

# New Zealand women's experiences of lawyers in the context of domestic violence: Criticisms and commendations

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Lawyers play an integral role when women use the legal system in an attempt to protect themselves and their children from domestic violence and abuse. Family lawyers representing victims of domestic violence typically prepare protection order applications and provide advice and information about the orders.<sup>1</sup> As part of the protection order application process, they prepare the women's affidavit, a sworn statement that outlines the nature of the applicant and respondent's relationship, the occurrences of physical, sexual, and/or psychological abuse, and the necessity of the order for her protection and any children's protection. If relevant, they might also address custody and access issues. Ideally, lawyers representing victims of domestic violence should also encourage women to attend education programmes, and explore matters such as maximising personal safety and instigating criminal charges where relevant (Barwick, Gray, & Macky, 2000).

Many family lawyers also work with respondents. Such work involves explaining the implications of a protection order or a protection order application, defending an application or a temporary order, and/or objecting to one or more of the conditions of a protection order. Some family lawyers have authorisation to be appointed as Counsel for Child. Such lawyers represent the child by placing the wishes and views of the child before the Court whilst at the same time keeping the welfare and best interest of the child paramount, and making such factors known to the Court. Criminal lawyers represent clients charged with violent offences and/or breaches of protection orders. Domestic violence work done by lawyers is interrelated with the work and decisions of police and judges.

Although there has been considerable research focusing on the police and judicial response to domestic violence, there has been little New Zealand research regarding the effectiveness of lawyers assisting women survivors of partner violence. Research on women's access to justice more generally reported that some lawyers fail to

respond appropriately to women who are seeking protection from violent partners (New Zealand Law Commission, 1997a). Another study, looking at women's satisfaction with their lawyers in the context of partnership breakdown and custody and access proceedings (Nash & Read, 1992), found that a significant proportion of women felt they were not listened to carefully enough, that the speed of communications and making things happen was too slow, and that they had not been given sufficient information or explanations. Over one-quarter described their lawyer as 'not at all supportive'. Women particularly appreciated lawyers who had a caring attitude, dealt with things promptly, treated them as an equal, and understood their point of view.

Nan Seuffert's (1994, 1996) research and the supplementary project on Māori women's perspectives (Milroy, 1996) are the only studies to have specifically examined lawyering in relation to domestic violence. Interviewed women reported that like police, judges, and society generally, their lawyers held attitudes that tended to minimise and trivialise the domestic violence and blame them for it (Seuffert, 1996). The women also reported that their lawyers did not understand the dynamics of domestic violence (Seuffert, 1994, 1996); a number of lawyers admitted this themselves (Seuffert, 1996). Some women noted a lack of respect and/or condescending attitudes from their lawyers (Seuffert, 1996).

Mirroring findings of other research, women in Seuffert's (1996) study believed that the legal system is gender biased. Many women felt silenced, either by not having a chance to tell their story, by having to keep their emotions separate from their story, or by not having their harmful experiences legally recognised. A number of women felt that their lawyers were also gender biased because they doubted their credibility and/or discredited them. Many concerns mirrored those in women's access to justice research (Morris, 1999; New Zealand Law Commission, 1997a, 1997b, 1997c). For example, women found legal terminology difficult to understand (particularly when overwhelmed by emotions), and had difficulty asking their lawyers questions. Many complained that they were not included in the decision-making process (Seuffert, 1996). Unfortunately, as in Busch, Robertson, and Lapsley's (1993) study, some women described their treatment by the legal system as comparable to the abuse that they had suffered from their partners: a double-victimisation. Many commented that although

their (ex-)partners lied throughout proceedings, their (ex-)partners were believed and they themselves were not (Seuffert, 1996).

Several of the women mentioned some positive aspects about their interactions with lawyers, such as having a lawyer who listened to them, who supported them and their decisions, who seemed to understand their situation, who involved them in the decision-making, and who provided clear explanations of the process. When asked, women said they would also appreciate a lawyer who offered emotional support, and who understood women's lives and domestic violence. Despite these positive comments, Seuffert (1996) concluded that her research raised some serious concerns about lawyers. It seemed that lawyers sometimes end up being barriers instead of facilitators to justice for survivors of domestic violence.

The present research was undertaken because the responsiveness of lawyers (and other legal personnel) affects the safety and protection of women, as well as their satisfaction with the legal system. The research took place around the beginning of the millennium. This research explored, first, how well the New Zealand legal system serves the needs of women who experience abuse and violence from their male partners and ex-partners, and second, how the legal profession makes sense of domestic violence within the context of their work. The former phase of the research examined and represented women's satisfaction with lawyers (the focus of this paper), the Family and District Court, protection orders, and child custody and access issues. By examining and representing women's satisfaction with lawyers, the present research also aimed to increase the body of research and women's voices on this topic.

### **Methodology**

This first phase of the research utilised narrative methodology. This methodology accords with feminist theory and research practice, where women's accounts of their experiences are considered a legitimate contribution to knowledge about women's lives.

Narrative representation (referred to as 'narrative analysis' by Polkinghorne, 1995) was specifically used. Here, accounts given by women during interviews were organised into coherent stories about their experiences using the legal system for domestic violence (Pond, 2003). Enquiring after and representing women's experiences of the legal system gave women survivors of male partner violence 'a voice'

where this has frequently been silenced, dismissed, or overlooked. It also gave women an opportunity to have their experience affirmed.

After representing women's stories, we identified significant problems mentioned by the women as well as factors they appreciated. Congruent with feminist principles, it was hoped that the research might contribute towards change by raising awareness of the problems faced by women who are victimised in their heterosexual relationships and/or marginalised by the legal system. Enhancing women's satisfaction with the legal system and increasing the safety of women and children were important considerations.

