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**S.C.Marks.**

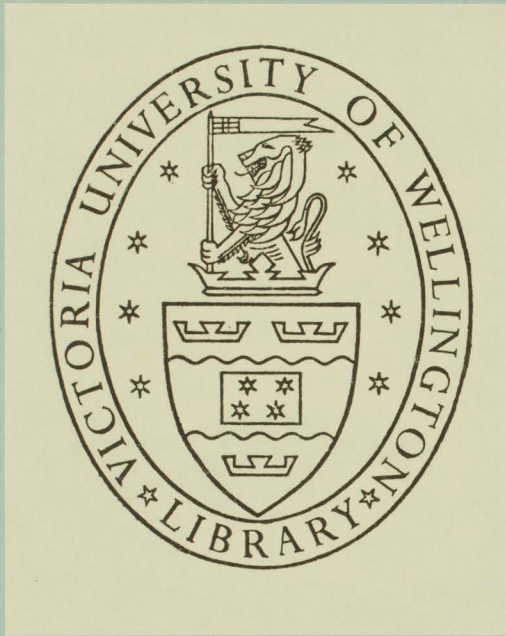
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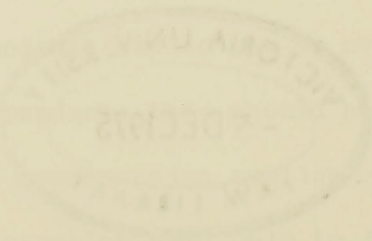


Susan C Marks

THE ACCIDENT COMPENSATION ACT, WIDOWS AND WIDOWERS PROVISIONS -  
A NEED FOR REVISION.

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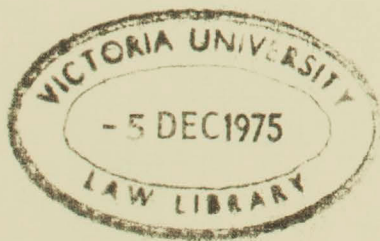
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Introduction

Widows of persons killed through accidents are compensated under New Zealand's Accident Compensation Act 1972. The term includes de facto wives. (1) Generally (1a) the scheme entitles them to funeral expenses, (2) a lump sum of \$1,000 (3) and then half of their husband's earnings related compensation for as long as they would have been dependant on him (4) which in most cases will be until either they reach sixty-five years of age or when the husband would have reached that age. Upon remarriage earnings related compensation ends, (5) and a further lump sum is given to the widow. (6) There is also an allowance of one third their father's earnings related compensation for each child (7) although a maximum is set on the total allowance. (8)

Because of a presumption in the Act (9) that wives are dependant on their husbands this coverage extends even to widows without dependants yet widowers are not given any comparable coverage. In effect the Act views every New Zealand Household as one where the husband is the sole breadwinner and his wife, whether or not they have children, is totally dependant on him for finance. In the same tradition the male contribution to his children's up bringing is limited largely to a monetary one as opposed to a personally active part such as a mother is presumed to play.

It is the intention of the writer to show that in this era of equal pay, the scheme is in need of review as women without dependants are as capable of self support as men without dependants. At the same time the position of widowers with dependants should not be overlooked; if they wish to stop work to look after dependants they should be eligible for the same comprehensive sort of compensation available to widows.

Some hypothetical examples will help to illustrate my point;

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The Widow without Dependants

X is a widow aged twenty-four. She is a qualified secondary teacher and she has in fact been teaching for three years, <sup>during</sup> all of which she was married. She went through University on a studentship and spent a year at training college. Her husband was twenty-seven, an accountant, and partner in his firm. X became widowed in January 1975 when her husband was killed in a boating accident. X had no teaching position planned for 1975 as she was considering spending some time renovating their house while perhaps doing a little relieving. She also hoped to have a family in the near future, but she is not pregnant. X and her husband owned a joint family home valued at \$25,000. They have \$2,000 mortgage left to pay on their home. X owns a 1966 Austin mini with \$200 still outstanding on hire purchase.

