



AUCKLAND WOMEN  
LAWYERS' ASSOCIATION

# NEWSLETTER

AUGUST 2009

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## From the President...

Hello and welcome to the August Edition of the AWLA newsletter.

**As you can see, this newsletter reflects our new logo, which following a successful test outing at the Anniversary Dinner, we have decided to adopt permanently.**

Thank you to all of you who supported our 25th Anniversary Dinner in July. It was great to have so many current and past members attend, and a particular pleasure to have such great attendance from the founding members. I was pleased to see that issues affecting women in the profession are still relevant today, as the robust panel discussion demonstrated. Although not necessarily the same issues as the founding members had to contend with, the Anniversary Dinner discussion clearly demonstrated that there remain key issues affecting women in the profession today, supporting the ongoing relevance of AWLA. Importantly some of the issues, part time working in particular, are issues relevant to many of us, across different aspects of the profession. Keep an eye out for the article and photos appearing in the upcoming edition of NZ Lawyer.

You will see in this Edition, a note on the provocation defence. Following the introduction of a Bill to remove the partial defence of provocation from the Crimes Act 1961 in August, we are anticipating the opportunity to make submissions should the Bill reach Select Committee stage. Please do send in your thoughts on this issue ([AWLA@xtra.co.nz](mailto:AWLA@xtra.co.nz)) and in particular your views about the possible impact on women should it be repealed. Are there better alternatives? We are looking to put together a member working group on this legislation, so let us know if you'd like to participate.

Our next event is the **Women on Boards** function in September (see flyer in this Edition). We are very pleased that Miriam Dean QC and Christine Grice have agreed to speak. Many of us in the legal profession feel we have a great skill set that we could bring to a board table and contribute to good governance, but often the pathway to the board room is not obvious. Our speakers will be sharing with us their experiences of being appointed to and sitting on boards. We hope to see you there.

*Sarah Carstens*  
**President, AWLA**

**This issue's editor:**  
*Angela Hansen*

## Women on Boards: The Ministry of Women's Affairs Nominations Service

***“Women who wish to be considered for appointment may apply to the Ministry to register with the Service and be placed on the nominations database.”***

Women lawyers interested in becoming involved in governance are encouraged to consider registering with the Nominations Service of the Ministry of Women's Affairs.

The Ministry of Women's Affairs is a government agency that provides policy advice on issues specific to New Zealand women. One of the Ministry's functions is promoting the appointment of women to state sector boards, and the department achieves this by recommending suitable women nominees through its Nominations Service.

The Nominations Service is regularly consulted on appointments to over 400 state sector boards and committees. The Service puts forward the names of women with relevant skills and experience for positions on state sector boards. Women who wish to be considered for appointment may apply to the Ministry to register with the Service and be placed on the nominations database.

The appointment process works in the following way. The Nominations Service receives a request from an appointing agency such as the Ministry of Health or the Department of Conservation, detailing the skills, knowledge and criteria required for the appointment. The Nominations Service then searches their database to find women who fit the criteria. Those women are contacted by the Service and their interest in the role and fit with the specified criteria is discussed. The Service then sends a list of nominees to the appointing agency, accompanied by profiles and CVs. The responsible Minister makes appointments from all nominations received.

Pamela Cohen, Director of the Nominations Service, says:

*“We are often asked to nominate lawyers with specific levels of experience and areas of specialisation for positions on state sector boards and committees. We are therefore currently looking to recruit lawyers with seven or more years of experience, especially partners of legal firms, or lawyers with significant commercial expertise.”*

The appointments process is highly competitive and the Ministry is only one source of advice for the appointing agencies. A single vacancy on a statutory board can attract 100 nominations in total. Once the nominations are provided to the appointing agency, the Nominations Service has no further role in the appointments process.

Recently the Ministry has also published a report in partnership with Business New Zealand and the Institute of Directors in New Zealand, promoting an increase in the participation of women on company boards. That report notes that in New Zealand, 45 women hold 54 directorships out of a total of 624 positions in the top 100 companies on the NZX. Pansy Wong, Minister of Women's Affairs, has said:

*“New Zealand is the first country where women gained the right to vote. We have never looked back and world holds us in high regard for our forward thinking and fair go attitude. It is important that women and men stand should to shoulder in our boardrooms. Combining the different strengths of men and women will provide a strong lever for business performance.”*

The report suggests that aspiring directors should seek out governance experience on not-for-profit organisations, for example, professional bodies, charities, local and national sports organisations and school trustee boards. Taking on roles of responsibility will demonstrate a commitment to governance.