### **Method**

Women participants were recruited through advertisements in a free weekly newspaper and through an agency that provided education and support to women affected by domestic violence.<sup>2</sup>

The first author interviewed ten women who met the pragmatic, experiential, and ethical criteria for participation, and she subsequently transcribed their interview audiotapes, and organised their accounts into individual narratives. These women had experienced previous psychological, sexual, and/or physical abuse from a male partner, and they had been involved with the legal system for this violence (either by their own initiation or as required by police for prosecution). Ethically, women could not participate if they were still experiencing abuse or if they would incur any physical or emotional risk by being involved in the research. Recognising that some women might have occasional contact with their ex-partners, appropriate contact methods were established and regularly evaluated. Women were fully informed about the research and any questions were answered before they agreed to participate. Safety and comfort during the interviews were a priority, and participants could have a friend or support person present if they wished. During conversations and interviews, the first author was affirming, empathic, and responsive to the experiences shared by the women and associated emotions. She offered women avenues of support when they felt they might benefit from this, and she welcomed ongoing contact with participants. The participants were given the opportunity to censor information that they provided during the interview but did not want included in research reports. Details that might reveal their identity were changed or removed to protect their anonymity. Also, in an effort to reduce power relationships that

exist between researchers and researched, a conscious effort was made to create a relaxed research atmosphere and to involve participants in decisions. The university human ethics committee approved the research project.

### **Research Findings**

Based on the women's narratives, it was evident that women encounter many problems when they become involved with the legal system for issues pertaining to partner violence. It was also evident that women are very appreciative of certain qualities in legal personnel when they experience these. Those judged as most prevalent and/or significant by the researchers are discussed next. Whilst we can not estimate the proportion of women who have similar experiences of the legal system based on the experiences of ten women, it can be argued that if one or more of these women experienced legal personnel and processes in particular ways, other women in New Zealand also do.

### **Women's experience of their own lawyers**

#### *Lawyers only doing a job for money*

It was evident from the narratives that women viewed and positioned lawyers in particular ways, often based on or confirmed by their experiences with them. First, women spoke of lawyers being primarily motivated by money and less interested in their clients' personal situation. Hence, they felt that lawyers were less concerned with their client's safety, protection, and other matters that were intensely significant to the women, including their children's welfare. The women also perceived lawyers' interactions with them as being 'only a job' for the lawyers. The final result was not important to the lawyers, nor did they have to live with these consequences.

Alana: This was a biggy for me, was trusting that your lawyer will do the best for you. Knowing that, that their stake in it is business. That's all it is, business. They might believe in what they're doing but the bottom line is to them it's business. But to you it's the most important issue you'll ever have to face. Like it's your safety, and your children's safety. And that's a very hard thing to, to put your trust in a lawyer when the bottom line is it's dollars to them.

Aroha: I think he was out for money. He wasn't there to help me ... He was very money orientated.

Katherine: Except once again you had to pay for lawyers. They just try and take whatever they can, you know.

Other research (Morris, 1999; New Zealand Law Commission, 1997b, 1997c) has also pointed out that women frequently find lawyers as self-interested and primarily concerned with making money, rather than being concerned with women's needs. Even though other types of work might be more lucrative for the legal profession, this perception and experience of lawyers is unlikely to imbue women with confidence in the service lawyers provide.

### *Lawyers are costly*

Several women in the present research commented that lawyers were too expensive, particularly if their ex-partners unnecessarily prolonged legal involvement. Partner persistence also meant that legal aid grants were sometimes depleted before matters were resolved, and/or that little money was left from any property settlement after legal aid costs were retrieved. Sometimes legal aid was not offered or applications were not followed through, which meant these women were deterred from applying for orders or received bills they could not afford. One woman's lawyer failed to explain that a large proportion of his work was not covered by legal aid, so she received an unexpected bill that was well beyond her means. The following interview excerpts illustrate these problems.

Aroha: I was granted legal aid. And, because of my ex-partner's persistence, you know, he'll just keep going and going until he gets his own way. He kept opposing, yeah ... And by then I'd given up. The money had gone, the lawyer hadn't helped me ... And then after that I was stuck, and I couldn't do anything more.

Rebecca: It had been drawn out so much and I was just really hagged, I was run out, I was broken, and I thought, 'I'm mentally not going to be stable soon,' nervous breakdown or something, and I could lose the children like that too ... And also my lawyer was at this stage reminding me constantly of the cost ... because it had been drawn out so much. Yeah, I had legal aid, but when you get the settlement from the house, the legal aid takes it. And that's what she was saying, I was going to get to the stage that I was going to be left with nothing.

Katherine: I was not offered even legal aid, and I didn't even know about it ... The last guy did end up bringing up legal aid after quite some time,

and then he just said, 'Oh, let's not worry about it. It's too many forms and that to fill out.' And so then I got this huge bill, like huge, about six grand for absolutely for nothing.

Alana: He didn't inform me fully about my legal aid position so I'm ending up, I had a \$700 bill from him that I'm paying off at five bucks a week, and it's going to take me a long time to pay that off. He gave me all the legal aid forms to fill out, which I did ... But he never explained that [only some of his work would be covered], so I assumed that the whole lot was covered by legal aid. Which just added stress on top of, you know, the heaps of stress I was under.

The perceived and actual financial cost associated with using lawyers has been raised in previous research (Morris, 1999; New Zealand Law Commission, 1997a, 1997b). Lawyers' expenses and constrained legal aid grants mean women are sometimes deterred from involving the legal profession, or are not able to continue until a good outcome is reached (Morris, 1999; New Zealand Law Commission, 1997b). As mentioned by women in the present research, financial stress also increases women's emotional distress.

#### *Lawyers are too busy*

Alana: My criticism of lawyers that I've come across are that they're real busy. They're so damned busy that they don't have a lot of time for you. Things are rushed, things are pushed through, mistakes are made. I picked up two or three pretty serious mistakes in my affidavits. Appointments are changed ... You'd be rung at the last minute saying, 'Oh, can we put this off because such and such else has come up?' And it's like, it's awful.

As evident in the excerpt above, women found their lawyers much too busy and without adequate time for them. They felt rushed and pressured for time during appointments, and a nuisance when contacting their lawyers between appointments. As identified in previous research (Morris, 1999), some lawyers were poor at returning phone calls, even when the woman's call was urgent in nature or she rang several times. Women were also upset that time constraints meant lawyers made mistakes in their affidavits. Not only does the time pressure and busyness of lawyers cause women stress and dissatisfaction, it can deter women from seeking necessary assistance outside of their appointments. Other women's excerpts also illustrate

their feeling that lawyers had insufficient time for them.

