Policy and Law in the Development of Relationship Property Legislation in New Zealand

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Introduction

The central theme of this paper is an analysis of the relationship between policy and law in the context of relationship property. The focus of the paper is on the development of the policy that provided the basis for the Property Relationships Act (PRA). At the outset I acknowledge a personal long term involvement in the campaign for legal recognition of women's right to entitlement of an equal share of the assets accumulated during the marriage or relationship.

As a young lawyer I was confronted with the reality of the then statutory framework on marital breakdown when I turned up to the then Magistrate's Court to seek enforcement of a maintenance agreement. On more than one occasion the defendant did not appear or turned up with a bundle of notes or on one occasion a case full of coins. This was a common experience of many lawyers and eventually led to the Domestic Purposes Benefit in 1973. This policy development marked the beginning of the state accepting the responsibility to financially support solo parents and enforce any maintenance agreement or court order between the parties. It is interesting to note that the state continues to have problems enforcing such orders. This policy development was an attempt to attribute responsibility between the state and the individual for the wellbeing of women and children on the breakdown of a relationship. While as a young lawyer I supported this approach to the problem, I also understood that it did not address the fundamental issue – the gendered nature of relationships that was the basic barrier to equitable distribution of assets on the breakdown of a relationship. I was also uncertain exactly what was the role of the law in resolving what was essentially a societal issue.

As a young academic in the 1970s I embarked on a project to find an answer the question how laws, or more accurately, legislation, was made, and why such laws discriminated against women. That project eventually led me into politics and Parliament and to an understanding that policy and law making was a bit like eating haggis – it is often better not to know what goes into the making though a good outcome may be dependent on such knowledge by the cook. My focus on understanding the process of making legislation arose from a lack of confidence at the time in the courts to deliver the equality sought by women. Any discretion exercised by the judges appeared to reflect the current societal gendered norms. However, as the interpreters of legislation

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within a constitutional framework that assigned law making to Parliament, the courts had limited scope to provide women with such remedies. It was for the Parliament to enact the laws which enabled the courts to exercise judgment and justice.

The project on which I embarked was a voyage of discovery for which I was little prepared. Legal education at the time was variable and reflected no understanding of the role of policy and its relationship to law. While I did have the advantage of a jurisprudence course, the topics were conventional and before the advent of critical legal studies movement. I was left with a strong sense of social injustice but little understanding of the nature of the injustice or how to redress it. There was also no acknowledgment of feminist theory within formal legal education so my generation was relatively self-taught through reading and discussion of the relative merits of various theories developed within other jurisdictions. My own preference at the time was a socialist feminist analysis because of the focus on the economic equality for women as a precondition to living a life over which women had some control.

I mention this personal development because it did influence my approach to issues such as matrimonial and relationship property. It also influenced my approach to marriage that to me seemed to lie at the heart of an equal division of relationship property. After much reading and some experience I rightly or wrongly came to the conclusion that while marriage fulfilled an important social role in society and could provide much personal wellbeing, when the relationship ended it was all about who got what in terms of property and assets. My view was informed by experiences in practice where I was sent as a young lawyer to preside over an equal division of property that included half of everything including cutlery and crockery. A soul destroying exercise for me but hopefully cathartic to the parties. Legal practice also introduced me to the reality of long term de facto relationships that end and the real difficulties when assessing division of property and assets. The lack of legal recognition and status of such relationships caused real injustice.

These early formed views influenced my support thirty years later to the inclusion of de facto and same sex couples in the PRA. Personally I would have also extended the notion to other relationships as argued by Associate Professor Margaret Briggs[1] but in 2000 that would have been a step too far. As I was characterised as the destroyer of marriage at the time, the inclusion of all domestic relationships would have presented another opposition and when enacting legislation there is just so much opposition that can be politically sustained. It remains however a relevant policy issue as society's approach to relationships develops.

Joanna Miles was correct then when she noted in her 2004 NZULR article; "it might seem that the New Zealand legislator has tried to enshrine a particular theory or theories regarding the division of property

1 Margaret Briggs "Rethinking Relationships" (2015) 46 VUWLR 649.

and income".[2] I hesitate however to say the policy commitment was informed by a detailed political discussion of competing theories on how to effect the reform in late 1990s. The Report of the Working Group on Matrimonial Property and Family Protection[3] however provided an influential analysis of the various issues that provided the basis for what eventually emerged as the Property (Relationships) Amendment Act in 2001. While I agree good legislation relies on good policy that in turn relies on good theory that produces a coherent principled approach, in my experience this process is not always found in reality. I acknowledge therefore the frustration of academics whose analysis of the law identifies the PRA's inconsistencies, injustices, and irrationalities.

