



NEW ZEALAND

**Women's
Law Journal**

**Te Aho Kawe Kaupapa
Ture a ngā Wāhine**

Quarterly
Newsletter
Q 3 / Q 4
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WELCOME

After what was a difficult year in 2020 we have finally released volume four of the Journal. It was really important to us that despite the hiccups that 2020 presented that we properly acknowledged the mahi of those who had contributed to the Journal. The fourth edition of the Journal is available to purchase online through the Lexis Nexis Store. We appreciate the support of everyone who has purchased a copy for contributing to the continual running the Journal.

A huge congratulations to Indiana Shewen who was awarded the 2020 ADLS Writing Prize for her article in the fourth edition. We have highlighted a number of contributions to the fourth edition of the Journal in this newsletter, but encourage everyone to take the time to peruse all of its content.

It has been a busy and difficult year for the Journal with COVID-19 again conspiring to delay the launch of the 2021 edition. The fifth edition of the Journal will be launched in February 2022. We cannot wait to celebrate with you the hard work of all our staff, authors and reviewers!

There are big changes on the horizon for the Journal! As we finish up 2022 there are a number of positions in the leadership team that we are recruiting for. The Journal is expanding its reach to increase its ability to interact with the broader legal community. We are also undergoing a process of considering a name change to the Journal and are looking for comments from the broader profession in considering this change. Information about both recruitment and the name change can be found on our website.

We hope you are all taking care of yourselves and have a great summer break!

**Victoria Rea
Managing Editor**



NEW ZEALAND
WOMEN'S LAW JOURNAL

TE AHO KAWE KAUPAPA
TURE A NGĀ WĀHINE

VOLUME IV
2020

Hon Justice Susan Thomas
Professor Julia Tolmie
Indiana Showen
Bella Rollinson

Jessica Sutton
Daniel Jackson
Hannah Reid
Meghan Laing



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Tahe; Tikanga and Abortion

NĀ INDIANA AROHA CHRISTBELLE SHEWEN

In 2020, the fifty-second New Zealand Parliament enacted the Abortion Legislation Act 2020, removing abortion from the Crimes Act 1961. This came forty-three years after the Contraception, Sterilisation, and Abortion Act 1977 came into law.

Indiana Shewen, won the 2020 ADLS Writing Prize for her piece, *Tahe;Tikanaga and Abortion* wherein she shares her personal experiences and advocates for a tikanga framework for abortion. She shines a light on the societal and cultural pressures some wahine Maori face to continue with the pregnancy.

"Through a simple feminist lens, the decision to continue a pregnancy is a pregnant person's choice alone. However, there are other considerations for tangata Maori, who must exercise tino rangatiratanga in their decision-making process".

Shewen argues that in the modern context, the concept of tahe (which can mean menses, abortion, or flow) is wide and significant enough to encapsulate the modern-day practice of abortion.

The passing of the Abortion Legislation Act was an important step towards the recognition of bodily autonomy and decriminalising a personal and often difficult choice. However, Shewen's writing shows that it is now necessary to review the ways in which tikanga can inform abortion practices and develop the abortion process in a way that supports all tangata Maori who can become pregnant on a cultural, social, and psychological level.

Shewen writes "[t]hroughout my abortion process I felt that there was a severe lack of information and culturally appropriate services to help me navigate the varying tikanga perspectives held by my whanau members".

Six Mistakes of Law About Consent

BY DANIEL JACKSON

Daniel Jackson discusses the different conceptions of consent and makes an argument for how New Zealand courts have failed to choose clearly between them.

"Consent lies at the heart of the law regarding rape ••• Given this, it might be thought that consent would be a well-understood and clearly defined concept, but in New Zealand, neither Parliament nor the courts have given a clear definition of consent as an element of sexual offences."

Jackson describes the absence of a statutory definition of consent in New Zealand and the circularity of judicial definitions. He then explains two conceptions of consent, the mental view and sets out the mistakes of law about consent, those being:

- 1. passivity or failure to protest can constitute consent;**
- 2. believing that the other person would probably, or might, agree to or**
- 3. welcome the sexual activity is a belief in consent (that is, believing that actual agreement is not required);**
- 4. consent can be at a time other than when the sexual act occurs;**
- 5. sexual desire or pleasure is the same as consent;**
- 6. "no" means yes; in other words, that an expressed lack of agreement to a sexual act can amount to consent; and**
- 7. there can be consent to sexual activity while a person is asleep,unconscious or so drunk that they cannot choose whether or not to have sex.**

Jackson describes the absence of a statutory definition of consent in New Zealand and the circularity of judicial definitions. He then explains two conceptions of consent and sets out the mistakes of law about consent.