Jenny: I hadn't felt listened to at all. Yeah, in fact, I felt like I was a damn nuisance... I remember phoning the lawyer that afternoon to let her know, you know, to find out, what was going to happen ... And I tried to get hold of her. She never, she wouldn't return my calls. You know I always felt that I was, just like I said, a damn nuisance.

Rebecca: She was always very busy. Very busy lady. [So], you always felt like you were, well for a start, you felt lost for words. And you were trying in a hurry to get out things, and try and get her to picture what you were going through. Which she wasn't really interested in anyway, well, I felt she wasn't.

Aroha: You know, I had like an hour with him and then, you know, 'Sorry,' you know, 'next customer please.'

Although the business ethos associated with the legal profession and law firms will likely act as a barrier, lawyers need to give more time and reassurance to their clients. This would increase perceived legal support and responsiveness, and enable the women's situation to be treated seriously. Insufficient time means that lawyers compromise their representation of clients. Increased time with domestic violence clients is problematic however, as this would equate to increased cost for services.

### *Lawyers lack understanding about domestic violence*

Some women commented that their lawyers lacked understanding about their personal situation. They also felt that lawyers lacked understanding about domestic violence, psychological abuse, the seriousness of such abuse and violence, and the reasonableness of their panic and distress. This is illustrated in the following interview excerpts.

Rebecca: I had a woman [lawyer] ... But there were some things I did not find good at all with her ... Just sort of lack of interest {inaudible} my case, like I was treated like I was over-reacting. And I had a lot of the time said to me, 'Just don't panic. Look you're panicking. There is nothing to worry about,' you know. And I thought, 'You live with a man for fifteen years that's, you know, used your head as a punching bag, and then say 'Oh, just nothing to worry about.' ... I actually would like to see the legal system understand this is a very, very frightened person. This



is a person who has gone through hell, and what the lawyers are seeing are only what's, you know, what's described as the tip of the iceberg. Yeah, I would like to have been treated like a person.

Alana: That's another thing actually, that I thought was quite shocking. After [my second lawyer] sent that letter stopping access but offering supervised access, she said to me, 'Oh well, if something happens,' meaning something violent, I mean, if he came to my house as a result of that letter and bashed me, we'd be, basically be home and hosed for the protection order. 'My god,' you know, {laugh}, 'success at all costs.' I think, in my experience with the court and both of my lawyers, that they don't actually understand or put a lot of seriousness to psychological abuse. I, I feel that really strongly, because it seemed to me that you almost had to prove you were either physically hurt or physically about to be hurt to lend any weight to psychological abuse ... So, no, I don't think they do understand psychological abuse.

Katherine: When I got home [from overseas], like the lawyer just wasn't understanding at all. Even though [my ex-partner] had been really violent, had been arrested and everything, she thought it was, yeah, really wrong of me to have organised my daughter to stay with this nice stable family. I felt awful. I was scared, a grown woman, and I was scared about having to go in and having to get a big telling off from [my lawyer] ... When she didn't have a clue what my life was like or what he was like.

Jenny: I didn't have a real really good understanding of [domestic violence] myself. It certainly wasn't explained, any of that, by lawyers. I wonder whether they actually have an understanding of domestic violence and all it's implications themselves.

Women in Seuffert's (1996) research also reported that their lawyers did not understand the dynamics of domestic violence. They felt their lawyers sometimes minimised and trivialised domestic violence, or blamed them for it. Other New Zealand research (Morris, 1999; New Zealand Law Commission, 1997c) has also commented that lawyers (and judges) are thought to lack awareness of women's lives and the situations that lead them to seek legal assistance. Amongst other things, lawyers and judges were thought to be ignorant or indifferent to the violence that may be dominating women's lives, and the urgency with which they need matters resolved so that they and their children can feel secure. Women obviously experience

greater satisfaction with lawyers who have a good understanding of domestic violence (including psychological abuse), and who do not dismiss women's distress or panic at their situation.

*Lack of empathy and poor interpersonal skills*

It seemed evident that some lawyers had poor interpersonal skills. Other research has found lawyers' poor communication skills to be one of the most frequent complaints by women (Morris, 1999), at a crisis time where good interpersonal skills are rated as very important (New Zealand Law Commission, 1997b). In the present research, one woman specifically mentioned that she did not feel heard:

Jenny: You never really feel like you've got a voice when you get entangled in the legal system... that's been my whole experience. And that's interesting because I've talked to a lot of women who have felt similar.

Several women described their lawyers as being unwilling or unable to cope with the emotion that comes with domestic violence work. These lawyers lacked understanding and empathy, and sometimes dismissed the woman concerned as being over-emotional or over-reacting. The process used by some lawyers was also described as cold and apathetic. For example, when collecting information for their affidavits, lawyers were only interested in the legalities and facts of the situation, and expected women to be able to separate from their emotion when providing such information. Similar to other research (New Zealand Law Commission, 1997a), women in the present research resented having their emotions treated as irrelevant and quite separate from the facts of their deeply personal problems.

Rebecca: Like I was treated like I was over-reacting. I felt between her and me the understanding wasn't there. Like I'd stick up for myself, for my rights, 'cause I said to her, 'I will not be abused at [by my ex-partner], you know. And she said, 'I think you should go to your counselling,' you know. Always shoved off to there. 'Oh, you're too emotional. Oh, don't panic. Go to the counsellor,' you know ... Well, I recognised that she had to be professional. I did recognise that she had to be professional and stick to the facts, that she was no counsellor ... She does have to do the job. She's got to get the facts out. I do respect that. But in the same token, I really felt like she wasn't working for me, that I was the bad guy.

Alana: [My first lawyer], he ended up discounting you as a person and you were too much trouble, too much bother ... I got the feeling that he sort of dismissed, eventually dismissed me as sort of an over-emotional woman. I was over-emotional {laugh}, but then you are when you're in those situations.