What is the Policy Question?

In preparation for this paper I read many of the academic articles first on matrimonial property and more recently relationship property and reflected on their conclusions that much of the legislative frameworks have been confused, incoherent and unclear.[4] This conclusion appeared to be based on the fact none of the recognised theories of unity property, separate property, or community property is consistently applied to the statutory framework. I can only agree with the various analyses. As I continued my research into the development of the policy I asked the question why does the legislation lack a theoretical consistency. It is too simple to say none of us live lives according to a theory. In fact, most of us live messy lives that are not always driven by rational decision making. As one of the functions of law is to provide a peaceful dispute resolution process to human conflict, it is not surprising that in an area such as family relationships where the issues causing the conflict are complex that the remedies can be pragmatic and lacking in coherence.

The fundamental reason however for the lack of a coherent theoretical legislative approach in this area is the gendered nature of our relationships. As Bettina Bradbury's[5] analysis of 19th century

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2 Joanna Miles "Financial Provision and Property Division on Relationship Breakdown: A Theoretical Analysis of the New Zealand Legislation" (2004) 21 NZULR 268 at 269.

3 Department of Justice, Wellington, October 1988. The membership of the Group that was chaired by Janice Lowe, Chief Legal Adviser of Department of Justice, included Bill Atkin, Sian Elias (Law Commissioner), Warwick Gendall, Margaret Wilson (Law Commissioner), Eva Schellevis, and Helen Carrad from Justice, Carol Thomson of Ministry of Women's Affairs, and Cathy Iorns as Secretary to the Group. Jim Cameron replaced Sian Elias or Margaret Wilson if they were unavailable.

4 For example, AH Angelo and WR Atkin "A Conceptual and Structural Overview of the Matrimonial Property Act 1976" (1977) 3(3) NZULR 237; Nicola Peart "The Property (Relationships) Amendment Act 2001: A Conceptual Change" (2008) 39 NZULR 813; and Miles, above n 2.

5 Bettina Bradbury "From Civil Death to Separate Property: Changes in the Legal Rights of Married Women in Nineteenth-Century New Zealand" (1995) 29(1) NZJH 40.

Married Women's Property Acts highlights, once a woman married she committed "civil death". The common law only recognised the legal status of the male and a married woman's legal identity was subsumed within the male and they became as one. The reality of this legal fiction was that many women were denied entitlement to property or income during marriage and dependent on the good will, sobriety, and industry of their husbands. Although the common law disabilities of married women were slowly dismantled from 1860 through various campaigns by women, Mary Ann Muller, an early New Zealand feminist, wrote to Kate Sheppard that although the right to vote was a triumph for women, for her; "The Married Women's Property Act was to me even greater, for I had suffered greatly. The effort will give us a freedom thousands have yearned for".[6]

The freedom she referred to was the freedom for women to be financially independent of their husbands. It was this desire for economic and financial autonomy that has remained a key objective of feminists and was to re-emerge as a policy issue during the second feminist movement in the 1960s and 1970s. While then many women sought independent legal status, they did so within a marriage that many in society still assumed was defined by traditional gendered roles. While women sought an independent separate legal status, the reality was that within a relationship there was a merging of separate interests. The question was how to legally recognise competing interests when the relationship ended for whatever reason. There was also the complication of how to provide for children of the relationship.

The notion of partnership evolved to provide a legal remedy for division of matrimonial property. Partnership was utilised as a conceptual bridge between unitary and separate property within the context of a marriage. The notion of property whether real or personal however did not take account of the economic reality of relationships. Nor did it account for the reality of children and the need for financial support following the breakdown of the relationship where property was insufficient to provide for income. The fundamental issue then was who was responsible for the financial wellbeing of a woman and her children on the breakdown of her marriage or relationship – the state or the individuals. And what was the role of the law on the breakdown of the relationship. The answers to these issues reflected the political context of the time.