Jackson then examines cases that have allowed defendants to rely on these mistakes and shows the court's reliance on rape myths.

Jackson concludes by suggesting some reforms to prevent reliance on mistakes of law and rape myths such as enacting a statutory definition of consent, adding a statutory provision clarifying that a belief in consent based on a mistake of law about consent cannot be relied upon, or developing model directions for juries on mistake of law.

"There are many reforms that are needed to address our woeful rate of sexual violence convictions. But this, unusually, does not require a change in the law - it just requires courts to apply existing legal doctrines."

The Passing of the Abortion Legislation Bill

BY MEGHAN LAING

Meghan Laing discusses the Passing of the Abortions Legislation Bill and what it means for womxn in Aoteroa and attempts to answer the question "While the passing of the Bill is a welcome relief, an important question still remains: has it gone far enough and is the battle truly over?"

Laing discusses whether the reform goes far enough, considers whether access to abortion has been sufficiently improved, and questions what other possible methods are available for improving access. Ultimately, she concludes, that Aotearoa should not consider the debate surrounding abortion and its liberalisation completely resolved

Beyond Victimhood: Women's Participation in Atrocities

BY HANNAH REID

Hannah Reid explores how gendered assumptions about participation in atrocities has affected the way society thinks about, talks about, and responds to women who participate in war crimes, crimes against humanity and genocide.

"When women commit atrocities, their conduct is generally portrayed in away that paints them as apolitical, irregular, and lacking agency. "

Reid discusses the implication of the presumption of men being perpetrators and argues that ignoring the contribution of women to atrocities risks leaving them out of disarmament, demobilisation and reintegration processes, thus derailing accountability efforts.

Reid concludes that the relationship between women and violence is complex; "…women have the same capacity for violence as men when put under the kinds of social, cultural and organisational pressures seen in violent armed units."

COME JOIN THE JOURNAL IN 2022

The Journal is expanding and are looking for a number of key individuals to be part of the leadership team.

We are looking for:

- **A CO-EDITOR-IN-CHIEF FOR OUR 2022 EDITION;**
- **A CO-EDITOR-IN-CHIEF FOR OUR 2022 SPECIAL EDITION;**
- **A MANAGING EDITOR; and**
- **A CO-LEADER OF OUR NEW ADVOCACY TEAM AS OUTREACH MANAGER.**

If you would like to discuss the role before applying, we would love to hear from you: trustees.nzwlj@gmail.com.

If you are ready to apply, please submit a cover letter and your CV to the Journal's trustees at trustees.nzwlj@gmail.com.

Applications close 5pm, 28 November 2021.

For more information go to:

<http://www.womenslawjournal.eo.nz/join-us>

THE JOURNAL'S NAME

Please note, from 2022 we are changing the name of the Journal in order to better reflect our vision for a feminist, intersectional and inclusive scholarly publication. To read more and to comment go to:

<https://docs.google.com/forms/d/e/1FAIpQLSfEfU6VuQdQuo-rNLFaOnZvljkX4GzQMz73PNPvx5E1-uNpYg/viewform>

We founded the Journal in 2016 at a time when we were law students and before a national feminist law journal existed. We were nervous about how we might get our foot in the door in the legal establishment, how we might get funding, and who would be interested in publishing our work. At the time, we felt like a feminist journal was quite radical, and we were excited -and scared! We founded the Journal with a Te Reo name, which means "the thread of the legal issues of women".

But we always knew that we would return to the question of the Journal's name once we had gained some traction in order to better reflect our vision for a feminist, intersectional and inclusive scholarly publication. We believe that now is the time for us to change our name to properly reflect the Journal's ethos - a space in which people of all genders who are interested in publishing feminist legal scholarship aimed at helping achieve gender equity in and through the law are clearly welcome.

The purpose of this survey is to get your views on our existing name and how we might change it. We are inviting you to submit your ideas for new English and Te Reo Māori names. If your suggested name is chosen, we will credit you in our 2022 edition, which will be the Journal's sixth.

IN THE NEWS

LAW SOCIETY ELECT NEW PRESIDENT: JACQUELINE LETHBRIDGE



Jacqueline Lethbridge has been elected the 32nd President of the New Zealand Law Society | Te Kihui Ture o Aotearoa. She will be the third consecutive female to hold the role.

Ms Lethbridge will take over from current President Tiana Epati when she finishes her three-year term in April 2022.

Currently the Law Society's Auckland Vice President, Ms Lethbridge is a partner at Martelli McKegg Lawyers in Tāmaki Makaurau Auckland where she heads the litigation team and specialises in commercial and civil litigation with a focus on restructuring and insolvency.