

GENDER ANALYSIS AND THE WOMEN'S ACCESS TO JUSTICE PROJECT

STUART BIRKS

Issues Paper No. 2

Published by
**Centre for Public Policy Evaluation
College of Business, Massey University
Palmerston North
NEW ZEALAND**

March 1998

ACKNOWLEDGEMENTS

Thanks are due to many people, both men and women, who have played a constructive part in the development of the ideas and analysis in this paper. Much of this has come through valuable face-to-face and email list discussions, as well as sharing of personal experiences. Perhaps unknown to them, many colleagues and graduate students have also made a contribution. Most welcome have been the specific assistance and comments on drafts of the paper from, in alphabetical order, Gary Buurman, Paul Callister, Mark Rowley, and Rob Thomson.

TABLE OF CONTENTS

	<i>Pages</i>
<i>Acknowledgements</i>	ii
1. Introduction	1
2. What is gender analysis?	2
3. What is the Women's Access to Justice Project?	4
4. Why is the legal establishment vulnerable?	12
5. Problems with background information from the WAJP and elsewhere	16
6. What Would Men Say?	31
7. Conclusion.....	43
Appendix I Women's Access to Justice Project: Terms of Reference.....	47
Appendix II Letter to the Women's Access to Justice Project.....	48
Appendix III Reply from the Law Commission	50
Appendix IV Separation and the 1996 Census.....	52
Appendix V The Statistics New Zealand/Ministry of Women's Affairs Time Use Survey.....	55
Appendix VI Separation and Wellbeing	59
Appendix VII The Duluth Wheel: Power and Control Version	63
References	65

1. INTRODUCTION

"Over the last three decades ideological doctrines have infiltrated the curricula of many of the larger universities. Spurious academic subjects such as 'black studies' and more recently 'women's studies', putatively designed to 'raise consciousness' and strengthen commitment to credos of 'emancipation', manifestly fail to meet the stringent requirements of scholarship: certainly the doctrines of these ideologically inspired 'studies' are not regarded by their proponents as provisional and refutable hypotheses. Clearly arrangements being made for their systematic propagation in these circumstances do not comport well with the idea of a university as a forum for open-minded enquiry and impartial scholarship." Mishan E.J. (1993) page 202.

The Law Commission's Women's Access to Justice project is an application of "gender analysis". Gender analysis is not intended to be open-minded, objective research. It is ideologically inspired and has an in-built political goal. As such, its methodology is suspect.

As will be shown, the New Zealand legal establishment possesses institutional characteristics which can make it particularly vulnerable to capture by well-positioned parties promoting a particular interest. This is illustrated by the current situation.

The aim of this paper is to assess the methodologies, the assumptions and the information being presented to make the case that women are disadvantaged. I shall consider how the legal sector might be vulnerable to this lobbying, and I shall attempt to briefly outline what might be men's perspectives on these issues. I shall focus primarily on Family Law because that appears to be the main area of relevance for the Women's Access to Justice project.

Section 2 below looks at gender analysis; section 3 considers the general direction of the Women's Access to Justice project; section 4 provides some context for assessing the possible impact of the project and related work; section 5 considers specific types of information presented in the project literature and elsewhere; and section 6 speculates on the perspectives that men might present if they were given an equal opportunity to comment on these matters.

2. WHAT IS GENDER ANALYSIS?

In 1996 the Ministry of Women's Affairs issued a publication called, *The Full Picture: Guidelines for Gender Analysis*.

To quote:

"What is gender analysis?"

Gender analysis:

- *examines the differences in women's and men's lives, including those which lead to social and economic inequity for women, and applies this understanding to policy development and service delivery;*
- *is concerned with the underlying causes of these inequities;*
- *aims to achieve positive change for women."*

It looks for and attempts to overcome inequities for women, but not for men. The identification of inequities involves the selection of indicators, obtaining the data, and applying value judgements to say whether a higher number is better or worse. There is scope for debate at each of these stages. A balanced approach would accept that the perspectives of all participants must be considered. Gender analysis aims to improve the position of women where they are considered to be disadvantaged, but to do nothing where they are considered to be advantaged. By focusing on disadvantage and overlooking areas of advantage, a distorted picture is presented. This is likely to result in inappropriate recommendations.

The outcome of the Women's Access to Justice project leads to perspectives such as the following: If women's material standard of living falls on separation, that should be corrected, but if men's material standard of living falls on marriage, that is irrelevant. If women have difficulty obtaining child support, that should be corrected, but if men are obstructed from seeing their children, that is irrelevant. If women are found to have more difficulty than men in getting paid employment, that should be corrected, but if men have difficulty getting custody, that is irrelevant.

The publication on gender analysis does not define equity, except to say that equality is not equity, because men's and women's lives are different (pages 7 and 8). With selective choice of criteria and a focus solely on women, there is great scope for fundamentally inequitable outcomes.

Under "Guidelines for Action" (page 24), there is a sub-heading, "Consultation". There are 5 points - four refer to consultation with women:

"Consultation

- *Begin consultation with women at the outset of the policy process to enable accurate scoping of the issue.*
- *Consider whether groups or individual women should be consulted, the time of day, appropriateness of venue, in particular whether it can be accessed by women with disabilities, how the meeting is to be run, the use of appropriate language, a signer (for those who are deaf or hearing impaired) and provision of accessible and affordable childcare.*
- *Consult with different groups of women to reflect the different issues affecting women.*
- *Allow adequate time for women and especially Maori women to consult amongst themselves as part of the process of forming a view."*

The fifth is not: "begin consulting with men at the outset"; nor is it "consider whether groups or individual men should be consulted, the time of day....."; or "consult with different groups of men"; or "allow men time to consult amongst themselves". It is, *"Seek the advice and assistance of the Ministry of Women's Affairs on key gender-specific issues concerning social and political policy development."*

Not only are the issues selected with a pro-women focus (or perhaps more accurately a feminist focus), but the whole approach to gathering information appears to exclude input from men.

On page 8 there is the claim that, *"Gender analysis provides a basis for robust analysis of the differences between women's and men's lives, and this removes the possibility of analysis*

being based on incorrect assumptions and stereotypes."

It is difficult to see how this can be the case when there is no provision for equal consultation with men. Also an approach based on gendered groupings will inevitably result in explanations reliant on stereotypes. It is hard to see how such a one-sided and loosely defined approach can possibly meet the claim, in the title of the document, that it gives "the full picture".

The Law Commission's Women's Access to Justice Project follows a gender analysis methodology. The approach should be contrasted with that used in the "Fathers Who Care: Partners in Parenting" project, being undertaken by the Office of the Commissioner for Children. According to a letter sent to parties interested in the latter project in late May 1997, a far wider range of opinions is being sought: *"We plan to ascertain the views of children, men and women in relation to their perceptions of fathering and co-parenting."*

3. WHAT IS THE WOMEN'S ACCESS TO JUSTICE PROJECT?

The terms of reference of the Women's Access to Justice Project are reproduced in appendix I. In brief, they state that the Law Commission will examine the response of the legal system to the experiences of women in New Zealand with emphasis on family and domestic relationships, violence against women, and the economic position of women.

There is an emphasis on consultation with women, and an assumption that women are disadvantaged. The language and approach show that this project fits under the umbrella of gender analysis. We can therefore already anticipate many of the weaknesses inherent in the project. I voiced my concerns in a blunt submission to the project (see appendix II), pointing out in particular that it is looking at the issues from one side only. This would seem to run counter to a fundamental requirement of law and justice. I have the benefit of a direct response from Joanne Morris, Law Commissioner, explaining the Law Commission's choice of approach (see appendix III). The main points that I would identify in her response are that:

- 1) the focus of the project is not on substantive laws but on the legal services which enable the substantive law to be invoked;
- 2) the effects of gender create a more marked set of difficulties for women seeking to access legal services than they do for men. For example:
 - a) women are more vulnerable to poverty or low income because of their gender and,
 - b) having not been participants in the legal system until relatively recently, are more likely to find its manner and style alien and offputting;
- 3) A male input is obtained in large part because they have received submissions from male lawyers, judges and others involved in the administration of justice, and their meetings with those who work within the legal system are invariably attended by a majority of men reflecting the composition of the legal profession.

These are addressed in turn in 3.1 to 3.3.

3.1 The focus of the project

To quote two extracts from the terms of reference of the project:

- i) *"Priority will be placed on examining the impact of laws....."*
- ii) *"The Law Commission ... will report to the Minister of Justice concerning: ... specific law reforms ... "*

There are also references to principles followed by policy makers and lawmakers, as well as educational strategies. The Law Commissioner's comments appear to be in direct contradiction of the terms of reference.

In the project's 1995 publication, *Overview of Law Commission's project and issues arising in the consultation sessions to date*, the following specific issues are identified: matrimonial property; de facto property; maintenance - child support; custody - guardianship; adoption; ACC - medical misadventure, lump sum compensation, unpaid work in the home; DSW benefits - income support; superannuation; tax; employment law - sexual harassment, pay equity, child care, parental leave; property division upon death; domestic violence; rape law; other crimes of violence against women; defences to murder; legal aid; sexual abuse of

children; prostitution; criminalisation/institutionalisation of women.

The project is clearly intended to have an impact on policy making, to suggest changes to the law, and to influence the background information provided. In addition, changing the process can affect outcomes, and a big impact on judicial decisions and the interpretation of the law can be had without resorting to law changes.

3.2 The effects of gender

That the project uncritically builds on a foundation of feminist thinking is evidenced by the explanation given in a paper by Law Commissioner Joanne Morris, “*Justice is not blind to the effects of gender*”. For example:

“ ... it is manifest that men do experience difficulties in dealing with the legal system. But those difficulties are not attributable to men’s gender - the socially constructed roles of men and the value placed upon them. Poor men and men from ethnic minorities head most people’s list of men who have difficulties accessing justice. Yet poverty is not as prevalent amongst men as amongst women. And the poverty of men is unlikely to be directly related to their socially constructed maleness whereas women’s poverty is very likely to be the outcome of the social construction of women’s roles and their value. Also, while men and women from ethnic minorities experience particular, and often fundamental, obstacles in their dealings with the legal system, the compounding effects of gender do seem to distinguish the quality of men’s and women’s dealings.”

(pp. 7-8)

Unfortunately, as suggested by Mishan in the quote at the beginning of this paper, we are expected to accept these claims on faith as a justification for modifying our legal system. The points really need to be spelled out and evidence presented.

That hypotheses are neither provisional nor refutable is suggested in the project’s *Miscellaneous Paper 11: The Education and Training of Law Students and Lawyers*, where,

for example, the terms “gender issues” and “feminist approaches” appear to be synonymous (see paragraphs 120, 121, 127-130).

Miscellaneous Paper 10, para.40, quotes an explanation of the importance of gender from the Australian Law Reform Commission document, *Equality Before the Law*, (DP54, 1993):

“Gender describes more than biological differences between men and women. It includes the ways in which those differences, whether real or perceived, have been valued, 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 experiences of the legal system, occur within complex sets of differing social and cultural expectations.”

This explanation is more tangible than that presented by Morris. Gender might be an important influence on perceptions and expectations. This does not mean that women are necessarily the ones who would be disadvantaged, however. For example, a father seeking custody might be required to prove to a skeptical court that he is a fit parent and also that the mother is unfit. In the context of women’s violence, Pearson (1997) writes: *“Because we won't concede aggression and anger in women, the language we use to describe what they do is much more limited, and much more exonerative.”* (p.42)

3.2.a Poverty or Low Income

It is claimed that women have more marked difficulties because of poverty or low income. Presumably this statement is based on national data on incomes of men and women. It should be based on information on the availability of funds to those requiring legal services. These are not the same. For example, it is insufficient to say simply that women are disadvantaged because they earn less than men. There are intra-family reallocations of income, so a woman is more likely to have access to funds from the income of a higher-earning partner. There should also be consideration of the demographics of users of the legal services. Male users are

not necessarily representative of men in general. This relates also to point 2(b), women are “more likely to find its manner and style alien and offputting”.

3.2.b Alien and offputting

Who are the “users”? Men comprise the majority of offenders, but a minority of men offend, and they are generally young. It is hard to see how their experience can be expected to give them an advantage over women in subsequent court appearances (when contesting custody, for example). Conversely, women’s contact with the court is more likely to be a positive experience and some areas, such as court ordered counselling, are arguably far more in tune with women’s needs and experiences than they are with men’s.