Her husband owned a 1970 Ford Escort which was fully paid for. All their other belongings are paid for and many of them are fairly old. They have \$600 in savings which they had intended to use to start their renovations.

X will be paid earnings related compensation equivalent to forty per cent of her husbands earnings for most of her life or until she remarries. This is even though she has considerable assets as well as both training and experience in a well paid profession. She has no children so is in no way handicapped from working - in fact not working will probably be a hinderance to her rehabilitation, (10) as a single woman in the community (11) If she does work - as is most probable - she will still receive the same amount of compensation, plus she will have considerable assets and she will be earning a very adequate income from teaching. If she had become widowed as a result of her husband's death from some illness she would not have been covered by Accident Compensation and she would not have qualified under Social Security, (12) simply because she is young and has no children or other dependants. The actual cause of death should not determine whether compensation be paid as it does at present with

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both the Social Security scheme and the Accident Compensation scheme in effect. The Woodhouse Report spoke of Financial compensation based on the injury - that is, the need, - not the cause (13) and it is my contention that in this example X has no financial need.

The optimistic may attempt to suggest that the Accident Compensation Commission would in fact simply interpret S123 so as to exclude a widow in these circumstances, but the position is in no way spelt out (14) so therefore prima facie a widow in these circumstances will receive compensation.

#### The Widower with Dependants

H and his wife had three children, two pre-schoolers and one child at primary school. H is a milkman earning \$150 gross a week. His wife was a registered nurse and had continued to do some private nursing three times a week including a Saturday and Sunday night. Her gross weekly income was \$85. Their total gross income was therefore \$235, net approximately \$180. They have a house on which they pay \$20.00 a week mortgage payment and which has several years payments still due. They are also committed to various hire-purchase payments on a washing machine and a lounge suite totalling \$50 a week. They are also paying \$22 per week on a car. They were able to cope with these commitments because they were both working but on August 16th 1975 H's wife suffered a fatal accident and H is left to face these commitments totalling \$92, a week alone. This would leave him about \$28 a week cash in hand to meet food, clothing and transport expenses plus bills such as gas, electricity, telephone and rates. H feels he should stop work until the younger children are at school rather than leave them in the care of neighbours or a housekeeper. His parents are elderly and his wife's parents live in Australia.

H is left to face commitments based on a double income with only his wage. Understandably and not uncommonly (15) he wants to compensate

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for his wife's death by taking over her tasks as mother and housekeeper. This would make it necessary to give up his job and he would therefore have no income except perhaps a domestic purposes benefit (16). The only compensation - apart from funeral expenses - he is likely to receive under the Accident Compensation Act is possibly a housekeepers allowance under S121 - but even this is not certain. He certainly does not receive compensation comparable to that of a widow left in the same circumstances. This omission appears only to be based on a presumption of a traditional division of roles between men and women, (17) and as such fails to recognise the needs of H and his family and to assist their rehabilitation after the bereavement.

S127 of the Act appears to be based on the notion of a bread-winning male in a marriage and a feminine incapacity for self-support. It raises the presumption that, for the purposes of the Act,

- 'a) where a husband and wife are living together,  
the wife is dependant on the husband;
- b) where they are not living together the wife is  
dependant to the extent of maintenance being paid.'

This presumption of dependancy does not apply to men and there is no equivalent which does. S123 says that a widow is entitled to a benefit where the partner has died as a result of personal injury by an accident covered by the Act;

'while she or he would, in the opinion of the Commission, have been totally dependant on the deceased person if that person were living...'

The S127 presumption of dependancy of a woman on her husband operates on S123. It implies a feminine incapacity for self-support, regardless of whether she has children or not, and as such that presumption can be rebutted by modern patterns of living, as I will show later.

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DEPENDANCY

The act intends to compensate the bereaved person to the extent of their dependancy on the deceased. It is therefore necessary to examine the concept of dependancy;

Dependancy in Workmans Compensation

In the Workmans Compensation Act 1956 dependancy was defined as dependancy on worker's earnings and there was a legal presumption of dependancy for a husband and wife both resident in New Zealand.(18). However the cases soon showed that this legal presumption could be readily overthrown.

