women and men experience barriers to obtaining legal advice and representation and for some of the same reasons. Yet women experience particular problems because of the effects of gender. The Australian Law Reform Commission defined gender as:

A social construction [which] arises from the commonly held values, beliefs and perspectives of an identifiable group of people. It develops over time and becomes part of the culture of the group. Gender describes more than biological differences between men and women. It

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<sup>4</sup> *Legal Aid and the Poor – A report by the National Council of Welfare* (Canadian Government, Winter 1995) 12.

<sup>5</sup> *Legal Aid and the Poor – A report by the National Council of Welfare*, 10. At the time of the 1991 Census half of the women in New Zealand earned less than \$11 278 (1996 – \$12 405) compared with men earning \$19 243 (1996 – \$21 167) (*All About Women in New Zealand* (Statistics New Zealand, Wellington, 1993), 109). The results from the 1996 are not yet available. Statistics New Zealand advises that from 1991 until the end of 1995, the Consumer Price Index moved upwards by 10.4%. However, income levels did not move upwards to that extent. A rough indication of the current value of the 1991 income dollar figures can be achieved by multiplying the 1991 figures by 10% as has been done for the bracketed figures.

<sup>6</sup> *Legal Aid and the Poor – A report by the National Council of Welfare*, 15. The *Poll of the Public* acknowledges that it does not take into account the fact that there may be New Zealanders who had been in a situation where a lawyer could have helped but were not aware that this was the case (58).

includes the ways in which those differences, whether real or perceived, have been valued, used and relied upon to classify women and men and to assign roles and expectations to them. The significance of this is that the lives and experiences of women and men, including their experience of the legal system, occur within complex sets of differing social and cultural expectations.<sup>7</sup>

9 Although the effects of gender unite to some degree the experiences of women as a group as they seek to obtain legal advice and representation services, their experiences can vary widely. Other social forces such as ethnicity, age, sexual orientation and disability all operate in distinct ways to affect access to legal advice and representation services. Throughout its consultation processes, the Commission has taken great care to speak with and listen to the concerns of New Zealand women in all their diversity. The effects of gender and other social forces upon women's search for legal services are clearly illustrated by what women have told the Commission.

10 Part 2 of the paper describes the barriers that women told the Commission prevented their access to legal services. Many of the problems relate to the difficulties women experience finding an appropriate lawyer in a legal system that is alien and often distrusted. Part 3 provides an overview of the main providers of legal advice and representation: lawyers, community law centres, and Citizens Advice Bureaux. Part 4 makes suggestions for improving women's choice of legal services and Part 5 makes suggestions for improving communication between women and their legal advisers.

11 This paper does not discuss in detail the cost of legal advice and representation. The effect of the cost of legal services is discussed in the consultation papers *Information About Lawyers' Fees* and *Women's Access to Civil Legal Aid*, and in the forthcoming paper *Lawyers' Costs in Family Law Disputes*.

12 This paper also does not directly address issues relating to the training of lawyers, which will be considered in a further paper, *Lawyers' Education*, to be issued during May for comment.

This paper is based upon the comments made to the Commission by thousands of New Zealand women users and potential users of legal services. The Commission would be very grateful for responses to those comments and/or answers to all or any of the questions asked in the paper about which you have particular knowledge, interest or views. Alternatively, we would be very grateful for a more general submission based on some of the ideas in this paper.

Please return these responses to the **Women's Access to Justice : He Putanga mo nga Wahine ki te Tika Project, Freepost 56452, Law Commission, PO Box 2590, Wellington**. Alternatively, if you would like to make a submission by telephone, please call **Michelle Vaughan** toll-free on **0800 88 3453**. If you would like to make a submission by e-mail, please send it to **MVaughan@lawcom.govt.nz**.

We would like responses by **Friday 6 June 1997**, please. If you have problems meeting this deadline, please let us know.

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<sup>7</sup>

*Equality Before the Law* (ALRC DP54 1993) 1.

## PART 2 – WHAT WOMEN HAVE TOLD THE COMMISSION

13 Women have told the Commission in detail about the barriers they encounter obtaining and using legal services. The barriers occur in:

- finding legal advice and representation;
- choosing an appropriate legal service provider; and
- working with the legal service provider.

14 This part of the paper examines each stage of that process but it focuses upon women's choice of legal service providers and communication between women clients and those providers. The issues women have identified in finding legal advice and representation, while very important, are very similar to the difficulties they experience finding legal information; these were addressed in the paper *Women's Access to Legal Information* (NZLC MP4).

### Difficulties finding legal advice and representation

15 The main reasons identified by women as preventing them from finding legal advice and representation are:

- fear of the cost of lawyers;
- lack of information about the law; and
- lack of information about legal advice and representation.

#### *Fear of the cost of lawyers*

16 As noted in the consultation paper on *Women's Access to Civil Legal Aid* (NZLC MP8) women, who are over-represented in part-time paid work and in occupations with low median incomes (eg clerical and service occupations), experience great difficulty affording legal services. Time and time again women described legal services as a luxury which would be foregone except in the most difficult situations of vital importance to them.

“The cost puts people off – they think what's the use of going.” – *Meeting with visually impaired women, Rotorua, 1996*

“[Cost] is a major problem – boy oh boy is this the real problem. I won't go and see any lawyer because of the cost.” – *Transcript of hui held with Maori women in Rohe 3*

“Lawyers cost, what, \$150 per hour? Even if I can find a job that pays \$15 an hour it would take me ten hours to earn what I pay for one hour from a lawyer. That's ridiculous.” – *Report on Consultation with Lesbian Women*

“If you are on a benefit you have to think twice before you get a lawyer.” – *Meeting with visually impaired women, Rotorua, 1996*

*Lack of information about the law*

17 One of the strongest messages to emerge from the Commission's consultations with women is the lack of available and accessible information about the law. At meetings throughout New Zealand the Commission was told that women were very often unsure whether they had a legal problem and/or what type of legal problem it was.

"I don't know anyone who knows about the law or where to go." – *Transcript of hui held with Maori women in Rohe 4*

"I didn't know where to get information to help me decide what to do with my daughter so I was forced to go and see a lawyer. I now know I could have gone to Social Welfare or CAB [Citizens Advice Bureaux] to get the info I needed to make a decision. I learned the expensive way." – *Report on Consultation with Pacific Island Women 23*

"Women will not contact recognised places to clarify issues because they do not know what kind of questions to ask to elicit the right reply." – *Submission 29*

*A lack of information about available legal advice and representation*

"A lot of the women we see don't know how to get lawyers to help them." – *Transcript of hui held with Maori women in Rohe 3*

"I didn't know how to ring the Court or a lawyer because I couldn't find it in the phone book. For Doctors and Hospitals you look in the front." – *Report on Consultation with Pacific Island Women 4*

18 The Commission was also told that a common problem for women is not knowing how to find out where to obtain legal advice. While women are aware that lawyers provide legal advice, many had dismissed the idea of going to a lawyer in private practice because of the cost. For those women it was vitally important to know of the availability of other legal service providers. Yet in many parts of New Zealand lawyers in private practice are the only legal service providers. Even in areas where there are alternative services in the form of community law centres, knowledge of them is not widespread, especially amongst some groups of women. For example, visually impaired women in Wellington were unaware of the Wellington South Community Law Centre, hearing impaired women at a meeting in Palmerston North were unaware of the local Citizens Advice Bureau's free legal advice evening, and disabled women in Invercargill were not aware of the existence of the Southland Community Law Centre.

19 Some women who know of the existence of local Citizens Advice Bureaux and community law centres have reasons for not using their services, including the public nature of the act of approaching the agencies (especially for women attempting to leave violent relationships) and the distance required to travel to them.

“In 1989 our relationship had deteriorated to such an extent that I urgently needed legal advice to protect myself and my assets . . . There was a major difficulty – a small community where we were well known, and I wanted advice I could make decisions on, not inadvertently triggering a reaction that could impact on my life and well-being, nor that of our family. [X] the nearest city, was 100kms away and I needed another ‘reason’ to be able to go there so my purpose was not revealed. I rang first the CAB who referred me to the Courthouse and from there I was given the names of five women solicitors who I could contact. . . . Finally I had a name, an appointment and with a family member in hospital a reason to visit [the city].” – *Submission 233*

20 Women often said they had to be very discreet when seeking legal advice for fear of reprisals should word get back to their partners.

“I found my lawyer through the yellow pages. As I sought legal advice before my ex-husband and I separated I did not want to ask too many people that I knew about who they could suggest for me to talk to, so I found it easier to look in the phone book and be as discreet as I could be.” – *Submission 47*

### **Choosing an appropriate legal service provider**

21 If information is obtained about providers of legal advice and representation, the next stage of the process for prospective clients is to choose a legal service provider. From the comments made by New Zealand women it seems that several factors operate to constrain that choice. The factors include: the intensely personal nature of family law related matters; many women’s lack of confidence in both the legal system and in their own abilities to manage the processes and interactions which the legal system entails; a desire to be assisted by someone from the same culture; and a fear of discrimination due to sexual orientation. Many women told the Commission that if they could, they would choose to obtain legal services from someone who was similar to themselves in some important respect, such as their culture, sex or sexuality, and that having that choice would allay many of their fears about negotiating the alien terrain of the legal system.

#### *Distrust of lawyers and the law*

“There was strong agreement that women lack confidence in the legal system itself.”  
– *Submission 218*

22 From its consultations the Commission learned that for a disturbingly large number of women fear of lawyers and the law is a barrier to seeking legal advice and representation. This was especially so for women who were least likely to identify with the Pakeha male tradition of the

legal profession. Many women commented that they did not personally know any lawyers who they could approach.

23 At each of the 48 hui held with Maori women a distrust of lawyers and the law itself was evident. This will be discussed further in a paper presenting the findings of the consultation process with Maori women.

“The attitudes of lawyers to Maori women are terrible, to the point where Maori women are discriminated against” – *Transcript of hui held with Maori women in Rohe 2*

“I feel that the justice system fails, irrespective of whether you are Maori or non-Maori” – *Transcript of hui held with Maori women in Rohe 5*

24 For some lesbians, fear of disclosing their sexual orientation to their lawyers, due to the uncertainty of knowing whether it was safe to do so, prevented them trusting heterosexual legal advisers.

“There’s so much homophobia from lawyers” – *Report on Consultation with Lesbian Women*

“You know even things like after \$7000 and heaps of visits the receptionist still wouldn’t say hi to me.” – *Report on Consultation with Lesbian Women*

“You even have to think about whether you will come out – it’s not just like you’re going in for this legal service delivery stuff – you’ve got this added thing that you’re thinking as well.” – *Report on Consultation with Lesbian Women*

25 Some refugee and migrant women said that they would not even consider approaching lawyers for help because in their home countries it was not safe to visit lawyers due to the corruption of the legal system. These women were not aware that the New Zealand legal system does not operate in the same way.

26 A theme of the Commission’s consultations with Pacific Islands women was that they would “shy away from seeking legal assistance because of the shame and humiliation of having to disclose intimate details to a complete stranger”.<sup>8</sup> It was disconcerting to learn that many Pacific Islands women’s perception of the law is that its main purpose is to punish people by deporting or imprisoning them.

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<sup>8</sup> Report on Consultation with Pacific Island Women, 11.