Jasmine: Like to them it was just, basically it's a legal document, 'I want to get the legal technicalities right.' That's all it was. And there was no feelings or emotions or anything like that involved in it. And yet they're asking you gut-wrenching questions, and you were expected to just sit there and answer it cold-blooded-heartedly. So yeah, that's why I'm saying to have someone there who's got an empathy for the situation would make just the most amazing difference.

Katherine: Certainly not understanding, certainly not, not sympathetic, neither of them ... I'd be very hesitant to use the legal system again actually when I think about it, very hesitant, because they made no difference in, in my life. You're not necessarily expecting a counsellor but you'd expect a bit of empathy.

The lawyers who dismissed women as over-emotional and/or over-reactive told women that they should not panic or that they should go to their counsellor. Sometimes, lawyers acted as if their clients' emotional state impacted on their ability to accurately assess the 'reality' of their situation. These participants resisted being treated as 'over-emotional women'. They did not want to have their experiences disregarded because of assumptions made about women. Instead, they wanted the dignity and respect that is normally afforded to a 'person' or 'human being'. They also felt that their highly emotional state was very reasonable considering their circumstances. Not only had they endured abuse and violence directed towards them, they were currently in danger, were often trying to protect their children, and usually facing additional stress because of the legal system. Previous research (Morris, 1999) has also shown that women do not think lawyers (or judges) respond well to women who are emotional or distressed about their circumstances.

It also seems that lawyers do not respond well to women who stand up to their partners, perhaps because it is not considered congruent with how abused women are perceived to behave. For example, when one woman was assertive to her husband about the laundering of their children's clothes after access visits, her lawyer

told her that they were both playing power games. This same lawyer did not respond well when this woman challenged her about her own behaviour. Lawyers need to recognise that whilst some women avoid confrontation with their (ex-)partners because of the threat of abuse and violence, some women defend their rights and assert themselves within and/or after their abusive relationship. Similarly, some abused women are quite able to provide feedback to their lawyers when their service is unsatisfactory.

Some women described their lawyers very negatively. One woman described her first two lawyers as ‘dreadful’ and ‘hopeless’. Neither of them was sympathetic or encouraging and both seemed more interested in her ex-partners rights to his children, not the children’s personal safety and wellbeing. Two women mentioned that their lawyers had a position of power over them that somewhat mirrored the power imbalance, and their powerlessness, within their abusive relationship. One of these women’s lawyers treated her very badly. This lawyer had poor communications skills, was moody, unpredictable, disinterested in her case, and lacked understanding and empathy. Whilst preparing her affidavit, she made derogatory, inappropriate, and exasperated remarks, and sometimes acted bored. She did not acknowledge the seriousness of her situation, and consistently told her that she was over-reacting, that there was nothing to worry about. Sometimes, her lawyer did not believe her and treated her with suspicion, or she supported or defended her ex-partner’s actions. When her ex-partner threw a tantrum, her lawyer would appease him. This lawyer also expected her to accommodate her ex-partner. She was treated like the person in the wrong. She did not feel that this lawyer treated her ex-partner’s violence and abuse towards her children seriously. She also felt very uncomfortable with the level of communication between her lawyer and her ex-partner’s lawyer. Sometimes her lawyer breached confidentiality by passing on confidential information to her ex-partner’s lawyer, who would then tell her ex-partner. This woman also felt that her relationship with her lawyer sometimes mirrored that with her (ex-)partner. Such stories by women are disheartening to say the least. They raise the issue of whether some lawyers adequately represent their (women) clients. One also wonders whether lawyers’ views about what constitutes a just outcome sometimes overshadow the intentions of the Domestic Violence Act and the best possible outcome for their women clients.

*The stereotype of women as vindictive*

At least one woman participant thought her lawyer viewed her as vindictive.

Alana: Well, I rang my lawyer and told her [what the policeman had said about the weapons]. And she said, 'Oh, I haven't got the energy for this.' And that made me feel once again like she thinks I'm just being vindictive.

Because her ex-partner used to tell her she was vindictive, she always questioned herself, and lacked confidence in expressing her opinions. More specifically, she was worried that she might come across to her lawyer as a vindictive woman when revenge was not her motive.

Alana: When you've been in an abusive relationship like that, you're still not convinced that it's not, a lot of it's not up here, that you're not being over the top. You're being told by your ex-partner that you're vindictive even though you're not. But that doubt is still there. You're questioning yourself the whole time. And then when you do come up with various things, points to your lawyer, 'Well, you know, why don't we do this? Or, why don't we do that?' it's, it's, very diffidently, I suppose, because you don't want to come across as a vindictive woman, and make what he says true about you.

Another woman commented that lawyers sometimes conceive women as vindictive when they are not. Women involved in other research have also reported that lawyers have told them they are vengeful (New Zealand Law Commission, 1997a). Stereotypical representations of women as vindictive or manipulative thus contributed to women's dissatisfaction with legal interventions.

*Inadequate consideration of children's safety and wellbeing*

Some women also felt their lawyers insufficiently considered their children's safety and interests. For example, one lawyer was prepared to gamble with the safety of a woman's son by suggesting a 'greater force' would protect him if they chose to pursue unsupervised access. Behaviour that lacked consideration of children's wellbeing was particularly distressing for women who were legally trying to increase the safety and protection of their children through supervised access.

Alana: I mean [my second lawyer] said to me at one stage 'Well look, why don't you just let him have his access unsupervised.' She said, and

this is pretty much the exact words, ‘God, or the universe, or whatever you believe in, has a way of looking after these children.’ And I thought, ‘That’s all very well for you to say, but it’s my child that you’re gambling with.’ There are too many children who have been killed in this country, you know, by parents, to believe that they’re protected in any way.

Women also thought that children’s safety was not emphasised in other ways by the legal system more generally. For example, one woman felt there was an expectation that supervised access is only a temporary phase that progresses, sometimes over-hastily, to unsupervised access, regardless of whether the non-custodial parent has learnt responsible parenting skills in this time. Also, a couple of women were very dissatisfied that important decisions regarding access are made on the basis of one meeting between Counsel for Child and those concerned. Such one-off meetings are unlikely to be representative of the actual situation or to indicate problems or safety concerns that are present. Two issues related to children’s safety, which also involve lawyers, are discussed below in the section on Counsel for Child. These include Counsel for Child excusing ex-partners who are not parenting responsibly or adhering to access arrangements, and Counsel for Child emphasising fathers’ rights and interests over and above children’s rights and interests.

