



30 December 2004

88 The Parade
Paekakariki
Kapiti Coast

Director Human Rights Proceedings
Office of Human Rights Proceedings
P.O.Box 6751
Auckland

Dear Sir/Madam

The Father and Child Society would like to apply for legal representation to take our complaint about paid parental leave to the Human Rights Review Tribunal. We attach a number of background documents. These are:

- A letter from the Human Rights Commission (HRC) dated 15 December setting out some of the history of our complaint since lodging it with the HRC in February 2003.
- Our submission to the parliamentary select committee in mid 2004 considering the proposed amendment of the parental leave legislation.
- Our original complaint to the HRC (Appendix 1)
- The reply from the Crown Law Office (Appendix 2)
- Our reply in response to the opinion from the Crown Law Office.

In considering the various arguments put forward in these documents we would also like to note the comments from the report of the select committee considering the amendment of the legislation:

Two submitters argued that, in this area, the bill discriminates against partners of biological mothers because eligibility is based on the employment status of the mother (p. 7).

They go onto say that:

The department told us that the bill does not change the policy intent of the principal Act. The policy intent of the Act is to provide a primary entitlement to maternity leave and payment to the mother of a child to allow women to recover from pregnancy and birth. The Act gives effect to these objectives, which are proportional, and not discriminatory (p. 7).

We agree that the legislation did not change the policy intent of the principal Act. We argue that principal Act discriminates against biological fathers and the amended Act continues this discrimination. We also note that, according to the select committee, the main aim of the act is to allow women to recover from pregnancy and birth. Yet, as you will see from our correspondence, the Crown Law Office, as quoted in the Human Rights Commission letter of 15 December 2004, notes while within the overall purpose one purpose (emphasis added) is to allow woman to recover from pregnancy and birth and to enable breast-feeding:

The main overall purpose of paid parental leave is to provide gender equity in the labour market including by reducing the long-term disparity between male and female earnings caused in particular by women's time out of the workforce to bear and raise children (p. 2, para 2).

As you will see in the various documents, we argue that there is much confusion as to the actual intent of the legislation. Sometimes the purpose is to allow women to recover from pregnancy and birth, sometimes to also support breastfeeding, and at times it is argued that the main purpose is to support gender equity in the labour market. As we note, if the primary purpose is to allow woman to recover from pregnancy and birth then there is little logic in providing the right to paid leave to adoptive parents or to allow the leave to be transferred to a partner. It should also be renamed maternity leave as it is in many other countries (and where there is often a specific period of paid paternity leave). However, as you will see in our various submissions, we in fact argue that if the legislation did not discriminate against fathers then in some situations mothers would be better supported through their pregnancy and birth and would have more support for breastfeeding. In addition, if gender equity in the labour market is a goal, then fathers need to be given equal incentives to take a period of parental leave. We believe that the parental leave legislation could easily be changed so it no longer discriminated against biological fathers yet continue to give support to children and mothers.

Finally, we would like to note that before presenting our submission to the parliamentary select committee, we were given a copy of the Human Rights Commission's own submission. It states in relation to our complaint:

While the issues are not clear cut, the complaint advances an arguable case which if it proceeded to the Human Rights Tribunal, would require a determination on whether or not it is technically discriminatory under s.21 of the HRA 1993. However, there is undoubtedly a sense of grievance that must be addressed for partners of biological mothers, usually the father of the child, because of the perception that they miss out on direct access to the scheme and possibly to a more involved role in the caregiving of their child. The legislation has created an unintended anomaly which has left some groups of people feeling excluded from a role to which they ascribe strong emotional attachment.

We also note their recommendation to the select committee

In the best interests of the child, the Bill should address the anomaly in section 71D(2) with regard to eligibility of partners.

The amended legislation did not address this anomaly and this is why we wish to take our complaint to the Human Rights Review Tribunal.

Thank you.

Yours sincerely

Dr Paul Callister
On behalf of the Father and Child Society