In Public Trustee v McMahan (19) a wife who had been separated from her husband for twenty years, during which time she had been self-supporting, tried to rely on the presumption to get compensation. The Court found that there was no dependancy save for the legal presumption and awarded a nominal £5 compensation.

Again in New Monckton Collieries Ltd v Keeling (20) the Court considered that the mere fact that a man in his ordinary circumstances is obliged by law to support his wife is not in itself sufficient evidence to support a claim for compensation. In other words legal obligation to support is not the same thing as actual support.

It appears from further cases that the court was only prepared to enforce this legal presumption of dependancy - in the absence of actual dependancy - where there are children involved. (21). Actual dependancy meant that in effect economic dependancy in the terms of the definition given in the Act. (22).

Dependancy in the New Zealand Scheme and Australians proposals.

The proposed Australian scheme gives a definition of dependant as: 'dependant for economic support, whether wholly or partly.' and as thus restricted itself to the economic aspect of dependancy. I suggest that in fact this is all the New Zealand Act can hope to cover

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despite a definition which appears wider than these two above. S2(1) of the New Zealand Act says dependant in relation to any person means;

'any other person whom he has a legal duty to support in whole or in part at the time when the dependancy has to be determined; and includes any other person whom he might then reasonably regard or have regarded himself as having a moral duty to support in whole or in part, and whom he was then supporting in whole or in part...'

Dependancy on grounds of a moral duty must then be based on actual (economic) support. It can perhaps be argued that legal support has a wider meaning. However, I have shown that before the Act despite a legal duty the courts looked for actual support and I suggest that here the only support which can in effect be meant by the Act is this economic support. All the Act provides is money payments, any other comfort being directly attributable to those payments. This is all the Act can practical provide but I will endeavour later to show that encouraging a woman read-just herself and reaffirm her status in society.

Peter Marris (23) sees the loss involved in widowhood as having three components; loss of livelihood loss of status and loss of a relationship. This and indeed any legislation can only directly replace the loss of livelihood, it does not provide a replacement husband, nor counselling, and becoming a dependant of the State in no way gives status to anyone. Such things as status may indirectly be eventually restored but money is all the State actually gives and so I suggest that dependancy be viewed in economic terms.

#### WOMEN IN EMPLOYMENT

##### The Increase of married women in employment

Increasingly today women are combining or expecting to combine their domestic responsibilities with a career. The 1971 census showed that just under 50% of women workers were married - this is twice as much as in 1951

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and in 1926 only 8% of women <sup>(7.)</sup> workers were married. The increase of married women in the work force then has been rapid and accelerating. The increase of women in the workforce has been greater for women between fifteen and thirty-five years of age. Clearly, more women are remaining in employment after marriage and more women are returning to the work-force, when their family responsibilities have lessened. (24). In other words a woman's ability to support herself does not miraculously fade away after marriage just as a woman's legal existance is no longer suspended during marriage disenabling her from owning and managing property in her own name.

Reasons for the Increase

Demographic changes in the twentieth century which are relevant are an increase in the proportion of women married in every age group over sixteen years, a decrease in the average age at marriage, a general decrease in family size, and earlier completion of child raising. Most women are now <sup>thirty</sup> ~~thirty~~-three when their last child begins school. The implication of these trends is that while the pre marriage working period is shortening, married women (who account for the mjaor part of the increased female participation rate) frenquently have some 20-30 years to pursue employment after their children become less dependant. Further most women do not leave their jobs when they get married and many return soon after their children are born.(25). In the age group of 35-44 years, 75% of the women working in 1966 were married.

