

FOREWORD — KUPU WHAKATAKI

New Zealanders are rightly proud of their place in advancing the rights of women. We were the first to allow all women the vote. Not for the first time, we have an all-female cast in our most important constitutional roles of Governor-General, Prime Minister and Chief Justice. Since the late 1800s, our laws have been revolutionised. In 1884, married women could, for the first time, own property in their own right and just last year, 2020, legislation came into force providing for equal pay for equal but different work. And yet ...

Our rates of family and sexual violence are horrifying and show no signs of abating. The reasons for these appalling statistics are complex but, at the core, must be the way women are perceived. The submissions for the National Strategy and Action Plans to eliminate family violence and sexual violence in Aotearoa identified patriarchal views and power structures as being amongst the root causes of such violence. Female archetypes — virgin, mother, whore — remain embedded in our collective subconscious. What can we do to change them? Are we at the point where the law has done all it can, and the focus should now be on engendering a cultural shift, or does the law have more work to do?

Our laws on rape and violence are intended to protect women, however, a number of the articles in this fourth edition of the New Zealand Women's Law Journal — *Tē Aho Kawe Kaupapa Ture a ngā Wāhine* challenge whether this is indeed so. Professor Julia Tolmie questions whether our laws of self-defence serve victims of intimate partner violence, who themselves commit acts of violence against their abusers. She describes “bad relationships with incidents of violence” as the main paradigm used in the criminal justice system. This entrenched understanding of intimate partner violence can lead to injustices where women have responded to their violent circumstances by reacting in a way which does not fit neatly within our law of self-defence. That law, written as it was from a male perspective of what is an appropriate response to violence or a threat of it, combined with embedded notions of how women should behave, has resulted in some questionable verdicts. In some cases, the verdict

has been manslaughter rather than murder but Professor Tolmie argues the proper verdict should have been an acquittal or perhaps no charge should have been laid at all. Our low conviction rates in sexual violation cases raise real issues — not only in terms of whether perpetrators are being held to account — but also in the message the verdicts send. Two thought-provoking articles analyse why this might be so and what could be done about it. Daniel Jackson argues that our courts have failed to provide a clear definition of consent. This in turn, he says, enables defendants to rely on mistakes of the law about consent. Jessica Sutton suggests that, if juries were required to give reasoned verdicts in sexual violence trials, this would assist in identifying the extent to which rape myths persist in jury reasoning and what might be done about it.

The courts are sometimes tasked with the burden of making decisions for women about their reproductive choices. Bella Rollinson writes about difficult cases involving intellectually disabled women ordered to undergo sterilisation or termination of pregnancies without their consent. She suggests that persistent gender stereotypes underpin both the law and some decisions applying it. Equally thought-provoking is Indiana Shewen's article on the role of tikanga in the context of women's issues such as abortion. She explains that, while, through a simple feminist lens, the decision to reproduce is a woman's choice and hers alone, there are other considerations for a wahine Māori who must exercise tino rangatiratanga in her decision-making process.

But, as Hannah Reid confrontingly identifies, women are not always the victim and can be perpetrators of extreme violence. She discusses women's participation in atrocities and their more lenient treatment resulting from the essentialising of women's experiences in conflict as victims. Her work adds another insightful dimension to the narrative about women.

We have come a long way but we cannot rest on our laurels. There is more work to do. The law is important — and while it can reinforce these deeply embedded stereotypes, it can also assist to dispel them. That is our challenge.

Hon Justice Susan Thomas
Chief High Court Judge
 23 July 2021