Development of Policy 1970 to 1999

The first formal recognition of matrimonial property reform as a policy issue in recent times was in the Report of the Select Committee on Women's Rights in 1975.[7] It was also raised at the First United Women's Convention where the issue of the distribution of property and income

6 At 66.

7 Select Committee on Women's Rights *The Role of Women in New Zealand Society* (June 1975) Government Printer, I.13 at 85.

between first and second wives was a much discussed issue. The Select Committee Report recommended that; "the Government give urgent consideration to amending the Matrimonial Property Act 1963 in line with comments in this report; and steps be taken to ensure that the spirit of any amendment be applied in other relevant areas of legislation, notably the Family Protection Act 1955".[8] The Report had noted:[9]

> The one factor which underlies all the recommendations made below is the committee's desire to further the concept of partnership in marriage. An area where there is considerable scope for doing so is that of matrimonial property where the present law, as enacted in the Matrimonial Property Act 1963, does not ensure that women will necessarily be done justice in the division of family assets on the breakdown of marriage. We believe that a women's contribution in the home should be considered on the same terms as the husband's financial contribution, and taken into account accordingly when a settlement made. In other words, the law should presume that the husband's and wife's respective contributions to the marriage assets are of equal value, thereby entitling each to an equal share in these assets. We do not envisage that the rule of equal division would be applied rigidly, but that it would function as the basic principle for assessing the disposal of marriage assets in place of the existing provisions under which the wife's share of property accumulated during marriage is determined at the discretion of the Court.

The Report also addressed the issue of children and whether their interests would be affected by any equal division of matrimonial property. The advice received by the Committee from the Department of Justice was "the interests of the children in their parents' property should not be allowed to stand in the way of doing justice to wives if the present law denies wives a share in the family property to which their total contribution to the family entitles them".[10] The needs of children were to be addressed through other means such as maintenance orders and the Family Proceedings Act.

The Select Committee also noted the Report of the Special Committee on Matrimonial Property to the Minister of Justice.[11] This Report was initiated by the New Zealand Law Society and had expressed concerns about the 1963 Matrimonial Property Act. It also included an assessment of the effect of *E v E* [1971] NZLR 859 that the Committee held to be open to criticism as being "artificial, unreal, and often unlikely to produce results that would be recognised as just".[12] The Report demonstrated a clear understanding of the dilemma of how

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8 At 85.

9 At 75.

10 At 76.

11 Report of the Special Committee on *Matrimonial Property Matrimonial Property: Report of a Special Committee* (Presented to the Minister of Justice in June 1972).

12 At 10.

to assess women's non-financial contribution and quoted Lord Simon's characterisation of the problem as; "the cock bird can feather his nest precisely because he is not required to spend most of his time sitting on it".[13] The Committee's primary recommendation was "to enact a single, clear and comprehensive statute to regulate matrimonial property in New Zealand."[14] Interestingly the Committee declined to recommend a presumption of equal contribution because this was a question of social policy rather than the law.[15] I refer to this Report because it demonstrated the issue was not only a feminist or women's issue, but one understood by the legal profession that advocated reform also. The policy issue however was essentially social and not legal in its nature.

The various reports and advocacy eventually led to the 1976 Matrimonial Property Act that clearly stated marriage was to be treated as a partnership of equals with reciprocal obligations and that property acquired during marriage should be shared equally between the spouses.[16] This Act was introduced by the Labour Government but continued after the change of government in 1975 by the National Government which indicated a cross party support for the policy. This cross party support continued until the PRA.

The 1976 Act although welcomed did not deliver the equality of division advocated by many in particular the feminist lobby. For those of us advocating legal reform on this issue, it was clear that our attention had to be directed at political change. In the 1980s I became more active in the Labour Party and assisted with the development of the Women's Equality Policy that was adopted by the Party in 1984. The policy contained a statement of commitment to introduce legislation to recognise the concept of communal property and establish a procedure for claims as well as extension of the Family Protection Act to recognise claims for parties outside immediate legal relationships. The result of this policy commitment and much lobbying by women in the Labour Party was the establishment of a working group by the government that produced the Report of the Working Group on Matrimonial Property and Family Protection.[17] The principles that guided the working group

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13 At 11.

14 At 1.

15 At 13.

16 See Matrimonial Property Act Seminar, Auckland University, 2 February 1977, Legal Research Foundation Inc for analysis of Act by JK McLay MP, Professor Webb, and Pauline Tapp who had been involved with the drafting of the legislation.