*Shortage of women lawyers*

“The way I was feeling at the time I felt I wanted a female lawyer as she would be more supportive of me.” – *Submission 65*

27 At every meeting around New Zealand there were women who told the Commission that they prefer to seek legal advice from a woman lawyer whenever personal matters are central to their legal problems. However, many women who expressed that preference had been unable to engage a woman lawyer for such matters, either because of the shortage of women lawyers in their area or a lack of information about how to contact a woman lawyer.

*Shortage of Maori lawyers*

“It’s horrible to say, but it is terrible communicating with Pakeha. The power goes to their heads and leaves their heart. The culture of Pakeha is not sensitive to our cultural ways. If someone would just try to understand our ways.” – *Transcript of hui held with Maori women in Rohe 3*

28 At each of the 48 meetings held with Maori women there was a call for more Maori and, in particular, Maori women, lawyers.

“Only a Maori can understand what Maori go through. We need to connect with another Maori woman, this is really important for us.” – *Transcript of hui held with Maori women in Rohe 2*

“We need more Maori women lawyers . . . Someone who can understand where we come from as Maori. Someone who we do not have to explain ourselves to.” – *Transcript of hui held with Maori women in Rohe 1*

“We have not one Maori male or woman lawyer who we can turn to and who will understand us as Maori first. We badly need more Maori lawyers in our area.” – *Transcript of hui held with Maori women in Rohe 4*

29 Maori women also spoke of the difficulty dealing with lawyers who were unable to meet their cultural needs.

“They are not even trained to look after Maori clients.” – *Transcript of hui held with Maori women in Rohe 5*

“We need [Maori lawyers] because of the cultural barriers that exist between us and the Pakeha lawyers in town. If we had more Maori lawyers it would be much easier for us women to approach them because they know of our culture. So it would be much easier for us to speak more comfortably if we had Maori lawyers . . . Our elders find it more comfortable talking to a person who is Maori.” – *Transcript of hui held with Maori women in Rohe 7*

*Shortage of lawyers from Pacific Islands and other cultures*

30 In the Commission’s consultations with Pacific Islands women, many spoke of their frustration and sadness at not being able to find a lawyer who could understand their cultural needs.

“[A]nd for me to talk about the personal things that have happened in my life was really hard. PI women don’t talk openly like that to Palagi people. We are too shame.” – *Report on Consultation with Pacific Island Women 11*

“I was too ashamed to ask the lawyer to explain things. I was worried that the lawyer would think that I was just a dumb Samoan.” – *Report on Consultation with Pacific Island Women 4*

“And I think that if there [were] a lot more PI lawyers out there perhaps I would feel more comfortable.” – *Report on Consultation with Pacific Island Women 18.*

“When I wanted to go to Court about my kids I wanted to find me a Tongan lawyer but I didn’t know where to [go].” – *Report on Consultation with Pacific Island Women 7*

31 As well as preferring a lawyer of the same culture, again women lawyers were preferred by many Pacific Islands women.

“It would be a Pacific Island woman that I would feel more comfortable with. Some things you can’t talk to a man about not even your husband.” – *Report on Consultation with Pacific Island Women 10*

*Shortage of non-English speaking lawyers*

32 Women from minority linguistic backgrounds spoke of their acute difficulties seeking legal advice and of their need for interpreters. The women said that it is often incorrectly assumed by lawyers that a family member can and should interpret but, especially when the matter is personal, this can be highly inappropriate.



33 Deaf women have told the Commission about their need for interpreters and lawyers who can use New Zealand sign language.<sup>9</sup> Again the women said they have been forced to rely on family members to interpret in cases where that was not appropriate.

“What lawyers are available for deaf people? The lawyer had no sympathy or empathy for this woman. I told the lawyer that I was not an interpreter and this was ignored. Who helps this person? No-one was available to interpret for her. No-one is available to interpret to our people who are deaf.” – *Transcript of hui held with Maori women in Rohe 12*

#### *Physical access to legal services*

34 Physically getting to services constrains the choice of many women who need legal services, especially for women who live in remote areas, are not able-bodied, or are responsible for children.

“A lot of women are isolated because they have no vehicle, phone or transport.” – *Transcript of hui held with Maori women in Rohe 1*

“There are no resident lawyers on the [Chatham] [I]slands nor is there any access to a law centre to obtain advice and information.” – *Submission 392*

35 Rural women invariably spoke of difficulties obtaining legal advice. Women living in some of the smaller settlements have had to travel well away from their local areas to obtain legal advice. In some cases rural women have had to travel to receive legal advice because their male partners’ business connections in the area meant that local lawyers were unwilling to act on their behalf. This situation was not confined to smaller centres: a number of women living in cities told the Commission that their partners’ business connections meant local lawyers were not willing to act for them.

36 For women living in the suburbs of larger cities geography also poses problems. Legal offices are generally situated in the central city area or in more affluent suburbs. Travel costs may create difficulties and further constrain choice, especially if there is limited public transport available.

“Nine times out of ten people just can’t afford the fares to travel. It’s too expensive. When you weigh the fare up against the kids’ bread on the table there is no choice.” – *Transcript of hui held with Maori women in Rohe 1*

<sup>9</sup> Meeting with Deaf women, Palmerston North, 1996.

37 Women in prison also described their problems accessing legal advice and representation.

“Access to a lawyer in prison is difficult. I am in the maximum security wing which means I am unable to use the telephone myself to contact my lawyer. I must rely on staff to do this and often by the time they are able to do this my lawyer is already in court for the day. My lawyer is reluctant to come out to the prison and will only talk to me on the telephone about any problems I may have.” – *Submission 253*

38 Women who provide care for others consistently described to the Commission the difficulties they must overcome in order to attend legal offices and the courts. Women as caregivers are often tied – by the needs of those in their care as well as by their budgets – to their home and more immediate environment. The prospect of attending a lawyer’s office which is not equipped to provide care for children is a powerful deterrent, especially as the children may then hear what is going on. But even if there is childcare provided in lawyers’ offices, women said that the difficulty and expense involved in bringing children to any appointment, or series of appointments, could make attendance impossible. Women who were unable to arrange alternative care for children or other dependents told the Commission that they could not pursue legal advice and representation.

39 In many of the submissions received from lawyers it was made clear that there are often not adequate facilities for children in law offices and that home visits are not made as a matter of common practice.

“... the only time that he could find to give appointments was at 7.30am in the morning and [I] had a pre-schooler and 2 school age children. Now you can imagine to get to a lawyer’s office by 7.30am you’ve got to get the children up an hour early get them all dressed and washed you’ve got to either take the toddler to a friend or bring a friend. I had to call on a friend to mind the children and then someone else to get them off to school.” – *Submission 65*

“A city lawyer was confident a particular woman client could have made a successful claim which would have been very worthwhile financially. However, the woman abandoned the claim when she was made aware of the number of times she would likely have to travel into the city from the outer suburbs to attend appointments with the lawyer and others: it was impossible for her to obtain childcare during the times she would need to be away from home.” – *Submission 8*

### Working with the legal service provider

40 The focus of this section is on the problems women have working with their lawyers. The customer service issues which women have identified as deterring them from proceeding with their legal matters are related to a failure of communication in the broadest sense. That failure seems to stem from many lawyers' lack of awareness of the general impact of women's socio-economic position upon individual women's interactions with the legal system and lawyers. This lack of awareness then affects all aspects of the communications between lawyers and women clients leading, for example, to assumptions being made by lawyers about women's familiarity with legal matters, about the way in which women should express themselves, and about the priority to be accorded to women's concerns. It is notable that most women spoke of their experiences with lawyers in private practice. The women who had used community law centre services were generally not critical of the skills of law centre staff.

41 An all too common example of lawyers' lack of awareness of women's lives was of lawyers failing to respond appropriately to women who were seeking protection from violent partners. Some women reported being told by their lawyers that they were vengeful in their efforts to protect themselves and their children from abusive partners.

“[L]awyers have some idea that we make up tales of abuse for revenge, anyone who thinks that has never been a single parent, if you thought your kids would be safe you'd be more than happy to let their dad have access just to get a break, some time alone.” – *Submission 267*

“After being told I was over-emotional not trying to understand my husband's needs, not thinking that the children might want to be with their (violent) father, did not need a non-molestation order, was not necessary to get an interim custody order (even after the children had to be put in a safe house as they were all on his current passport) and he had tried to lift them twice – all I needed was counselling!! – I became very angry and very desperate. I could not change lawyers even though I was quite frightened and intimidated by him. He was and still is a very well respected and liked lawyer I believe.” – *Submission 124*

42 Women also told how their descriptions of their lives have been disbelieved or ignored by their lawyers. One woman told her lawyer that her partner kept a knife under the bed yet was not asked whether her husband was violent towards her (*Submission 388*).

“I had no help from anyone. I didn't know who was a good lawyer or anything. I said I want a non-molestation from yesterday, I want a non-molestation order urgently. The lawyer didn't do that, she didn't listen to me. She put it through the normal channels and I didn't get my order in the end.” – *Transcript of hui held with Maori women in Rohe 10*

43 It was common too for women to say that they felt forced by their lawyers to behave in a particular way that was at odds with their nature or situation.

“If you’re assertive you are deemed to be too controlling or aggressive. We are expected not to complain. If you get stressed they often believe you can’t control yourself and they use that against you in your case.” – *Submission 267*

“In my experience women seem to be penalised by the current legal system on two counts. On one hand for any display of emotion and on the other because there is no legal channel for so-called emotional issues. I am warned that an emotional outburst in the presence of a judge could cost me my case. Because one speaks with tears in one’s eyes, anger in one’s voice and pain in one’s words – does this mean that what is being spoken is invalid? There are male lawyers who do not appear to be able to hear what is being said by a woman client unless she manages to be cool and “rational”. They seem to “switch off” and ignore what she is saying because of the way she is saying it. Therefore she feels herself failed by the very person who is there to be her advocate. He might well box on regardless and achieve a satisfactory end solution. How this is achieved is an academic issue for him. For his female client it is possibly a moral one and not unrelated to her personal integrity which includes honouring her emotional equilibrium.” – *Submission 219*

44 While many women said that they resented having their emotions treated as irrelevant and quite separate from their often intensely personal problems, lawyers have indicated that dealing with clients’ emotions is not their responsibility and that emotions are quite irrelevant to legal matters.

“[Women] expect you to be in a role of a counsellor as well as legal adviser. They will not keep to relevant details for the ex-parte applications and therefore you use too much time in the consultations.” – *Submission 200 (lawyer)*

“Sometimes [women] clients require more empathy and compassion than budgetary restraints allow. I am there as a lawyer and it is a waste of resources to be used as a counsellor/shoulder to cry on.” – *Submission 84 (lawyer)*

“Women clients often want a friend/counsellor rather than a lawyer – hard sometimes to keep them on track. . . . while you might empathise there are other professionals/avenues for counselling.” – *Submission 95 (lawyer)*

“[As a woman lawyer] I am expected to have more empathy, more compassion and to charge less.” – *Submission 310 (lawyer)*.

45 Despite lawyers’ attitude that clients’ emotions are not their business, lawyers’ submissions indicate that referrals to relevant support services are not common practice. Women at many of the meetings said that they did not expect lawyers to be social workers but that they would benefit from lawyers referring them to appropriate services.

46 Many women also told the Commission that when they finally found a lawyer, they could not understand the information they were given. For some, the experience was so distressing they did not return.