If you have the relevant skills and experience required for directorship on state sector boards and would like to be considered by the Nominations Service, consult [www.mwa.govt.nz/women-on-boards](http://www.mwa.govt.nz/women-on-boards). A copy of the report promoting women on company boards is also available under the publications section of the Ministry of Women's Affairs website (Women on Boards – Why women on company boards are good for business).

## PROVOCATION – UNWORKABLE AND UNFIXABLE?

### A Plea for Your Views

***“The defence is based on the premise that an ordinary person that faced severe provocation may lose the power of self-control and resort to homicidal violence.”***

The current limelight on provocation has thrown the long recognised difficulties with the partial defence into the public’s scrutiny and obvious disdain following the Weatherston trial.

On Tuesday 4 August 2009, the Minister of Justice, The Right Honourable Simon Power introduced a bill to remove the partial defence of provocation from the Crimes Act 1961. He said that he hoped that the legislation would be passed by the end of the year. In doing so he said:

“It wrongly enables defendants to besmirch the character of victims and effectively reward the lack of self control.”

The Law Commission had earlier recommended the abolition of the partial defence of provocation in 2001, when it reviewed the legislation in terms of battered defendants, and has more recently again recommended its repeal.

We seek views from our members on the partial defence, its repeal or retention and any alternatives available. We wish to make submissions on the Bill when the opportunity arises. Our aim is that the submissions made on the Bill truly reflect your mandate. Please write to us or email us with your comments.

For ease of reference we set out the partial defence and main arguments for and against retention of provocation summarised from the Law Commissions’ 2007 report.

#### **The partial defence**

Section 169 of the Crimes Act provides that:

“Anything done or said may be provocation if –

- (a) in the circumstances if the case it was sufficient to deprive a person having the power of self-control of an ordinary person, otherwise having the characteristics of the offender, of the power of self-control; and
- (b) it did in fact deprive the offender of the power of self-control and thereby induced him to commit the act of homicide.”

Being a partial defence, provocation reduces culpable homicide that would otherwise be murder to manslaughter.

In 2007 the Law Commissioner issued a report recommending the appeal of section 169 of the Crimes Act and therefore the partial defence of provocation. The report identified that left four fundamental flaws in the partial defence.

#### **The Flaws**

- 1 The defence is based on the premise that an ordinary person that faced severe provocation may lose the power of self-control and resort to homicidal violence. It is unlikely that the public at large would ever accept that with extreme provocation they may lose the power of self-control and kill. But that is the basis on which the defence in enacted.
- 2 The partial defence requires a bifurcation between an accused’s perception of the seriousness of the provocation (which is considered by a jury in light of the accused’s personal characteristics) and the ordinary person’s power of self-control (objectively assessed). This is a very difficult assessment and is an illogical approach for a jury to grasp and also a Judge to direct a jury on.
- 3 It is not clear in psychological or philosophical spheres that there is such a phenomenon as the loss of self-control.
- 4 Provocation is now seen to be a defence for the mentally normal and therefore it fails those who have frailties that mean that they do have the ordinary power of self-control.

#### **The Main Arguments for Retention of the Partial Defence**

The most cited and recognised arguments for the retention of provocation are:

- 1 A degree of culpability short of murder needs to be available.
- 2 Most other comparable jurisdictions still offer a defence of provocation.
- 3 If the issue of provocation is moved to be being considered as a mitigating factor on sentencing, various practical problems arise such as requiring a dispute of facts hearing to determine whether or not there was any provocation in the extent to which that acted upon an accused’s mind and caused a loss of self-control.

Most of these arguments for retention are dismissed by the Law Commission’s Report. As a result the Law Commission recommended that the partial defence of provocation be repealed. The Commission considers that issues of provocation can be dealt with properly during the sentencing exercise, with the offender convicted of murder.

AWLA is interested in hearing members’ views. If you have any comments, please send these to us at [awla@xtra.co.nz](mailto:awla@xtra.co.nz).

## FILM FESTIVAL – JULY 2009

### A slice of real life

A number of the most popular, and most compelling, films shown at the 2009 Film Festival were based on real-life events, or indeed documentaries.

One of these stands out as my particular favourite from this year's line-up.

*This Way of Life*, is a beautifully shot New Zealand documentary which follows the Karena family – Peter, Colleen and their six children. The Karena family, in particular the children, enjoy simple pleasures – riding horses, swimming in the creek – and focus on “doing”, not material possessions. As Peter Karena says, when he's asked what he does for a living, he “lives for a living”.

