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# Miscellaneous

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## Some Notes

### COMMONWEALTH

#### Survey of Abortion Laws in the Commonwealth discussed

The Commonwealth Parliamentary Conference in Jamaica in September Discussed the subject: "the need for up-dating medical legislation on abortion in the Commonwealth".

Introducing the subject, Senator Michael Beaubrun, Professor of Psychiatry at the University of the West Indies, Trinidad, noted the gradual liberalising of laws relating to abortion over the past decades. He observed that in many parts of the Commonwealth, laws remain which are not only out-dated but have become virtually unenforceable because of the advance of new technologies.

"Modern medical technology has blurred the distinction between contraception and abortion so that some of the new family planning techniques might technically offend against existing laws," he said.

He cited, as one instance, the "morning after" pill and noted that, although technically an offence against abortion laws in most Commonwealth countries, its use was virtually impossible to detect so that there was an unenforceable law, which was ipso facto a bad law.

Referring to the recent birth of a "test-tube" baby in the United Kingdom, he said this showed that contraception or fertilisation can take place actually outside the woman's body, which was quite beyond the capacity of existing laws to deal with.

Although he himself felt the need for increasingly permissive abortion laws, Dr. Beaubrun stated that the purpose of his presentation was more modest.

"It would be both presumptuous and unwise for me to urge you to accept my view. Every country has its peculiar circumstances to consider. The attitudes of its people are born of different social, political, religious, economic and other considerations. As parliamentarians, it is true that we lead the people but we also serve the people, and we must take into account their views and even their prejudices," he explained.

He said his object was merely to draw to delegates attention the Commonwealth Secretariat publication, "Three Studies of Abortion Laws in the Commonwealth". While the Preface to that Report stated that it was recognised that some countries were confident that their laws were already adequate and reflected the values and needs of their own society, and that the Report had little relevance for them, Senator Beaubrun urged delegates not to jump to this conclusion too readily - even those who had advanced laws.

The Senator concluded by inviting delegates to push for the establishment of revision or reform committees in their respective countries to bring their laws up-to-date. He said that he would not

suggest what those reform committees would find, but merely that if the reform committees were filled with women, countries were unlikely to go wrong.

Senator Jean Melzer, Australia, supported Dr. Beaubrun, arguing that women had the right to decide for themselves. "I don't think the father of the child has the rights to decide, and I do not think the legislators have the right to decide," she said.

Not all the Australian Senator's colleagues agreed on the degree to which men should be involved in abortion decisions. One delegate said that where a married couple was involved, it should be a joint decision.

Other delegates pointed to the present laws as legislating mostly against the poor, since the rich could always get abortions, and to the results of unwanted children in countries and regions with problems of over-population in relation to their economic and employment resources.

The Maltese delegation, the Hon. Daniel Micallef, expressing a contrary viewpoint, suggested that there was a vacuum in the Declaration of Human Rights, as the rights of the unborn child were not protected.

"Most countries seem to agree that the rights of the unborn child do not matter," he said, "To my mind and conscience this is a compromise between justice and convenience".

(C.L.B. January 1979 pp.282-283)

## AFRICA

### Vasectomy in the Polygamous Marriage

The Africa Regional Law Panel has endorsed the policy statement on sterilization adopted by the International Planned Parenthood Federation's Management and Planning Committee - namely, that doctors should, where possible, consult with the other spouse before carrying out a sterilization operation but that consent should not be a legal requirement: in polygamous marriages, doctors should consult all the wives before a vasectomy.

The Panel also recommended that where voluntary sterilization is against the law, Family Planning Associations should lobby for change. Similarly, any barriers should be removed from offering contraceptive advice to adolescents, whether married or unmarried.

(C.L.B. January 1978 p.158)

## AUSTRALIA

### Discrimination in Industry

The Federal Minister for Employment and Industrial Relations has appointed five new Committees on Discrimination.

Funded by the Australian Government, the Committees are constituted from representatives from government, employers' and employees' organizations, women, migrants and Australian Aborigines and will seek to overcome problems of discrimination in industry by the processes of conciliation.

## Family Law Council

The Federal Attorney-General Has announced the names of the persons he has appointed to be members of the Family Law Council.

The Council, which is established under the Family Law Act 1975-1976, has the function of advising and making recommendations to the Attorney-General, either on its own or by request, concerning the working of the Act and other legislation relating to family law, as well as the working of legal aid in proceedings in matters of family law.

(C.L.B. January 1977 p.151)

## AUSTRALIA- WESTERN AUSTRALIA

### Rape Penalties

The Western Australian Attorney-General has stated that it is most unlikely that his government will adopt the New South Wales proposals to introduce a lower maximum penalty for certain categories of rape. The Attorney-General stated that although the State's Criminal Code provided for a maximum penalty of life imprisonment for rape, this sentence was not mandatory. Further, there was no evidence that Western Australian juries were reluctant to convict males charged with rape on the ground of the severity of the sentences that could possibly be imposed.