“When I went to see a lawyer he kept talking in big words that I couldn’t understand. I left his office not even knowing what he had said to me. I felt so stupid. I never went to another lawyer again. Why can’t they talk the same language as us? Why do they have to hide behind those big words.” – *Transcript of hui held with Maori women in Rohe 9*

47 Many women told the Commission that because they could not understand the information provided by their lawyer, their confidence in the legal process was undermined. Women, regardless of socio-economic group and educational achievements, were almost unanimous in their concerns about their communication with lawyers. It was common for the Commission to hear that women do not understand the meanings of terms like “custody”, “access” and “guardianship”, and that their lawyers’ explanations, when given, were not always helpful.

“The lawyer talks to you in big words. They think you can understand but they never ask, ‘Do you understand me?’” – *Report on Consultation with Pacific Island Women 3*

“The language of the law is too difficult.” – *Meeting with rural community workers, 1996*

“It’s very difficult to understand. You need a dictionary to understand a lawyer. It should be everyday language.” – *Report on Consultation with Lesbian Women*

48 Information about the likely cost of legal matters, while of great importance to women clients, was often not forthcoming. A number of women told the Commission that when they finally did obtain information about costs from their lawyer, often upon receipt of their first bills of costs, they could not afford to continue. These issues are discussed further in *Information About Lawyers’ Fees* (NZLC MP3).

“I often asked why this process took so long to finalise. My solicitor told me that my costs would be between \$600–\$2000 initially, but my final account totalled \$25 000.” – *Submission 29*

49 Women also described the difficulty of receiving timely information from their lawyers so that they could make informed decisions about the steps to be taken in resolving their legal problems. For many women this lack of information indicated that their lawyers had assumed an inordinate amount of control of their legal matters rather than assisting the women to reach decisions appropriate to their cases.

“In general I’ve found lawyers have not kept me informed of realities – what to expect, the purpose of meetings – I was just expected to understand. I know lawyers

have to do their job but if I know what is going to happen I can be better prepared and that is good for everyone.” – *Submission 267*

“Women spoke of lawyers having been controlling of them as opposed to there being a partnership relationship.” – *Submission 275*

50 The Commission was told by many women that legal matters took a very long time. It was also told that explanations for delays were not forthcoming from lawyers. It was plain that many women perceived the lack of information about likely timeframes and delays as evidence that their lawyers did not take their problems seriously. For women who were anxiously awaiting the resolution of custody and property disputes before they could get on with their lives, the delays and lack of explanations undermined their confidence in the legal process and its personnel.

51 Disabled women described how lawyers often did not know how to communicate with them. For visually impaired women this problem was particularly acute when relying on lawyers to advise upon the contents of documents.

“Sometimes lawyers read [the documents] out fast to you.” – *Meeting with visually impaired women, Wellington 1996*

## QUESTIONS

- 1 What comments do you have about the issues identified here?
- 2 Are there issues that have not been identified?

## PART 3 – WHO IS PROVIDING LEGAL ADVICE AND REPRESENTATION?

52 This part of the paper contains a very brief overview of the three main providers of legal advice and representation:

- Lawyers in private practice
- Community law centres
- Citizens Advice Bureaux.

53 These providers have been selected because they have been most commonly mentioned by women as the people and places they would contact for help with legal problems.

## Lawyers in private practice

54 When legal problems arise lawyers in private practice seem to be most commonly thought of as being able to provide assistance.<sup>10</sup> Lawyers have traditionally had a monopoly on the provision of legal advice and representation before the courts. For example, it is an offence for an unqualified person who is not enrolled as a legal practitioner to

- act as a solicitor;
- hold her or himself out as a solicitor;
- lead people to believe that she or he is a solicitor; or
- carry on business as a solicitors' agent.<sup>11</sup>

### *Profile of lawyers*

55 There are now over 7400 lawyers with practising certificates spread throughout New Zealand.<sup>12</sup> Approximately 90% of these lawyers are in private practice offering services to clients.

56 The following table provides an overview of the geographical spread of the law profession. From this it can be seen that lawyers are more heavily concentrated in those areas of high population density.<sup>13</sup>

	<b>Practising Certificates Issued</b>
<b>Auckland</b>	<b>3020</b>
<b>Gisborne</b>	<b>46</b>
<b>Taranaki</b>	<b>122</b>
<b>Waikato/BOP</b>	<b>689</b>
<b>Hawkes Bay</b>	<b>184</b>
<b>Wanganui</b>	<b>63</b>
<b>Manawatu</b>	<b>129</b>
<b>Wellington</b>	<b>1768</b>
<b>Marlborough</b>	<b>38</b>
<b>Nelson</b>	<b>104</b>
<b>Canterbury</b>	<b>792</b>
<b>Otago</b>	<b>319</b>
<b>Southland</b>	<b>112</b>
<b>Westland</b>	<b>27</b>
<b>TOTAL</b>	<b>7413</b>

57 At the end of 1996 women comprised just over one quarter of the legal profession (2075). While almost 3000 lawyers with practising certificates are principals in firms, only 358 (12%) are women.

<sup>10</sup> The term lawyers will be used in this paper. Other terms such as solicitor or law practitioner are often used to describe lawyers.

<sup>11</sup> Law Practitioners Act 1982 s 64.

<sup>12</sup> New Zealand Law Society 100th Annual Report for the year ended November 1996, 5.

<sup>13</sup> New Zealand Law Society 100th Annual Report for the year ended November 1996, 5.

58 There are currently no detailed statistics available on the ethnicity of lawyers.<sup>14</sup> Information from the 1991 Census indicates that, at that time, there were 104 Maori lawyers (2.3% of all practising lawyers) and 63 Pacific Islands lawyers (1.4% of all lawyers).

#### *Membership of Law Societies*

59 All lawyers with practising certificates are members of the District Law Society for the area in which they practise and of the New Zealand Law Society. As it is not possible to practise as a lawyer in New Zealand without a practising certificate, membership of these bodies is compulsory.

#### *Training and registration*

60 The Law Practitioners Act 1982 controls who may act as a lawyer in New Zealand. A New Zealand trained lawyer must study for a law degree at University and then undergo a further period of training through the Institute of Professional Legal Studies before being admitted to practice as a lawyer.<sup>15</sup>

61 Once a lawyer has been admitted to practice, ongoing professional training is not compulsory. However, the New Zealand Law Society and some District Law Societies run continuing legal education programmes for their members on a range of matters.<sup>16</sup>

#### *Regulation of lawyers*

62 Lawyers must comply with the Law Practitioners Act 1982 and rules and regulations made under that Act (for example the New Zealand Law Society's *Rules of Professional Conduct for Barristers and Solicitors*). Disciplinary matters and revisions of lawyers' fees are dealt with by the District Law Society to which the particular lawyer belongs at the relevant time (s 98). Appeals lie to bodies at national level.

#### *Advertising of services*

63 Lawyers may promote their services in a range of ways subject to the *Rules of Professional Conduct* and the Fair Trading Act 1986. The previous constraints upon lawyers were relaxed considerably in 1984: by 1986 advertising by lawyers was virtually unrestricted and advertising of price was permitted.<sup>17</sup> In New Zealand, lawyers' advertising is generally used to identify firms and lawyers that undertake particular types of work.

64 The New Zealand Law Society produces a series of pamphlets designed to increase the public's general awareness of the law and legal services. District Law Societies generally assist members of the public seeking a lawyer either by producing a legal services directory or providing a phone referral service during office hours.

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<sup>14</sup> This will be remedied when the New Zealand Law Society's database is operational.

<sup>15</sup> Under s 55 Act, following admission, lawyers must usually have at least three years legal experience before they can practise as solicitors on their own account (ie as a sole practitioner or as a partner in a firm). This requirement does not apply to barristers.

<sup>16</sup> Issues relating to the training of lawyers will be considered further in the paper *Lawyers' Education*.

<sup>17</sup> See Rules 4.01–4.06 *Rules of Professional Conduct for Barristers and Solicitors* (4th edition, 1996).



### *Charges for services*

65 As a private profession lawyers normally charge for legal advice. Lawyers are subject to the Fair Trading Act 1986 which prohibits false or misleading claims about prices and services, and the Consumer Guarantees Act 1993. The New Zealand Law Society's *Costing and Conveyancing Practice Manual*,<sup>18</sup> provides lawyers with some guidance as to the need to provide information about fees, as well as guidance on what type of information is necessary.

66 The average hourly rate for principals in the 1995–1996 financial year was \$190 per hour and for solicitors was \$128.95 per hour.<sup>19</sup>

67 People requiring legal representation may receive some financial assistance from the state through the civil and criminal legal aid schemes if they meet the means test under the Legal Services Act 1991 (see *Women's Access to Civil Legal Aid* (NZLC MP8)).

68 In October 1980 the New Zealand Law Society introduced a scheme called LawHelp. Under the scheme lawyers agreed to see clients for 20 minutes for \$10 (now \$20). Although initially widely advertised, it was noted in the 1981 *Access to the Law – A Research and Discussion Paper*<sup>20</sup>

that the scheme is not being unduly used despite a nationwide publicity campaign designed to reach 90 percent of the population . . . the lack of public response may indicate that the publicity to date has not overcome the anxieties many people feel about approaching a formal law office.

In some areas the LawHelp scheme continues to be widely promoted, but in other areas it seems to have fallen into disuse with some lawyers being unaware of its existence.

69 In certain cases lawyers may act pro bono (free) for clients. This practice varies from lawyer to lawyer. Some indication is given from lawyers' submissions of the range of pro bono work that is done. Lawyers have told the Commission that they do pro bono work in their individual capacities for Citizens Advice Bureaux, Women's Refuge, Rape Crisis, and community law centres. Lawyers have also said that they provide phone advice and sometimes initial consultations for free. A number of the submissions indicate that some law firms also provide pro bono work for existing clients, for example, local organisations, charities, sports clubs, Forest and Bird Protection Society, St John's Ambulance, and for clients who do not qualify for legal aid and who cannot afford fees.

### **Community law centres**

Community law centres are operated for a community, by a community, to bring about change in or benefit to a community.<sup>21</sup>

70 There is no standard model community law centre. There are currently advice based, law student based, community support based and resource based centres. Some community law centres

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<sup>18</sup> These are rules approved by the Council of the New Zealand Law Society on 22 June 1984 to be observed from 1 November 1984.

<sup>19</sup> *New Zealand Law Society Profession Report 1996* (School of Management Studies, The University of Waikato, 1996), 46. This study is a self-selecting study of 197 law firms throughout New Zealand. It may not be completely representative.

<sup>20</sup> (Department of Justice, Wellington, 1981) 110, commenting on an extract from *Consumer* (1981) 182.

<sup>21</sup> Andrew Becroft, "Community Law Centres Here to Stay" (1992) *Northern Law News*, 22 June 4, 4.

are responsible to a specific community which can be defined by ethnicity (eg Nga Kaiwhakamarama i nga Ture, Te Ture Manaaki o Rehua, Ngai Tahu Community Law Centre), age (eg, Youth Law Project) or geographical area (eg, Mangere Community Law Centre).

*Location of community law centres*

71 There are now 18 community law centres in New Zealand namely:

- Grey Lynn Neighbourhood Law Office – Auckland
- Mangere Community Law Centre – Auckland
- Youth Law Project – Auckland
- Nga Ture Kaitiaki – Auckland
- Maungarongo ki Otara Community Law Centre – Auckland
- Hamilton Community Law Centre – Hamilton
- Rotorua Community Law Centre – Rotorua
- Ture Amo Kura o Heretaunga – Hastings
- Wairarapa Community Law Centre – Masterton
- Whitireia Community Law Centre – Porirua
- Wellington South Community Law Centre – Wellington
- Nga Kaiwhakamarama i nga Ture – Wellington
- Marlborough Community Law Centre – Blenheim
- Christchurch Community Law Centre – Christchurch
- Te Ture Manaaki o Rehua – Christchurch
- Dunedin Community Law Centre – Dunedin
- Ngai Tahu Community Law Centre – Dunedin
- Southland Community Law Centre – Invercargill.