#### *Inadequate explanations of terminology*

Several women commented that their lawyers did not explain terminology (e.g., ‘mediation conference’, the distinction between ‘custody’ and ‘access’), omitted to tell them important information, or did not provide enough information about matters that could have had serious implications. However, no women specifically mentioned that their lawyers spoke in ‘legal jargon’ as has been found in previous research (Morris, 1999; New Zealand Law Commission, 1997b).

Alana: ‘Another thing about [that lawyer] was that I felt he expected me to know a lot of, of the law about custody and things like that. And I didn’t have a clue. No idea at all. And I found out quite accidentally through a Family Court co-ordinator that I didn’t actually have custody of [my son], which I guess I’d never really thought about, but assumed that seeing I was the Mum and he was living with me that that was how it would be until the court might change it for some reason. But that wasn’t the case ... I found out that [my ex-partner] was not legally required to bring [our son] back to me, that he could have just kept him,

and then I would have had to have gone to the Family Court to fight to get him back.

Katherine: Another thing too, I suppose, they omitted to tell me was to close down any bank accounts, which I didn't do. And he had the cheque book, and then five grand went ... because unfortunately our account was in both of our names. You see nobody told me. Oh man, {laugh}, it was bad luck after bad luck.

It is important that lawyers do not assume that lay people understand terms that are commonplace within the legal arena as many words seem to be misused or poorly understood within an everyday context. Provision of clear explanations (both written and oral) of terms that have specific legal meanings and implications (e.g., custody, guardianship) could reduce confusion. Lawyers also need to ensure that they advise women of actions they need to take to protect their assets.

#### *Unsatisfactory decision making processes*

A few women found the decision-making process unsatisfactory. For example, one woman felt her lawyer bullied her. Another woman noticed that her lawyers did not provide the options and information required to make informed decisions. Instead, they did what they thought was in her best interest. Another research participant felt powerless because her lawyer would make decisions with her ex-partner's lawyers and then push her to accept them. Consequently, she would end up complying with decisions with which she felt unhappy.

Jenny: I don't recall being given a lot of information from [my first lawyer]. It was almost like he decided what was in my best interest, which I suppose is what lawyers seem to do, isn't it? But, [he] ploughed on and tried to get me to do what he thought was in my best interest ... He wasn't giving me information ... And again [with my second lawyer], she was just going off and doing what she felt was in my best interest, okay, and didn't, and never gave me clear information to make choices. That's been my whole experience with lawyers. They don't lay out the options, no, no, no, and they don't give you the relevant information, and so you can't make, you can't make an informed choice.

Rebecca: There were a lot of phone calls going between lawyers. And you just you had no record of what was being said ... And I felt that

they were hitting on agreement without your authority, and then they'd come back at you and work you around to that ... A lot of things I was agreeing to that I wasn't happy with, because I just found that my lawyer would not really have it. She was very negative to anything that I wanted ... So you felt like nothing was really in your power.

Women participating in other research have also complained that lawyers assume too much control, do not provide enough information for women to make their own decisions, and/or cut them out of the decision-making process by coming to a solution with the other party's lawyer (Morris, 1999; New Zealand Law Commission, 1997a; Seuffert, 1996). Involvement in the decision-making process is likely to give women a greater sense of control over the process, and to ensure they are more satisfied with the decisions made. Issues of control are critically important to women seeking legal interventions for domestic violence, since controlling behaviour of (ex-)partners is frequently a dimension of abuse they have experienced.

#### *Positive experiences of lawyers*

Some women did make positive comments about their lawyers. Overall, they appreciated lawyers who had a good understanding of domestic violence, treated their situation seriously, had concern for their safety, and had their children's interests and welfare at heart. They also appreciated it when lawyers listened to them, believed them, and validated their experiences of abuse and of their (ex-)partner. Empathy, understanding, support, and encouragement were characteristics that were valued.

Sally: [My first lawyer] just seemed really on to it. The attitude was, 'No, that's not acceptable. Get some back up, and we'll try and stop this.' She seemed very confident and knew what she was doing ... [And my second lawyer] never gave the impression that she didn't believe me, or that she thought what he was doing was okay. She had that same attitude too. Yeah, they treated me seriously in a way of that I was there for a good reason, that I wasn't just kind of wasting everyone's time and being, you know, silly and emotional, like what I was there for was valid.

Jenny: And then I got a lawyer who was just wonderful ... Again, quite gentle, not pushy. Would listen to me, and then he would tell me what he thought ... He had, clearly had my son's interests at heart. In fact, I think he, you know, he really came from that perspective of what was in the



best interest of my child, yeah. Clearly worked from that mandate. So I could trust him. And I think he was far more astute, seemed to have quite a grasp of [domestic violence], yeah, streets and streets ahead.

Alana: The lawyer, he was such a sweetie. I told him that [my partner] was forcing me go and answer the door to the cops. And he said, 'That is despicable.' And that actually made me feel quite good, because I, I sort of thought, 'No, I'm meant to be the loyal woman who stands between her man and all danger, sort of thing,' {laugh}, you know.

Hayley: The lawyer was very sympathetic ... And we did things. We set up little bits and pieces later on, like when [my son] went to crèche and to school, the crèche had a photo of his father, and then later the school. And if [my ex-partner] ever entered the property they were to ring 111 straight away.

Women also appreciated lawyers who were informative, dealt with things promptly, kept them well informed, included them in decision-making, and did not rush them.

Sally: [My first lawyer], she was more on the ball. Like she kind of knew exactly what to do, got the information, got it together, got [the order] served.' ... And she gave me a lot of information. And then she kept in contact with me after, you know, if I needed to ring and ask anything about it ... And she kept me informed with letters, you know, that the order had been served, and then when the legal aid came through, and sending little notes for your information... You knew exactly what was going on and when ... [And my second lawyer], it was like a Friday afternoon, but she wanted to get the order cleared or get it confirmed then and there, so that if anything happened say over the weekend I wouldn't have to wait. So she was on to it like that, getting the judge that afternoon to look at it, and then getting back to me with that, that had been done, and that kind of thing. So, she was, she was on the ball that way too, I think.