The Attorney-General added that he believed that the New South Wales proposals would the undesirable effect of down-grading the seriousness of the charge of rape and in a technical sense they would mean that some rape cases would no longer be tried by that State's Supreme Court.

(C.L.B. April 1978 p.425)

## AUSTRALIA- NEW SOUTH WALES

### Countering Sexual Offences

The New South Wales Government is to establish special referral centres in five hospitals in Sydney and Newcastle for the victims of sexual offences. This decision was brought about as a result of a recommendations by a government task force that was appointed last year to report on the care of victims of sexual offences. The task force concluded that there were shortcomings in the existing methods and procedures adopted by health authorities and the police force in such cases.

The task force recommended that -

- (i) greater emphasis should be placed on crisis care counselling in university medical courses;
- (ii) sexual offence referral centres should be established in hospitals to provide medical treatment and follow-up counselling and changes in police procedures in dealing with these cases;

- (iii) a special police "rape squad" or "sexual offences unit" as used in other states and overseas be not established;
- (iv) a reduction in the time taken before victims of sexual offences received medical attention;
- (v) wherever possible after initial interview, victims of sexual offences should be transferred to referral centres and given immediate treatment before further police questioning;
- (vi) sexual offences "evidence kits" should be made available to all referral centres, country police stations and Government medical officers; and
- (vii) training courses for the treatment of sexual victims should be held for Government medical officers in country areas.

(C.L.B. July 1978 pp.703-704)

#### Family Law - de facto relationships

The New South Wales Anti-Discrimination Board has issued its First Annual Report under the State's Anti-Discrimination Act 1977.

In its Report the Board has recommended, inter alia, that a de facto relationship should be accorded the same legal status as that of marriage.

In allowing the Board's Report to lie on the table of the State Parliament for six months before it is debated, the State Premier expressed the view that it would be difficult to translate this aspect of the Board's Report into legal definition so as to define a de facto relationship and elevate it to the status of a de facto marriage.

(C.L.B. January 1979 pp.294-295)

#### AUSTRALIA

##### Family Law

The Chief Judge of the Family Court of Australia has announced that the Court is planning to establish a counselling programme for parties who are considering divorce; a pilot programme would be established at which the parties attending would be encouraged to join in a series of group sessions with a Family Court Counsellor and a lawyer. The parties would there learn about and discuss the legal and social implications of marital breakdown and the alternatives available to them.

The Chief Judge stated that there was no statistical or other evidence to support the view that the Family Law Act 1975 had had an impact on the rate of marriage breakdown.

(C.L.B. October 1979 p.1353)

#### AUSTRALIA- VICTORIA

##### Discrimination Against Women

The Chairman of the Victorian Equal Opportunities Board has suggested

that some form of positive discrimination may be necessary if the promotion of equal opportunity does not progress at a reasonable rate under existing legislation.

This suggestion was contained in the Second Annual Report of the Board which has been tabled in the State Parliament. After reviewing the Board's operations over the past year, the Chairman concluded that some minor amendments to the Equal Opportunity Act 1978 were needed.

"It is preferable that the community be given the opportunity of eliminating discrimination within the framework of the existing Act with the modifications already suggested", she said. She added that: "If, however, research indicated that the promotion of equality of opportunity is not progressing at what may seem to be a reasonable rate and that the reason for this is that indirect forms of discrimination are being used to avoid treating people equally then the Board may well conclude and recommend that the Act be extended to render unlawful indirect discrimination.

And that in certain areas, at least "affirmative action" should be introduced, for example, to offer a financial incentive to an employer who engages a trainee, be the trainee male or female, in an area in which the great majority of employees are persons of the sex opposite to that of the trainee."

The Report of the Commissioner showed an increase in the number of complaints about discrimination and a fall in discriminatory job advertisements to two per cent.

According to the Report sexual harassment continues to be a serious problem in the workplace. The Victoria Commissioner for Equal Opportunity said that the range of problems involving sexual harassment was wide. But the problem was not specifically covered by the Equal Opportunity Act 1978(Vic) under which she worked.

She said complaints had been few but recent publicity had drawn many unquiries, particularly from careers advice teachers. These inquiries had indicated that young school-leavers in need of jobs faced sexual exploitation. This also confirms a pattern reported by colleagues from other States and suggests that some employers may be exploiting the current employment position for women to obtain sexual favours in return for a job. Overall, despite the small number of substantiated cases, the frequency and source of reports suggests that sexual exploitation could be widespread.

(C.L.B. July 1980 pp.1067-1068)

## AUSTRALIA

### Rape Law Reform

Agreement is widening among women's groups, lawyers, social workers and criminologists in Australia that Australia's laws on rape require drastic reform. A National Conference on Rape Reform held at Hobart urged State and Federal Governments to increase efforts for a complete overhaul of the rape laws.

Speakers at the Conference claimed that rape is one of the most regularly occurring but unpunished crimes in Australia and that the continuing high incidence of rape and the few convictions in the courts

underlined the lack of deterrent effect the law has at present.