17 Department of Justice, Wellington, October 1988. The membership of the Group that was chaired by Janice Lowe, Chief Legal Adviser of Department of Justice, included Bill Atkin, Sian Elias (Law Commissioner), Warwick Gendall, Margaret Wilson (Law Commissioner, Eva Schellevis, and Helen Carrad from Justice, Carol Thomson of Ministry of Women's Affairs and Cathy Iorns as Secretary to the Group. Jim Cameron replaced Sian Elias or Margaret Wilson if they were unavailable.

were stated as follows and being applicable generally to family law in New Zealand:

(a) The law ought to reinforce equality of status between the sexes.

(b) The law ought to endorse the concept of marriage as an equal partnership to which both partners contribute equally, although in different ways.

(c) When a marriage fails the resolution of outstanding issues between the parties should not be unduly protracted (referred to, somewhat erroneously, as the "clean break" principle).

(d) The State should continue to have an important role in supporting families that have lost the support of the principal income earner; in many cases there will not be sufficient money available after marriage breakdown to support two households.

The Working Group acknowledged any amendment to the Act should include the implications of the Treaty of Waitangi but made no specific recommendations as the Group considered it did not have the expertise to make recommendations.

I have cited these principles in full because they provided an important influence on the consideration of the Matrimonial Property Amendment Bill 1998 and the De Facto Relationships (Property) Bill 1998 and eventually the Property (Relationships) Amendment Act 2001. The Ministry of Justice officials were initially guided by the Working Group Report, but in the face of many submissions adapted their advice on matters such as the inclusion of economic disparity and de facto couples within the legislation. The 1988 Working Group was not prepared to make a recommendation on inclusion of de facto couples (though there was increasing evidence of such relationships requiring legal recognition) or consider one spouse should get a share of the other's future income as a means to achieve comparable living standards between the spouses.[18]

There is not time to analyse the Working Group recommendations in detail but it is important to note that it agreed to continue the "deferred participation" model and rejected the community property notion though one member argued for this option.[19] The somewhat conservative approach of the Working Group was reflected in the recommendations that supported changes around property definition but essentially the approach was to amend obvious injustices that had appeared in the Act. This approach may have been justified in terms of legal reform in a stable policy environment, but the 1980s was the advent of a fundamentally

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18 A persuasive case for legal inclusion was made during the 1993 New Zealand Suffrage Centennial year by Helen Cull in "De Facto Couples & Family Law – What Protection?" (paper presented to Women's Law Conference, 1993). Also *Lankow v Rose* [1995] 1 NZLR 1 highlighted the injustice that was caused by the existing law and that manipulation of the law relating to trusts was an uncertain and inadequate remedy.

19 I suspect that member may have been me because that was consistent with the government's policy approach.

different approach to public policy and societal relationships. The implications of neo liberalism could not have been fully appreciated in 1988 but some of us who were closer to the policy foresaw that a different approach would eventually be required.

Property (Relationships) Act – Process

The lobbying for law reform in this area continued through the 1990s and eventually led to the government introducing the Matrimonial Property Amendment Bill and the De Facto Relationships (Property) Bill in 1998. Both Bills attracted many submissions with 60 percent of the submissions on Matrimonial Property Amendment Bill expressing concern that the Bill did not address the issue of economic disparity suffered by the non-career partner on the breakdown of the marriage. When the Bill was reported back to the Parliament it did not address this issue though the government had indicated support for amendments to the Family Proceedings Act relating to spousal maintenance to address the issue. The Bill as reported back did apply the Matrimonial Property Act where marriage is ended by death as well as separation. Importantly jurisdiction was given to the Family Court to resolve disputes. The De Facto Bill was not reported back though submissions had been heard on the Bill. A principal point of contention was the inclusion of same sex couples with over 50 per cent of submissions supporting this inclusion, but reservations existed within the Committee to extend legal rights to same sex couples on relationship breakdown.

The issue of the legal status of same sex relationships was actively pursued through the 1990s and was related to the campaign to amend the Human Rights Act to give it the status of superior legislation. Part of that campaign was to amend all laws to remove same sex discriminatory provisions. This campaign was led by the Human Rights Commission and was known as the Consistency 2000 project. Although the government in 2000 decided not to make the Human Rights Act superior law, it did support legislation to remove discrimination against same sex couples and began the policy work for the Compliance 2001 project for which, as the Associate Justice Minister, I was responsible. This policy work resulted in the Relationships (Statutory References) Act 2005. The National government in the 1990s recognised the issue of same sex couples legislation was on the policy agenda, and in August 1999 the Ministry of Justice released a discussion paper and an issues document for public submissions.[20] In December 1999, the Law Commission also issued a study paper on same sex relationships.[21] This paper recommended legal recognition of same sex relationships. The issue was a much discussed one at officials' level and there was a sense that it was only a question of time before legislation was introduced to legally recognise such relationships.