72 The following districts<sup>22</sup> do not currently have a community law centre: North Auckland, Bay of Plenty, Taranaki, Wanganui, Manawatu, Nelson, Westland and Timaru.

*Functions of community law centres*

73 The functions of the 18 community law centres are largely determined by their respective communities through the identification of unmet legal needs within those communities.<sup>23</sup> There are some common services though.

74 Important functions of community law centres include the provision of legal education and law reform work. As well, most law centres provide legal advice to individual clients. Some centres provide clients with legal representation in courts and tribunals. The Hamilton District Community Law Centre, Grey Lynn Neighbourhood Law Office, Dunedin Community Law Centre and the Mangere Community Law Centre provide legal representation. Representation is usually provided in accordance with a consent given by the local District Law Society.<sup>24</sup> For example, the Heretaunga Community Law Centre:

<sup>22</sup> Legal Services Districts were established under the Legal Services Act 1991. There are currently 19 Legal Services Districts in New Zealand.

<sup>23</sup> Section 155 of the Legal Services Act 1991 provides that:

The functions of a community law centre shall include—

- (a) The provision of legal advice to the public or any section of the public;
- (b) The provision of legal information to the public or any section of the public;
- (c) The promotion of law-related education for the public or any section of the public;
- (d) Such other functions as each community law centre considers necessary to ensure that the needs of the public that it serves for legal services are met.

<sup>24</sup> Law Practitioners Act 1982 s 6.

- is unable to act for a person with sufficient financial means to engage her/his own solicitor;
- in the absence of exceptional circumstances, is unable to act for a person who is eligible for a grant of legal aid; and
- can under no circumstances act in any conveyance or commercial matter, nor act in the administration of estates and wills.<sup>25</sup>

#### *Staffing of community law centres*

75 There is usually a range of staff at a community law centre; both volunteers and paid staff, legally trained and non-legally trained. Staffing levels at community law centres vary. There is also often a mix of part-time and full-time positions.

76 Community law centres offer training for their workers to ensure the quality of advice is the same as would be expected in most law offices. For example, the Wellington South Community Law Centre has an introductory law centre training programme, compulsory for all student volunteers, comprising 11 sessions over a 4-week period.

77 Much of the volunteer help provided to community law centres is provided by local lawyers. In areas where there are law schools, law students also contribute volunteer hours.

#### *Funding of community law centres*

78 The Legal Services Board has a duty to fund community law centres as a first priority from the New Zealand Law Society Special Fund, which is derived from interest on solicitors' trust accounts.<sup>26</sup> Law Centres are not fully funded by the Legal Services Board and seek funding from a number of sources for special projects. For example, the Christchurch Community Law Centre receives funding from a range of sources including Christchurch City Council, Community Organisation Grants Scheme, Department of Labour, Lottery Grants Boards, and Telecom.<sup>27</sup>

79 The total amount paid by the Legal Services Board during the 1995-1996 financial year to the then sixteen existing law centres was \$2 918 000.<sup>28</sup>

#### *Advertising of services*

80 Community law centres promote their services in a range of ways. Hamilton District Community Law Centre advertises under the yellow pages "Lawyers" section. The Christchurch Community Law Centre has pamphlets which advertise "Free Legal Help". Community law centres usually have strong relationships with other community groups which result in information about their services being spread by word-of-mouth.

#### *When and how legal services are provided*

81 The hours of legal advice sessions vary from centre to centre. Many centres run either morning or evening legal advice sessions. Some operate an open door policy during the day.

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<sup>25</sup> Annual report para 2.2.

<sup>26</sup> Legal Services Act 1991 s 95(1)(e).

<sup>27</sup> Christchurch Community Law Centre – Annual Report 1995/96, 37.

<sup>28</sup> Annual Report for the Year Ended 30 June 1996, 19.

82 As well as providing services on community law centre premises a number of the centres have outreach services. For example, the Wellington South Community Law Centre has been coordinating a legal advice service at the Wellington prisons for the past 3 years;<sup>29</sup> Dunedin Community Law Centre provides a rural advice service; and the Christchurch Community Law Service provides an elderly service from the Age Concern Building on a fortnightly basis.

#### *Cost of services to the public*

83 Generally legal services from community law centres are free. Some centres may levy a small charge or ask for a koha or donation.

#### *Regulation of community law centres*

84 Under the Legal Services Act 1991 the establishment of community law centres is the responsibility of District Legal Services Committees (s 154). If there is no community law centre in a district, each Committee must consider, every two years, whether one should be established.<sup>30</sup> The Legal Services Board has the ultimate statutory responsibility of approving the establishment of new law centres.

85 Once established, community law centres must obtain law society approval under s 6 of the Law Practitioners Act 1982 if they intend to provide legal advice and legal representation. This is because only solicitors with practising certificates may “act as a solicitor”. This approval is given by way of exemptions from those provisions of the Act which create offences for unqualified persons who act as solicitors.<sup>31</sup> The need for an exemption generally arises when a law centre wishes to employ a solicitor, whether or not the solicitor is qualified to practise on her or his own account. When granting the application the District Law Society must satisfy itself that:

- (a) the legal work which the law centre intends to do is not being adequately undertaken by practitioners in the ordinary course of their practice (whether because of the uneconomic nature of the work or the unavailability of willing practitioners); and
- (b) an exemption from sections 64, 66 or 67(1) of the Act is needed to enable the centre, or its staff, to undertake the work.<sup>32</sup>

86 The New Zealand Law Society has also recommended certain minimum standards for legal advice and representation for community law centres. The standards control who may provide legal advice and representation and are intended to maintain the quality of legal services provided to clients by community law centres.

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<sup>29</sup> Community law centres in Auckland, Christchurch and Southland also coordinate advice services for the prisons.

<sup>30</sup> Pursuant to the Legal Services Act 1991 each Legal Services District has a Legal Services Committee. The Legal Services Board has issued guidelines to assist District Legal Services Committees – “Suggested Approach for District Legal Services Committees to Adopt when Considering the Need for a Community Law Centre”.

<sup>31</sup> Sections 64 (offence for an unqualified person to act as a solicitor), 66 (offence for an unqualified person to act through the agency of a qualified solicitor) and 67(1) (solicitors are not to act as agents for unqualified persons).

<sup>32</sup> New Zealand Law Society Guidelines, *Community Law Centres: Exemptions under section 6 of the Law Practitioners Act* (1995) 4.

## Citizens Advice Bureaux

87 The New Zealand Association of Citizens Advice Bureaux (NZACAB) is a voluntary organisation which provides, free to all individuals, an impartial and confidential service of information, guidance and support. The aims/whainga of NZACAB are:

- to ensure that individuals do not suffer through ignorance of their rights and responsibilities, or of the services available; or through an inability to express their needs effectively; and
- to exert a responsible influence on the development of social policies and services, both locally and nationally.<sup>33</sup>

### *Location of Citizens Advice Bureaux (CAB)*

88 The first CAB opened in Ponsonby, Auckland in 1970. During the 1970s the number of CAB in New Zealand increased to 54. There are now 91 CAB nationwide which are staffed by over 2500 volunteers from local communities, and 55 paid staff. There are 34 CAB in the North Region (Auckland and above), 18 in Waikato/Bay of Plenty Region, 23 in the Central Region (Taranaki across to Napier down to Wellington), and 16 in the South Island.<sup>34</sup>

### *The service provided by CAB*

89 The NZACAB estimates that a quarter to a third of CAB work is law related,<sup>35</sup> and that 71% of those using its services each year are women. During the 1995–1996 financial year the CAB received 15 964 enquiries for free legal advice, 15 641 enquiries about dissolution, separation, custody and access, and 9164 enquiries about lawyers, legal aid and duty solicitor matters.<sup>36</sup>

90 In most areas the CAB allocates a specific time for people to visit to receive free legal advice from a lawyer. The CAB itself will often provide assistance to clients with more straightforward legal problems but if the matter is quite complex will refer the client to a lawyer in private practice or advise the client to visit the CAB during one of its free advice sessions. Legal advice services are often organised by the CAB with the assistance of local lawyers and sometimes District Law Societies. Usually legal advice and representation is offered once a week, for example on a particular evening or Saturday morning.

91 The NZACAB has just introduced an 0800 number which links callers to their local CAB. The 0800 line operates during ordinary CAB hours.

### *Marketing*

92 The NZACAB is about to implement a marketing plan which has been designed to address the challenges of reaching those who are unaware of CAB services and to broaden the understanding of those who are already aware of them. Newspaper articles are also used to publicise CAB services.

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<sup>33</sup> NZACAB, Working for your community – New Zealand Association of Citizens Advice Bureaux 1996 Annual Report, inside cover.

<sup>34</sup> Working for your community – New Zealand Association of Citizens Advice Bureaux 1996 Annual Report, 6

<sup>35</sup> Discussion with Executive Director, NZACAB, 2 April 1996. During the 1995/1996 financial year the CAB received 518 138 enquiries. An increase of 23 791 enquiries on the previous year (1996) Annual Report 3.

<sup>36</sup> Annual report 3.

*Cost to members of the public*

93 Each CAB provides a free service to individuals.

*Funding*

94 NZACAB receives funding for both core operating costs of the individual CAB and particular projects. Central government is the primary source of funding, through the Community Funding Agency. This funding supports approximately two thirds of the cost of information, public relations, training, management support and policy development work. Funding is also received from the Community Organisation Grants Scheme (COGS) and the New Zealand Lottery Grants Board. The rest of its funding is made up of grants from philanthropic trusts and from businesses.

**Other advice providers**

95 A number of other organisations provide legal advice services, similar to those of the CAB, which are essentially referral services. Women’s Centres in some areas operate legal advice sessions where lawyers attend the centre (one weekday evening or on Saturday mornings) and see clients for 15–20 minute sessions.

96 Women’s Refuge advocates also provide women with legal information specific to their situation by explaining the protection orders available, the availability of legal aid, and how the court process will work. With the changes to the Domestic Violence Act 1995 they are also able to assist women with applying for a protection order. The aim of the Refuge’s advice is to enable the client to make informed choices. Women may then be referred to appropriate lawyers with whom Refuge has close relationships.

**PART 4 – CREATING CLIENT CHOICE**

97 The barriers women experience when seeking legal advice and representation indicate that the current arrangements for the provision of these services are not as responsive to women’s needs as they could be. Any plan to minimise these barriers must take account of the socio-economic position of women and the circumstances in which women seek legal services:

Women victims of family violence are probably the most fearful and hesitant about seeking legal assistance. Some are ashamed, or afraid of reprisals or other effects on their relationships with their spouses. Many assaulted women, especially immigrant women, are extremely embarrassed at having to discuss intimate questions with strangers.<sup>37</sup>

**Information about providers of legal advice and representation**

98 A very important component of legal information that is relevant to women’s choice of legal adviser is information about *who* is providing legal advice and representation.