The Conference was intended to initiate debate on specific proposals for legislative reform which are overdue and are technically complicated. It also studied American experience which has shown that increased public awareness is important if changes in rape laws are to be effective. It was the first time that Australian judges, lawyers, social workers and politicians had met in national forum to discuss guidelines for change in this area of the law and delegates overwhelmingly acknowledged the present weaknesses of the law.

The Conference concluded by calling on State and Federal Governments actively to continue to search for reforms in rape and sexual laws. In a 17-point motion it said the Australian Institute of Criminology should act as a clearing house for statistics and research data and that the Commonwealth and State Attorneys-General meet in three years time to consider and evaluate progress.

(C.L.B. October 1980 pp.1494-1496)

AUSTRALIA - A.C.T.

#### Rape: Prosecution of Husbands

A draft Bill for the Australian Capital Territory proposes that women will be able to prosecute their husbands or de facto husbands for rape under some circumstances.

A spokesman for the Federal Attorney-General's Department, the drafter of the Bill, has stated that the draft Bill as it applies to the Australian Capital Territory was being considered by the Federal Attorney General. The parts of the Bill which have been approved by the Federal Attorney-General include those which provide (a) that consent should be irrelevant in offences involving the use of violence, threats, false pretences or drugs; (b) that there should be no distinction in penalty between cases where penetration was effected and those where it was attempted; (c) that there should be no distinction between sexual penetration of a male and a female; and that there should be a range of offences reflecting the severity of harm caused.

Terms of imprisonment ranging between life imprisonment and seven years were proposed to cover varying sets of severe circumstances in which the offence was either committed or attempted. The Bill also incorporates the proposals of a paper previously agreed to by the Territory's House of Assembly recommending that women should be able to prosecute their husbands for rape within marriage. The Bill proposes to limit the defences of husbands or de facto husbands in the prosecution of rape.

(C.L.B. April 1981 pp.791-793)

AUSTRALIA -  
NEW SOUTH WALES

#### Rape and sexual assaults

The New South Wales Government has approved amendments to the State laws

relating to rape so that men who rape their wives will no longer be immune from prosecution. Announcing the Cabinet decision the State Premier said that the proposal had widespread support within the community.

Although the removal of immunity against prosecuting husbands is the most controversial aspect of the proposed legislation, it contains other far-reaching provisions. The term "rape" itself will disappear from the statute books and will be replaced by a graded scale of sexual assaults, ranging from an act of intercourse without consent to brutal attacks.

Accordingly, prison sentences will vary from a maximum of seven years for the least serious charges to twenty years maximum for the most vicious.

(C.L.B. April 1981 p.794)

## AUSTRALIA

### Property Rights of Husbands and Wives

The Federal Attorney General has responded to the recommendations of the Federal Parliament's Joint Select Committee concerning family law. A specialist Committee of Inquiry will investigate whether there should be new laws in Australia to clearly define the property rights of husbands and wives.

The Committee is required to investigate whether there should be a fixed set of rules about the ownership of property so that spouses will become more aware of what property they owned during a marriage or how they could expect such property to be divided if their marriage breaks down.

The Attorney-General stated that he hoped to introduce legislation soon to amend the Family Law Act 1975 which would incorporate 27 of the Joint Select Committee's recommendations.

(C.L.B. January 1982 pp.392-394)

## AUSTRALIA - VICTORIA

### Women Prisoners Increase dramatically

According to the Victorian Minister for Community Welfare the number of women in Victorian prisons has increased dramatically. The Minister said that the increase in the number of women prisoners was partly due to the courts' changed attitude to sexual equality. In addition, women had begun to commit crimes traditionally committed by men.

The Minister was replying to a call by the Acting Director of the Australian Institute of Criminology for a second women's prison in Victoria. The Minister stated that Victoria still had the lowest prison rate of all Australian States with about 47 prisoners per 100,000 people compared to the national average of 67 per 100,000.

(C.L.B. January 1982 p.406)

## AUSTRALIA

### Human Rights - Status of Women

The Australian Human Rights Commission has endorsed the Australian National Women's Advisory Council Plan of Action which is primarily a statement of suggested principles and objectives necessary to raise the status of women in Australia. In a foreword to the Plan, the Chairman of the Human Rights Commission stated that Plan was directed not only at the Australian Government but also at Australian State and local governments, non-government organisations and the community generally.

The Australian Plan is an adaptation of the United Nations World Programme of Action which was adopted at the World Conference of the United Nations Decade for Women held in Copenhagen in July 1980 to mark the mid-point of the Decade for Women (1976-1985)

The contents of the Plan are divided into three parts: Part A deals with the targets and strategies for accelerating the full participation of women in Australia's economic and social development; Part B covers national development plans and policies; and Part C deals with Australia's role in international development.

The World Programme of Action states that "improvement in the status of women requires action at the national, local and family levels. It also requires a change of men's and women's attitudes towards their roles and responsibilities in society. The joint responsibilities in society. The joint responsibility of men and women for the welfare of the family in general and the care of their children in particular must be reaffirmed."