Table 2.13 of *Conviction and Sentencing of Offenders in New Zealand: 1985 to 1994* (1994, Ministry of Justice) gives figures on number of cases resulting in a conviction excluding traffic offences. They are 51,554 for males and 11,212 for females. According to Department of Statistics figures, the 15+ population of New Zealand in 1994/5 was 1,346,400 males and 1,415,700 females. Male cases therefore equalled approximately 1 in 27 of the male population. Of the male figures, 18,741 were Maori and 23,258 were European. Department of Statistics data suggest about 10% of the population is Maori, the others are mainly European, so we have a convictions:population ratio of about 1:7 for Maori and about 1:50 for European (2%). Going by age (table 2.14 of the Ministry of Justice publication), of the 48,050 male cases where age is known, 9,644 are 14-19 and 14,009 are 20-24. I.e. nearly half are under 25.

So in a year, perhaps 2% of the male European population has a case resulting in a conviction (ignoring the possibility of one person having several cases). Perhaps half of these are men under 25. Their experience is supposed to result in all European men, including those with convictions, not finding the legal system “alien and off-putting”. I would have thought that it would do the opposite for those convicted, and nothing for other men. We should also add that contact with the legal system does not necessarily mean conviction. There are those who were wronged and seek redress, many of whom are women, there are witnesses, many of whom are women, and so on. Their contact may be a far more positive and beneficial

experience.

It is also hard to understand how a conviction for a drug offence or for shoplifting, for example, could be considered useful familiarisation for anyone making a custody application. Surely it is more likely to have the opposite effect.

Much of the contact that women have with the legal sector occurs in the Family Court (*“Predominantly ... women described family law as the one area in which they came into contact with the civil justice system.” Miscellaneous Paper 10, para.44*). This contact would commonly arise in the context of disputes with men. The failure of the project to seek a substantial input from men therefore means not only that many of the users of the sector are overlooked, but also that the concerns of one side only are considered. To take the issue of custody, for example, the Family Court addresses conflicts between custodial mothers and non-custodial fathers. The experiences of these two groups are quite different, so submissions by these mothers are unlikely to reflect the experiences of the fathers. Changes to the treatment of mothers would inevitably impact on the fathers, however.

The Family Court’s work involves input from people with various skills besides the law. In particular, it pays and/or works closely with psychologists, counsellors and social workers. It could be argued that men are more likely to find these people and the way they work “alien and offputting”.

A large proportion of these workers are women. The following data from the Massey University annual publication *Graduate Destinations* for the relevant years refer to Massey Bachelor of Social Work graduates for 1992-1994.

1992 - M=3, F=28

1993 - M=6, F=32

1994 - M=3, F=35

1993 figures also show that the mean age for the men was 35, and for the women was 26, but the mean salaries of those who were employed at the time of the survey was \$26,580 for the

men and \$28,379 for the women. Women are also more likely to be clients.

Also, on page 87 of Maxwell G M and Robertson J P (1993), we find that *"All but three of the 33 counselling co-ordinators during the first half of 1989 were women"*.

Counselling co-ordinators have an important part to play in allocating the people who conduct Family Court counselling and those who make psychological assessments under section 29A of the Guardianship Act.

"It has been held in the High Court that a s 29 A does not limit persons qualified to make psychological reports to persons registered under the Psychologists Act 1981 (re existing psychotherapists). Section 29A does not provide any restriction upon the selection of report writers, it leaves the determination of "suitability" to the Court's discretion." (Butterworths, 1995, page 476)

In other words, unqualified people may be selecting the experts to advise the Court, and these experts may not be vetted by the relevant professional body. Even appropriately recognised experts may not be impartial, however, as is discussed in part 4.6.

It may therefore be the case that women have far more contact and familiarity with important aspects of the system. Those working in these areas may also be more familiar with and sympathetic to women's perspectives.

3.3 Men represented by men in the legal profession

The Law Society has made a submission to the Women's Access to Justice project. It is summarised at: <http://www.nz-lawsoc.org.nz/lawtalk/access.htm>. They point out that the work of the project to the date of submission:

"...fails adequately to acknowledge that the experiences and needs of the self-identified group informing the project are not representative of the experiences of all women accessing the justice system."

The paper records comments by women self-identified because of their negative experiences. From these comments are drawn generalisations about women's experience in the legal system, resulting in an almost wholly negative commentary on what lawyers generally can and do provide for their clients."

The defence of lawyers against criticisms raised by the project is that women who are satisfied would not make submissions. They fail to mention that men may also have a viewpoint and that men's perspectives may be different from women's. Given this oversight on the Law Society's part, it is hardly likely that they would adequately represent men as claimed by Joanne Morris. To the Law Society, in the context of the Women's Access to Justice project, male clients appear to be invisible.

Interestingly, the following is from Women's Health Action Trust, *Discussion Paper 1 June 1997 Guidelines for the involvement of consumers in guideline development* (<http://www.womens-health.org.nz/html/guidelines.html>)

"It is not appropriate:

- that those holding medical power, or operating as health professionals and health service providers take on the role of consumer representatives.*
- to use professional social work services to act on behalf of the community. Such people do not necessarily have a mandate to represent community views and aspirations."*

If representation by professionals is inappropriate for women in the health sector, would it not be equally inappropriate for men in the legal sector?

4 WHY IS THE LEGAL ESTABLISHMENT VULNERABLE?

What influence might the Women's Access to Justice project have? Will its recommendations be subject to rigorous scrutiny? Will they be seriously challenged in the courts and elsewhere? This section considers whether errors or biases are likely to be speedily identified and corrected.

4.1 Specialist issues

In an earlier paper (Birks S and Buurman G (1997)), Gary Buurman and I suggested that the law fulfils a service to society. It does not exist and operate in isolation. Rather, it is used to address issues which, to be properly understood, require an understanding of other specialisms. If, for example, the law is used to resolve an economic issue, then the arguments used and the decision reached should stand up to critical scrutiny on economic terms. It should therefore be assessed on that basis. The same applies in other areas, such as the environment, employment, or families. If it is not subject to this scrutiny, there is a danger that it will produce inappropriate outcomes.

There are those who would say that the law is complex, that lay people need specialist lawyers to help them to understand it. There is even a "mystique" built around the law which, some might argue, affords it a distinct logic and its own assessment criteria. This is to lose sight of the function that the law fulfils for society. For example, if legal decisions on economic issues do not make economic sense, then the law is failing in its function. The assessment criteria must include economics.

Judges and others in the legal profession may be experts in law, but in areas such as economics and families they are amateurs. They are heavily reliant on appropriate professional support in these and other areas. They may be misled by inappropriate or inaccurate information. It is not clear that satisfactory support is always obtained and incorporated (see section 5).

4.2 Lack of Transparency - Menus and Plausibility

In *Logan v Robertson* (1995, NZFLR 711) late submission of a husband's affidavit was not permitted because "the directions of the Court were not to be treated as non-binding guidelines". In *Nichols v Nichols* (1996, NZFLR 311) the same judge allowed late submission on the grounds that "an injustice could have been done to the wife if she had been unable to have the affidavits introduced". Any underlying justification for these conflicting approaches is not presented. It is as if there is a "menu of principles" which can be drawn from as necessary to support the desired result. Under such circumstances arbitrary or biased decisions could be made with the appropriate explanation added, and we would be none the wiser. In other words, even if a decision appears to be well reasoned and internally consistent, it may not give a complete and transparent explanation. This potential for decisions based on unstated assumptions gives further cause for concern about the information which might be shaping judges' opinions.

Furthermore, the *Dominion*, 18 December 1997, reports on an appeal in the case of a man convicted of rape when his defence counsel had chosen not to present evidence that he was impotent. His counsel claimed that it would have been "dangerous" to run that defence in addition to the chosen approach. This suggests that cases presented to the court consist of selected pieces of information tailored and interpreted in an attempt to make a "plausible story". The party with the most plausible story then wins. Plausibility will depend on the judge or jury's preconceived views. Widespread misinformation about, for example, domestic violence and abuse, relative earnings, paid and unpaid work contributions, and ability to care for children could therefore have a big effect on court decisions.

4.3 Discretion and Pressure

Roger Kerr (1997) states that, "*the Court of Appeal has been inconsistent (at best) in observing restraint and predictability as cardinal virtues of decision making in critical cases*"(p. 361). In reference to *Z v Z* ([1997] NZFLR 241, the appeal on the *B v B* decision mentioned in 4.4 below), he refers to "*cases ... regarded as merely a trigger for the Judge's*

social activism ...” (p. 362). On page 363 he uses the term “bootstrapping” to refer to “*the frequent repetition of comments on unargued matters until they are regarded as representing the law*”. This sounds remarkably similar to Mishan’s “doctrines” as compared to “provisional and refutable hypotheses” in the quote at the start of this paper. If Kerr is correct in his assertion, then doctrines can become part of law without proper investigation or analysis. This is a particular concern if judges aspire to social activism while being primarily exposed to one-sided information.

4.4 A "Team" Outcome

The outcome of court action does not depend on judges alone. There are other participants in the process and effective and appropriate behaviour is also required from them. New Zealand Principal Family Court Judge Patrick Mahony indicated this point in relation to the Domestic Violence Act when he referred to a:

“... heavy professional onus on members of the legal profession who advise applicants, to ensure in each case that an application without notice is justified, and to ensure in every such case the evidence placed before the Court is fair and balanced with all relevant circumstances disclosed, whether they are favourable to the applicant or not.” (Mahony P, 1997, page 64)

He may be overly optimistic if such behaviour is widely expected. Cotter W B and Roper C are authors of the (1996?) *Report on a Project on Education and Training in Legal Ethics and Professional Responsibility for the Council of Legal Education and the New Zealand Law Society*. In it they state:

“Is the legal profession still a profession, or should we simply accept that the delivery of legal services is nothing more than a business. ... Lawyers need to ask what are the fundamental values which underlie their work.

In business different rules often apply, for example with regard to conflicts of interest and confidentiality. Are lawyers operating effectively in a business

environment but being inhibited by an outmoded concept that they are working as part of a profession, which has its own rules of conduct? It was suggested that the times include a climate of deregulation. Far too often there is an attitude that you get away with as much as you can." (page 58)

If the professionals working in the legal system have reason to behave in inappropriate ways, and if their respective professional bodies are unable or unwilling to effectively constrain and discourage such behaviour, then judges will be faced with a particularly challenging task.

4.5 Innovation and Precedent

Evolution of common law without good information or understanding of relevant areas could be very damaging. If there is no further monitoring of the effects of decisions, it could take a long time for approaches to be identified as unsuitable. Confidentiality as exists in the Family Court can be a factor in extending this process. In the meantime, similar decisions could be made, erroneously, on the assumption that they are appropriate.

There are also issues of cost and uncertainty of outcome. While it might be considered desirable that the law can evolve and adapt to meet society's changing circumstances, the cost of this process increases the financial burden of the particular litigants concerned. Repeated testing of points can result in expensive actions "reinventing the wheel", with no guarantee that the relevant specialist issues are being considered in a full and balanced way. More transparency and public accountability might reduce these costs, but it may be that better approaches for many issues would be developed more effectively and economically outside the courtroom. As things stand, the costs associated with an unclear legal position might deter people from court action, resulting in their accepting a less than satisfactory situation. In economic terms, legal action may benefit the rest of society for which the beneficiaries do not have to pay (an "external" benefit). Those paying consider the cost to themselves in relation to their own benefit only.

5 PROBLEMS WITH BACKGROUND INFORMATION FROM THE WAJP AND ELSEWHERE

Information shapes opinions and influences decisions. This section looks at some of information used by the Woman's Access to Justice project and from other sources which is likely to have an influence on the development and application of the law. It considers the specific areas of incomes, the measurement of unpaid work, the effects of separation, domestic violence, and perspectives of experts. The project also claims that the law is biased against women. That claim will be addressed first.

5.1 Bias against women?

Joanne Morris, in her paper "*Justice is not blind to the effects of gender*" refers to women's conviction that they, "*because of their gender, are at a disadvantage in obtaining justice*". She appears to accept the existence of a "*systemic gender bias*". No evidence is presented in support of this claim. Overseas debate suggests that the reverse may be the case. This debate focuses on questions such as:

- Given a situation, are women as likely as men to be charged with an offence?
- If charged, will the charge be as serious?
- Once charged, are women as likely to be convicted?
- If convicted, will the sentence be as severe?

There are indications that the answers to these questions in New Zealand, in relation to violent offences at least, would be, "No":

- a) On 10 October 1997 the Evening Standard reported on a woman who shot her partner. The police were "sympathetic" and laid relatively light charges. The judge was also sympathetic and gave a suspended sentence. One "justification" given is that she "believed she was not being taken seriously".
- b) On 3 December 1997 the same paper reported that "Young crims must be punished". The article gave details of jail sentences imposed on four sixteen year old males. The judge is

quoted as saying that, "a message must be sent out loud and clear". The fifth case in the article is that of a sixteen year old girl who was given a suspended sentence by the same judge for "smashing the face of a bartender with a beer bottle ... causing severe cuts to the side of his face which needed 32 stitches".