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20 Ministry of Justice *Same-Sex Couples and the Law* (1999) and *Same-Sex Couples and the Law – Backgrounding the Issues* (1999).

21 Law Commission *Recognising Same-Sex Relationships* (NZLC SP4, 1999).

The 1999 election intervened with the election of new Labour led government that had a policy commitment on both economic disparity and inclusion of same sex couples. As Associate Minister of Justice responsible for this area of policy I was responsible for preparing advice for Cabinet and how to proceed with the existing Bills in a way that was consistent with the government's policy. A Cabinet paper was prepared for Cabinet on 3 March 2000 with the recommendation to extend the Matrimonial Property Bill before the Parliament to include de facto and same sex couples. The Cabinet paper further recommended that courts be given limited discretion to award "unequal sharing of matrimonial property where there are likely to be significant differences in living standards and earning capacity between spouses arising from division of functions during marriage". A further recommendation was made to amend the Family Proceedings Act to provide greater flexibility in addressing economic disparities and that these provisions extend to all de facto couples including same sex couples. It was further recommended to proceed with the legislation by way of Supplementary Order Papers (SOP) to be moved when the Committee of the Whole House considers the Bill. As the recommendations relating the Family Proceeding Act were outside the scope of the Bill, the SOPs relating to them would need to be moved on instruction of the House. Finally, it was recommended to change the name of the legislation to the Property Relationships Act.

While the Cabinet agreed with the recommendations in principle it required further work on economic disparity and on the legislative process and timing. A further paper was prepared for the Cabinet Social Policy and Public Health Committee and presented at the 24 March meeting. This paper contained more detail including estimate of costs and to issue drafting instructions for the SOP. It also required the Minister to undertake further consultation with relevant portfolio Ministers and coalition consultation Ministers. The SOP was drafted and introduced into Parliament on 16 May 2000 and referred to the Justice and Electoral Select Committee for further submissions with a report back date by 1 November 2000. The Committee reported back on 30 October 2000 having received 1700 submissions.

The Chair of the Select Committee Tim Barnett noted in the Report back debate that the Committee had spent 36 hours over 9 months on the Bill and SOP. He also noted there had been over two years discussion spanning two governments on the issues in the Bills and SOP.[22] The SOP as reported back did recommend several changes, including the reinstatement of terms wife, husband, spouse and marriage; a more extensive definition of de facto modelled on the New South Wales Property (Relationships) Act 1984; the inclusion of a principles clause to assist the Court when interpreting the provisions; and a specimen contract out form to minimise legal costs. These amendments reflected the submissions that were largely concerned with the effect of the inclusion

22 Matrimonial Property Amendment Bill: Consideration of Report of Justice and Electoral Committee, 14 November 2000.

of de facto and same sex couples in the legislation on the status of the institution of marriage.

It is interesting to note that Tim Barnett noted there was little interest in economic disparity in the submissions beyond that of the legal profession. He described the difficulty at trying to find a balance that addressed the reality of economic disparity arising from the end of a relationship. He stated; "We walked the tightrope of tightly defined law that gives security but lacks flexibility – a law that, like a Gruyere cheese, contains large holes down which people may fall".[23]

As the main opposition to the SOP focussed on the inclusion of de facto and same sex couples, it was necessary to provide members of Parliament with a conscience/personal vote on the amendments recommended by the Justice and Electoral Committee and also on the question that the Matrimonial Property Amendment Bill incorporating the Supplementary Order Paper 25. Both votes were won with a majority of 9. The Bill then proceeded through the Parliament and came into force 1 February 2002 except for the contracting out provisions that came into force on 1 August 2001 to give people time to organise their affairs before the Act came into force.

Reading the material surrounding the development of the PRA from early 2000, it is surprising, given the opposition, that the Bill was eventually enacted in 2001. The decision facing the Cabinet early in 2000 was whether to proceed and if so at what speed given the large numbers of policy commitments it had pledged to implement within the next 3 years. One of the main tasks of a Minister is to compete with colleagues to get their legislation before the Parliament. There is a limited resource in terms of officials' time to work on proposals and then to secure a slot in the legislative programme. The success of a Minister therefore depends on the quality of the officials, the skill of the Select Committee chair to guide the Bill through the submission and report back process, and the support of Ministerial colleagues, in particular in the Clark government, the support of the Prime Minister and the Leader of the House who are influential in terms of setting legislative priorities. On a personal note, at the time the PRA Bill was being prepared, I was also developing the policy process for both the Employment Relations Bill and the Supreme Court Bill to be drafted and introduced to Parliament.