(C.L.B. July 1982 pp.1208-1209)

## AUSTRALIA- NEW SOUTH WALES

### Sexual Discrimination

A Report by the New South Wales Anti-Discrimination Board has disclosed that widespread discrimination exists against women in relation to financial matters.

The investigation by the Board, which is the first of its kind in Australia, shows that -

- (i) marital status affects many lending decisions;
- (ii) the sex of the applicant determines some decisions; and
- (iii) some apparently fair criteria for borrowing discriminates indirectly against women.

The Board's community relations officer said that although discrimination based on sex was illegal in New South Wales, financial institutions continued to get away with such discrimination because they could claim that they were refusing women loans or credit for other reasons. Further, many women lacked confidence in their financial dealings and were reluctant to insist on their rights.

She said the existence of discrimination was partly a result of the conservatism of middle-management executives. It was an extremely serious form of discrimination because it held back women in so many fields.

(C.L.B. October 1982 p.1577)

## AUSTRALIA

### Test Tube Babies: Ethical, Legal and Moral Questions

The Deputy Chairman of the New South Wales Law Reform Commission, Mr. Russell Scott, has stated that a national standing committee should be established to check on the continuing ethical, legal and moral questions raised by test-tube baby programmes and similar medical research.

Mr Scott said that Australia's prominence in experiments on in vitro fertilization and embryo transfer gave an outstanding opportunity for leadership. "A national standing committee would mean that practices and developments in this field can be monitored," he said. "We might be able to avoid the sterile, entrenched attitudes that seem to characterise the abortion debate," Mr Scott told the Australian Society of Legal Philosophy in Sydney.

Mr. Scott said that the moral, ethical and social problems created by the modern medical advances, such as test-tube babies and cloning would not go away. "Somehow we must achieve a balance between the desire to ignore the advances on the one hand and getting the benefits for the society which they offer on the other.

Mr. Scott was a member of the medical and legal Working Party which recently revised Australia's guidelines for research on humans. The Working Party's guidelines, which were released after they had been accepted by the National Health and Medical Research Council, are the first to be produced by any country.

Mr. Scott said that the Working Party was aware that its findings could be controversial. "Our first decision was that in vitro fertilization can be a justifiable medical practice", he said. "It has developed as a means of alleviating infertility in marriage which can be a serious, even tragic, problem for many couples. We are aware that some people strongly oppose in vitro fertilization. However, we took account of the fact that such an approach has also been brought to other practices which are clearly now acceptable to our society, such as contraception." Mr. Scott said that the Working Party was faced with several novel issues, including the ethics of long-term sperm banks and ovum banks. "Who should own them? Should the State be allowed to assert ownership or control over these potential citizens?"

In his call for a national standing committee, Mr. Scott said it would not only be necessary for in vitro fertilization problems but for the whole range of ethical issues in medical research on humans.

(C.L.B. January 1983 pp.302-303)

## AUSTRALIA - SOUTH AUSTRALIA

### Women Discriminated Against in the Police Force

The South Australian Sex Discrimination Board has held that successive State Police Commissioners have unlawfully discriminated against female members of the Police Force. The decision by the three-member Board, headed by a District Court Judge, followed hearings lasting nearly two years.

The Police Department had discriminated against women in recruitment, allocation of duties, promotions and transfers. The Board said

that women were still seen and treated as a separate group within the Force from the moment they were asked to fill out "pink" application forms while men filled out "blue" forms. Among the breaches of the Sex Discrimination Act 1975 found by the Board were: the policy of the Commissioner in not allowing females to be recruited as cadets from 1976 until March 1979; the differences in duties between male and female patrol officers; and the policy of regarding solo motorcycle duties, accident investigation and prevention, the traffic task force and the police dog squad as being unsuitable for females.

(C.L.B. April 1983 p.742)

## AUSTRALIA

### Passports: Abolition of consent of spouse

The former Australian Minister for Foreign Affairs announced in January 1983 that married and previously married persons will no longer be required to obtain the consent of their spouse or ex-spouse before being issued with an Australian passport.

The requirement of consent has become a frequent source of complaint from passport applicants and others for many years and it no longer served the purpose for which it was originally intended, that is, to prevent the desertion of either married partner and to safeguard maintenance obligations in the event of the dissolution of the marriage. The Minister said that the abolition of the consent requirement would not deprive a person to restrain the departure from Australia of a spouse or ex-spouse with maintenance obligations. There were now adequate provisions in the Family Law Act 1975 to cover those who might attempt to avoid payment of maintenance.

(C.L.B. July 1983 pp. 1097-1098)

### Discrimination in Employment and Occupation

The Australian Government's National Committee on Discrimination in Employment and Occupation has published its Tenth Annual Report covering the period 1982-1983.

Full details of the Report appear in the C.L.B. as referred to below.