- c) On 2 February 1998 the paper reported on a seventeen year old woman who had committed two assaults including punching the victim in the back of the head and face, and slamming her head into the wall of a building. The judge is quoted as saying that he thought the light charges she faced were possibly due to gender. Although she expected only a fine, she was sentenced to three weeks in prison.
- d) On 3 February 1998 the same paper reported on another case heard by the same judge on the same day as the above. This time it involved an eighteen year old man who participated in a takeaway robbery. The man, described as amateurish and inexperienced, produced a knife. There was no violence. He was sentenced to four and a half years in prison.

There are indications of possible gender bias in other areas of law also. The *Child Support Review 1994: A Consultative Document* specifically addresses the question of gender bias in the Child Support Act. On page 16, the issue of gender discrimination in the legislation is dismissed on the basis that the assessment criteria are gender neutral:

"The Act is only concerned with the provision of financial support from absent parents toward their children, not the gender of the liable parent or custodian."

The language is clearly gender neutral. However there is a difference between the technical effects of the legislation, as specified in the gender neutral language of the Act, and the distributional effects in terms of who is generally affected in what way.

This is clearly shown and the bias apparent on page 24, where it states that:

"a strong disincentive to workforce participation could result if every dollar earned by the custodian over a given threshold resulted in a decrease in child support. As 84% of lone parents are women, structural gender based inequities in

the labour market could be worsened."

In other words, although the language is gender neutral, the legislation is designed to meet gender-specific objectives. No information was presented to support the claim of "*gender based inequities in the labour market*". This reasoning also results in people being treated according to some (claimed) average gender-based characteristic. In other words, it is based on gender, not the characteristic itself. This is gender stereotyping.

Another example can be found in relation to the Child Support Act. A parent who has the children with him/her for less than 40 percent of nights is considered non-custodial (otherwise termed the "absent" parent, while the other is the "lone" parent!). This means that there is no consideration of most of that parent's costs incurred as a result of time with the children, he/she pays child support as if the children are with the custodial parent all the time. Some would question whether "nights" is the appropriate measure, rather than time with the children. Butterworths explains it as follows:

"The choice of 40 per cent of nights might at first appear curious but it is probably explained by the fact that most children spend a great part of the day time in school and most of the parental care is later in the day and in the early morning with sleep in between." (Butterworths, 1997, p. 294)

This misses the fact that most non-custodial contact would be at weekends and holidays. Non-custodial parents would not be limiting their care to later in the day and in the early morning. Given their limited contact, they are likely to be providing very intensive care all the time that the children are with them. Arguably, therefore, the criterion gives the most favourable weighting possible to custodial parents, predominantly mothers.

5.2 Incomes

Paragraphs 41 and 42 of the project's *Miscellaneous Paper 10* contain some census data comparing men's and women's incomes. It is stated that "*women are over-represented in occupations with low median incomes, such as clerical and service occupations*". This is not what we find in the 1996 census. The occupations with low median incomes are service and

sales workers; agriculture and fishery workers; and elementary occupations. All these have median annual incomes below \$25000 (note that census income data is for income from all sources). These cover 25.47% of men and 24.76% of women. The occupations with median incomes of over \$30000 are legislators, administrators and managers; professionals; and technicians and associate professionals. These cover 36.15% of men and 40.18% of women. Contrary to the WAJP claim, these figures suggest that women are over-represented in occupations with **high** median incomes. This is remarkable because women are more likely to work part time, and this is likely to deflate the median income level to a greater extent in the occupations where they are concentrated.

Table I gives estimates of average incomes (as distinct from median incomes) of men and women by occupation, plus the proportions of men and women in each occupation.

Table I: Income by occupation and gender

Occupation	average income males	average income females	m/f emp. ratio	Males %	Females %
Legislators, Administrators and Managers	\$40,997	\$31,969	2.06	14.78%	11.79%
Professionals	\$42,031	\$34,082	1.05	10.40%	16.17%
Technicians and Associate Professionals	\$37,962	\$29,533	1.47	10.97%	12.22%
Clerks	\$30,295	\$25,209	0.32	4.72%	24.11%
Service and Sales Workers	\$28,975	\$18,258	0.84	7.57%	14.74%
Agriculture and Fishery Workers	\$24,565	\$18,732	3.06	11.35%	6.08%
Trades Workers	\$29,221	\$21,036	18.53	16.87%	1.49%
Plant and Machine Operators and Assemblers	\$28,939	\$18,633	4.45	12.65%	4.67%
Elementary Occupations	\$23,906	\$17,134	2.73	6.56%	3.95%
Not Adequately Defined	\$28,617	\$20,536	1.42	4.14%	4.78%
Total	\$32,449	\$25,818	1.64	100.00%	100.00%

Source: Calculated from Income Table 5, *1996 Census*, Statistics New Zealand (incomes were assumed to be at the mid-point of the income group, negative incomes assumed to be zero, highest income group assumed to have an average of \$120000). The ratio column gives the number of male workers divided by the number of female workers.

Note that average incomes for female clerks are about the average for women overall, and

exceed those of males in agriculture and fisheries or elementary occupations. The claim that women are concentrated in lower paid occupations is therefore dependent on the measures used. While women's average income is lower than men's for each occupation, this is in part explained by such factors as differences in time worked through the year, years of experience, and the nature of the work done.

Paragraph 42 of *Miscellaneous Paper 10* states that the median income of mother-only families was 85% of the median income of father-only families. This may be the wrong indicator to use for comparisons. The paper indicates that men in father-only families are more likely to be in full-time paid work. When comparing median incomes, attention should be paid to whether income is taxed (child support is not), and other benefits which may be available (such as cheaper medical care). Children in father-only families also tend to be older, and hence more costly. Fathers may also have higher childcare and work related expenses if they are in full-time paid work. There are also measurement problems when census data are used to compare custodial, non-custodial and two parent households. The data are likely to give inflated figures for non-custodial parents and understate those of custodial parents. This is discussed in appendix IV.

5.3 Measurement of Unpaid Work

It is said that women bear a double burden. Not only are they undertaking paid work, but they also do the majority of the unpaid work. See for example, Hyman P (1994) pages 67, 181, 186, 187, and 220. This claim is misleading, however. A common source of information on unpaid work is time use surveys. These consistently show that, on average, men and women spend about the same amount of time in total on paid and unpaid work.

Two New Zealand studies have been undertaken so far: Fletcher, G.J.O. (1978), "Division of Labour in the New Zealand Nuclear Family", *New Zealand Psychologist*, 7(2), pp.33-40, and Department of Statistics (1991), *Testing Time: Report of the 1990 Pilot Time Use Survey*, Wellington: Department of Statistics.

Fletcher's study has been used to show that women perform the greater part of unpaid work in the home, and that women who switch from "homemakers" to full-time paid workers experience a big increase in total hours worked while their partners' total work time hardly changes. While the study does support these findings, it has been incorrectly used to support claims that women are disadvantaged (for a recent example, see Christine Beckett (1997) *I love you but... How to stop doing more than your share of housework*, page 20). Fletcher found that where the woman was a homemaker, working men's total work hours were 66.4, compared to 54.8 by their spouses. The men were working on average 11.6 hours more than their wives. Where both partners were in full-time paid work, the increase in the woman's hours worked was primarily a catch-up (with 66.3 hours worked by the man, and 68.1 by the woman).

Testing Time also does not show women doing a disproportionate share of the work. Figures on page 21 show that the sum of paid and unpaid work took up 34 per cent of an average 24-hour day for men and 28 per cent for women. Note that this considers primary activities only. It could overstate work time in that leisure activities could be undertaken at the same time, and it could understate work time as it would not include work done as a secondary activity.

Statistics New Zealand is currently undertaking a time use survey under contract to the Ministry of Women's Affairs. There are some worrying aspects to this study. These are addressed in appendix V. In summary, it may not be following accepted practices for time diary studies. As a result of the particular structure of this study there may be undue emphasis on "caring" activities and results on time spent on these activities may overstate the true situation. There are also likely to be distortions resulting in understatement of separated mothers' incomes and overstatement of separated fathers' incomes.

5.4 The Effects of Separation

The project's *Miscellaneous Paper 10* in paragraph 45 and *Miscellaneous Paper 11* in paragraph 52 state that women suffer a major fall in income following separation. They draw on the famous study by Leonore Weitzman. Weitzman has admitted that her figures are wrong (see Peterson R R (1996a) and (1996b), and Weitzman L J (1996)). There is more

discussion related to these matters at:

<http://www.massey.ac.nz/~KBirks/gender/econ/weitzman.htm>.

There is some New Zealand information on the effects of separation. Gabrielle Maxwell was engaged as an expert witness in *B v B [1997] NZFLR 217* to present evidence showing that women fared worse than men after separation. She drew on Maxwell G M and Robertson J P (1993). The study was conducted in the late 1980s, and included initial and 6 month follow-up data. This could well mean that there was insufficient time for separation-related earnings changes to be observed. Subsequent policy and other changes may mean that her information is no longer applicable. It would also be too soon for most of the alienation and loss of contact of fathers with their children to have occurred.

There are problems with the basic approach. First, it is not clear why the emphasis was solely on income, which may be an inappropriate measure of the effects of separation. Second, if income is chosen, why was it assumed that a fall in income in a women's income is inappropriate if marriage had resulted in a rise (does marriage involve a lifetime obligation to support a partner even if the marriage ends, the partner can remarry, and the marriage is for only a few years)? Third, was an appropriate time dimension taken to observe the effects of separation? And fourth, shouldn't unpaid work also be considered, in which case men on average would be shown to lose out, as in marriage they have been exchanging the results of their paid work for the results of their partner's unpaid work?

In their paper, Maxwell and Robertson present other information besides incomes. Some of this is summarised in appendix VI. As the issue is one of relative wellbeing of men and women post-separation, this information should be considered in addition to, or even in place of, the income figures used.

Maxwell and Robertson also found that:

- the decisions to separate were predominantly made by women;
- separation had little short-term effect on employment;
- men's incomes were perceived to be more stable than women's, with 35% of women claiming to be worse off and 30% better off;

- men appear to do less well in terms of housing as a result of separation, with 9% saying they were better off, compared to 24% of women. 34% of men and 26% of women said they were worse off;
- on parenting matters, custodial parents were more satisfied than non-custodial parents, and women were more satisfied than men of the same custodial status. The most satisfied group was custodial women, and the least satisfied group was non-custodial men. Most women are custodial and most men are non-custodial;
- women appeared to recover better from separation and be more satisfied with life than men.

Given these findings, why did Maxwell just pick out the income measure? We should have serious doubts about the use of crude income measures alone to judge gender differences in wellbeing after separation.

Even if separation did cause a marked fall in incomes for women in the 1980s, the situation may have changed radically by the 1990s. McKeever M and Wolfinger N H (1997) found with US data that the drop in median income experienced by single women after separation in the early 1990s was only 12%, while there was virtually no fall in comparison to still married couples for those who had repartnered. They pointed out that other existing studies are based on data that are at least nine years old.

Incidentally Maxwell, now with the Office of the Commissioner for Children, was quoted in “Do children need a mum and a dad?”, *Listener*, November 5, 1994, page 13:

“Many more women are solo parents now than in 1985, “and they know the reality that they can provide for their children without a man”.”

and:

“The overall change [in opinion] between 1985 and 1994, she suggests, also partly reflects “the -gradual percolating-down of information from research, which shows that children can grow up perfectly unharmed by being in a solo-parent family.””

She seems to be of the opinion that fathers are irrelevant, other than as a source of money.

The use of the Maxwell evidence in *B v B* raises another issue. In section 4.2 I suggested that there might be a “menu of principles”. One such principle might relate to the use of general information. Judge Bremner has dismissed statements on the importance of parental contact as being “*not accurate enough to make such general statements*” (Green D F, 1995, page 140). In other words the information is not accurate enough to be of value. This situation can arise if the results vary over individual cases, or if alternative results have been observed. Individual circumstances are also important in relation to earnings. *B v B* was an extreme case, and Maxwell’s information was based on averages.

In section 2 it is mentioned that gender analysis claims to prevent analysis based on stereotypes. Here we see the application of an inappropriate stereotype when there exists a principle that general statements may not be accurate enough to apply to a particular case. If we are looking for gender bias, it could be noted that this principle was applied where its application was to a mother’s advantage (by excluding expert testimony on the harmful effects of father absence) and ignored where its application would have been detrimental to a woman’s case (by excluding expert testimony on the impact of separation on men’s and women’s income levels).