TABLE XXII  
(c.f. Table 148) (26)

AGE BY WORKING AFTER MARRIAGE

Base: Women ever married	16-20	21-29	30-39	40-49	50-59	Total
	%	%	%	%	%	%
Work after marriage						
Did not work	39	26	37	52	74	45
Still working	17	14	4	2	2	6
Worked under 6 months	26	18	15	10	5	13
Worked under 1 year	12	16	14	12	5	12
Worked under 2 years	-	14	13	8	3	10
Worked under 3 years	2	7	6	6	2	5
Worked under 5 years	-	4	6	4	2	4
Worked over 5 years	-	-	4	5	5	3
Not specified	4	1	1	1	2	1
Total working after marriage	61	74	63	48	26	54
Total Bases	100 120	100 1,149	100 1,026	100 1,098	100 824	100 4,218

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Disregarding the 16-20 age group where a high proportion are still unmarried it can be seen from the table above that in each successive younger age group a larger percentage of women worked after marriage and for longer.

#### Overseas Trends

These same trends are even more marked overseas. Sutch (27) tells us that the percentage of women in the work force will in time reach 40% if New Zealand develops in the way other small, high living standard countries such as Finland or Austria have developed. These countries he tells us, have at least two women for every three men in the labour force. When the total increase of women in the labour force in New Zealand has been 200% between 1926 and 1970 this prediction seems quite plausible.

In Canada the participation rate for married women reached 53.3% in 1967. In Denmark 1969, 47% of all married women were employed, constituting 60% of the total female labour force. In Germany 36.7% of the total labour force were women in 1966. In the United Kingdom 1968 females constituted 35% of the total labour force - 58% of them were married. (28).

#### Advance into Professional Occupations

Women are still largely employed in clerical and service jobs, (29) but their predominance in some professions such as nursing and teaching is marked and women are gradually entering areas of work traditionally performed by men and are gaining admittance to the higher levels in a range of occupations, notable examples frequently drawing the attention of the news media. This and more significantly the implementation of the Equal Pay Act 1970 can be expected to diminish the overall income disparity between men and women workers.

In the United Kingdom 1962, 25% of the registered medical practitioners were women(30) a figure which varies in different countries but repre-

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sentative of trends already being followed in Western Countries including New Zealand.

The conclusion from this data must be that women are capable of supporting themselves - they are not in the same category as invalid or incapacitated males. The high percentage of married women working indicates that many New Zealand families will be double-income families. It is also useful to see why women work.

Reasons for Women Working

Money was invariably the first reason given by women for working but the study of Urban Women(31) found that other major reasons given are enjoyment of work, need for social stimulus, need for mental stimulus and independence. These reasons when viewed in light of widowhood can be seen as an essential part of the rehabilitating process. Many of the widows interviewed by Peter Marris (32) as long ago as 1958, when the scope of work offered to women would have been limited and women generally discriminated against in employment, recognised themselves the benefits of working to their attempts to readjust to their new status. The widows were under the British National Insurance Scheme whereby widows without dependent children got a benefit for only thirteen weeks unless they were over fifty years of age or incapable of supporting themselves. Any widow without dependants married for less than three years does not get any further benefit whether under or over fifty years of age, the idea being that after a brief marriage she should be able to resume her former livelihood. That scheme is based on the recommendations of the Beveridge Report which said

'There is no reason why a childless widow should get a pension for life, if she is able to work, she should work'. (33)

Marris found that most of those who had been employed before their husband's death were back at work within a very few weeks, mainly

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for the money, (this need not be so if covered for a year as under the proposed Australian Scheme) but also because they felt less lonely working. One such widow said,

'There was the money, yes, but there was the added pressure that if you're on your own all day you get to brooding.' (34)

Another reason which became obvious was that a job helps a widow maintain her self-respect.

Once you've been at work you don't feel like staying at home.

It makes your appearance different and you feel different. When I am at home I get dilatory and I neglect myself'. (35)

Also if the work is skilled it adds an interest to life - and skilled vocations are increasingly open to women. But it is necessary to remember as the British Scheme and the proposed Australian one do, that older women may not have had any previous work experience. (36)

A survey similar to the Marris one has been carried out in Blackton (Northern England) 1964. (37) It showed that all widows employed at the time of widowhood returned to work within one month of bereavement. They found the financial assistance a great help and also the company of their workmates helped them to forget their distress. Despite the fact that Blackton offered limited work opportunities for women and that very few of the widows had any extensive training before marriage, seventeen other widows had at the time of the interview secured employment. The rest either had children under five years old, or suffered ill health, were over fifty years old or had only recently been widowed and so were still looking for work.