“Why can’t we have a list of lawyers available to the community which explains whether they are male or female. Even a photo with information about their interests

<sup>37</sup> *Legal Aid and the Poor – A Report by the National Council of Welfare*, 30.

in law and their current work would be really useful for the women.” – *Transcript of hui held with Maori women in Rohe 4*

“It would be really good if there was a handout. A booklet about going to your lawyer for the first time – saying what your rights are. Educate. It should tell people that they can make ... more fully informed choices. The more you know of something the more informed your choice can be. At the moment going to a lawyer you don’t really have much choice. It’s so iffy and you don’t even know if you’re going to get a good one. Like trial and error. It’s like word of mouth.” – *Report on Consultation with Pacific Island Women 22*

“I saw on TV the ads about Women’s Refuge and being able to get help. I also saw the ads about not hitting children cos then they’ll grow up to hit their children. I rang CAB like it said on TV.” – *Report on Consultation with Pacific Island Women 4*

### *Community initiatives*

99 As noted earlier in the paper the NZACAB is intending to implement the strategic stages of its marketing plan during 1997 in order to better inform New Zealanders about its services. Other community services advertise as funding and opportunities arise. Funding is often cited by community organisations as the main reason preventing advertising and marketing. Yet, as many community groups have commented, for a service to be accessible it is fundamental that it be publicised.

100 Community law centres usually maintain a list of lawyers to refer people to if the centre cannot be of assistance.<sup>38</sup> Many CAB and Women’s Refuges also maintain lists of lawyers and their areas of expertise and will refer people on. While these lists have been of great assistance to many women, many others have told the Commission that they were not aware that they could get lawyers’ names from these community groups.

101 Further, a number of community groups around the country have told the Commission that they are often asked for the names of lawyers but are unsure who to refer people to as they do not have the networks. This perhaps explains why in the recent New Zealand Law Society *Poll of the Public* only 1% of those who have consulted a lawyer were referred by a community service (47).

“We are often asked for a list of women lawyers – we need a list.” – *Meeting in Nelson, May 1996*

“Is there a place where lesbian friendly lawyers put their names forward, so you can find them?” – *Report on Consultation with Lesbian Women*

102 Lists with accurate information about local legal services do provide a starting point for those women who are uncertain which lawyer to approach. It seems that there is a need both for

<sup>38</sup> For example during 1995, Christchurch Community Law Centre referred about 9–10% of its caseload to solicitors in practice, about 70–80 referrals per month. See *Community Survey Timaru District*, 1995, 1.

more lists to be available in the community and for more information to be available in the community about referral services.

## QUESTION

### 3 How could referral services be publicised more widely?

#### *New Zealand Law Society initiatives*

103 The New Zealand Law Society has been involved with several very positive initiatives to promote the public's knowledge about the legal profession and the services it provides. Currently the main New Zealand Law Society initiative is the production of the Law Awareness series of pamphlets which all include the following message:

#### Finding a lawyer

If you don't have a lawyer:

- Ask friends to recommend one to you;
- Look in the Yellow Pages under the barristers and solicitors listing;
- Inquire at a citizens advice bureau; or
- Contact your local district law society.

104 A number of comments may be made about the pamphlets:

- The pamphlets are available in English only. The New Zealand Law Society has begun translating the Law Awareness series into Maori. There are no plans to translate the series into other languages, for example, Samoan, Cook Island Maori, Tongan etc. This has implications for people who speak English as a second language.
- The information is only available in written form and in fairly small type which excludes sight impaired people and creates difficulties for those from oral based cultures.
- The Society distributed 80 000 pamphlets during 1996. The Law Awareness pamphlets are distributed by the Society through District Law Societies, law firms and voluntary agencies. District Law Societies will distribute pamphlets to enquirers. While postage to an enquirer will remove the cost and inconvenience of travel, it presupposes knowledge of the existence of District Law Societies and that they have this type of information. It also presupposes that the District Law Society offices are usually staffed. While the pamphlets are available from some law firms, the Commission's consultations suggest that in a climate of uncertainty about what a lawyer may charge, it is unlikely the information will be sought directly from a lawyer.

(These points are discussed further in *Women's Access to Legal Information* (NZLC MP4).)

105 In 1984 the New Zealand Law Society screened a television commercial for three weeks to inform clients about changes to the way lawyers charged for services. It also carried out a survey immediately afterwards, to measure public awareness of the television campaign. The survey used a sample of 1000 households (500 male and 500 female interviews) chosen to reflect a statistically relevant national spread. Unprompted recall of the advertisement was 43% rising to



54% after prompting.<sup>39</sup> Of those who recalled the advertisement, 82% understood the message it was trying to convey in total or in part, with only 18% having no recall as to the content of the advertisement. A more regular national advertising campaign about lawyers and the types of service they provide may assist in raising the public's awareness of services.

106 In 1993 the New Zealand Law Society held an initiative called 'Law Week' which was intended as a public relations and information initiative for the profession. The week coincided, however, with the Renshaw Edwards controversy which meant that 'Law Week' did not receive very much media attention. This resulted in a reluctance to repeat 'Law Week' and it is now in abeyance.

107 It seems that there is now support amongst the profession for more to be done. In the latest *Poll of Lawyers*, 88% of lawyers rated as important the need to make the public more aware of what lawyers are and do.<sup>40</sup> Almost one in two lawyers believe this objective to be very important (64). The majority of lawyers (55%) would support the New Zealand Law Society advertising in the media to promote the legal profession as a whole.<sup>41</sup>

### QUESTIONS

- 4 **Would more advertising of lawyers' services be of assistance?**
- 5 **Should this be the responsibility of the New Zealand Law Society?**
- 6 **What other initiatives could be considered by the New Zealand Law Society?**

#### *District Law Societies' initiatives*

108 In 1982, the Access to the Law Working Party stated:

The directories some District Law Societies now produce provide a valuable starting point for people looking for a lawyer who works in the area in which they need advice, and as such are a good substitute for some of the advantages of individual advertising. These directories should be more widely available – in Courts and in other public places – and District Law Societies who do not produce a directory should be encouraged to do so.<sup>42</sup>

109 Only two District Law Societies – Wellington and Auckland – currently have legal services directories. In Wellington the directory, which is produced annually, is sent free of charge to mental hospitals, CAB, community law centres, Plunket and other community organisations. The Auckland District Law Society charged the public \$15 for its latest (1994/1995) directory although copies were sent free of charge to the CAB and to law firms.

<sup>39</sup> "Television advert prompts high recall: survey" (1984) 211 LawTalk 1.

<sup>40</sup> *Poll of Lawyers – The New Zealand Law Society* (MRL Research Group, Wellington, February 1997). This poll was a random self completion survey amongst 670 lawyers. The characteristics of this sample are similar to the known characteristics of the population of lawyers.

<sup>41</sup> The remaining vote is split between opposing such a campaign (25%) and neither supporting nor opposing it (19%), *Poll of Lawyers*, 66.

<sup>42</sup> *Final report of the Working Party on Access to the Law* (Department of Justice, Wellington, May 1983) 37.

110 The Wellington Legal Services Directory 1997 is a very comprehensive guide to the 1700 lawyers in practice in the Wellington region which extends from Wellington to the Wairarapa in the East and to the Kapiti Coast in the West. Its contents page is as follows:

Barristers  
 Categories of Legal Work  
 Citizens Advice Bureaux and Community Law Centres  
 Foreign Language Speaking Lawyers  
 Government Departments  
 Law Firms  
 Law Awareness Programme Pamphlets  
 Listing of Lawyers  
 Notaries Public  
 Queen's Counsel

**HOW TO USE THIS DIRECTORY**

If you need initial advice –

Contact a lawyer through LAWHELP  
 or contact a Citizens' Advice Bureau

If you want a Queen's Counsel or a barrister

If you want a lawyer in your area

If you want a lawyer who does a particular kind of work

If you want to contact the local office of a Government Department for assistance

If you want a lawyer who speaks a foreign language

For further assistance telephone the Wellington District Law Society  
 – telephone 472 8978

111 For people whose first language is not English, the Directory lists in English the law firms that can be of assistance with foreign languages. Interestingly, Maori which is an official language of New Zealand, is part of that list. However, the English terms used in the directory could be confusing. For example, there is no explanation of the terms "Notaries Public", "Queen's Counsel" or "barrister".

112 The Auckland directory is not as comprehensive as the Wellington directory. It does not contain the street addresses of the law firms, a list of community organisations that could help, a list of lawyers with proficiency in other languages, or a reference to the fact that the District Law Society can be telephoned for assistance.

113 Most District Law Societies will provide members of the public with names of lawyers in their regions and an idea of their areas of specialisation. The service provided by the law societies is advertised through the New Zealand Law Society Law Awareness Programme pamphlets. As noted, the pamphlets may only reach a small proportion of the population. It may be useful for District Law Societies to provide a range of community groups with lists of lawyers.

114 District Law Society services were seldom mentioned throughout the Commission's consultation process and it seems that they are not widely known amongst women. This is certainly reflected in the New Zealand Law Society's *Poll of the Public* which found that 63% of women (and 46% of men) are unaware of the existence of District Law Societies (99). It seems that the existence and role of District Law Societies needs to be more widely publicised if they are to fulfil a role in providing the public with information about legal services.

## QUESTIONS

- 7 **Are you aware of the Legal Services Directories? Have you found them useful?**
- 8 **Would a Directory be useful in your area?**
- 9 **What information should it contain?**
- 10 **Are you aware of the District Law Societies' referral service?**
- 11 **What comments do you have about it?**
- 12 **What else could District Law Societies do to inform the public about lawyers' services?**

### *Lawyers' advertising*

115 Multi-media advertising has been identified internationally as an effective means of informing clients about legal services. In New Zealand, lawyers' advertising is generally used to identify firms and lawyers that undertake particular types of work.

116 The "Yellow Pages" of the telephone book contain a wide variety of advertisements, listed under "Lawyers" or "Barristers and Solicitors". The majority of advertisements give only the lawyer's or firm's name, address and phone number. Some advertisements include the type of legal work the lawyer or law firm practises in, for example family, civil, criminal, or employment. However, the Yellow Pages contain little information about the sex or ethnicity of the lawyer, information which many women have said they would like.

117 In a recent study of 200 legal firms across England and Wales it was found that seminars and presentations are the most frequently adopted forms of advertising, along with newsletters and legal information sheets. One large firm stated that, to increase awareness of the firm and its services, it used a combination of seminars, newsletters and bulletins to inform clients and prospective clients. The recipients had no objection to this type of advertising as it was regarded as containing useful and interesting information.<sup>43</sup>

118 The recent *Poll of Law Firms* illustrates that a range of marketing activities are undertaken by law firms in New Zealand. All firms indicated that they market their services by means of one or more of the following activities: sponsorship, speaking at seminars, client newsletters, writing articles for newspapers/magazines, conducting seminars for clients, and the production of a firm brochure (14).

119 Lawyers' submissions to the Commission also disclosed a range of advertising practices, from none at all ("we rely on our existing client base") to Yellow Pages listings and seminars. Generally the submissions indicated that the lawyers had a sufficient number of clients and that advertising was not undertaken as part of a pro-active strategy. One pro-active strategy proposed

<sup>43</sup> Christopher Samples "Advertising by lawyers: a more enlightened approach" (4 October 1996) *Solicitors Journal* 940, 940.

by an autonomous group of Maori lawyers in the Auckland region, Te Runanga Roia Maori o Tamaki Makau Rau Inc, is the release of a Maori Legal Services Directory. The Directory is intended to assist those persons wanting to contact a Maori lawyer in Auckland and will include an alphabetical list of Maori lawyers, their iwi affiliation(s), qualifications, area of work, specialty, and their employer's details.