(C.L.B. October 1984 pp. 1906-1913)

### Guidelines on Sexual Harrassment

The New South Wales Anti-Discrimination Board has drawn up a series of formal guidelines on sexual harrassment. They are designed to show employers in the private sector how to deal with and eliminate the problem in the workplace. The move to produce the guidelines follows an extensive programme initiated by the Office of Equal Opportunities in Public Employment which aimed to control and eliminate sexual harrassment in the State's public sector.

The Board's guidelines define sexual harrassment as "any unwanted and unreturned sexual conduct including unwanted physical contact,

verbal comments, abuse or gestures". The draft guidelines recommend that employers -

1. to issue a strongly-worded policy statement to all employees, making it clear that sexual harrassment would not be tolerated under any circumstances;
2. to emphasise to all employees that the company would regard harrassment grievances seriously, sympathetically and impartially;
3. to educate employees on the nature of sexual harrassment and the procedures to deal with grievances;
4. to nominate an employee to receive grievances and appoint a senior staff member to investigate and resolve the grievances;
5. to draw up a set of guidelines on how to investigate complaints and resolve them internally.

(C.L.B. October 1984 p.1922)

#### Prostitution and Human Rights

The Australian Human Rights Commission has commissioned a study of the human rights implications of legislation dealing with prostitution. The study will be conducted on behalf of the Western Australian Council of Civil Liberties.

The Chairman of the Human Rights Commission said that the study would involve contact with prostitutes, their clients and community groups with strong views on the issue and would canvass general community attitudes.

(C.L.B. January 1985 p.249)

#### BANGLADESH

##### Late Marriage in Bangladesh

A national youth organisation in Bangladesh, Jatio Tarun Sangha, has been running a nationwide late marriage movement with full government support in order to create favourable public opinion leading to new legislation on the age of marriage. The target of the campaign is to establish the age of marriage as 23 for girls and 28 for boys. The Bangladesh Family Planning Association has supported the campaign.

(C.L.B. October 1977 p.715)

#### BARBADOS

##### Survey of Abortion Law Attitudes

A national survey of doctors, nurses and social workers on the liberalising of the Barbados abortion law carried out by the University of the West Indies has found that 85 per cent of doctors and social workers were in favour of liberalisation, while only one third of nurses favoured liberalisation. On the question of abortion being freely available at the request of the patient, doctors and social workers showed reservations and sixty per cent of them were against this. 60 per cent of the nurses as compared with 25 per cent of doctors and 6 per cent of

social workers felt that there would be less interest in contraception if abortion were more readily available.

(C.L.B. July 1977 p.526)

## CANADA

### Abortion

The Committee on the Operation Law, appointed in September 1975 is conducting a fact-finding study to determine whether the therapeutic abortion procedure provided for in the Criminal Code (section 251) is operating equitably across the country. Rather than appoint a Royal Commission that would be asked to make recommendations on the policy underlying the law, it was decided to establish a Committee to undertake a scientific study of the way in which the present law is operating.

### Tax and the Family

#### Family Law and the Native People

These are two background research papers, not published, but available for reference in the library of the Law Reform Commission. The first studies the effects of the family on the federal income tax and conversely the effects of the tax on the family. It includes a survey of the amendments to the tax system required if the basic thread of the current system, the individual as the only personal tax unit, is maintained and a review of the desirability of adopting the family, or part of it, as an additional unit of tax liability and measurement.

The second paper studies customary family law as it obtains amongst the Indian population of Canada in relation to marriage, divorce, inheritance and adoption. It further examines the status (or membership system under the Indian Act and the situation in regard to child welfare.

(C.L.B. January 1976 p.54)

### Major Amendments to Divorce Law

The Justice Minister, Mr. Mark MacGuigan, has tabled in Parliament a Bill to revise Canada's divorce law to make it more consistent with current social needs and realities.

When the Divorce Act was passed in 1968, the then Minister of Justice, the Right Honourable Pierre Trudeau, promised that amendments to the Act would be brought forward as required by evolving social conditions. "In the light of recent studies on divorce, not to mention the many representations I have received from concerned groups and individuals, it is evident that the time has now come to fulfil that promise," said Mr. MacGuigan. The Minister stated that the new divorce law would promote mediation and counselling services at any stage of the divorce proceedings, to help prevent impetuous divorces where there was hope of saving the marriage.

The proposed changes strive for a more humane resolution of marital differences as promised in the speech from the Throne. For, example, fault grounds would be eliminated and the waiting period for seeking a divorce on the basis of marriage breakdown would be one year. In addition, procedural changes to the law are expected to make the divorce process more efficient. In uncontested cases new rules of court could allow a divorce to be granted without requiring that the case be brought to trial. This would not only reduce the backlog in Canadian courts but would also reduce costs for taxpayers as well as for those seeking a divorce.

A summary of the proposed amendments are set out as referred to below.