These two surveys must be considered with regard to the fact that low level benefits often compelled these women to work however, the other reasons given for working and their own observances on the rehabilitating effects of employment are important considerations for our purpose. If New Zealand adopted a scheme similar to Australia's proposed

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scheme and gave widows without dependants a benefit for a year plus a lump sum of \$1,000 finance need not initially be a major factor in seeking employment.

The Committee on Woman's Rights, when looking at the reasons for women working, noted that a large number of married women may work in order to supplement their husband's earnings, to meet expectations of a higher standard of living. (38). This supports the argement of a widower's benefit to allow readjustment to a lower income.

The Committee also observed that an increasing proportion of women seek jobs in order to fulfil their own vocational aspirations.

'The Committee believes that in the immediate future this factor will be highly significant for those young women who currently are preparing to leave school, are in the process of tertiary education, or are at the early stages of a career. The commitment of such women to the pursuit of a career is ahead of both social attitudes to women's role in employment and the provision of practical facilities to allow realisation of their expectations.' (39)

#### Consequent economic advantage to New Zealand

Sutch also points out the economic importance of making full use of our potential labour force - women being a major part of that potential.

'For economic reasons New Zealand must ensure that the potentialities of every person... are recognised and developed. In whatever way New Zealand's living standards are measured, whether by crude assessment of gross national product or by the more imponderable and more important needs of a developed person, the human asset will provide the improvement.' (40)

He observes that economic studies on developed countries have shown this. Thus it would be to New Zealand's economic advantage to bring about in as short as time as possible the optimum use of women in the labour force.

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I should perhaps underline at this stage that I am recommending that women without dependant children should get a benefit for one year only. Women with children have a full time job looking after them and should not be forced to have two occupations. Under the Act as it stands at present widows without dependants are in effect in the same category as incapacitated or invalid males.

Effects on the modern marriage and widower

Participation by women in the work force on the basis of equal pay and opportunity itself may be expected to have far reaching implications for the changing roles of men and women and the quality of marriage and child care.(41) Increasingly, as the double income family become more common, there is an equally distributed parental and domestic responsibility in families, whereas traditionally mothers generally have the most to do with the bringing up children, increasingly as she goes out to work her husband assumes more of such responsibilities. The Report refers to this as the partnership element in marriage and recommends education of boys and girls in this direction. (42)

Therefore an Act such as this should give fathers the option of deciding to stay home and bring up the children when they loose their mother. By not giving this opportunity to men the Act perpetuates a traditional under-evaluation of the jobs of housemaking and child-rearing and a traditional attitude that such work is 'womens' work'. (43)

Even if a working couple were employing someone to care for the children it is doubtful that a widower could afford to continue doing this on his income alone.

I suggest that S123 of the Act be altered to cover widowers as well as widows, in recognition of a womans financial contribution to a family and of her role in bringing up the children. The housekeepers allowance - if one was given - is not enough, it does not enable a man to give up his job if he choses to devote his time to the children while they are dependant.

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Many family financial commitments will be based on a double income and whereas a woman may continue to work as well as get her earnings related compensation because of her husband's death, a man must try to adjust immediately to what may often be as little as half the former income.

In Australia the Women's Electoral Lobby (W.E.L.) presented submissions promoted by similar indiscrepancies in their bill to have the Australian Clauses extended to widowers. As an intermediate step they suggest that the Act provide an 'automatic adjustment assistance' to widowers for one year after the death of their wife. This would be based on earnings related compensation and would allow the widower and his family a year to adjust downwards to its new standard of living and it would recognise the real contribution of income and/or services of women to their family's economical welfare.

I suggest that similar changes be made to the New Zealand Act. Such a step would be in accord with comment by the Commission of Inquiry into Equal Pay in New Zealand.