Aroha: [My second lawyer], he had time for me ... I was able to ring him at any time if I didn't understand any of the orders. Yeah, and that was really choice ... And I could pop in, you know, to see him with, with that issue. He was there for me, and it was really cool, you know. I felt secure that this man is good {laugh} ... The patience too, yeah, he had a lot of patience and time through this process ... You need a really good lawyer {laugh}, one who's going to listen, who is willing to, you know, basically lay down their life for this, these women, you know. Because

that's what my lawyer has done. And by that I mean his time, yeah, his time and his patience, and his understanding, and, and non-threatening, you know. Yeah, yeah, real choice, really neat this time.

Rose: She could sort of relate, even though she probably hasn't been through those experiences she could relate to them ... And she was always willing to sort things out and to advise me ... She always kept me informed of anything that was going on. And she always kept me informed of correspondence that came from his lawyer, anything like that, phone calls, all correspondence, she kept me informed of it ... We'd sit down and talk things through and she'd always agree ... Yeah, no, I don't regret anything that she's done. She's, I actually find her to be a quite good lawyer. It makes you feel more easy about what they're doing and where you're going and what you're, you know, where you're heading in life I suppose ... And I found her quite supportive when I'd talk with her.

Some women particularly appreciated lawyer's letters that were supportive of them and represented their interests clearly.

Past research by Seuffert (1996) has also found that women appreciate (or would appreciate) lawyers who understand domestic violence, listen to them, provide emotional support, give clear explanations of the legal process, and involve them in decision-making.

**The need for advocates to work alongside you and your lawyer:  
A suggestion from women**

As mentioned, women had good experiences with lawyers who had empathy and understanding. Indeed, this seems an important part of women's satisfaction or dissatisfaction with their lawyers. However, women realise that some lawyers are not skilled at dealing with emotion, and lawyers do not always consider this their responsibility. To improve their experience with the legal system, particularly with lawyers, a couple of women suggested the need for empathic advocates. It was envisaged that these advocates could support women through the legal system and offer emotional support because lawyers seem unwilling or unable to do this. These advocates could provide information, assist with the process, and make sure that proper procedure was being followed. One woman suggested that having an advocate to assist with writing affidavits would mean that women would not have to separate out emotion from fact.

Alana: And women who have been in abusive relationships are really fragile, and they're really vulnerable, and very emotional. I feel they really need somebody with them who understands the system and who doesn't take any shit from lawyers, and this sort of thing, to help them through. Because, I mean, I can understand lawyers aren't counsellors and they don't want to sit there and listen to you bleat on for hours about this, this, and the other. They've got to sift out the facts. But the point is, you're not in any state to do that. You really do need somebody else, to be a support person that you can, you can go out and cry on their shoulder or whatever. But someone to help keep you strong too.

Jasmine: There should be an advocacy, well like an advocacy system. Definitely, when you're going through shit like that. You don't think straight. And how can you think straight ... You need to have a back up system where the person who's lodging the complaint is going to get back up and support. Plus they can help that person process what they're trying to do, because you can't process it on your own, and you can't fight for the lawyers and judges and police ... To have someone there who's got an empathy for the situation would make just the most amazing difference ... Also, if you're going to apply for a protection order, someone like an advocate would go in and tell you the ins and outs because the lawyer's not going to tell you. They're only going to do the paperwork ... You definitely need somebody there to lead you along to tell you how it works, someone who is going to follow up and make sure that it's doing what it's supposed to do.

Alternatively, as part of their role, lawyers should demonstrate a caring and empathetic response towards women who are distressed because violence has been used against them.

### **Problems with their ex-partners' lawyers**

Women had four main complaints about their ex-partners' lawyers. The first concerned unprofessional behaviour:

Rebecca: Anyway, his lawyer actually phoned me, and I didn't even know who she was. And [she] started going on about it... And then I got thinking about it ... And I rung up the court co-ordinator. And I said, 'I've just had this phone call.' And I told her what had happened. And she said, 'No. That's not on. They shouldn't be ringing you personally. They should be getting to your lawyer.'

Alana: Plus, [his lawyer] had actually breached ethics prior to it ... She rang me and tried to get me to talk with [my ex-partner], or to, I don't

know what she was after. But I didn't know that, that was like against ethics in law. But I was quite shocked that she'd done that ... And when I told [my lawyer], she was like blown away. She said, 'She's not allowed to do that.'

Hayley: His lawyer is really intimidating ... He does all the really bad crims... I have heard a lot of really bad things about him ... And there were things like, before we actually went in to the courtroom he yelled out, 'Oh, here comes that [lawyer's surname] woman,' who was my lawyer. You know, sort of yelled it down the stairs ... I think he was trying to intimidate me because he knew I wouldn't like that. And [my lawyer], she could cope because there was no doubt she was used to him. But, you know, if you're, if you're about to enter a courtroom and you've got someone's lawyer, you know, larking off another lawyer in front of the clients, I think it's really bad ... Really unprofessional. And then [he] made some comment about had she been sober later ... It wasn't smart, it was just, I don't know, I've never seen anything like it. Just bad ... So it puts you on a back foot before you even start. You just want to turn around and run.

Second, one woman was particularly displeased that her ex-partner's lawyer obstructed legal processes. More specifically, he repeatedly stalled the hearing for the non-molestation order, and would not respond to written communication from her lawyer. She strongly believed that behaviour like this should not be tolerated. Such practice prolongs stress for women, increases costs, and may result in some women giving up.