(C.L.B. April 1984 pp. 1003-1004)

#### CANADA-ONTARIO

##### Legal Specialists on Domestic Violence

The Attorney-General, the Hon. Roy McMurty has announced the appointment of more than 50 specifically designated Crown legal officers throughout Ontario to deal with domestic assault matters. It is part of a continuing initiative to give the problem of family violence a high priority within the justice system. The Attorney-General said he will be designating more than 50 lawyers to further develop expertise on domestic violence with the aim of improving assistance to victims and prosecuting officers where appropriate.

This means that in the office of the Crown Attorney in every County and District of Ontario at least one prosecutor will be designated the specialist in family violence. The specialist will be either the Crown Attorney or an Assistant Crown Attorney. In larger centres more than one person may be designated to ensure that the service is available to all who need it. The designated person will receive training in dealing with the special problems faced by victims of domestic violence through regional seminars to be conducted by the Ministry of the Attorney-General, the Ontario Women's Directorate, the Ministry of the Solicitor General and the Justice Secretariat.

The specialists will be available to offer advice, assistance and prosecutorial expertise to victims of domestic assault. As specialists, they will be familiar with local resources available to victims and will help obtain assistance from other appropriate social agencies in the community. In addition, the specialists will work closely with police forces to ensure the active and vigorous investigation and prosecution of domestic assault charges. If advice on other legal matters is required and the victim is unable to afford a lawyer, the specialist will assist in obtaining legal assistance through the Ontario Legal Aid Plan.

The Attorney-General pointed out that the appointment of these specialists is in addition to his plans to greatly improve services to all victims of crime. Mr McMurty said, "As Attorney-General, my policy has been to vigorously prosecute incidents of domestic violence and to lessen wherever possible the apprehension many ordinary citizens have of the court system. Our new programme to develop specialists in domestic violence cases is evidence of the government's commitment in this regard.

(C.L.B. October 1984 p.1931)

## GHANA

### Ghana Branch of the International Federation of Women Lawyers

The International Federation of Women Lawyers (Ghana Branch) was inaugurated by the Chief Justice on 4 April 1975. F.I.D.A. seeks to promote the principles and aims of the United Nations in their legal and social aspects and to embrace and promote the welfare of women and children, realizing that on women and children's well-being depends the happiness of the home and the strength of society.

(C.L.B. May 1975 p.66)

## INDIA

### Family Courts

The Indian Parliament has approved the establishment of family courts to settle marital disputes expeditiously.

"The Courts would preferably be headed by lady judges," the Law Minister, the Hon. Jagan Nath Kaushal, told the Lower House. He described the legislation as "progressive and revolutionary". The courts will initially be set up in cities with populations of more than one million and will exclusively handle issues relating to separation, divorce, alimony and conjugal rights. The courts will later be established in smaller cities. "The emphasis in the family courts will be on reconciliation," the Minister told the House.

The National Parliament has also passed legislation imposing harsher penalties on dowry-greedy relatives in a move to curb harassment of younger married women. The traditional practice of dowry, although outlawed in 1961, has continued because of social pressures on parents to marry off their daughters at a young age.

In recent years there have been many cases of "bride-burning" in which dowry-hungry relatives have been accused of killing or driving young wives to suicide. Police say brides are subject to increasing harassment by in-laws not satisfied with the size of the dowry given by parents.

The new legislation increases terms of imprisonment for the acceptance of dowry from six months to two years. Husbands and in-laws suspected of dowry-connected violence will be liable to immediate police arrest without warrant or bail.

(C.L.B. October 1984 p.1932)

## NEW ZEALAND

### Reform of Maintenance and Property Linked

The Minister of Justice has told a public meeting that there is a close link between matrimonial property and maintenance reform.

He said that the division of property does not necessarily abolish the need for maintenance, because in most marriages the only asset is the earning capacity of one spouse. However, where there was a large amount of income-producing property the need for financial support was much reduced by its division. He said that in modern times the end of marriage should mean "just that" and should not continue indefinitely for maintenance purposes when it is otherwise finished.

However, the Minister said that this does not mean that there should be an abrupt end to maintenance, particularly where young children are involved.

### Proposed Matrimonial Proceedings Changes

Possible changes in the field of matrimonial proceedings have been outlined by a Government spokesman. Instead of applying for separation and other orders spouses would ask for a reference to a conciliator. If the consultation is not successful, the parties will attend a compulsory conference chaired by an independent person to seek agreement on some of the matters in dispute and to identify those matters on which there is no agreement. Only after that will the matter go before a court for contested hearing - and then only on those questions still in dispute.

The spokesman also says that the Government intends to remove from the law any possible suggestion of bias in favour of the mother in custody proceedings.

### Female Offending

The level of female offending in New Zealand appears to have escalated dramatically. The Secretary for Justice had this to say in his latest annual report to Parliament:-

"Little has been written or mentioned on this subject since the publication of Crime in New Zealand in 1968. However, an examination of the available information indicates that, as is the situation in society in general, the position and status of women as offenders has changed dramatically over the last ten years.

