

THE CAPITAL LETTER

A weekly review of administration, legislation & law

**UNDERSTANDING FAMILY
VIOLENCE: "LAW REFORM
MAKES LESS OF A
DIFFERENCE"**

– 31 May 2016

Day after day, week after week, judgments roll out from the courts, accounting for offenders' months and years committing awful family violence, often of reoffending broken by lengthy prison terms during which offenders only lacked opportunity to demonstrate their propensity for horrific domestic abuse. The judgments dispassionately narrate offenders' brutal conduct, identify aggravating cruelty, and search for any mitigating factors, before establishing by reference to a distressing volume of comparable cases a starting point for sentencing. Despite decades of concentrated law reform, nothing seems effective to combat aggressors' determination, literally, to bend and break another independent but intimate being to their will.

The Law Commission's 12 May 2016 200 page report, "Understanding Family Violence: reforming the criminal law relating to homicide", focuses on the most desperate consequence of this endemic behaviour – when victims are driven to kill their abusers. Noting NZ has the highest reported rate of family violence in the developed world, and nearly half of all NZ homicides are related to family violence, the Report commends removal of any requirement for imminence in family violence victims' resort to self-defence, greater recognition of their reduced culpability, and better comprehension of the mitigating factors arising from their victimhood, while rejecting any new partial defence or separate homicide offence targeted at victims of family violence.

In coming to those recommendations, the Report recognises it is addressing only the very tip of family violence's iceberg. It adopts University of Auckland law professor Julia Tolmie's insight "legal rules, and therefore law reform, make less of a difference than we might expect in the resolution of... family violence". Thus the most compelling part of the Report is its contextualisation of contemporary family violence, as a pattern of harm rather than a series of incidents, entrapping victims in the abusive relationship. From that perspective, the Report dispels a series of misconceptions about family violence: in fact, physical violence is generally only one method of maintaining coercive control in the relationship; a victim's own appreciation of risk is the most reliable, and conservative, predictor of future violence; the risk may crystallise on attempts to leave the relationship and is likely to continue afterwards; and resistance to coercive control may often require victims' own resort to violence.

Acceptance and endorsement of those understandings is necessary at every level of the justice system dealing with family violence, from initial charging and intermediate pre-trial decisions and discussions, to jury directions and, on conviction, sentencing. Without the institutional embedding of informative context, the Report accepts its substantive recommendations are likely only to be of "symbolic effect". Comprehensive education is necessary for justice system actors to be alert to circumstances in which the dynamics of family violence are relevant to criminal offending. Of those, critically important is education of prosecutors and defence counsel, whose decisions shape the charges and evidence before the courts, and funding of family violence experts who can extend that understanding to juries.

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