'the move away from the traditional relationship of husband as breadwinner and wife as dependant, and the changes that are taking place in the financial status of women, will have far-reaching effects which will necessitate a review of the whole field of family and domestic law'. (44)

EXISTING LEGISLATIVE PATTERNS

Social Security

Under the New Zealand Social Security Scheme a widow who has never had children qualifies only if...

- a) she has been married at least fifteen years and was widowed after attaining fifty years of age; or
- b) if she fulfills all the following conditions:
  - i) age fifty years or over
  - ii) widowed after attaining the age of forty

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iii) was married at least ten years

iv) it has been at least fifteen years since she was married.

A widow who has a child no longer dependant qualifies if she meets the same conditions as above of if...

i) she was married at least fifteen years or

ii) the total period of marriage and later care and control of at least one child under sixteen years total not less than fifteen years. (45)

Generally then it is fair to say that a widow without dependants only get a benefit under Social Security if she has been out of the labour force for such a length of time that re-entry would be a very difficult adjustment. The result of having both the Accident Compensation Scheme operating concurrent is that if a woman, who has no dependant children becomes widowed when her husband dies from personal injury by accident, she received forty per cent of his earnings, for life plus a lump sum. But if he dies as a result of sickness she does not qualify for any benefit. The distinction is determined by the cause of death and could be as random as the former distinction between 'in the course of and arising out of employment' and not in the course of employment. Both schemes were enacted to meet the needs of people such as widows and these needs do not differ with the manner in which they become widows. With the Social Security System and the Accident Compensation Scheme working simultaneously we have the following sort of inconsistency;

1. X is aged thirty-nine years, she has had no children. She is a trained nurse. She and her husband own a joint family home with no mortgage. They owned two cars one of which was fully paid for. They have \$1,000 in Post Office Bonds and \$2,000 savings. Her husband dies of cancer after twenty years of marriage. She does not qualify for a Social Security widows benefit.
2. Y is aged thirty-nine years. She is a qualified and experienced

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dictaphone typist. She has no children. She and her husband had a joint family home with no mortgage and a car. They were also joint owners of a property worth \$8,000 with a \$2,000 mortgage. They have \$800 savings. Her husband is killed in a car accident after twenty years of marriage. She qualifies for earnings related compensation for the rest of her life or until remarriage.

Both women in these hypothetical examples above are capable of working and qualified to do so. They have in fact worked during their married life to contribute to the assets they shared with their husband. Whereas their losses are very similar one gets a benefit and the other does not. The manner of becoming a widow should not effect the nature of state-assistance, financial need should.

The McCarthy Report (46) is considering widows covered by social security had this to say:

'There have been many changes since the present system was introduced and the pace of change seemed to be accelerating especially as affecting the place of women in society. The majority of women have now been employed before marriage; increasing numbers are employed while married; equal rates of pay for women are becoming more common.' (47)

The Report also considered that an assumption of separation from the work force should only be based on the care of children or in firm relatives rather than on marriage alone. However, despite their apparently up-to-date policies the committee declined to act on a submission suggesting assistance for male solo parents. It felt rather that the State should provide adequate day-care centres and that where the interests of all concerned might best be met by the father staying at home and coming for the children at least until suitable alternative arrangements can be made - then he would qualify in the some way as a female solo parent. Many men obtaining custody of their children during separation or divorce proceedings do in fact give up their jobs and obtain a Domestic Purposes Benefit, (48) to

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enable them to stay at home and care for children. However, caring for children is not a qualification for an employment benefit. The fact that social security to this limited extent recognises the needs of solo male parent points further to the inadequacy of the Accident Compensation Act in not providing a benefit for widowers with dependants.

It is not desirable for a country to have inconsistent legislative patterns. Accident Compensation, I suggest, has in this respect followed the traditional approach evident in the Workers Compensation Act towards male and female roles. It should up date itself to comply with social realities and existing legislative patterns.