120 Any advertising of lawyers' services must be targeted to the diversity of potential clients yet also benefit those whose services are being advertised. The comments made by women about the information they want when they seek access to lawyers may be of assistance to lawyers intending to advertise their services.

### QUESTIONS

**13 What other strategies could be considered by lawyers?**

**14 What information could lawyers' advertisements contain to assist potential clients?**

### A greater diversity of lawyers

[Women] feel like unwelcome intruders in a system where almost everyone in authority is male, white and middleclass.<sup>44</sup>

121 The clear message from women throughout New Zealand is that greater diversity within the legal profession would help to meet the needs of women clients and prospective clients by reducing the sense of alienation from the legal system and lawyers that was so often described.

122 At almost every meeting women questioned why there were not more women in the legal profession. In 1971, women comprised less than 4% of the annual intake to the legal profession. By 1981 women were 30% of those admitted, in 1985 45%, and in 1991 for the first time women slightly outnumbered men in the new admissions to the profession. In 1996, 53% of the 709 people admitted to legal practice were women. However, in 1996 women made up only 28% of all practising lawyers.

“All the women expressed a desire for more informal choices within the legal process. All the women wanted more women in the system.” – *Submission 33*

123 The Commission has received many comments from women lawyers about the direct and indirect discrimination they experience within the legal profession. The recent *Poll of Lawyers* highlights the matter. The majority of lawyers (58%) believe it is more difficult for women than men to make progress in the profession, and that this is a problem. The majority of women (71%) believe this issue to be a major problem (cf 17% of men). Almost half (49%) of employed solicitors rate the issue as a major problem, while only 11% of principals (sole practitioners or partners of law firms) rate it in that way (104–106).

<sup>44</sup> *Legal Aid and the Poor – A Report by the National Council of Welfare*, 31 (footnote omitted).

124 One submission received by the Commission is particularly poignant:

“I am given work of lesser value than the male staff solicitor.  
 I am paid less than the male staff solicitor.  
 I am given less court work than the male staff solicitor.  
 I’ve been told there is nothing worse than a smart woman.  
 I’ve been told ‘I won’t be beaten by a sheila’ by one of my male partners.  
 The support staff won’t assist me as they assist the males and I am given no help addressing this.  
 I have to do my own typing sometimes and filing which no male here would have to do. Then I am told I do not earn enough fees.  
 I am not allowed to address letters to both husband and wife – husband only.  
 My memos to older males are always to Mr X from me (my first and second names) no matter how I dictate them.  
 Incidentally the male staff solicitor referred to above has been admitted less time than me.  
 . . . I know I am good at my job. I know I am unlikely to get to where I intend going because I am female.” – *Submission 293 (lawyer)*

125 The Commission is aware of a high demand for Maori women lawyers, Pacific Islands women lawyers and women lawyers from other ethnic groups. In 1991 there were 52 Maori women lawyers and 28 Pacific Island women lawyers out of 1377 women lawyers.<sup>45</sup> The *Poll of Lawyers* found that only 44% of lawyers believe that it is more difficult for people of minority ethnic groups to make progress in the law profession and see this as a problem, and only 35% rated this issue as a major problem (104–105). Interestingly, 43% of women rated this as a major problem (cf 11% of men) (105).

126 Many Maori and Pacific Islands women raised concerns about the lack of choice of lawyer in criminal matters. In 1994 the Legal Services Board commissioned research into the criminal legal aid scheme. As part of the research, a survey was conducted of 250 criminal legal aid list lawyers. There was a 51% response rate to the survey. Of those who responded to the survey 87% identified as Pakeha, 8% as Maori and 1% as Pacific Islands. The greatest number of lawyers (71%) were in the 30–49 age bracket (81% between the ages of 30–64). Almost 80% were male.<sup>46</sup> From this profile it would be difficult to match a desire for a Maori or a Pacific Islands lawyer, and especially a Maori or Pacific Islands woman lawyer, from the lawyers available on the criminal legal aid list. The Commission understands that the Legal Services Board is considering a limited scheme of preferred counsel in criminal legal aid matters.

127 Issues relating to increasing the diversity of the profession stem in part from the policies which control admission to law school. These policies will be discussed in the forthcoming paper on Lawyers’ Education.

128 Also relevant is the implementation of Equal Employment Opportunity (EEO) policies within the profession. In May 1995 the New Zealand Law Society Board agreed to its first EEO initiative which was the

<sup>45</sup> Gill Gatfield, *Without Prejudice: Women in the Law*, (Brooker’s Ltd, Wellington, 1996) 130.

<sup>46</sup> *In the Interests of Justice*, (Legal Services Board, Wellington, March 1995) 18.

promotion of an awareness within the profession of the principles of EEO.

During that year the New Zealand Law Society publication *LawTalk* contained a number of articles about EEO and the New Zealand Law Society Board commended EEO to District Law Societies. To date the New Zealand Law Society initiatives have focused on raising the profile of EEO amongst law firms rather than seeking to achieve its implementation.

129 At District Law Society level, only the Wellington and Auckland District Law Societies have taken EEO initiatives. In November 1993 the Auckland District Law Society launched an EEO kit which was then adopted by the Wellington District Law Society. A 1995 survey of EEO implementation in Auckland law firms showed that 43% of the 995 lawyers surveyed had EEO policies, but only 20% actually had programmes or plans of action for implementing EEO.<sup>47</sup> There has been no formal survey of EEO implementation in the Wellington District Law Society area.

130 The New Zealand Law Society *Poll of Law Firms* found that one in two law firms have an EEO policy (predominantly a known plan rather than a documented one). However, only a minority of law firms have designated an employee or member of the firm to be responsible for EEO and very few firms state that they have carried out a formal review of their EEO policy (18).

## QUESTION

**15 How can EEO be implemented and enforced in the law profession?**

### Physical access to lawyers' offices

131 Women are usually the primary caregivers for children and other dependents. The availability of childcare will, in many cases, affect the accessibility of legal advice and representation services and constrain the choice to access those services. Many women told the Commission of the lack of childcare available in lawyers' offices and in the courts. As noted by the Ministry of Women's Affairs:

Addressing the needs of women as customers may not require the development of new products, but rather attention to issues such as ability to access. For example, it may be easier for women to use services if children are also welcome . . .<sup>48</sup>

"Lawyers' offices sometimes feel uncomfortable for mothers. Often there is no recognition that mothers may need to bring children with them to an appointment." – *Submission 331*

132 It seems that few lawyers' offices have appropriate spaces where women can leave their children. A number of lawyers in their submissions to the Commission acknowledged that they did not have appropriate facilities. It would certainly assist women if there were childcare facilities

<sup>47</sup> See *Without Prejudice: Women in the Law*, 303.

<sup>48</sup> *The Full Picture – Te Tirohanga Whanui* (Ministry of Women's Affairs, Wellington, 1996) 21

available. Some women have suggested to the Commission that legal aid should cover childcare expenses. In the paper *Women's Access to Civil Legal Aid* it was questioned whether this was the best solution to the problem. Instead, it may be of more assistance for there to be more publicly available childcare. Since many lawyers' offices are clustered around the local court, the provision of childcare at that site may be part of a solution.

133 Disabled women told the Commission of their difficulties gaining access to lawyers' offices and community law centres. Many offices in older buildings are not wheelchair accessible. Modern buildings pose problems as well, especially for those who are visually impaired. Visually impaired women described to the Commission their difficulties gaining access to elevators which can be designed to form part of the wall facade.

134 Improving the provision of legal services to women in remote communities is considered in the next section which focuses on increasing the availability of alternative legal services.

## QUESTION

### 16 How can physical access to lawyers' offices be improved?

#### Providing alternative legal advice and representation services

135 Women throughout New Zealand told the Commission of their need for better "alternative" legal advice and representation services. One of the main characteristics of many current alternative legal services is that they operate only as referral services due to a lack of resources. In some cases, alternative providers are unable to provide legal advice and representation because of lawyers' control over those services.

#### *Telephone/facsimile/TTY legal advice*

136 While a number of women have said that they do not have a telephone or access to one, many more have suggested that a toll-free telephone advice service would improve access to legal advice.<sup>49</sup> Telephone advice is an accessible method of providing information to a large number of women, especially if it has an interpreting service, facsimile and TTY<sup>50</sup> facility. Some groups of women identified a need for a more specialised telephone advice service, for example an 0800 LESBIAN line was suggested for lesbians to obtain legal advice.<sup>51</sup>

137 Telephone legal advice, if it was well publicised, would enable women in isolated rural areas and women confined to homes in the suburbs to obtain information quickly, confidentially and for no charge. As noted by the Australian Law Reform Commission [telephone legal advice] "allows a woman who may feel embarrassed or intimidated to get information through a familiar technology with anonymity".<sup>52</sup> It would enable initial assessment of a problem, some preliminary advice possibly followed by written information and may lead to a subsequent appointment with a local service.

<sup>49</sup> At the year ended March 1996 7.3% of households with an income of \$21 000 or under did not have a telephone. Just over 6% of households with an income between \$21 0001-\$37 300 did not have a telephone.

<sup>50</sup> Tele-text type writing facility enables a two way conversation to be held via a liquid crystal display.

<sup>51</sup> *Report on Consultation with Lesbian Women*.

<sup>52</sup> *Equality Before the Law* (ALRC R69 Part 1 1994) para 5.6.

138 In Australia, one of the major roles of women's legal services is to provide telephone advice. In some cases this is a 24-hour service. There is currently no nationwide general legal advice service in New Zealand, let alone a 24-hour telephone service.<sup>53</sup> However, the NZACAB has recently introduced an 0800 service that will link callers back to their local CAB during office hours.<sup>54</sup>

139 The Legal Services Board has recently stated that it will:

examine the possibility of setting up a nationwide 0800 telephone service, the existence of which would be made widely known. A person calling the service would be able to talk through their perceived problem, receive initial "first aid" advice from a trained lawyer or paralegal with access to a legal services database, obtain referral to a sympathetic lawyer practising in the appropriate field, and/or secure a visit from a law centre "outreach" worker. Written advice or pamphlet material could also be sent out with suggestions for further follow-up assistance.<sup>55</sup>

140 In some areas, lawyers are now beginning to offer 0900 24-hour legal advice services. However, the cost of these services – up to \$4.95 a minute – would place them out of the reach of many women.

#### QUESTIONS

- 17 **Is an 0800 legal advice service part of an appropriate response to the barriers women have described?**
- 18 **If it is, who should be responsible for funding the service?**
- 19 **What type of service should be provided (eg a referral service, general legal advice, should follow-up information be provided)?**

#### *More community law centres*

141 Throughout the Commission's consultations, women have called repeatedly for more community law centres to provide women and their communities with legal advice and representation services. This occurred in areas with and without community law centres.

"We need a community law office to help us here" – *Transcript of hui held with Maori women in Rohe 3*

"I would like a community law centre that we can go to whenever we need to." – *Transcript of hui held with Maori women in Rohe 6*

<sup>53</sup> In most states and territories of Australia toll-free services are in operation. See *Equality Before the Law* (ALRC R67 interim 1994) para 4.26.

<sup>54</sup> The Invercargill CAB has had an 0800 number for three years and it is now also available on the bureau's free legal advice evenings.



142 *Geographical access to community law centres* – As noted earlier, while there are now 18 community law centres in New Zealand, the following areas are without the services of a centre: all of Northland, Gisborne and East Cape, Bay of Plenty, Wanganui, Taranaki, Manawatu, Nelson and Golden Bay, Timaru and Oamaru, West Coast and Buller.