There are other dimensions of separation besides income changes to consider. The project’s *Miscellaneous Paper 11* states that women are “*much more likely to take primary responsibility for children and the associated economic burden*” (page 16).

There is extensive literature on parental alienation which makes it clear that it is not uncommon for women to exclude fathers against the fathers' wishes. It can hardly be said that the mother is disadvantaged under those circumstances.

We should also note the operation of the Child Support Act in New Zealand. While many liable fathers are on low income and are not liable for much child support, those who do pay above the minimum are frequently making sizable payments. The custodial parent is not accountable for how this money is spent, the payments take no account of the custodial parent's income, and there is no consideration of the costs of “enjoyment of access” incurred

by the non-custodial parent when caring for the children. The “economic burden” may therefore be born largely by the non-custodial parent, and the custodial parent may be given significant assistance in the form of Family Support and other benefits.

Family Support levels are based on household income in relation to number of children. There is no consideration of the fact that a single parent household is favourably treated because: i) it has only one adult to provide for; ii) a significant proportion of its income could be tax free; and iii) the children might be elsewhere for a significant amount of time.

Child support has another impact also. It is sometimes said that separated women are disadvantaged because it is harder for them than for separated men to borrow money. Fathers are also affected, however. Child support liabilities are considered by financial institutions to be equivalent to payments in service of debts. As a result, fathers may find that their ability to borrow is severely restricted.

5.5 Domestic Violence

Miscellaneous Paper 11 discusses violence against women on pages 17 and 18, making the claim that, “*Violence against New Zealand women is also an effect of gender ...*” (page 17) This is a puzzling claim and their data present only part of the story. Local and overseas studies indicate high levels of female violence.

Karen Holdom (1995) quotes Liz Malcouronne, a co-ordinator at Waitakere Women's Self-Help Trust:

Liz Malcouronne admits she feels uncomfortable about putting female aggression into the limelight. "It's very sensitive because when you start talking about women being violent it takes the emphasis away from men being violent. It's like transferring the responsibility. You don't want to take the heat off men." (p.82)

What is the female aggression which is not being mentioned? As Pearson (1997) says:

"Women commit the majority of child homicides in the United States, a greater share of physical child abuse, an equal rate of sibling violence and assaults on the elderly, about a quarter of child sexual abuse, an overwhelming share of the killings of newborns, and a fair preponderance of spousal assaults." (p. 7)

and:

"In Canada, young women now account for 24 percent of all violent offences in their age group..." (p.32)

Straus (1993) also found that partner violence is evenly distributed between men and women:

"Although there may be exceptions that I missed, every study among the more than 30 describing some type of sample that is not self-selective ... has found a rate of assault by women on male partners that is about the same as the rate of assault by men on female partners." (p.70)

More extreme results have been found for New Zealand, as shown in figure 1 on page 6 of Moffitt T E, Caspi A and Silva P (1996). For the cohort in the study, reported perpetration rates for violence in the previous year were clearly **higher** for women than for men, with reported victimisation rates for married and cohabiting males were also markedly higher than for the corresponding group of women.

Hilary Lapsley has criticised the use of findings such as those by Straus (Lapsley H, 1993). It is suggested that the effects of violence on victims are greater for women than for men. In many cases of violence by both men and women, there are no injuries. If only violence resulting in injuries is considered, then many of the cases of violence should be omitted.

Some data on the severity of domestic violence injuries in reported cases in New Zealand are provided by the Hamilton Abuse Intervention Pilot Project. Maxwell presents these data in table 2 of Maxwell G M (1994). The data only cover women, but that is not surprising given

that the project has a "Assailant/Men's Programme" and a "Victim/Women's Programme" (see Robertson N, Busch R, Ave K and Balzer R (1991), Appendices B and C). Of 476 records of police incidents of physical assault (or a "serious threat") involving "family or people in a close relationship" collected by HAIPP between July 1991 and April 1994, 26 percent had no visible injuries, and a further 61 percent had "bruises, laceration, redness, swelling, etc."

Surveys tend to report a higher incidence of violence than would usually show up in police records, for example. They would include more "lower level" violence with fewer injuries, however. Programmes such as HAIPP, by broadening the range of incidents of violence by men which result in charges, give an exaggerated picture of men's violence in comparison to that of women. A survey has been conducted in New Zealand (Leibrich J, Paulin J and Ransom R (1995)). Unfortunately it only involved men, and they were not asked about women's violence against them. It clearly does not present the whole picture, therefore.

As Pearson (1997) says:

"The idea that domestic violence refers exclusively to wife abuse or to violence against women is ... deeply ingrained in Western consciousness ... The problem is that the dynamic of domestic violence is not analogous to two differently weighted boxers in a ring. There are relational strategies and psychological issues at work in an intimate relationship that negate the fact of physical strength. At the heart of the matter lies human will. Which partner - by dint of temperament, personality, life history - has the will to harm the other?" (p.117)

The above findings are based on male-centred measures of violence. We should not overlook psychological abuse and indirect aggression. Lapsley (1993) also focuses on psychological dimensions rather than just physical injury. She makes a distinction between "minor violence" and "abuse", referring to "an atmosphere of fear and coercion" (page 34). This does not seem to be presented as, in Mishan's words, a "provisional and refutable hypothesis". Broader dimensions of abuse are also described in the Duluth Wheel (see appendix VII). These are gender specific, however. They are discussed further in 5.4 below.

Pearson (1997) discusses why people stay in abusive relationships:

"In many abusive gay partnerships, it is the women with the higher earning power and self-esteem who get assaulted. In her survey of women who identified themselves as victims of abuse, Claire Renzetti found an important distinction between what might be described as "strength" and what we tend to describe as "power". On the whole, the women who got abused tended to be more independent and self-sufficient, less jealous, and had higher incomes. ... they considered themselves to be the anchor for their insecure, volatile partner."
(p.132)

and:

*"It becomes an important clue to understanding why economically self-sufficient men and women stay in abusive relationships. ... They make a decision that they can **stand** it ... "* (p.133)

This is a very different scenario to that of patriarchal power and control and the battered woman as victim. The gender-based "explanation" currently provides a plausible story, however. To quote Pearson again, referring to explanations for violence given after the event:

"Coming from women, these justifications [for their violence] reveal how explanations are culled after the fact from a vocabulary of motive, rationales that anyone - male or female, gay or straight - may reach for to explain what is otherwise mystifying.

*That men have used a patriarchal vocabulary to account for themselves doesn't mean that patriarchy **causes** their violence, any more than being patriarchs prevents them from being victimised."* (p.132)

Pearson (1997) also discusses alternative methods which may be favoured by women:

"... as soon as girls hone their verbal and social skills, at around ten or eleven, they become aggressors of a different kind. They abandon physical aggression, even though their pre-pubescent hormones are still no different than boys', and adopt a new set of tactics: they bully, they name call, they set up and frame fellow kids. They become masters of indirection.

Indirect aggression, as the Finnish psychologist Kaj Bjorkqvist defines it, is 'a kind of social manipulation: the aggressor manipulates others to attack the victim, or, by other means, makes use of the social structure in order to harm the target person, without being personally involved in the attack.'" (p.17)

If we should recognise differences between men and women, as the proponents of gender analysis suggest, then the concept of indirect aggression may be important when assessing violence and abuse. It may be that some women are using the law as a means of indirect aggression when they make false allegations and/or play the victim role:

*"... it might be said that the most extreme form of female-perpetrated abuse is situational. Women can operate the system to their advantage. Donning the feminine mask, they can manipulate the biases of family and community ... in order to set men up. ...Men can be committed to prison on the strength of stereotypes about **them**." (Pearson, 1997, p.142)*

To summarise, the data on violence require careful interpretation and may be misleading. There are alternative explanations of violence and the nature of violent and abusive relationships. The patriarchal power and control approach appears to dominate current thinking. There are flaws in this approach. It would be inappropriate to put too much emphasis on one explanation alone.

5.6 Perspectives of experts

The Family Court is particularly dependent on specialists in other disciplines. They play a role as court-appointed counsellors and specialist report writers, for example, not to mention input from social workers and staff of the Children's and Young Persons' Service. This section presents some information on specialists working in the Family Court area.

An international expert on unpaid work was a keynote speaker at a recent conference on the family in Palmerston North. In his presentation to people active in policy-making and implementation he joked that men are lazy and incompetent, to the obvious amusement of most of the audience. Jack Kammer, in his 1994 book, *Good Will Toward Men*, describes anti-men bias shown by psychotherapists at a gathering in the US. He quotes a woman social worker/director of a relationships centre saying that many women therapists have anti-male prejudices, and that, "many men, especially social workers, are going to take the female's side" (p.51).

In 1994 Judge Blaikie recognised that alienating strategies by separated parents (otherwise known as parental alienation) constitute child abuse, and has suggested possible remedies by the Family Court (Blaikie E O K (1994)). This is an interesting paper, although it is noteworthy that there is no discussion of false allegations of physical and sexual abuse. Although his suggestions are very mild, he is unlikely to get support from some of the Court's experts. Some consider it more appropriate to ignore the issue.

Section 29A reports are mentioned in 2.2b above. A paper by a consultant psychologist and section 29A report writer at the New Zealand Law Society's 1995 Family Law Conference in Wellington took a far more sceptical approach than Blaikie (Adamiak J, (1995)). She questions the use of parental alienation arguments, suggesting the need for "*an informed challenge of the assumptions underlying such terminology*" (p.125). She also addresses the matter of a custodial parent wishing to live elsewhere, which she terms "parental distance". She says, "... *the scenario of parental distance provides an example of where I seriously question the involvement of the Family Court at all.*" (p.125) In other words, she believes that custodial mothers should be free to relocate at will with no regard for the father and his ongoing contact with the children.

Some research questions the focus of training provided in courses on families and family relations. Little is said about fathers in child development texts. This can be misleading. Textbooks on the family and marriage have been evaluated by Glenn (Glenn N D (1997)). He is not complimentary, finding in particular that there is little consideration of children and a downplaying of the problems of marital disruption. Where the latter topic is covered, the books generally “tend to minimise any possible harmful effects” (p.202) on children.

In a more historical perspective, Adrienne Burgess has this to say about books on parenting and their limited focus on fathers:

“Household historians also turned their attention away from advice given to parents and focused on private papers, by analysing diaries, autobiographies and letters in a systematic way. Together these two approaches cast quite a different light on family life in times gone by and, in particular, on the actions and affections of fathers.” (Burgess A (1997), page 38)

It is not clear that experts, if trained, have been given a balanced perspective on some of the crucial issues. If their input is based on a perspective which is not supportive of marriage, undervalues fathers, and has a primary emphasis on favouring women, we can expect to see the same reflected in the actions of the Family Court.

6 WHAT WOULD MEN SAY?

The Women’s Access to Justice project offers women the opportunity to present their views on the legal system. Were men to be given this opportunity also, what might they say? As a result of my work and organisations with which I have connections, I am in contact with men and women who have relevant experience. In this section I shall attempt to briefly express what might be men’s perspectives on some of these issues. It is no substitute for a project on the scale of that being undertaken for women, but it is better than is normally seen. In brief, there is a lot of anger and frustration, but also, contrary to the view of aggressive males, a lot of restraint. That is not a justification for men’s perspectives and feelings to be ignored, however.

6.1 How are fathers viewed by the Family Court?

New Zealand is a signatory to the United Nations Convention on the Rights of the Child. Article 18 begins:

*“1. States Parties shall use their best efforts to ensure recognition of the principle that **both parents** have common responsibilities for the upbringing and development of the child...”*

(my emphasis)

It should be noted that the UN emphasises two parents. In practice, the New Zealand approach, both to separated couples and to couples in difficulty, is strongly biased towards there being only one active parent.

New Zealand legislation is supposedly intended not to favour the mother when considering custody. Section 23, subsections 1 and 1A, of the Guardianship Act 1968, the latter of which was added in 1980, state:

"Section 23. Welfare of the child paramount - (1) In any proceedings where any matter relating to the custody or guardianship of or access to a child, or the administration of any property belonging to or held in trust for a child, or the application of the income thereof, is in question, the Court shall regard the welfare of the child as the first and paramount consideration. The Court shall have regard to the conduct of any parent to the extent only that such conduct is relevant to the welfare of the child.

[1A For the purposes of this section, and regardless of the age of a child, there shall be no presumption that the placing of a child in the custody of a particular person will, because of the sex of that person, best serve the welfare of that child.]"