Family Law

In family law under the Matrimonial Proceedings Act 1963 and the Domestic Proceedings Act 1968 there is provision made for a wife to pay maintenance to her husband. However, the legislators have come only so far towards recognising the changes taking place in society - the implied assumption is still that the husband is breadwinner. For the purposes of S44 of the Matrimonial Proceedings Act and S31 of the Domestic Proceedings Act, the Court before granting maintenance in favour of the husband must be satisfied that -

S44 (1) 'the husband is unable by his own means or labour to support himself.' or

S31 (1) ' that having regard to his health, his duty of care to any child of the family in his custody, or to other circumstances he is unable to provide the necessities of life for himself.'

Note that under the Domestic Proceedings Act - the most recent of the two acts - the court considers a husband's duty to children in determining his working ability. The recognition of a wife's duty to pay maintenance is also recognition that she is capable of supporting not only herself but others to.

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For the purpose of maintenance under S27 of the Domestic Proceedings Act the onus is on the wife to provide proper evidence that when her needs are considered, taking into account 'the ability of the wife to provide for her needs' her husband is not providing. In deciding whether to make a maintenance order under this section the Court may also consider the ability of the wife to increase her earning capacity if she was assisted to undertake a period of education or training, or to establish herself in a business or in any other manner whatsoever. (49)

Bromley (50) in discussing the legislation on maintenance has this to say:

'But in many cases today, particularly if the wife is young and childless and the marriage has not lasted for long, it cannot be unreasonable to expect her to work, and this might even prove to be therapeutic(51).

If the legislation has been 'shy' about too outward recognition of women's role the Courts have not. In the case of Attwood v Attwood (52) it was considered that if a wife was earning or if she had a potential earning capacity that must be taken into account. Denning L J stated his view quite clearly in Rose v Rose (53).

'if a wife does earn, then her earnings must be taken into account or if she is a young woman with no children and obviously ought to go out to work in her own interest, but does not, then her potential earning capacity ought to be taken into account.' (54)

The Courts then have clearly recognised the ability of married women to work and that it is in their interest to do so. Here therefore is another area where the Accident Compensation Act is inconsistent with other legislation. Clearly if a couple only married a short time split up having had no children, the Courts will be hesitant in granting much maintenance (if any) to the wife whereas an Accident Compensation widow left in the same circumstances gets what can be a substantial benefit for life.

Changes have also been made as to a married woman's ability legally

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to own and manage property. As a result of the married women's Property Act 1952 women are subject only to the same restrictions as anyone else regarding property. She has the same rights to sue in contract and tort as any other landowner and can even sue her husband unless the tort arised from a dispute affecting the family home. Remedies of the Matrimonial Property Act 1963 are more appropriate. This is yet another example of legislative recognition of a woman's economic ability and independence even in marriage.

Cost

The most substantial arguement against the scheme I proposed is the question of cost. This is something the scheme has always had to face, but welfare of the nation has, and always should come first. It should be remembered that men with working wives have always been denied a tax exemption for them and so during a period of adjustment they should reap some benefit for their sacrifice. Housewives wives originally excluded from the scheme on the basis that they were not earners but in 1974 this ommision was rectified so as to comply with the Woodhouse recommendation to recognise the importance of a housewife's job. This is what the Act should do now because to realise the concept of real compensation we must allow men to fill the gap left when a mother dies. The scheme will save money by restricting widows benefits to those women who have dependants or are over the age of fifty-five years. Sutch's arguements as to the importance of utilization of women in the labour force for New Zealand's economy must also be remembered.

Some uniformity in legislation must be achieved - especially if the scheme is extended to sickness. Rather than adding to costs by extending the traditional view of widows as presently adopted by the Act to widows as a result of sickness, I suggest that criteria similar to that in the Social Security Act be adopted for all widows and that instead of a domestic purposes benefit all widowers with dependants should be able to receive a benefit.

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RECOMMENDATIONS

This is the sort of provision I propose;

'Class A' widow or widower means a widow or widower who is

- a) pregnant;
- b) maintaining a family home for a child for whom they have legal custody;
- c) related by blood, marriage or adoption to the widow or widower;
- d) unable to engage in suitable gainful work or
- e) became a widow or widower after attaining the age of fifty five years.