143 In the areas where there are community law centres, the centre is often responsible for a very large geographical area. For example, the Hamilton Community Law Centre is responsible for the area from the Bombay Hills to National Park, Te Aroha, Morrinsville to Raglan and Kawhia and also takes in Putaruru, Tirau and Tokoroa. The Dunedin Community Law centre is responsible for the Otago district which includes Queenstown, Wanaka, Oamaru, Milton and Greater Dunedin. In the Hawkes Bay area the only community law centre is in Flaxmere (near Hastings). In its 1995-1996 Annual report, Ture Amo Kura o Heretaunga Community Law Centre commented:

The Community Law Centre services the Heretaunga Community, which has its boundaries in the North at Wairoa and in the South at Dannevirke. The Heretaunga basin covers an area of 5500 sq km and encompasses a population of 148 500.

144 *Physical access to community law centres* – Not all community law centres are wheelchair-accessible. Nor are they all child friendly. Appropriate premises with child care facilities and wheelchair access would increase women's access to these services.

145 *Resourcing of community law centres* – Almost all community law centres identify services that they currently should be providing but cannot due to a lack of human and/or financial resources. The lack of human resources means for some centres that multicultural staff cannot be employed so as to meet the needs of their communities.

“[We should be doing] outreach work in the wider community, [but cannot] due to lack of manpower and transport.” – *Submission 502*

“[We should be providing] mediation in disputes . . . training for other community workers . . . assistance with law reform.” – *Submission 501*

“[We should be providing] employment tribunal representation [and representation in] domestic protection proceedings.” – *Submission 500*

“[We should be providing] a mobile service.” – *Submission 499*

“[We should be providing] a specialist family law evening.” – *Submission 253*

“[We should be providing] more education and more hands on support with disadvantaged groups.” – *Submission 497*

“There will never be enough money to meet the unmet legal needs of our community.” – *Submission 498*

146 At present the New Zealand Law Society Special Fund is the only dedicated source of funding for community law centre activities. As noted the annual grants from the Fund do not

cover the full costs of all the existing community law centres, and those which are not fully funded must apply elsewhere for funding to maintain the level of services provided. The Fund is determined by the amount of money coming into solicitors' trust accounts and by prevailing interest rates. It is expected that the total amount available in the Fund will decrease.<sup>56</sup> The Legal Services Board recently commented:

Having only recently made statutory provision for funding community law centres by way of the funds derived from the NZLS Special Fund, the government is unlikely, in the short to medium term, to make money available for the same purpose from another source or sources.<sup>57</sup>

147 The Legal Services Board has made some projections as to the funding that may be required in the short to medium term period of 3–5 years so that it may manage the available funds. At the end of this period the Board estimates that there may be 30 community law centres, an increase of 12 on existing numbers. Its policy statement relating to community law centre funding cautions that:

No guarantee can be given of the level of funding which can be expected by an individual community law centre in any year. This applies even when a centre has reached the maximum funding level. A law centre will always be required to make application and justify the amount sought annually in relation to a planned level of core activities. A fundamental appraisal of the need for and the extent of all core activities of each community law centre will be the starting point for all funding applications.<sup>58</sup>

148 *District Legal Services Committee responsibilities* – The Legal Services Act 1991 requires Committees to establish in their Districts such number of community law centres as they consider necessary to ensure that the community's needs for legal services are met. In the recent *Review of the Legal Services Act 1991*, the Legal Services Board notes:

The review process has highlighted a perceived need for more community law centres and that District Legal Services Committees have been slow to address this issue . . . The Act requires District Legal Services Committees to carry out a needs assessment for legal services and to establish sufficient community law centres to ensure that the needs are being met.<sup>59</sup>

149 A number of District Legal Services Committees have not complied with the Act's requirement to carry out a needs assessment every two years. Some Committees have made the decision that a community law centre is not required. For example, in late 1995 the Taranaki District Legal Services Committee decided that the Taranaki district did not need a community law centre. The Timaru District Legal Services Committee made a similar decision. In other areas the Commission understands that local lawyers have opposed the establishment of a community law centre due to fear of competition. The Legal Services Board has also rejected proposals for services in some areas. For example, in 1996 the Board rejected a proposal by the North Auckland District Legal Services Committee for a mobile law centre.<sup>60</sup>

150 Since the review of the Act, the Legal Services Board has commissioned a nationwide study which will look into the legal needs of New Zealanders. The study, expected to be finished late in 1997, is intended to identify those groups in the community who experience barriers to

<sup>56</sup> Legal Services Board, *Policy Statement – Funding Process for Community Law Centres* (1996) para 1.2.1.

<sup>57</sup> Legal Services Board, *Policy Statement* (1996) para 1.3.1.

<sup>58</sup> Legal Services Board, *Policy Statement* (1996) para 2.3.1. Under the new funding policy community law centres will be funded on the basis of outputs. Prior to the introduction of this policy the Legal Services Board used the following developmental benchmarks to fund community law centres: first year centre – \$62 000 (GST incl); second year centre – \$125 000 (GST incl); and third year centre – \$205 000 (GST incl).

<sup>59</sup> *Review of the Legal Services Act* (Legal Services Board, 1996) 5.

<sup>60</sup> Northern Law News, Issue 13, 19 April 1996, 3. This was not a rejection of the concept of mobile law centres.

obtaining legal services. The Commission understands that the research will provide a data platform and overview which will be useful in starting local needs assessments. It is uncertain at this stage how much local detail will emerge from the research. The Commission is aware that some District Legal Services Committees are intending to wait for the results of that survey before making further decisions about the need for community law centre(s) in their districts.

151 *Relationship with local lawyers* – Community law centres are dependent upon their relationship with local lawyers so that they may provide the services that their communities need. To a large extent this is due to the restrictions imposed upon community law centres by the Law Practitioners Act concerning who may provide legal advice. The Commission has received the following comments from law centres:

“... we have had to repeatedly justify our work to local lawyers, MPs, the District Legal Services Committee, and the Legal Services Board. This springs from a lack of understanding about the role of the Law Centre in the Legal Services District, and a lack of understanding about the barriers women experience in obtaining legal services.” – *Submission 497*

Some local practitioners are very supportive and most are not because ... ‘we’re not real lawyers’, we’re radical etc” – *Submission 505*

152 While many community law centres have good relationships with their local lawyers, some experience problems as they seek to set up new services. For example, the Hamilton Community Law Centre hoped to trial Saturday morning advice sessions but the lack of lawyers willing to participate in the provision of advice meant that the idea has had to be “shelved”.<sup>61</sup>

153 It is well established that cooperation with community law centres has benefits for lawyers, as do other forms of pro bono work. The Christchurch Community Law Centre referred 9–10% of its clients to lawyers during 1995.

Law Centres invariably mean more work for private law firms. This is because typically 60 per cent or more of visitors to a law centre have never attended a normal law firm and nor would they otherwise. They are more likely to do so after attending a Law Centre.<sup>62</sup>

154 *Specialist community law centres* – Women have suggested throughout the consultation process that law centres should be established to service particular groups in the community. There are already specialist law centres in operation in New Zealand (for example, Youth Law Project, Nga Kaiwhakamarama i nga Ture, Te Ture Manaaki o Rehua), but no women’s law centres. One suggestion made frequently to the Commission, that there should be a well-publicised nationwide network of Women’s Law Centres, has received support in Australia. Law centres there provide legal advice, information, representation and referral services at venues or times designated specifically for women.

Women’s specialist legal services have an important role. They are sensitive to women’s needs in areas of law which particularly affect women. They have specialist knowledge of the way in which the legal system can discriminate against women and have an important

<sup>61</sup> Hamilton District Community Law Centre Annual Report 1995/6, 8.

<sup>62</sup> Andrew Becroft, “Community Law Centres Here to Stay” (1992) Northern Law News, 22 June 4, 4.

function in educating the community and lobbying for reform in areas affecting women. The services are characterised by commitment in promoting women's legal rights.<sup>63</sup>

155 In its 1995 Justice Statement, the previous Australian Government announced that “[i]n a major new initiative, which will begin to redress the inequities Australian women have faced in obtaining access to legal services, the Government will provide \$12.3 million over four years to establish a national network of women’s legal services, ensuring at least one specialist women’s legal centre is located to serve the legal needs of women in every State and Territory”.<sup>64</sup> This initiative continues under the present government.

The focus of the new centres will be on assisting women to gain access to justice. They will provide legal advice and referral services for women, including telephone advice services. They will undertake community legal education on the legal issues that are of particular concern to women, including family law matters, violence against women, discrimination, employment matters, ‘sexually transmitted debt’ and other areas of the law. They will also have an advocacy role and will increase the availability of lawyers for women needing legal representation in courts and tribunals . . . The centres will aim to develop appropriate forms of assistance for all women, including women of non-English speaking backgrounds, those living in rural or isolated areas, Aboriginal and Torres Strait Islander women, women with disabilities and women living in poverty.<sup>65</sup>

“I wonder if [Maori community law centres] are the obvious choice for rural Maori communities’ access to justice?” – *Transcript of hui held with Maori women in Rohe 5*

“Whether Maori would be comfortable in using a centre would be another issue. If the centre was Maori orientated, with Maori faces to greet them, then I feel that more Maori women would seek help for their situations.” – *Transcript of hui held with Maori women in Rohe 8*

“Ideally Auckland should have its own Pacific Island Community Law Centre. Run by Pacific Islanders for Pacific Islanders. Surely with Auckland being known as the Polynesian capital of the world, the need is clearly established.” – *Report of Consultation with Pacific Island Women 36*

156 Some Maori and Pacific Islands women called respectively for Maori and Pacific Islands women’s law centres. Another suggestion has been for specialist units within existing or new centres, to be run and serviced by, for example, Pacific Islands women. Other women have suggested that a mobile law centre would be welcome, particularly for women with access difficulties due to, for example, geographical isolation or disability.

157 Community law centres have also been generally supportive of this concept.

“[There is a need for ] a Maori Law Centre due to the large number of Maori in the region.” – *Submission 502*

<sup>63</sup> *Equality Before the Law* (ALRC R69 Part 1 1994) para 5.4.

<sup>64</sup> Attorney-General’s Department, *The Justice Statement* (Canberra, May 1995) 78.

<sup>65</sup> Attorney-General’s Department, *The Justice Statement*, 79.