During this period the rate of total charges brought against women has increased by 94 per cent. In 1967 the number of charges per 1000 female population was 17. Within 10 years this figure has virtually doubled and in 1976 stood at 33. The actual number of charges against women in this period has increased from 22,736 to 51,464. By way of comparison the number of charges against males over the same period has increased by 32 per cent although the male rate per 1000 of population is still very much higher than females. In 1976 females were responsible for 13 per cent of the criminal workload of Magistrates' Courts.

Within the total framework of criminal offending women do still play a comparatively minor role. But the facts as I have outlined them raise issues and questions that should not go unnoticed. This is

particularly so when an analysis of the nature of offending is made. Most offences committed by women (and by men) are traffic offences but the rate of more serious female offending has increased still more since 1968. Moreover, vagrancy and "victimless" offences traditionally associated with women's offending now play a much less prominent part in the total picture. We find an emerging pattern of female offending involving more serious crimes such as aggravated robbery, assaults, burglary and false pretences. Theft (which includes shoplifting) still figures prominently in the total number of offences by women but has not increased proportionately to overall offending. The involvement of females in drug offending has also become apparent. In 1976, 190 women were convicted for drug offences compared with only 2 in 1967.

What the figures creating this portrayal of females offending do not disclose is whether the increase is real in the sense that women are actually committing more offences, perhaps because of their changing role in society. A writer commenting on the criminality of women contended that the tendency to crime between the sexes was not significant but that the "masked" criminality of women hides many offences committed by women from detection. Perhaps the "mask" has been removed and society is general now has less reluctance to report and prosecute offences where women are involved. No doubt the actual reasons are many and complex. However, whatever the reasons this development poses problems that cannot be ignored."

(C.L.B. October 1978 pp. 1034-1036)

#### Exemption of Women's Clothing from Price Freeze held to be Discriminatory

The exemption of women's fashion clothing from the Price Freeze Regulations amounts to discrimination, the Human Rights Commission has said. The Commission has recommended that the Government remove the exemption unless it can be proved that the industry cannot continue without it. The Commission said that a remedy might be to give similar exemption to men's fashion clothing. "It is wrong in principle to make a distinction on the basis of sex unless this is clearly a matter of business inevitability. It is not enough to say that this is to be presumed. Much of the existing discrimination between the sexes is based on presumption and on examination most of these are found to be traditional prejudice without any rational basis of necessity," the Commission said.

The real issue was that the exemption was a carry-over from the period before the idea of equality between the sexes was understood as it was now.

(C.L.B. April 1983 pp.742-743)

#### Rape: Submissions on the Rape Study

The Department of Justice has released an Analysis of the Submissions to the Rape Study and its publication includes the formal study of the experience of rape victims. It attempts to identify the principal concerns of those who have made submissions and to summarise the views

expressed on how best to improve the law on rape and the way the criminal justice system deals with complaints of rape.

It is noted that there is a large measure of consensus on the general point that existing police and criminal justice system procedures for dealing with rape cases can cause unnecessary distress to the victim of the offence. All but a few submissions asked for changes of some description to the law. There were several issues on which there was sharp disagreement. Notable among these is that of "spousal immunity" to a charge of rape which is both attacked and defended in strong terms.

(C.L.B. October 1983 p.1552)

## TRINIDAD AND TOBAGO

### Abortion Law and Public Opinion

Controversy over abortion is mounting in Trinidad and Tobago, sparked off by a survey carried out by a doctor at the University of the West Indies, Dr. Syam Roopanrinesingh, which indicated that public opinion is in favour of liberalisation of the abortion law. Currently the law is the same as the prohibitive United Kingdom legislation on abortion of 1861, except for the fact that penalties imposed have been considerably reduced. The Archbishop of the Port of Spain, Mr Antony Patin, has spoken out against liberalisation and the Prime Minister has spoken against abortion and sterilisation. However, the President of the Family Planning Association, Mr. Emile Elias, has said that any move which takes abortions "out of the back room" would be welcome. Data provided by the F.P.A. indicates that there were an estimated 12,500 illegal abortions in 1963 (noted in IPPF "Law File").

(C.L.B. July 1977 pp.528-529)

## UNITED KINGDOM

### Laws to Protect Women Can Work Against Them

Legislation intended to safe-guard the conditions of women at work serves to discriminate as much as protect, the Chairman of the Equal Opportunities Commission has said. In particular it had prohibited night work, shift work, early starts and late finishes, she said. Women were unable to work with lead or radiation, and, except in certain circumstances could not work underground in mines.

Pointing out the thin line that existed between discrimination and protection, she said: "For the Equal Opportunities Commission shift work and overtime ..... represents one of the main methods of maintaining a large differential between men's and women's pay. Management is on occasions manipulating the protective legislation to oust women from jobs, or to stop them getting jobs, or to keep them on low pay without any legal remedy."

(C.L.B. January 1978 p.182)

## Equality in Benefits for Women

The European Economic Community has approved legislation ensuring women equality with men in social security benefits. The member States have six years within which to implement the measures in their national legislation. The directive will enable women to claim on the same basis as men, social security, family income supplements and unemployment and sickness benefits for their husbands and children.