The second reading of the Guardianship Amendment Bill (No.2), the amendment that introduced the section, was on 27 November 1980. Hon J.K.McLay (Minister of Justice) said:

"There are those who believe that fathers do not gain custody of their children more often because the judiciary discriminates in favour of mothers. If any lingering trace of the so-called mother principle does in fact survive, it will be eradicated by the proposed new subsection (1A) of section 23, inserted by clause 8 of the Bill." (New Zealand Parliamentary Debates, Vol.435 (Nov 6-Nov 27 1980, page 5432)

Eighteen years later, fathers struggling for access or custody are expressing the view that there is currently far more than a "lingering trace" surviving. Their experience indicates to them that there is a strong bias in favour of the mother. This is expressed both in decisions reached and in their experience of the process of determining and enforcing decisions on custody and access. Even when fathers have access time with their children, the circumstances surrounding their involvement (decision-making, the activities they can participate in) can still result in their role as parents being undermined. This failure to support fathers as parents may be partly due to prevailing attitudes - the underlying beliefs which influence opinions about plausibility:

"Professor Ruth Wisse from Harvard, has this to say about the women's movement.... 'By defining relationships between men and women in terms of power and competition instead of reciprocity and cooperation, the movement tore apart the most basic and fragile contract in human society, the unit from which all other social institutions draw their strength.'"

(in an email message by Erin Pizzey, author and founder of the world's first women's refuge)

She is describing the perspective commonly summarised as "patriarchal power and control", the view that men are in control and women are disadvantaged victims. This is central to prevailing approaches to abuse and domestic violence. It falls into Mishan's category of a doctrine rather than a provisional and refutable hypothesis. We can see it applied in practice by Alistair Nicholson, Australian Family Court Chief Justice, when he was interviewed by Susanna Lobez for ABC Radio National - The Law Report, Tuesday, 26th September 1995. He said:

"I think that probably men do better out of the Family Law system than women, overall. I think very often the marriage, or their approach to a marriage, may have been conditioned by older ideas. And I think there is very much a power factor comes into this. And I think the loss of that power that stems from the breakdown of the marriage is something that some men just cannot cope with. They in fact expected to control their wives, they expected to control their children, and they expected that they would do what they were told by them. And once that ceases to happen, I think they find that almost unbearable from the point of view of their ego. ...

The ones that I've observed, anyhow, that seem to have the greatest problem, are the ones who are in access situations where they are, for one reason or other, unable to get their former partner or the children to comply with the access orders that have been made. And they then come to the court and expect the court to solve the problem for them. And the court can't always solve that problem for them."

This is a convenient way to dismiss men's dissatisfaction with their treatment in the Family Court. He fails to mention that one reason for the dissatisfaction is that the mothers in question are able to disregard the law with impunity and have full control. Presumably the access orders were made for good reason, so the mothers are not acting in the best interest of the children.

It is also interesting that Nicholson considers it the father's responsibility to ensure that the mother complies with the order, even if it is the court that the mother is holding in contempt. This is a regrettable attitude to take because any action aimed at enforcing the orders can be represented to the children by the mother as the father attacking and controlling her and them. In other words, it can be used to alienate the children from the father. This is less likely to happen if the matter were portrayed clearly as one between the mother and the court. The cost to the father of seeking lawful remedies is shown in the following by Judge Ellis in *R v C*:

"In situations of conflict between parents over custody and access, it is a primary concern that children have the benefit of contact with both parents. However, in some cases this is not possible. Here it can be said without being unfair to either

parent that Mr R has done all in his power to obtain some form of contact with S and Ms C has done all in her power to make sure that he does not. Mr R has pursued a wide variety of Court procedures, and Ms C has on occasion taken steps outside the law. This pertinency and stubbornness has created a situation where those consulted agree access by Mr R to S is impossible. So too is any form of reporting which would involve Ms C." (Butterworths, 1995, page 441)

Similarly Judge Green, in a paper to the 1995 Family Law Conference, described a case where a judge found that the father's attempts to enforce his guardianship and access rights *"had contributed to the alienation [of the children], because he was seen by the children as thereby controlling the 'new' family"*. (Green D F (1995), p.140)

The clear signal from the 1995 Family Law Conference is that the Court will allow alienation to occur, and will then reward alienating strategies by simply acknowledging the results.

The outcomes are predictable, and it has to be asked why the court allows events to proceed to this stage. Many fathers have seen their relationship with their children be gradually eroded during the course of a custody application or other conflict with the mother while the court has refused to act until the situation is beyond remedy. It is not that the court is powerless. There are numerous interventions which the court has been observed to make for non-custodial mothers, but, in our experience, non-custodial fathers do not appear to be so favoured. Perhaps when the court supports non-custodial mothers it sees itself as countering patriarchal power and control, whereas support of fathers would be seen as reinforcing such control. Especially in the light of Nicholson's comment, it is almost as if a man is considered to be abusive if he takes legal action against a woman. Pearson's view could well be the opposite, the woman could be considered to be using the court as an agent for her indirect abuse of the man.

Even in the absence of any "power and control" beliefs, if there is to be one custodial parent, there may not be an equal competition for custody between father and mother. When the relative merits of the father and the mother are being assessed, the father is effectively competing against a mother who is also given a share of his income (child support payments) plus other assistance from the state. The children may be considered better off with the

mother plus a large portion of his income than with him on his own. A father could be deprived of his family not because he is a poor parent, but because he is a good earner.

He also has grounds to feel that the state is siding firmly with the mother. It gives her financial assistance and uses its powers to obtain child support, but does not enforce access orders or guardianship rights, tolerates other alienating behaviour (where the mother discourages contact, restricts phone contact, or encourages the children to dislike the father, for example), and takes a very protective approach if she calls on the provisions of the Domestic Violence Act. Fathers report that the Family Court appears sekeptical of their parenting ability while treating criticisms they might make of the mother not as justified concerns, but as signs of their hostility to her. The court can also require them to spend many months, or even years, with limited contact with the children while the issue is being considered, and then use the weakened relationship as a basis for not changing the status quo. In addition, there appears to be an emphasis on parenting in the form of caring for young children without recognition that fathers may parent differently and that children's needs change as they grow.

Many fathers do not want to deprive their children of a mother, however. They simply want to continue to be active parents to their children. They face significant obstacles. Non-custodial fathers are not considered as active parents. This is clear from the language used. Contact for less than 40% of nights means that they are considered "absent" parents, even if they care for their children every weekend or more. According to the Child Support Act, their time with their children is for the "enjoyment" of access. There is virtually no consideration of their costs for this time with the children. As a result, there are non-custodial parents approaching 40% of nights who are struggling even to feed the children when they are with them.

This raises the issue of shared custody. Butterworths (1995) states:

“Shared custody arrangements will usually be the result of agreements rather than Court proceedings but sometimes the Courts find it appropriate to make orders for genuine joint custody. The fact that the parents do not get on well at all is no bar to the Court ordering genuine shared custody. Interim orders for shared custody pending the hearing of the merits are more common.” (p. 371)

Cases cited in support dated from the mid-1980's with one from 1991. Hall G and Lee A (1994) present a different view:

“For a joint custody arrangement to work, it would appear that the parents need to have a good, cooperative relationship ... while joint custody was a suitable and beneficial custody arrangement under the right circumstances, an unwilling parent should not be forced or pressured into accepting a joint custody arrangement ... According to New Zealand judges who were surveyed for this research programme, the indicators for making a joint custody order in a disputed case were good communication or cooperation between the parents ...”

(page 76)

The latter approach appears to be the prevalent one at present. There are numerous examples of separated couples co-operating effectively sometimes for years at something approximating shared custody, but with the father paying child support as a non-custodial parent. If he then applies for shared custody, the mother simply has to stop co-operating and he will lose. The perspective that the court takes is such that the mother has a very strong incentive to be uncooperative, even if this is not in the best interest of the children.

Conflict between parents can be enough for the court to order that only one parent have a significant role:

“If the noncustodial parent is reasonably well-adjusted, competent in parenting and has a close relationship with the child, and if the child is not exposed to conflict between the two parents, continued contact can have a salutary effect on the child's adjustment. However, it takes an exceptionally close relationship with a noncustodial parent to buffer a child from the deleterious effects of a conflictual, non-supportive relationship with a custodial parent. If there is high conflict between the parents, joint custody and continuing contact can have adverse effects on the child (Hetherington et al, 1993, p.213).”

(Quoted on P.48 of Smith A B (1996))

Sadly, the conflict is often because the mother wants the children to have only one parent active in their lives whereas the father does not want to be shut out. The court is effectively giving her the power of veto over the father's involvement. The court's apparent initial response to such a situation is that the woman be "persuaded" to be reasonable. How is this to be accomplished when it is clear that no steps are taken to penalise her when she chooses to behave otherwise? This approach is unlikely to be effective if she is vindictive, or greedy, or advised by those groups with strong anti-men views, or by an aggressive and litigious lawyer. If the father persists through the courts, he is then labeled aggressive and controlling.

If a mother causes antagonism through being uncooperative, the Court is likely to limit the father's contact with the children to keep her happy. Lawyers representing mothers have supported this on the basis that they are merely doing their best for their clients, despite the Family Court's supposed primary concern for the children. The Child Support Act's 40% of nights criterion almost always has to be met if consideration is to be given to both parents' direct costs of the children. Lawyers' concerns to ensure that the other parent does not meet this are sometimes quite blatant. This obstructive behaviour can give big rewards to a mother in terms of money, power and expression of vindictiveness against an ex-partner. The Court is often seen to be either powerless or actively supporting mothers in this behaviour. This is particularly apparent where the non-custodial parent's position is gradually eroded through one "compromise" after another, or by delays and disruption of contact.

There are many cases where separated parents work together for the sake of the children. They may do this even without any Family Court involvement, in which case they should not be considered as successes for the Court. The real test of the Court is whether it can achieve a satisfactory outcome in situations when one or more parties would otherwise be unreasonable. In situations of male violence, real or imagined, and in the requirement that child support be paid, the Court is often seen to act forcefully. This is in marked contrast to the Court's ineffectiveness in supporting separated fathers' guardianship rights, and even less their ongoing role as active parents.

It is not clear why the court does so little to effectively support fathers, given that, in some circles at least the value of a father's contribution is recognised:

"The value of networks of family, friends and supportive schools and early childhood centres and of continuing meaningful relationships with non custodial parents has been well demonstrated in the research." (P.49 of Smith A B (1996))

and:

"Yet more and more children are growing up deprived of that best of all influences - a father in the home." (Governor-General Sir Michael Hardie Boys, The Dominion, 25 August 1997, page 8)

This has an effect on fathers also. Ironically it is generally those fathers who were most involved with children before separation who feel most betrayed. Those who were less involved believe that the limited contact with their children is a consequence of their failure to be active enough as parents during the marriage. Those who were active realise that it has no effect. They are being judged according to negative stereotypes. Their claims that they did much of the caregiving are not believed.

The denial of these men's roles as fathers results in denial of other roles for them in society also. As active fathers they can participate in school activities, family-based community groups, sporting activities and social events. They can be role models to their children's friends and share their interests and activities. Many of these fathers are currently being shut out, with harmful effects all round. There are approaching 140,000 New Zealand fathers who are paying child support. This suggests that we are not just losing the involvement of a few individuals. There will be a major impact on the nature of our society both now and in the future. We only have to consider the importance that adopted children place on finding their natural parents to realise that the systematic large-scale exclusion and marginalisation of fathers is a serious matter. It is one which the Family Court has taken very lightly. As a result, men who should be acting as role models and teaching our teenagers to respect society's institutions are turning their backs on the Family Court because they have no faith in it.

6.2 False Accusations

One common tactic, according to some Family Court lawyers, is for a mother to make claims that the man is violent. This is sufficient to give her possession of the house and to restrict his contact with the children. As a result, he incurs higher legal fees and is in a weak position if he wishes to apply for custody. She gets sympathy and his character is in doubt. If the claims are groundless or inflated, it is a very useful instrument of indirect aggression. If women's real violence is taken as lightly as indicated in section 5.1, a man making similar claims, even with foundation, is less likely to find them so effective. The "common wisdom" about the nature of domestic violence is an important factor.

False allegations may be made by people other than a partner or ex-partner. Men have described reports and affidavits from counsellors, psychologists and others which they say have been highly inaccurate. Some have even been accused anonymously and had no opportunity to defend themselves. This can happen if allegations are made and later withdrawn, but they could still have a big impact on events and outcomes.

False allegations could be made for various reasons, not necessarily malicious. Nevertheless there is little opportunity for redress in these situations and inadequate constraints to ensure that only valid domestic violence and abuse claims are made. Loss of family, impoverishment and even loss of career are not unknown consequences. Men in these situations do not feel that they have had access to justice.