The fact that there were already Bills before the Parliament on relationship property meant there was cross party support for some of the provisions in the Bills. The fact they did not include economic disparity provisions and inclusion of same sex couples meant amendments to the existing Bills had to be made. It was also likely that there would be considerable political opposition to the inclusion of those provisions in any new Bill. When I examined both Bills I could not see why their provisions could not be included in one Bill. I judged such a proposal would provide one legal framework, while not perfect given the

23 Ibid.

complexity of the issues, but which would give greater access to justice for a large number of people. Although numbers varied, I was given statistics that suggested there were over 230,000 de facto couples whose legal rights were unclear and in many instances resulted in injustices. It was apparent to me and others that society was changing and in particular gender roles were being challenged. It was therefore essential that the law responded to these developments.

I was also acutely aware that New Zealand governments have three years to implement their commitments to the electorate. Enacting legislation takes time and this is appropriate to ensure it reflects the purpose for which it is enacted. When faced with two partially enacted Bills however, that had been through a Select Committee, it seemed sensible to ensure they were both enacted and this could be done through combining their provisions, plus the new provisions, into one Bill through the SOP process. I was aware that not every official approved of this SOP process but they worked hard with the drafting office to ensure the SOP was ready for introduction within two months of Cabinet giving its approval to proceed. The SOP was then referred to the Justice and Electoral Select Committee for submissions on the new provisions.

I was also aware that there would be considerable opposition to such an approach. Although there was a level of cross party support on matrimonial property reform, though not economic disparity, there was little support for de facto or same sex couples having equal rights. A reading of the Hansard on the committee debate reminded me of just how much opposition, and how personal it could get. I must confess however when Tony Ryall asserted the Minister would marry more New Zealanders than the Reverend Moon through the inclusion of de facto couples I wondered how seriously to take the opposition. It is important however in such debates to try and work out what is just opposition for opposition sake and what criticisms bear some merit.

For example, the opposition members made much of opposition from members of the legal profession but I also knew the submissions reflected divided views within the profession and that they were no clear consensus on how to address the question of economic disparity in particular. The Family Court Chief Judge Patrick Mahoney was also much quoted as opposing the Bill because of the assumed increased work in the Family Court and therefore need for more judges. Again it was difficult to know if the Family Court would be flooded with more litigation. I had told the Chief Judge a watch would be kept on the workload and if necessary more resources would be made available. There was no point from the Government's perspective to provide a legal remedy that was not then accessible.

A more difficult issue is to judge the community support for change on any issue but I was aware that marriage had a special significance for many New Zealanders and in particular the religious communities. It was a mistake to use the term "partner" instead of the traditional terms of wife, husband, and spouse in the Bill. The government had no

problem accepting the Select Committee recommendation to reinstate the traditional terms. I doubt though the opposition would have been less intense if there had been two Bills providing similar remedies. If one is seeking efficiencies in time and coping with political opposition then, it seemed to me, preferable to take it in one hit. From the government's perspective it is preferable to enact such contentious legislation early within the parliamentary term.

Conclusion

Somehow, the PRA 2001 was ultimately enacted, and although I was aware that it would require future amendment after interpretation by the courts, I was surprised it has taken so long for the necessary review that the Law Commission is currently undertaking. This may reflect the fact that this is a policy that is fraught with political difficulties or that the predicted disasters that would result from the legislation have not happened. I am aware however it takes time for the practical implications of new legislation to emerge and I suspect that is the position with the PRA. Personally I welcome the review by the Law Commission because the law must reflect, in the best way it can, societal changes. And there have been considerable changes from the impact of the economic policy on the value of partnership assets and the income of relationship partners. At the same time the needs of children and the income dependent partner remain the same.

I have endeavoured in the above account of the journey to enactment of the PRA through outlining the societal and policy context within which the law has been developed. Policy development is a complex process little understood by many. It is also a process fundamental to democratic decision making. Good law requires the inclusion of contestable views in law making. At the end however it also requires a decision to be made and followed through in the parliamentary law making process.