Rebecca: We [were] trying to get access worked out ... [and] the situation here with his belongings and the property sorted out. And like I've got this huge pile of letters that went out to [his lawyer], okay. And he just did not respond. And that's how the communication went the whole way through. He just didn't respond. And I'd be chasing up my lawyer, because you can imagine what mess, that was me, when we weren't getting a response and nothing was happening sort of thing... I was told that a week should be the acceptable time between letters. [His lawyer] went months. We would be letter, letter, letter, no reply. That should be looked at seriously, especially in a separation where custody of children and non-molestation, that should be taken very seriously ... Also, the court registrar, you know, is supposed to put through a court time so that you should go into court to get the final molestation order come through ... Well, [his lawyer] kept going to the court registrar and changing times.

'I can't make it then, I can't make it then,' and the registrar would just accept it, and tell [my lawyer], 'Sorry, that's off.' ... And that happened on a number of times. And in the end I said to [my lawyer], 'This, this doesn't seem normal.' ... And [my lawyer] said to me, 'This is strange, this is not normal,' but she wouldn't explain to me. But I knew that there was something amiss there. I felt like old boys were patting each other on the back doing each other a favour, and I really felt that that had been happening between [his lawyer] and the registrar.

Third, some women mentioned that they were upset that their ex-partner's lawyer absolved their ex-partner of responsibility for his violence. Women felt similarly upset if their ex-partner's lawyer treated them as the guilty party or accused them of lying or being vindictive. Women obviously (and not surprisingly) want the legal system to hold perpetrators and not victims accountable for violence.

Sally: Because you're, you're standing there, and, you know, my heart was pounding, and yeah, I'm panicking ... especially when you've got someone, you know, like, who's defending him, who's arguing that you asked for it, or it's your fault it happened kind of thing... His [lawyer's] attitude was, you know, like he's got to make out that his client is innocent and that ... 'You wind him up,' you know. 'You're making it out worse than what it is to be,' you know. And then he'll, he'll bring up times that you've let him in the house, you know, like the year or two before, all this kind of thing ... Yeah, he tries to take it away from the incident I felt ... 'He's not, he's a really good guy,' you know, 'let him off,' you know. 'This women takes him back. She must want that kind of life. She must be happy like that, you know,' {laugh}... I felt really, really angry, really annoyed. Oh, and he also made a comment, 'My client will say that what you're saying is not true,' and that kind of thing ... I felt like you're kind of taking on everyone, and you're, there's just little old you, and you're up against a system that you don't know how it works, and you're up against these lawyers who are, and your ex, who will twist anything and lie to, to make it look like it's not, not really wrong what he's done, that it's more you.

Aroha: The men need to be accountable. That's all it is, okay. They need to face what they've done, okay ... [His lawyer] blamed me {laugh} ... Well, there was a knife involved, okay. But I didn't use it. But it was a form of threat, you know, 'Just back off,' you know, 'don't come near me.' Because I had had enough of the fella ... He said that I had tried to stab him, and things like that, yeah. And there was a whole lot of lies

... It was horrible {laugh}, yeah, it really was.

Finally, some women found their ex-partner's lawyers' adversarial approach within the Family Court and District Court very unpleasant. Cross-examination during District Court trials was particularly difficult. As evident in the women's excerpts, their ex-partner's lawyers lied and twisted things, minimised the seriousness of the violence, removed responsibility for the violence from the ex-partner, and blamed and accused them of lying instead.

Jenny: [The court experience] was shocking, absolutely shocking ... His lawyer got up and he went straight for the jugular ... he went straight for the jugular. And by that time I was quite well down my road of recovery and I was feeling quite strong. But I was a mess afterwards, an absolute mess afterwards. And I think that if I hadn't have been that far down the track then I would have gone to pieces on the stand ... [His lawyer was doing] the goading, the baiting, the answers to questions with the, you know, yes no questions when they weren't necessarily yes no answers. He got pissed off with me, he got really pissed off, you know, because he'd asked me yes no answers and I would expand ... 'Just answer the question. Yes or no?' And he'd, you know, it was really hard, really really hard ... It was not an experience I would wish to repeat ... His lawyer, honestly, he was an arsehole.

Women in other research (New Zealand Law Commission, 1997b) have also experienced an aggressive, adversarial approach within the Family Court.

Interestingly, some women mentioned that their ex-partner's lawyer had been less threatening or less aggressive than they had expected during Family Court proceedings. Their expectation that they would be aggressive suggests that many women fear or angst about how their ex-partner's lawyer will treat them. This likely deters some women from initiating legal involvement or from continuing with certain legal proceedings. Indeed, one woman felt so intimidated by her ex-partner's lawyer's adversarial approach and the prospect of him cross-examining her that she decided not to follow through with finalising her non-molestation order.

Rebecca: And I found the whole idea of having to get up on the stand and being, what's it called, cross-examined by a lawyer, too much, too much ... Too threatening, totally. Especially since I knew that I was going to get hell from [his lawyer]. Too much. And also the general feeling

of mistrust of the legal system, the way I was getting treated anyway. I just felt very strongly my instincts were telling me, 'You get up there, they're going to make mincemeat of you.'

When fear of the other party's lawyer deters women from continuing with legal options, women's and children's safety and wellbeing are not enhanced.

### **Problems with Counsel for Child**

Some women found it frustrating that the legal system protects ex-partners who do not parent responsibly or adhere to access arrangements by excusing their behaviour, or by repeatedly outlining what he needs to be doing, not what he actually is doing. One woman repeatedly found that her children's lawyer did this. There was an attitude that 'all he needs is a little bit of help and encouragement.' Whilst this left her ex-partner without consequences for his actions, it made her situation seem hopeless, especially because he would not change his behaviour or adhere to legal advice.

Rebecca: And [the children's] lawyer wrote in the, in the letter for [my ex-partner] that he should do this and he should do that with the kids, all the things that he should do with the children ... And what I'd been saying is, 'For goodness sake ... he doesn't do that thing. Get it in your head, he does not do those things.' And this woman is saying, 'Well, he should do this and do that and do the other.' And it seemed to wipe out the fact that he just didn't, if you know what I mean. It was the language that was in there. Again it sort of put a little protective circle around this poor guy. He just needed to be helped along a bit and encouraged ... And telling people that, 'Look, he just does not do those things,' in one ear out the other. You just sort of felt like it was of no importance. And this was something I've heard through other women too, especially when the children are very young, is the father is not doing those important care to those kids, and it, the system just ignores that, and writes this little note, 'The father should do this and should do that with the child when he [is with them].' They're not looking at the fact that he doesn't do those things. And the woman is stuck with that ... Excuses seem to be made for them. For some reason they've got the impression that if these lawyers put it in writing what he should be doing, a bit of direction for the guy, everything would be, you know, honky dory. Forget about it. They weren't looking at the situation of him not doing these things.