6.3 Judges

Anthony Hubbard reports on an interview with Chief Justice Sir Thomas Eichelbaum (Hubbard A (1996)):

"He accepts the feminist argument that there are big barriers to women's advancement in the law. 'I think the whole system is oriented towards the ethos of the work-driven male, and the expectations are largely male expectations.'"

Sir Thomas suggests that women judges are needed to balance up the men, as if an extreme stance in one direction can be "balanced" by an extreme stance in the other. This might mean that the "average" decision would be balanced, but that does not mean that individual decisions will be fair, any more than two wrongs make a right.

He misses the point, however, when he thinks that male judges understand the men who appear in their courts. He is assuming, wrongly, that all men have the same work ethic that he ascribes to judges. Where are the judges who understand what it means to a capable and caring father when they tell him, without explanation, "It is in the best interests of your children that you not be a parent to them," or "Your children do not need your parenting, just your money"? Would any judge consider saying that to a mother?

Judge von Dadelszen quotes Judge Inglis, "... a parent who is deprived of the right to custody is in reality left with only the shell of guardianship." (Dadelszen v P (1995), p.264). He then suggests that the problem could be solved simply by using the term "parental responsibility" in place of "custody" and "access". Is this suggesting that a rose by another name would have a very different smell? Judge Blaikie takes a similar view, suggesting use of the word "contact" instead of custody and access. These suggestions would seem more genuine if they also criticised the use of the terms "enjoyment of access" and "absent" parent with the associated practical implications for child support assessments.

There is a statement said to have been uttered by a priest, or a rabbi, or perhaps a doctor, which goes something like: "I have never heard a man on his deathbed say that he wished he had spent more time at the office." Many men are aware of this issue and want to devote as much time as they can to their families. The message that many of these men are getting from Family Court judges is, "Why don't you spend less time with your children?"

Judge Boshier has suggested that it may be difficult to penalise mothers who obstruct access orders due to legal problems:

"In YvY a mother deliberately obstructed enforcement of an access order. Judge Boshier explained that where welfare arrangements for children have been

reasonably tested and orders made, it is "quite deleterious" to the children's welfare if there is no sanction for breach of the order. Judge Boshier further emphasised that a false message is communicated if the Family Court operates on a different basis than other Courts on the issue of contempt. Judge Boshier found there was clear contempt, but doubted whether there was power to punish for such contempt. Section 16 Family Courts Act 1980 and s 1 12, District Courts Act, contains provision for sanction when the contempt is the face of the Court. Where the contempt is breach of a Court order, Judge Boshier doubted whether there is clearcut provision to sanction for contempt and stated a case to the High Court." (Butterworths, 1995, page 506)

This is puzzling given the provisions of section 20A of the Guardianship Act 1968:

SECT. 20A. OFFENCE OF HINDERING OR PREVENTING ACCESS--

(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who--

(a) Without reasonable excuse; and

(b) With intent to prevent an order for access to a child from being complied with-- hinders or prevents access to a child by a person who is entitled under the order to access to the child.

(2) Nothing in this section shall limit the power of a Court to punish a person for contempt of Court.

6.4 The Duluth Wheel and the court

The Duluth Wheel was mentioned in section 5.5 and is reproduced in tabular form in appendix VII. In its traditional form it describes various abusive behaviours which a man may use towards a woman in a relationship. It is gender specific (although gender neutral and

gender-reversed versions have been compiled by Tom Graves [these are available on the internet at: <http://www.massey.ac.nz/~KBirks/gender/viol/duluth.htm>]. It is part of the body of thinking which underpins the Hamilton Abuse Intervention Pilot Project. If we look at specific components, we see that the attitude of the Family Court to alienation achieves the same results. For example: lack of effective guardianship rights prevents a say in big decisions; possible denial of access relates to threatening to take the children away; that and actual denial of access involve playing mind games, isolating him from his family; failure by the court to see that this is distressing for the father, or interpreting it as a power issue, equates to minimising, denying and shifting the blame to the father.

Other components in the Duluth Wheel are "not letting her know about or have access to family income", and "taking her money". Payments of child support occur with no accountability or even guidelines as to how or on whom it is spent. It may be wisely spent, but this depends entirely on the recipient and the payer generally has no knowledge of or input into the decisions.

Should we consider the courts and the child support legislation as instruments for a form of institutionalised indirect aggression? Certainly if women were subject to this sort of treatment within a relationship they would be considered as victims of abuse. There appears to be a double standard in operation.

7. CONCLUSION

Why take a gendered approach? If differing characteristics are important, then those should be considered. We should be wary of basing policies and laws on the assumption that characteristics are purely gender-based, however. This could penalise the stay-at-home father, or unduly favour the childless career woman, for example. The gender based approach relies on averaging within groups. Technically, it is an aggregation problem. Are men and women distinct groups, internally homogeneous? If, as is clear, they are not, then aggregation is misleading. People will be judged according to the group they belong to, even though that is a poor descriptor. The large woman and the small man will be seen as a helpless female victim and a the dominant aggressive male - judgement by crude stereotype.

Gendered research as in the Women's Access to Justice project, focusing on only one group, makes other groups invisible. This can result in conclusions which would not be supported if a wider perspective is taken.

If the gendered approach is taken to redress perceived inequities, when will a broader approach be taken to determine if any imbalance has been corrected? There is a danger that our perspectives will be distorted due to the weight of information from one perspective only. The view has been expressed that scientists have some moral responsibility for the consequences of their research (as with the development of the atomic bomb, genetic engineering, etc.). If this is so, then the responsibility also applies to social scientists. A partial view may be misused. This does not necessarily mean that there is improper intent on the part of the researchers, but the effects of the research could be the same irrespective of the researchers' underlying motivations.

This is a real danger. The existence of "gender analysis" indicates that we cannot assume gender impartiality by professionals. At the very least, the information is heavily weighted towards presenting women's perspectives and issues. More seriously, perhaps, when a society widely adopts a term such as "political correctness", it indicates that there are many people who feel that they cannot openly voice their true opinions.

Disadvantage requires both differences and relevant values assigned to those differences. Does gender analysis identify differences appropriately, or with bias? For example, why is it suggested that men should do half the unpaid work if they are doing more of the paid? Once differences are identified, are the correct values assigned? How can we know this if men are not also consulted to see what values they place on these issues?

This is not to say that women have no grievances, but the gender analysis approach is distorting. It is regrettable that it has been institutionalised.

One of the aims of the project is to provide education in gender issues. Some balance in perspectives might be possible if the material covered were to include titles such as:

- Adrienne Burgess (1997) *Fatherhood Reclaimed: The Making of the Modern Father*, Vermilion
- Blaikie E O K (1994) “Emotional abuse of children: some responses from the Family Court”, *Butterworths Family Law Journal*, March, pp.77-82
- Some material on parental alienation, available on the internet, such as:
 - “Family Wars: The Alienation of Children”
(<http://piero.warplink.ch/VeV/en/lit/alienati.htm>)
 - “Guide to the Parental Alienation Syndrome”, Stan Hayward
(<http://www.coeffic.demon.co.uk/pas.htm>)
 - “The Parental Alienation Directory”
(<http://www.parentalalienation.com/PASdirectory.htm>)
- Bender W M and Brannon L (1994) “Victimization of Non-Custodial Parents, Grandparents, and Children as a Function of Sole Custody: Views of the Advocacy Groups and Research Support”, *Journal of Divorce and Remarriage*, Vol 21(3/4) pp. 81-114
- Pearson P (1997) *When She Was Bad: Violent Women and the Myth of Innocence*, New York: Viking Penguin
- Steinmetz S K and Lucca J S, “Husband Battering”, chapter 10 of van Hasselt V B, Morrison R L, Bellack A S and Hersen M (eds.) (1988) *Handbook of Family Violence*, New York: Plenum Press
- Murray Straus, "Physical Assaults by Wives: A Major Social Problem", Chapter 4 in Gelles R.J. and Loseke D.R. (eds.) (1993) *Current Controversies on Family Violence*, London: Sage

Is gender analysis as in this project really of any value, or does it merely hide the real issues? Is it, as Mishan would suggest, the systematic propagation of an ideological doctrine, rather than open-minded enquiry and impartial scholarship? I have my suspicions as to how Bertrand Russell would have viewed it. George D (1954) describes Russell’s views on other issues:

"In 1940 he wrote:

'Intellectual integrity made it quite impossible for me to accept the war myths of any of the belligerent nations. Indeed, those intellectuals who accepted them were

*abdicating their functions for the joy of believing themselves as one of the herd ...
If the intellectual has any function in society, it is to preserve a cool and
unbiased judgement in the face of all solicitations to passion. I found, however,
that most intellectuals have no belief in the utility of intellect except in quiet
times."* (page 180)

and:

*"In the essay 'On Being Modern-Minded' Russell says: 'The belief that fashion
alone should dominate opinion has great advantages. It makes thought
unnecessary and puts the highest intelligence within the reach of everyone. It is
not difficult to learn the correct use of such words as "complex", "sadism",
"Oedipus", "bourgeois", "deviation", "left"; and nothing more is needed to make
a brilliant writer or talker."* (Page 181)

To update, we only have to change the terms to “victim”, patriarchy”, “power and control”.

Alistair Nicholson, Australian Family Court Chief Justice says, *"I think the loss of that power
that stems from the breakdown of the marriage is something that some men just cannot cope
with."*

In contrast, the last words of the final public address of the late Laurie O'Reilly, New
Zealand's Commissioner for Children were:

*"It remains only to say that for me, the greatest gift in my life has been that of
fatherhood."*

APPENDIX I

WOMEN'S ACCESS TO JUSTICE PROJECT

TERMS OF REFERENCE

The Law Commission: Te Aka Matua te Ture will examine the response of the legal system to the experiences of women in New Zealand, recognising the importance of the Treaty of Waitangi in the examination of Maori women's experiences.

The Law Commission: Te Aka Matua te Ture will take account of the multi-cultural character of New Zealand society and New Zealand's obligations under international law.

Priority will be placed on examining the impact of laws, legal procedures and the delivery of legal services upon:

- *family and domestic relationships,*
- *violence against women, and*
- *the economic position of women.*

At all stages of the project, there will be widespread consultation with women throughout New Zealand. The project will draw upon, and complement, the work of other government agencies, the Judicial Working Group on gender equity and other Law Commission projects.

The Law Commission: Te Aka Matua te Ture will report to the Minister of Justice concerning:

- *principles and processes to be followed by policy makers and lawmakers,*
- *specific law reforms, and*
- *educational and other strategies*

which will promote the just treatment of women by the legal system.

APPENDIX II

Letter to: The Women's Access to Justice Project : He Putanga mo nga Wahine ki te Tika, Free Post 56452, Law Commission : Te Aka Matua o te Ture, P O Box 2590, WELLINGTON,

26 March, 1996

Dear sir/madam,

Submission on the invalid approach of the WAJP

The approach taken by the project is fundamentally flawed and it would be unjust to implement any recommendations without further detailed investigation. The Commission takes the view that there is some justification in looking at the issue of access to justice solely from a women's perspective. **If the issues relate to interaction between men and women, can just solutions be found by looking at one side's case only?**

In the call for submissions, it states that, "*We really need to hear from the women of New Zealand about their experiences with the legal system*". In the terms of reference, it states, "*The Law Commission: Te Aka Matua te Ture will examine the response of the legal system to the experiences of women in New Zealand ... At all stages of the project, there will be widespread consultation with women throughout New Zealand.*"

I would have thought that it would be patently obvious to those in the legal profession that both sides of a case have to be heard if justice is to be obtained. I have copies of various Law Commission documents on the Project. There appears to be confusion as to whether or not there is any bias against women. Even if there is, to fail to call for submissions from men is equivalent to holding a trial with a prosecution, but no defence.

Issues identified for consideration include many which are of great importance to men. This is readily apparent from even the briefest glance at the list, including as it does: matrimonial property; de facto property; maintenance - child support; and custody - guardianship, to name just the first few. Any change in the treatment of women with respect to these and others on

the list will inevitably impact on men.

I note also that, while there is an entire project on women's access to justice, the Justice Department does not even collect data on award of custody by gender, or the number of custodial parents penalised for obstructing access. This indicates the lack of interest or effective policies for matters of fundamental concern to many men and children. Nevertheless, this project is intended to promote "solutions" which affect those areas.