(C.L.B. April 1979 p.480)

## 'Morning After' Pill

In a written question the Attorney General was asked how many complaints have been received, either by himself or by the Director of Public Prosecutions, which relate to the supply of what is commonly called the 'morning after' pill and whether he proposes to institute criminal proceedings in connection with any of the complaints.

The Attorney General replied that on May 10, 1983 one complaint had been made to his Department and three to the Director of Public Prosecutions. Each complaint alleged that the supply and administration of such post-coital medications contravenes sections 58 and 59 of the Offences against the Persons Act 1861 and that a woman using such medication may commit an offence under section 58 of the Act.

Such pills are intended to be taken by women following unprotected intercourse to inhibit implantation in the womb of any fertilised ovum. The sole question for resolution therefore is whether the prevention of implantation constitutes the procuring of a miscarriage within the meaning of sections 58 and 59 of the Offences against the Person Act 1861. The principles relating to the interpretation of statutes require that the words of the statute be given the meaning which they bore at the time the statute was passed. Further, since the words were used in a general statute, they are prima facie presumed to be used in their popular, ordinary or natural sense.

In this context it is important to bear in mind that a failure to implant is something which may occur in the manner described above quite spontaneously. Indeed in a significant proportion of cases the fertilised ovum is lost either prior to implantation or at the next menstruation. It is clear that, used in its ordinary sense, the word "miscarriage" is not apt to describe a failure to implant - whether spontaneous or not. Likewise, the phrase "procure a miscarriage" cannot be construed to include the prevention of implantation. Whatever the state of medical knowledge in the 19th century, the ordinary use of the word "miscarriage" related to interference at a stage of pre-natal development later than implantation.

"In the light of the above", the Attorney General said, "I have come to the conclusion that this form of post-coital treatment does not constitute a criminal offence within either sections 58 or 59 of the Offences against the Person Act 1861. No proceedings are to be instituted."

(C.L.B. January 1984 p.470)

## "Rent-a-womb" Schemes Should be Avoided

The British Medical Association has recommended that doctors should have no involvement with any scheme involving "surrogate" mothers.

The association's stand comes as the first commercial "surrogate" agency is proposing to start a "rent-a-womb" scheme for childless couples in Surrey and as the government-appointed Warnock committee is preparing to make recommendations on this issue this summer. The committee is considering making the charging of fees for such a service illegal.

The B.M.A.'s council is expected next month to approve advice from its central ethical committee that doctors should not become involved in any procedure in which a woman bears a child for another woman and then hands it over after birth. That should apply whether the treatment is done privately, where the mother who bears the child is paid a fee for her services or even if it were to be attempted under the National Health Service with no fees involved.

The committee is also opposed to such treatment whether it is undertaken by artificial insemination, where the husband's sperm is inserted in the child-carrying woman or by the test-tube baby technique. In the latter case, the egg from the woman who cannot bear a child would be mixed in the laboratory with the husband's sperm and the resulting embryo implanted in the woman who is to carry the child. That process offers the advantage that the resulting child is genetically the offspring of the parents who are to bring it up, as opposed to the surrogate child produced by artificial insemination where half the genes will have come from the father but half from the woman bearing the child.

Both techniques are surrounded by serious legal and ethical dilemmas, but the least question of to whom the child belongs if the mother who has borne it changes her mind about handing it over.

Dr. John Dawson, head of the BMA's professional division said: "The committee feels strongly that doctors should have nothing to do with any process that will produce a surrogate child, whether by artificial insemination, the test-tube baby technique or by any other method. Once a woman is pregnant, however, doctors would have an obvious duty to care for her and the baby."

Some have argued that surrogacy can offer hope of a child to a woman who cannot bear children and that the test-tube baby technique, by making the offspring genetically the product of its parents, even though another woman produces it, makes the technique ethically more acceptable.

The BMA's committee is not opposed to the test-tube baby technique being used to allow another woman to donate an egg to a woman whose ovaries no longer function, allowing her to produce the child. That is seen as no different from the widely practised artificial insemination by donor, where donated sperm is used to make a wife pregnant if her husband is infertile.

(C.L.B. April 1984 pp.1014-1015)

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by Lesley Vick.

(C.L.B. April 1979 pp.581-584)

#### Family Law in the Commonwealth Caribbean

by Gloria Cumper and Stephanie Daley (Department of Extra Mural Studies,  
University of the West Indies, 1979)  
Reviewed by the Editors Commonwealth Law Bulletin.

(C.L.B. October 1981 pp.1607-1608)

### AUSTRALIA

#### Women and Crime

Edited by Satyanshu K. Mukherjee and Jocelyne A.Scutt (Australian  
Institute of Criminology: Paperback \$A8.95 Hardback \$A16.95  
Reviewed by the Editors of the Commonwealth Law Bulletin

(C.L.B. January 1982 p.425)

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## UNITED KINGDOM

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