Another woman complained that her son's lawyer was over-

concerned with her ex-partner's rights but less interested in her son's (his client's) rights and welfare. Indeed, before their mediation conference, this lawyer took her aside and criticised her for wanting supervised access.

Alana: So, I was sitting there waiting and, and then [my son's lawyer] and [my ex-partner] walked in together. And [my son's lawyer], I don't know whether he didn't see me or didn't recognise me, but he didn't acknowledge me ... And then [my son's] lawyer came around to me, and he said, 'Oh, look, have we got time for a little meeting before we? Come into this room.' And he just was like really aggressive ... He hounded me about access. He, huh, he said to me, 'Well, what are your objections?' And I mean, I'd already given him some of them when I'd met with him. And, and he said, 'Well, what about [your ex-partner's] rights?' And he started pounding me with [my ex-partner's] rights. And it was like, you know, I mean, I was feeling really shaky by the way this guy was being. Really sort of domineering and bulldozing and intimidating and at me and at me and at me ... And I mean, afterwards, as you always do, I had time to calm down and think about it. I thought to myself, 'Well, this guy didn't want to talk about [my son's] rights, and he's actually [my son's] counsel. All he was concerned with were [my ex-partner's] rights.' And I was really worried about that ... Also, because I would say that his behaviour towards me was really inappropriate. He was [my son's] lawyer and he was pushing [my ex-partner's] rights ... And no, I, I didn't like that, the way he treated me at all ... I think he's quite a strong advocate of the importance of fathers in the life of children, especially of little boys. And I don't disagree with that, but, but, but, but ... it's not the case of any father is better than no father.

Such behaviour by Counsel for Child seems to conflict with their role to represent the wishes and best interests of children. Women who are relying on Counsel for Child for the safety and protection of their children will obviously feel distressed when their children's welfare is not their children's lawyers' primary concern, or when their ex-partner's inappropriate parenting is ignored. Children may consequently be placed at risk. Custodial parents in other New Zealand research (Chetwin, Knaggs, & Young, 1999) have also suggested the need for improvements in the performance of Counsel for Child.



### **Concluding Comments**

Narrative representation is a useful way to present women's experiences of being involved with the legal system. It gives women voice, and recognises women's tellings of their experience as legitimate contributions to knowledge about how well the legal system serves their needs. When these narratives are looked at together, it is evident that women had both positive and negative experiences with legal personnel.

In summary, women's satisfaction or dissatisfaction with lawyers depended on several things: their understanding of domestic violence and psychological abuse; whether they treated their situation seriously, had concern for their safety, and had their children's interests and welfare at heart; whether they listened to, believed, and validated their experience of abuse and of their (ex-)partner; and whether they were empathic, supportive, and encouraging. Good interpersonal skills were valued. Women were also appreciative of lawyers who provided sufficient information, dealt with things promptly, kept them well informed, included them in decision-making, and did not rush them. Many of the issues raised about lawyers in this research are not new. This highlights their ongoing significance for women.

As mentioned previously, whilst we can not estimate the proportion of women who have similar experiences of the legal system based on the experiences of ten self-selected women, it can be argued that if one or more of these women experienced legal personnel and processes in particular ways, a significant number of other women in New Zealand also do.

It is also important to consider the relationship between the findings and the period of time that women participants were involved the legal system. All of the women used the legal system in the 1990s or around the time of the new millennium. Hence, the issues raised cannot be easily generalised beyond this point in time. Also, because no comparison was made between the experiences of women who had involved the legal system before the introduction of the Domestic Violence Act 1995, after the introduction of this Act, or over both periods, no authoritative statements can be made about whether this Act has improved women's satisfaction with legal personnel. However, it is possible to say that some women had negative experiences of lawyers after the introduction of the Domestic Violence Act. Future research examining women's experiences of lawyers (and the wider

legal system) now that the Domestic Violence Act has been in place some time is pertinent.

Research findings accentuate the need to educate legal personnel about the gravity of psychological abuse and domestic violence against women. Lawyers need to realise that their clients will likely feel much distress as a consequence of abuse and safety issues, and sometimes because of legal involvement. This emotional state is very reasonable. They should not be treated as ‘over-emotional women’ or ‘irrational’, and dismissed because of this. Because women’s emotions cannot easily be separated from the facts that lawyers require during this crisis time, lawyers need to be able to respond to the emotional component of this type of work. Alternatively, the legal system needs to fund advocates to assist with this process.

Some consideration needs to be given about the adversarial approach employed by some lawyers in the domestic violence arena. Whilst abusive men also require good-quality representation, an overly aggressive approach towards the woman ex-partner is unwarranted. Minimising the violence or blaming her for it also seems to contravene the intention of the Domestic Violence Act. Professional behaviour by all lawyers is important, as is a commitment to dealing with matters in a timely and efficient way. Finally, instead of taking a moral side in the debate about mothers’ and fathers’ rights to a relationship with their children, Counsel for Child need to keep children’s safety and wellbeing as their principal concern as they are required to do under the law.

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## Notes

- <sup>1</sup> A protection order is a legal document that prohibits the respondent (i.e., abuser) from being physically, sexually, or psychologically abusive to the protected person, and that can also prohibit any contact by the respondent should the protected person wish this. It is at the centre of legislation known as the Domestic Violence Act 1995. Under previous legislation (the Domestic Protection Act 1982), non-violence orders and non-molestation orders performed a similar role. The former prohibited violence and the latter prohibited contact.
- <sup>2</sup> Although recruitment occurred within a particular geographic region, women's legal involvement had occurred in several regions of New Zealand. The region where recruitment occurred is not specified to protect women's anonymity.