During the course of the film, the Karena family go through some tough times, not least losing their home in a fire, but show amazing resilience. In fact, when they find another house and move out of the shed they have been living in since the fire, Colleen Karena regrets this, saying she preferred the shed, as it brought them closer together.

For those of us who live and work in the city, this film is a real insight to the Karena's way of life and audiences will undoubtedly be moved by some of the struggles this close-knit family faces. Highly recommended.

## AWLA'S 25TH ANNIVERSARY – A TOUCH OF SILVER

Thank you to all you who supported and attended the Auckland Women Lawyers' Association 25th Anniversary dinner, which we celebrated on our birthday of 2 July 2009. It was great to have so many current and past members attend, and a particular pleasure to have such great attendance from the founding members. The sold-out event provided an opportunity for our members to celebrate their successes over the years, and to recognise the women who founded the organisation – true trail-blazers.

Members had the chance to catch-up informally over drinks and to reminisce. Following dinner, Associate Judge Sargisson led a fascinating panel discussion which covered past achievements, and looked at the future of AWLA.

Panellists for the evening were the Honourable Margaret Wilson, Helen Melrose (the first President of AWLA), Judge Ida Malosi and Judge Ema Aitken, all of whom contributed to a lively exchange of views, with comments also flowing from the floor.

It was great to see that issues affecting women in the profession are still relevant today, as the robust panel discussion demonstrated. Although not necessarily the same issues as the founding members had to

contend with, the Anniversary Dinner discussion clearly demonstrated that there remain key issues affecting women in the profession today, supporting the ongoing relevance of AWLA.

While there were differing perspectives offered in the debate, the panellists were agreed on a number of key issues, including:

- The real need for women to be represented in the law, and on the bench;
- The importance of ensuring there are options for women in the law (and no barriers to their advancement in whatever field of law they choose);
- The fact that there is still work for AWLA to do – particularly in mentoring young women lawyers, and as an advocate for women when legal issues affect them; and
- Supporting women in the profession, particularly across common issues such as part time working.

The panel were also in no doubt about AWLA's reputation and its proud history. In the words of Judge Malosi, women who are working in the law today “wouldn't be here” if it wasn't for women like those founding members of AWLA who have inspired and mentored those coming after them.

*Katherine Burson and Sarah Carstens*

***“In the words of Judge Malosi, women who are working in the law today ‘wouldn't be here’ if it wasn't for women like those founding members of AWLA who have inspired and mentored those coming after them.”***



# Women on Board Function

Wednesday 9th September 2009 at Russell McVeagh

How do you get appointed, what qualifications and experience do you need and what is it like when you are there?

**Miriam Dean QC and Christine Grice** will give you insights into their experiences being appointed to and serving on Boards.

Drinks will begin at **5.30pm**, with the speakers to begin at **6.00pm**

Afterwards take the opportunity to meet and mingle with the speakers and other women practitioners.

**Ticket prices \$15 for members, \$25 for non-members**

*Kindly sponsored by*

**RUSSELL McVEAGH**

Level 30, Vero Centre, Shortland Street

### AWLA Women on Board Function Wednesday 9 September 2009

Please RSVP along with your payment by Friday 4 September 2009.

Your place is only guaranteed once payment has been accepted.

Name/s: \_\_\_\_\_

Employer: \_\_\_\_\_ No of Persons Attending: \_\_\_\_\_

\_\_\_\_\_ Members at \$15 = \_\_\_\_\_

\_\_\_\_\_ Non-Members at \$25 = \_\_\_\_\_

Cheque enclosed for \$ \_\_\_\_\_

Please tick if you require a receipt to be posted

Cheques should be made payable to "AWLA" and posted to PO Box 6568, Wellesley St, Auckland.

### Paying via Internet Banking

Please credit your payment to: *Name of Account:* The Auckland Women Lawyers' Assn Inc  
*Bank:* BNZ Auckland Branch  
*Account Number:* 02-0100-0147026-00

Please insert your name and "Board" in the particulars section before making the transfer, and let us know the date it will go in so that we can trace it as your payment.

## AWLA EXECUTIVE COMMITTEE 2009 – CONTACT DETAILS

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## 2009 PORTFOLIOS

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<b>Mentoring:</b>	Anisa Barrowclough & Katrina Winsor
<b>Historical Committee:</b>	Angela Stafford, Katrina Winsor, Angela Hansen & Sarah Pidgeon
<b>Legislative Watch:</b>	Angela Hansen & Stephanie Earl