The terms of reference for the Project state that:

The Law Commission: Te Aka Matua te Ture will report to the Minister of Justice concerning:

- *principles and processes to be followed by policy makers and lawmakers,*
- *specific law reforms, and*
- *educational and other strategies*

which will promote the just treatment of women by the legal system.

People in New Zealand have good reason to be concerned if the structure of this project reflects the Law Commission's attitude towards justice. I have to wonder if the Law Commission, or those who drew up the Terms of Reference, really understand what "just treatment" means.

Yours sincerely,

Stuart Birks

APPENDIX III

LAW COMMISSION : TE AKA MATUA O TE TURE

1 May 1996

Dear Mr Birks

Thank you for your submission of 26 March 1996, a further copy of which was sent to me by Jill White MP.

In response to your concerns about the Women's Access to Justice project, I note that the focus of the project is not on substantive laws (such as custody, matrimonial property or child support laws) but on the legal services which enable the substantive law to be invoked. Thus the focus of the project is upon lawyers' and court services: their availability and responsiveness to women, especially in civil matters. Since women share with men many of the factors which impair or prevent access to lawyers and the courts (eg, low income, lack of information), the project's research and recommendations will undoubtedly also assist men's access to legal services.

The Commission believes that the effects of gender create a more marked set of difficulties for women seeking to access legal services than they do for men. For example, women are more vulnerable to poverty or low income because of their gender and, having not been participants in the legal system until relatively recently, are more likely to find its manner and style alien and offputting. Therefore by focusing upon women's access to legal services, a "view from the bottom" is obtained, the full implications of which may otherwise be overlooked in a more general study purporting to focus on People's Access to Justice.

In the course of the project, which has been advertised publicly, we have received submissions from men who are users of the legal system and many more from male lawyers, judges and others involved in the administration of justice. Our meetings with those who work within the legal system, at which the project and ideas for improving access to legal services are discussed, are invariably attended by a majority of men reflecting the

composition of the legal profession. You suggest that as the issues the project is concerned with arise between women and men, discussion with both women and men is necessary. Because the project focuses on legal services, the relevant issues arise between women users of the legal system and the men and women responsible for the provision of those services. I can assure you that the promotion of discussion with and between both those groups is a vital part of the project.

It is not the case that the project is aiming to promote better access to legal services only for women. Rather, its aim is to promote better access for all but by means which are sensitive to women's particular difficulties with the current system. Because of its focus upon women, the project does not and has never purported to stand alone: it is part of a broader initiative to make the legal system more accessible and userfriendly. That broader initiative is supported by government agencies responsible for the administration of justice and by sectors, at least, of the legal profession. (You will be aware that the profession is responsible for many matters affecting the standard of legal services' delivery.) Those agencies, and the profession, have welcomed the Commission's focus upon women's access to justice.

Yours sincerely

Joanne Morris

Commissioner

APPENDIX IV

SEPARATION AND THE 1996 CENSUS

There are some questions on the Individual Form for the New Zealand 1996 Census which are not very well designed for separated parents:

Question 21

Which of these people live in the same household as you?

- *your son(s)*
- *your daughter(s)*
- *none of these*

If the children are with a non-custodial parent for 2 nights a week, the expected answer is "none of these". If the children are with a custodial parent for 5 nights a week, they count as being in the same household. In other words, there is no classification catering for this shared parenting arrangement.

Question 35

*Tick as many circles as you need to show ALL the ways you yourself got income in **the 12 months ending today**.*

Domestic Purposes Benefit.

other sources of income, COUNTING support payments from people who do not live in your household

For the custodial parent, child support is included as income. (It is not clear whether child support should be included as income for the parent or for the children. Technically, child support is for the children, but it is also for the custodial parent when used to offset Domestic Purposes Benefit payments. Even where child support payments exceed the DPB so there is no net government contribution, the custodial parent would still be classified as receiving a government benefit.)

Question 36

From ALL the sources of income you ticked in question 35, what will the TOTAL income be

- *that you yourself got*
- *before tax or anything else was taken out of it*
- *in the 12 months that will end on 31 March 1996?*

Income for the custodial parent is gross income including child support, but without acknowledging that child support receipts are tax free.

Income for the liable parent is before deduction of child support and without recognition of the taxes paid on child support by the liable parent.

It would appear, therefore that

- the time a non-custodial parent spends with his/her children is not picked up
- child support is counted twice, being in the income for the custodial parent and in that of the liable parent
- the failure to allow for the tax paid on child support further distorts the relative income figures for custodial and liable parents, artificially raising that of liable parents and deflating that of custodial parents.

We should be careful in our interpretation of census data used to show the relative positions of custodial and non-custodial parents, and of single parent and two parent households where different benefits are received.

There are questions which allow for consideration of a non-custodial parent's time with his/her children:

Question 38:

*... In the last four weeks, which of the following have you done, without pay, for people **who do NOT live in the same household as you?***

*looking after a child **who does not live in the same household as you, unpaid***

Question 39:

If you have done any of the things asked about in question 38, answer this question.

In the last four weeks how many hours did you spend in total, doing all those things asked about in question 38?

- *1-4*
- *5-14*
- *15-29*
- *30-59*
- *60 or more*

I do not know how many NCPs will have interpreted these questions to include the care of their own children, nor do I know how many would include night-time hours if the children stayed overnight. Presumably the answers will be used to indicate the amount of voluntary work done.

APPENDIX V

THE STATISTICS NEW ZEALAND/MINISTRY OF WOMEN'S AFFAIRS TIME USE SURVEY

Statistics New Zealand is currently undertaking a survey under contract to the Ministry of Women's Affairs. The Ministry has been allocated \$2 million to fund the survey. To quote from the survey newsletter, *Time Use Survey Update No.1*, Statistics New Zealand and Ministry of Women's Affairs, November 1997:

*"The Ministry of Women's Affairs is the sponsor for the survey and Judy Lawrence, Chief Executive, Ministry of Women's Affairs, chairs the steering committee which oversees the survey. Statistics New Zealand will conduct the survey, including developing the survey methodology, collecting, processing and analysing the data. Marilyn Waring, author of the 1988 book **Counting for Nothing**, is providing expert advice to the Ministry of Women's Affairs on the development of the survey."* (page 1)

Marilyn Waring has been outspoken on the need for time use information.

In *Counting for Nothing*, Waring suggested that a Canadian housewife does 96 hours of unpaid work per week of "slave labour" (pp. 100-103). However, in 1992, Canadian women with children under 5 whose main work was keeping house spent an average of 8.5 hours per day on unpaid work (from *A Portrait of Families in Canada*, Statistics Canada, 1993.) This totals 59.5 hours per week.

By 1996 she was claiming that women work 16-18 hours per day (*Massey Focus*, 1996, Issue 1). This would leave only 6-8 hours a day for other activities including sleep, or a maximum of 56 hours sleep per week. Table 160 of Schmittroth L (1991) gives women's sleeping hours as: US 59.9; Japan 57.0; USSR 58.2; Finland 60.9; Sweden 56.9. If they sleep for these numbers of hours, they are awake for less than 16 hours a day. Waring must be claiming that women work in their sleep.

While that is implausible, the current study may support Waring's claims in a way that previous studies have failed to do. This is because the study appears to go against two

recognised practices for time diary studies.

Robinson J P and Bostrom A (1994) compare time diary studies with studies asking people to estimate work undertaken. Firstly, they say that surveys are poorer than time diaries at estimating work weeks because, inter alia, other activities may be undertaken during working hours. The draft diaries for this study specifically state, "Don't write all the things you do as part of your paid work (just put "at work"), but do write down what you do in your lunch and coffee breaks."

Secondly, diaries are better because people are less able to distort the results, and because "they are not told which activities are of survey interest". In this study, the emphasis on caring activities in the draft diaries shows very clearly what is of interest.

The draft pilot survey 48-hour diary has 2 pages for each 2 hours. The right-hand page is for people to fill in themselves, saying "What are you doing?" and "What else are you doing?" This allows for a main activity and then all others. The left hand page is to be ignored, "The interviewer will fill those in with you". It has the following columns:

- Available for care of members of own household - child or sickness/disability (0-4, 5-13, 14+)
- Active care for own household member - child or sickness/disability (0-4, 5-13, 14+)
- Unpaid work NOT for own household
 - ◆ NOT through organisation
 - caring or helping - child or person with sickness or disability (child 0-4, child 5-13, 14+, sick/disabled)
 - other unpaid work for other household or person
 - ◆ through organisation
 - work for organisation

It seems as if the study is designed to maximise the time recorded as being available (including when asleep during the night?). It is also likely to favour women if the interviewers assign nights to mothers/women. The time recorded as active care simply means that one of the activities has to involve the child/person (such as having a coffee with a friend while

"overseeing" and/or occasionally talking to the children in the room?).

Time spent actively or available for "caring" seems to be the main focus of the study, given that half the time diary is devoted to it, and also the individuals are not left to fill in those pages themselves.

Non-custodial parents should be particularly concerned about how their time is recorded. It seems that they do not care for their children. Time with their children would be measured as voluntary informal community work with children not from their household (unless their children are counted as part of their household). Similarly, their time "available for care" would not be recorded. The special parts for analysts to fill in count time when someone is available for children of their household, and time when someone is active with someone from their household (doesn't matter if it is the main or other activity), but only time actively caring for a child not from your household.

More generally, time "on call" for children counts, but time "on call" for work is overlooked. The income figures follow those in the census, as discussed in appendix IV. Hence they do not allow for child support paid, or tax on child support, there is no mention that child support is tax free to the recipient. The study is likely to generally overstate the caring input of mothers (important in custody issues), while understating men's paid and unpaid work time. It is also likely to understate the parenting input of non-custodial parents as well as understating custodial parents' incomes and overstating the incomes of non-custodial parents.

There are other questions which could be raised about the study.

What is being measured in unpaid work? Not actual inputs because multiple activities are possible, not contribution to household because unpaid work solely for one's self is included, not types of activity because paid work is not disaggregated, not effort put in because just hours are recorded, not input as a proxy for benefit gained because leisure time gives benefits also. Should we count one hour of primary activity as an hour if other activities are also occurring? That might overstate hours worked. What about secondary activities, how should they be included, if at all?

If the distinction between time on paid versus unpaid work is considered important, perhaps it would be more accurate if non-custodial parents were to record the time they spend to earn the child support and associated tax as time spent doing unpaid work for another household or person, and to provide income figures after having deducted child support and associated income tax.

While this study is being promoted as offering important information which was not previously available, in fact some information has been available for New Zealand and other countries. This available information does not support the claims being made about women's significantly greater overall work contribution. In fact, if women's unpaid work is unrecognised, then surely men's is even less acknowledged. There are grounds for us to be suspicious of the results of this survey.

APPENDIX VI

SEPARATION AND WELLBEING

Information from Maxwell G M and Robertson J P (1993) *Moving Apart: A Study of Family Court Counselling Services*, Department of Justice

Who decided to separate? (from table 1.4.3 on page 37)

	Men	Women
Self	33	162
Partner	95	46
Both	39	44
NA or NS	4	3
Total	171	255

	Men %	Women %
Self	19.30%	63.53%
Partner	55.56%	18.04%
Both	22.81%	17.25%
NA or NS	2.34%	1.18%
Total	100.01%	100.00%

Both men and women indicated that the decisions to separate were predominantly made by women.

Effects of changes in employment, income and housing for those separated at 6 months, percentages (from table 1.5.1.2, page 43)

The data are subjective assessments.

Employment

	Worse off	Much the same/ no change	Better off	N
Men	13%	70%	17%	50
Women	11%	71%	18%	82

There appears to be little difference in men's and women's responses about employment, with the majority showing no change. It may be that the survey was undertaken too soon after separation for any employment changes to have occurred.

Income

	Worse off	Much the same/ no change	Better off	N
Men	28%	51%	21%	83
Women	35%	36%	30%	170

Men's incomes appear to have been more stable than women's for this period. Note that there is greater scope for women to change their income levels due to the higher incidence of part-time work among women. Men are more likely to have been in full-time paid work before separation and to have continued in the same job for some time after separation. As household "income" also consists of the results of unpaid work, income levels alone are inappropriate for comparing pre- and post-separation living standards.

Information is also given on total income before and after separation (figure 4, page 41). These are presented to show that women's actual incomes fall as a result of separation while men's rise. It is a crude measure with no mention of whether the income is tax-free or taxable. Gross incomes to non-custodial parents will include child support that they have to pay, plus the tax on their entire income including child support payments. The data are also from about 1987, before the current child support legislation came into force. There were cases where lump-sum payments were made in matrimonial property settlements in place of ongoing transfers. These would be overlooked in this assessment.

