**Provoking Law Reform: Feminism, Queer Theory and the Legislative Agenda**

Elisabeth McDonald, Victoria University of Wellington - Faculty of Law

This chapter uses the abolition of the partial defence of provocation as a case study to illustrate the impact (or not) of two particular non-dominant groups in law reform. There is a discussion on the number of elements that need to be present for effective law reform to occur, and a conclusion that a number of these will not usually be present with regard to issues that are identified as significant for feminists or members of the GBLT community. There is also a consideration of the author’s own experience with regard to other lobbying efforts, with a conclusion that hard cases may be required to...
achieve law reform, especially with regard to concerns identified by non-dominant groups.

"Response to Mark Masterson: Gender Conforming Bodies: Consent, Sexuality and the Criminal Law"

Michael Hemmingsen and J L Shaw (eds) Meaning and Identity: An Interdisciplinary Perspective (Society for Philosophy and Culture, Wellington, 2013) pp 177-192

Victoria University of Wellington Legal Research Paper No. 138

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In response to Mark Masterson’s piece, this chapter considers the practice of gender assignment surgery and its impact on sex and gender, while also questioning New Zealand’s cultural and specific criminalisation of genital surgery. The difference between intersexuals and transsexuals is explored, along with the historical assertions that have been made in regards to treatment of intersexual infants and how these assertions have been challenged. The chapter then focuses on the psychological well being of those who did and those who did not receive surgery. There is particular focus on New Zealand’s legislation of specific cultural values, which tends to enforce one cultural perspective over another. Finally, the chapter concludes that a healthy post-surgical sex life should be a recognised legitimate aim.

"No Straight Answer: Homophobia as Both an Aggravating and Mitigating Factor in New Zealand Homicide Cases"


Victoria University of Wellington Legal Research Paper No. 139

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This article discusses recent New Zealand homicide cases in which male defendants have sought to rely on the partial defence of provocation to excuse the killing of a man who allegedly made them the subject of unwanted sexual advances. The author argues that at least in cases in which such claims are unsuccessful, reference should be made to section (9)(1)(h) of the Sentencing Act 2002, which renders homophobia an aggravating feature in sentencing. To the extent that section 9(1)(h) is not relied on, while provocation is successfully pleaded in some cases, the author concludes that gay male citizens are not afforded equal protection under the criminal law.

"Discrimination and Trans People: The Abandoned Proposal to Amend the Human Rights Act 1993"

Vol 5 NZJPIL, pp 301-316, 2007
Victoria University of Wellington Legal Research Paper No. 140

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The trans community debate concerning the application of section 21 of the Human Rights Act 1993 to trans people became public when the Human Rights (Gender Identity) Amendment Bill 2004 was selected from the legislative ballot. The Bill proposed to amend section 21 to include gender identity as a prohibited ground of discrimination. Before the Bill received its first reading, however, it was withdrawn by its proponent, on the grounds that an opinion from the Crown Law Office concluded that such an amendment was unnecessary as trans people could well be covered by the existing prohibited ground of “sex” in section 21. In this comment, the author questions the conclusion of the Crown Law opinion and argues that an amendment is still required in order to protect the trans community from discrimination.

"Her Sexuality as Indicative of His Innocence: The Operation of New Zealand's 'Rape Shield' Provision"

Criminal Law Journal V 18 No 6
Victoria University of Wellington Legal Research Paper No. 141

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This article examines the judicial interpretation of section 23A of the Evidence Act 1908 (New Zealand) since the 1985 legislative reforms of rape law and procedure. The author argues that some of the
decisions concerning the admissibility of sexual history evidence may still be informed by traditional views of women’s sexuality and credibility. The article concludes that it is now appropriate to ask the judiciary to counter rape myths.

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