“[I]t would be very helpful for us to establish networks so we can tap into specialists assistance when faced with particular sectoral needs.” – *Submission 501*

“[Specialist Law Centres] are certainly a good idea.” – *Submission 499*

“Women’s legal centres or services that are available to women on a regular and ongoing basis [are required] . . . the need is evident.” – *Submission 496*

## QUESTIONS

- 20**      **What characteristics do community law centres need to make them accessible to women?**
- 21**      **Should there be a network of specialist law centres?**
- 22**      **What groups and interests should have specialist law centres?**
- 23**      **What role should specialist community law centres have? (Should they provide resources or actual face-to-face services?)**
- 24**      **Who should be responsible for maintaining and/or increasing levels of funding to community law centres?**
- 25**      **What comments do you have on the role of District Legal Services Committees in determining the appropriate number of law centres for their districts?**
- 26**      **What other comments do you have on community law centres and the service they do or could provide?**

### *A greater diversity of legal advisers – community workers*

158      It is plain from what the Commission has been told that women would value a greater contribution from non-lawyers in the provision of a comprehensive service to meet their needs, as they are disheartened by the type of services that some lawyers provide:

Many lawyers complain that family law clients (mostly women) are difficult and waste their time with demands which are really calls for emotional support. For their part, many female clients complain that lawyers do not listen, they are insensitive and they do a poor job of what is going on. . . . Instead of a system which leaves everyone dissatisfied and ignores clients’ emotional needs, family law cases could be handled by teams which would combine social work and legal skills. For example, initial interviews and ongoing contact with clients could be the responsibility of [community workers] with training in social work and law, who would

be sympathetic listeners trained to elicit the necessary facts. The summaries of facts would then be passed on to lawyers, whose job would be to advise and proceed on legal points.<sup>66</sup>

159 As noted in the Australian *Justice Statement*:

... there are real issues of affordable choice for consumers. Our view is that the further opening up of work to non-lawyers could assist in making services cheaper and in creating a climate for more consumer oriented services, as lawyers respond to the increased competition for work.<sup>67</sup>

“There needs to be a paralegal service whereby women can go and find out the basics of what they have to do before they go to a lawyer, so they know what they need and what their options are, which may not necessarily be legal, but just what their options are.” – *Report on Consultation with Lesbian Women*

160 Maori women in particular suggested that there should be Maori community workers, with some knowledge of the law and an understanding of cultural values, to assist Maori with legal problems.

“A Maori advocate from the community, not from the established institutions. – *Transcript of hui held with Maori women in Rohe 11*

“I really think we need a law advocate in town. So when someone has a concern with the police or with a lawyer or anything – even if they just want advice – we would have someone that people could ring here. Someone who could go with people to help them out. We could solve a lot of the negative attitudes and some of the imbalance which exists today.” – *Transcript of hui held with Maori women in Rohe 6*

161 The Commission is aware that Pacific Islands women are looking increasingly to people other than lawyers to represent them because of cultural factors. For example, church ministers are seen to be better able to put forward pleas in mitigation on behalf of their parishioners than Palagi middle class lawyers.<sup>68</sup>

162 One suggestion made to the Commission was that law firms employ a community worker as the first contact for women. In the recent New Zealand Law Society *Poll of the Public* three in five New Zealanders believed that it would be a good idea “for law firms to offer additional family orientated services, such as counselling, by having their own qualified staff in these areas” (108). As noted in the Australian *Justice Statement*:

Clients may require the services of professionals other than lawyers in connection with the resolution of their legal problems. Multi-disciplinary practices respond to this need by combining different occupations and professions within the one firm . . . ‘one stop shopping’

<sup>66</sup> *Legal Aid and the Poor – A Report by the National Council of Welfare*, 64 (footnotes omitted).

<sup>67</sup> Attorney-General’s Department, *The Justice Statement*, 52.

<sup>68</sup> Report on Consultation with Pacific Island Women, 9.

provided by multi-disciplinary practices is convenient for clients in that it saves them time, reduces their transaction costs and increases the choice of the types of legal services available.<sup>69</sup>

163 Community law centres already make some use of community workers with legal experience/knowledge to provide legal information and advice as well as other information related to the clients' situations. A number of community law centres, as resources permit, are already providing or are planning training for community workers so that the demand for law related information and advice in the community can be better met.

164 Potentially, community workers could have a much larger role both within traditional legal institutions<sup>70</sup> and a wider range of community organisations. Currently some law firms do employ legal executives. However, they are not used to provide information about support services (eg for housing assistance, information about benefit entitlements, support groups) or to discuss options as women suggest they could be. Repeatedly women have said that it would have been enormously helpful if they could have received this information at their lawyers' office rather than not receiving it at all or having to make numerous phone calls and journeys away from home to find it.

165 In Australia, community workers are used extensively in the provision of traditional legal services, especially within Legal Aid Commissions, community law centres and in private practice. Increasingly, they are providing legal advice, legal information, assisting with the preparation of documents and correspondence, interviewing clients and in some cases may appear before particular tribunals and courts.<sup>71</sup> As noted by Frederick Zemans, former director of Toronto's Parkdale community legal clinic:

The use of non-lawyers in the delivery of legal services is one, if not the most important, vehicle for ensuring that the citizens of our society who cannot afford to purchase the services offered by lawyers are not denied access to justice . . . the translation of the ideal of equal access before the law into reality requires opening the legal services market to alternative suppliers and entrusting these suppliers with the maximum degree of independence that is consistent with adequate and competent service.<sup>72</sup>

## QUESTIONS

- 27 **Would community workers who are able to give legal advice be of assistance in your community?**
- 28 **What training should such community workers have?**
- 29 **Who should be responsible for the relevant training of these community workers?**

<sup>69</sup> Attorney-General's Department *The Justice Statement*, 50.

<sup>70</sup> In England and Wales more law firms are employing paralegals as support staff in their litigation and conveyancing departments. See Robert Verkaik, "Paras Step Forward" (1996) 93/30 Gazette 14.

<sup>71</sup> See *Paralegals and Legal Aid – Information paper* (Attorney General's Department, Canberra, February 1994) 13–18.

<sup>72</sup> Frederick Zemans, "The Non-Lawyer as a Means of Providing Legal Services", in *Lawyers and the Consumer Interest: Regulating the Market for Legal Services* Robert G Evans and Michael J Trebilcock, (eds) (Toronto, Butterworths, 1982) 293.

- 30 Who should be responsible for funding the services of such community workers?**
- 31 Is there a role for community workers in law firms?**
- 32 What should that role be?**

## PART 5 – IMPROVING COMMUNICATION

Lawyers are at the front-line of the legal services industry. Generally, a lawyer is a person's main contact with the legal system . . . Client satisfaction in legal matters depends to a great extent on the integrity and responsiveness of the legal profession. The profession has been criticised for a lack of consumer focus and for clinging to antiquated practices which are mystifying to their clients and which, in many cases, unnecessarily increase costs, cause delays, and restrict consumer choice.<sup>73</sup>

166 This section outlines the changes that women have suggested should be made to lawyers' services to make them more client centred. These include improving lawyers' communication skills and awareness of gender and cultural issues. As noted by the Canadian National Council of Welfare, in words which mirror the comments made by New Zealand women:

At best, low income people think of lawyers as people who act, dress and talk strangely and are mostly found in intimidating environments in faraway locations requiring an "awesome trip downtown." At worst . . . clients perceive lawyers as exploitive, untrustworthy, intimidating, patronising, impatient, and rude people who are insensitive to women, persons of other cultures and the disadvantaged in general, and who cannot communicate in a straightforward manner but insist on speaking an incomprehensible jargon.<sup>74</sup>

### *Communication skills*

"Lawyers' training needs to be about basic communication skills." – *Meeting with rural community workers June 1996*

"We want a good lawyer, one that is going to help us, not one that just looks at us, not a lawyer who speaks big words, or high words we can't really understand." – *Transcript of hui held with Maori women in Rohe 6*

"They need to handle people much better than they do. They lack adequate communication skills when dealing with the public. Women don't realise that they are paying for the lawyers' service and that they have a right to expect the best for their money." – *Transcript of hui held with Maori women in Rohe 8*

"The most important issue identified was that law students be educated about the need for communicating clearly with their clients and that they need to ascertain that clients do understand what they are being advised." – *Submission 244*

<sup>73</sup> Attorney-General's Department *The Justice Statement* (Canberra, May 1995), 38.

<sup>74</sup> *Legal Aid and the Poor – A Report by the National Council of Welfare*, 31 (footnotes omitted).



“My lawyer is very good at explaining things in my everyday language instead of using those jargon legal terms.” – *Transcript of hui held with Maori women in Rohe 10*

167 One very common complaint made by women about lawyers is of their poor communication skills. In the recent New Zealand Law Society *Poll of the Public* almost one third of New Zealanders agreed with the statement “lawyers don’t explain things to you well enough” (66).

168 Good communication skills would seem to pay dividends for both clients and lawyers. In *A Survey of Parents Who Have Obtained a Dissolution*, one of the main reasons why clients were satisfied with the service provided by their lawyers was that they received explanations of information and legal rights.<sup>75</sup>

“One woman felt very happy about an instance where she felt her (female) lawyer went to a great deal of effort to ensure that she (the client) remained in control of the process. The lawyer kept up with correspondence, coped well with the client’s children, ensured meetings were short and to the point and always kept the client informed and legal documents up to date.” – *Submission 331*

169 There is also a need for a diverse range of language skills. Access to legal advice and representation means little to those women who do not understand English well enough to describe their legal problems or understand any explanation provided in English. The Commission became aware through its consultations that immigrant women are less likely to have expertise in English than their husbands and partners. Often there is not enough money to send both partners to English classes and the man often attends or learns more from exposure to English speakers as he is more often the breadwinner.<sup>76</sup> One aspect of improving lawyers’ communication skills could be their greater familiarisation with the services of interpreters.

170 Currently, and as many lawyers have acknowledged to the Commission, lawyers receive very little training in communication skills and are not adequately prepared for client interaction. The New Zealand university law degree courses generally have little focus on skills-based training. The Institute of Professional Legal Studies Course, a 13 week course which lawyers must complete before they can be admitted to practice, provides some training in basic interview techniques. There is little continuing education provided by the profession which focuses on these skills. In a number of the submissions lawyers have indicated that this training would be helpful.

171 Part of communication is ensuring that clients’ needs for legal services are met. One obvious example relates to the cost of legal services and was discussed in *Information About Lawyers’ Fees* (NZLC MP3). Another important component of communication is an awareness of the standard of the service to be expected. A number of women told the Commission they were

<sup>75</sup> *Family Court Custody and Access Research Report 2, A Survey of Parents Who Have Obtained a Dissolution*, Family Court Custody and Access Research Report 2, (Department of Justice, 1980) 40.

<sup>76</sup> See Sue Fenton, “Interpreting New Zealand Key Issues” in Report of Conference Proceedings *Challenge of the Future* (Wellington, New Zealand, 1993).

concerned about the quality of service provided by their lawyers and were often unaware why their legal matters had taken so long and cost so much. Issues surrounding client care will be discussed further in a consultation paper on Lawyers' Costs in Family Law Disputes.

### *Cultural training*

172 Even when language barriers are overcome, cultural barriers may prevent communication and the understanding of legal rights. The cultural component of current legal courses is very small. Maori women have called for lawyers to be trained in cultural matters including tikanga, te reo and the Treaty of Waitangi. And at meetings of Pacific Islands women it was recommended that there should be a cultural component with a Pacific Islands perspective in every lawyers' training.

### *Gender training*

173 Lawyers' lack of awareness of women's lives was a common criticism made during the consultation process. Lawyers currently receive very little training about the difference gender makes to the effect of the content and processes of the law. And in a number of the submissions received from lawyers it was suggested that such training would be helpful. Women have been clear that lawyers need to understand more about what it means to be a woman in New Zealand society so that lawyers can provide appropriate services.

**These issues will be discussed further in the forthcoming paper on Lawyers' Education. However, the Commission would be grateful for any comments you may have on these points at this stage.**

## CONCLUSION

174 Without access to legal advice and representation services, legal rights cannot be protected or enforced. While the cost of legal services is perhaps the greatest barrier to access to justice, the range of barriers that women have described will not be removed simply by providing financial assistance so that existing legal services can be purchased.

175 Currently the legal profession has a central role in the provision of legal advice and representation. Women have made many suggestions as to how lawyers' services can be improved. All the suggestions can be seen to be focused on the need for a client-centred approach to the provision of legal advice and representation.

176 The Commission would be very grateful for your comments on any aspect of this paper. We look forward to receiving them.

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