Housing

	Worse off	Much the same/ no change	Better off	N
Men	34%	57%	9%	77
Women	26%	50%	24%	126

Men appear to do less well in terms of housing as a result of separation. It is notable that 24 percent of the women said they were better off.

Satisfaction with opportunity to be a parent and to share in decision about one's children; percentages at 6 months (from table 1.5.3.2 on page 46)

Communication

		Men			Women	
	+	0	-	+	0	-
Custodial	77%	9%	14%	88%	9%	3%
Non-custodial	22%	28%	49%	40%	15%	45%

N=255

Disagreements

		Men			Women	
	+	0	-	+	0	-
Custodial	68%	14%	18%	82%	11%	7%
Non-custodial	18%	22%	60%	25%	25%	50%

N=238

In both these areas, custodial parents are more satisfied than non-custodial parents, and women are more satisfied than men of the same custodial status. The most satisfied group is custodial women, and the least satisfied group is non-custodial men. Note that predominantly women are custodial and men non-custodial. Over time, participation by non-custodial fathers is likely to diminish further as their relationship with their children is eroded.

Recovery from separation and life satisfaction now; percentages at 6 months (from table 2.2.7.1, on page 65)

Recovery

	-	0	+
Men	15%	28%	57%
Women	8%	17%	75%

Life satisfaction

	-	0	+
Men	16%	31%	53%
Women	8%	16%	76%

N=421

In both these areas, women responded more positively than men. Some causal factors are considered in table 2.2.7.2, but custody of children was not one of them. From a man's perspective this is a surprising omission.

APPENDIX VII

The Duluth Wheel: Power and Control Version

This is the text of the standard wheel, which considers violence against women. The Wheel can be found in the usual circular form on page 11 of Dominick C, Gray A and Weenick M (1995) *Women's Experiences of the Hamilton Abuse Intervention Pilot Project*, Wellington: Ministry of Health

Using coercion and threats

- making and/or carrying out threats to do something to hurt her
- threatening to leave her, to commit suicide, to report her to welfare
- making her drop charges
- making her do illegal things

Using intimidation

- making her afraid by using looks, actions, gestures
- smashing things
- destroying her property
- abusing pets
- displaying weapons (such as knives)

Using economic abuse

- preventing her from getting or keeping a job
- making her ask for money
- giving her an allowance
- taking her money
- not letting her know about or have access to family income

Using emotional abuse

- putting her down
- making her feel bad about herself

- calling her names
- making her think she's crazy
- playing mind-games
- making her feel guilty

Using gender privilege

- treating her like a servant
- making all the big decisions
- acting like the 'master of the house'
- being the one to define male and female roles

Using isolation

- controlling what she does, who she sees and talks to, what she reads, where she goes
- limiting her outside involvement
- using jealousy to justify actions

Using children

- making her feel guilty about the children
- using the children to relay messages
- using visitation to harass her
- threatening to take the children away

Minimising, denying and blaming

- making light of the abuse and not taking her concerns about it seriously
- saying the abuse didn't happen
- shifting responsibility for abusive behaviour
- saying she caused it

REFERENCES

- Adamiak J (1995) "Wait Until Your Father Gets Home" - Reflections of a 29(A) Report Writer' *Volume 1: Conference Session Papers*, NZLS Family Law Conference, Wellington 2-4 October, Butterworths, pp.115-125
- Beckett C (1997) *I love you but... How to stop doing more than your share of housework*, North Shore: Tandem
- Bender W M and Brannon L (1994) "Victimization of Non-Custodial Parents, Grandparents, and Children as a Function of Sole Custody: Views of the Advocacy Groups and Research Support", *Journal of Divorce and Remarriage*, Vol 21(3/4) pp. 81-114
- Birks S and Buurman G (1997) *Is the Legal System an Efficient Regulatory and Dispute Resolution Device? Issues Paper No. 1*, Palmerston North: Centre for Public Policy Evaluation, Massey University
- Blaikie E O K (1994) "Emotional abuse of children: some responses from the Family Court" *Butterworths Family Law Journal*, March, pp.77-82
- Burgess A (1997) *Fatherhood Reclaimed: The Making of the Modern Father*, London: Vermilion
- Butterworths (1995) *Butterworths Family Law in New Zealand*, 7th edition, Wellington: Butterworths
- Cotter W B and Roper C (1996?) *Report on a Project on Education and Training in Legal Ethics and Professional Responsibility for the Council of Legal Education and the New Zealand Law Society*, New Zealand Law Society
- Dadelszen von P (1995) "The case for change: 'parental responsibility' not 'custody' and 'access'", *Butterworths Family Law Journal*, December, pp.263-268
- Department of Statistics (1991), *Testing Time: Report of the 1990 Pilot Time Use Survey*, Wellington: Department of Statistics
- Dominick C, Gray A and Weenick M (1995) *Women's Experiences of the Hamilton Abuse Intervention Pilot Project*, Wellington: Ministry of Health
- Dominion*, 25 August 1997
- Dominion*, 18 December 1997
- Evening Standard*, 10 October 1997
- Evening Standard* 3 December 1997
- Evening Standard* 2 February 1998

Evening Standard 3 February 1998

Fletcher, G.J.O. (1978), "Division of Labour in the New Zealand Nuclear Family", *New Zealand Psychologist*, 7(2), pp.33-40

George D (1954) *Lonely Pleasures*, London: Jonathan Cape

Glenn N D (1997) "A Critique of Twenty Family and Marriage and the Family Textbooks", *Family Relations*, vol. 46, pp.197-208

Green D F (1995) "Custody and Access Disputes - Parents at a distance: Intractable Access", *Conference Session Papers NZLS Family Law Conference*, Wellington 2-4 October, Butterworths, pages 133-146

Hall G and Lee A (1994) *Family Court Custody and Access Research Report 8: Discussion Paper*, Department of Justice

Holdom K (1995) "Femme fatal", *More*, April, pp.80-82

Hubbard A (1996) "A View From the Bench", *Listener*, May 4, pp.33-5

Hyman P (1994) *Women and Economics: a New Zealand Feminist Perspective*, Wellington: Bridgit Williams Books

Inland Revenue Department (1994) *Child Support Review 1994: A Consultative Document*

Kammer J (1994) *Good Will Toward Men*, St Martin's Press

Kerr R (1997) "Commerce, Certainty and the Courts", *New Zealand Law Journal*, October, pp. 361-364

Lapsley H (1993) *The Measurement of Family Violence: A Critical Review of the Literature*, New Zealand: Social Policy Agency

Leibrich J, Paulin J and Ransom R (1995) *Hitting Home: Men speak out about abuse of women partners*, Wellington: Department of Justice

Listener (1994) "Do children need a mum and a dad?", November 5, page 13

Mahony P (1997) "The Domestic Violence Act 1995: 'The End Of A Process And A New Beginning'", pages 56-66 in Patrick J, Foster H and Taper T (eds) (1997) *Successful Practice in Domestic Violence in New Zealand*, Palmerston North: Manawatu Men Against Violence

Massey University (various years) *Graduate Destinations*

Massey University *Massey Focus*, 1996, Issue 1

Maxwell G M and Robertson J P (1993) *Moving Apart: A Study of the Role of Family Court*

- Maxwell G M (1994) "Children and Family Violence: the Unnoticed Victims", *Social Policy Journal of New Zealand*, Issue 2, July, pp.81-96
- McKeever M and Wolfinger N H (1997) "Reexamining the Economic Costs of Marital Disruption for Women", paper for the 1997 annual meeting of the American Sociological Association, Toronto
- Ministry of Justice (1994) *Conviction and Sentencing of Offenders in New Zealand: 1985 to 1994*
- Ministry of Women's Affairs (1996) *The Full Picture: Guidelines for Gender Analysis*
- Mishan E.J. (1993) *The Costs of Economic Growth*, Revised Edition, Westport: Praeger
- Moffitt T E, Caspi A and Silva P (1996) *Findings About Partner Violence from the Dunedin Multidisciplinary Health and Development Study*, Dunedin Multidisciplinary Health and Development Research Unit
- Morris J. (1995?) "Justice is not blind to the effects of gender", Law Commission
New Zealand Parliamentary Debates, Vol.435 (Nov 6-Nov 27 1980)
- Pearson P. (1997) *When She Was Bad: Violent Women and the Myth of Innocence*, New York: Viking
- Peterson R R (1996a) "A Re-evaluation of the Economic Consequences of Divorce", *American Sociological Review* Vol. 61, June, pp. 528-536
- Peterson R R (1996b) "Statistical Errors, Faulty Conclusions, Misguided Policy: Reply to Weitzman", *American Sociological Review* Vol. 61, June, pp. 539-570
- Robertson N, Busch R, Ave K and Balzer R (1991) *The Hamilton Abuse Intervention Pilot Project: The First Three Months*, Family Violence Prevention Co-ordinating Committee, October
- Robinson, J.P and A. Bostrom (1994) "The over-estimated workweek? What time diary measures suggest", *Monthly Labor Review*, 117 (8): 11-23
- Schmittroth L (ed), (1991) *Statistical Record of Women Worldwide*, London: Gale Research
- Smith A B, "Research on the Effect of Marital Transitions on Children", in Smith A B and Taylor N J (eds) (1996) *Supporting Children and Parents through Family Changes*, Dunedin: University of Otago Press
- Statistics New Zealand *1996 Census*
- Statistics New Zealand and Ministry of Women's Affairs (1997) *Time Use Survey Update*

Steinmetz S K and Lucca J S, "Husband Battering", chapter 10 of van Hasselt V B, Morrison R L, Bellack A S and Hersen M (eds.) (1988) *Handbook of Family Violence*, New York: Plenum Press

Straus M.A., "Physical assaults by Wives: a Major Social Problem", chapter 4 in Gelles R.J. and Loseke D. (eds) (1993) *Current Controversies on Family Violence*, London: Sage

Weitzman L J (1996) "The Economic Consequences of Divorce are Still Unequal: Comment on Peterson", *American Sociological Review* Vol. 61, June, pp. 537-538

Women's Access to Justice Project (1995) *Overview of Law Commission's project and issues arising in the consultation sessions to date*, Law Commission

Women's Access to Justice Project (1997a) *Miscellaneous Paper 10: Lawyers' Costs in Family Law Disputes*, Law Commission

Women's Access to Justice Project (1997b) *Miscellaneous Paper 11: The Education and Training of Law Students and Lawyers*, Law Commission

Internet references:

Birks S discussion and links on the Weitzman study
<http://www.massey.ac.nz/~KBirks/gender/econ/weitzman.htm>

"Family Wars: The Alienation of Children"
<http://piero.warplink.ch/VeV/en/lit/alienati.htm>

Graves T alternative versions of the Duluth Wheel
<http://www.massey.ac.nz/~KBirks/gender/viol/duluth.htm>

"Guide to the Parental Alienation Syndrome", Stan Hayward
<http://www.coeffic.demon.co.uk/pas.htm>

New Zealand Law Society submission to the Women's Access to Justice project
<http://www.nz-lawsoc.org.nz/lawtalk/access.htm>

"The Parental Alienation Directory"
<http://www.parentalalienation.com/PASdirectory.htm>

Women's Health Action Trust, *Discussion Paper 1 June 1997 Guidelines for the involvement of consumers in guideline development*
<http://www.womens-health.org.nz/html/guidelines.html>

Cases:

B v B (1997 NZFLR 217)

Logan v Robertson (1995, NZFLR 711)

Nichols v Nichols (1996, NZFLR 311)

Z v Z (1997 NZFLR 241)

LIST OF ISSUES PAPERS

- No.1 S. Birks and G. Buurman, *“Is the Legal System an Efficient Regulatory and Dispute Resolution Device”*, October 1997.
- No.2 S. Birks, *Gender Analysis and the Women’s Access to Justice Project*, March 1998.

The Centre for Public Policy Evaluation is based in the College of Business, Massey University, Palmerston North campus. While the primary focus is economics, the centre wishes to promote multidisciplinary perspectives.

The Issues Paper series looks at a range of current policy questions. It is intended to inform and to stimulate debate.

The Centre's web page is at:

<http://econ.massey.ac.nz/cppe>

Email queries or requests for notification of future publications should be sent to K.S.Birks@massey.ac.nz

Further copies may be obtained from:

The Secretary

Department of Applied and International Economics

Massey University

Private Bag

Palmerston North

NEW ZEALAND

Phone: 06 350 5961

Fax: 06 350 5660

ISSN. 1174 – 412X

GENDER ANALYSIS AND THE WOMEN'S ACCESS TO JUSTICE PROJECT

ISSUE PAPER NO. 2

STUART BIRKS



**CENTRE FOR PUBLIC POLICY EVALUATION
1998**