'Class B' widow or widower means a widow or widower other than Class A widow or widow, provided that where a widow or widower wished to partake in some employment training or retraining, they may at the discretion of the Commission receive a benefit for the duration of the period required for such training.

There should also be a subsection requiring that for the purposes of the above definitions a man or woman shall not by reason of his or her employment in or conduct of a hospital, nursing home, old persons home or similar institution be taking to be caring for an aged or infirm persons.

It may be necessary to lay down guidelines as to the meaning of 'suitable gainful work' although I feel that the phrase would not be arbitrarily used.

The Act should make payable to a Class A widow or widower earnings related compensation as outlined in S123 and to Class B widows and widowers the same compensation for one year only except in circumstances where the proviso applies S124 should apply to both classes so that they will all get a lump sum of \$1,000 and S125 providing lump sums on remarriage should only apply to Class A.

If this change is considered as yet to be a little ahead of trends or too costly then as an intermediate stop, with the above change still as the ultimate goal, I suggest a section incorporating three classes; Class A and B as above but only applying to widows and a further 'Class C' meaning any husband or defacto husband of the deceased person. Accordingly

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S123 would continue to apply to Class A only, Class 3 to get the same compensation for one year only and Class C to get the same compensation until all dependant children reach five years of age. S124 would provide lump sums for all classes and S125 to apply to Class A only.

These recommendations are substantially the same as the Australian provisions but these have been subject to some criticism. (55) First it is pointed out that at Common Law a Class B widow could get substantial damages - much higher than the limited allowance offered here. However this comment might have limited validity in the future. As shown previously the Courts in dealing with Accident Compensation claims often looked for actual (economic) dependancy rather than rely on the legal presumption, and in the family courts there is reluctance to grant maintenance to a young, childless woman for whom 'it may be in her interest' to work. Therefore although theoretically the possibility of damages in these situations may remain in practice the Courts are unlikely to grant damages.

The further criticism that Public Servants widows and war widows will still receive a substantial allowance fades in comparison with the far greater number of widows who under social security will not qualify for a benefit.

It is suggested also that each widow's needs should be assessed individually. This is an ideal towards which I too aspire but in the light of administrative handicaps to that proposal it must give way to more practical measures such as those recommended above. The beauracratc delays inherent in an individual assessment scheme would offset many of the desirable effects of accident compensation.

Either of the changes which I recommend recognise the facts that women can support themselves; that <sup>it</sup> is desirable for them and society that they should so do; that many families today are double income families and that a housewife's job is measurable in economic terms. Such changes then should be made to keep the Accident Compensation Act in tune with modern patterns of living and existing legislative patterns.

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Footnotes:

1. S123 (1) (c) N.Z. Accident Compensation Act 1972 (hence forth unless otherwise stated all sections refer to this Act.)
- 1a. the position differs for wives who are separated and might therefore only be partially dependant on their husbands S123 (1) (a) (ii)
2. S122
3. S124
4. S123(1) (a)
5. S123 (1) 'while she or he would, in the opinion of the Commission have been totally dependant on the deceased person.'
6. S125
7. S123 (1) (b)
8. S123 (4)
9. S127
10. The Woodhouse Report contains as one of its five objections 'complete rehabilitation' see page 39 Compensation For Personal Injury in N.Z. Report of the Royal Commission of Inquiry 1967. It is discussed primarily in the context of rehabilitation of injured workers but presumably just as the scheme gives compensation to dependants of persons killed through accidents so too rehabilitation should extend to them.
11. See further discussion of the rehabilitating affects of employment for widows.
12. See further discussion of widows benefits in N.Z.'s Social Security Scheme.
13. See for example page 20 of the Report.
14. As it is for example in the Australian Draft Bill Clause 51. Compensation and Rehabilitation in Australia. Vol I Report of the National Committee of Inquiry July 1974.
15. Many men applying for custody of their children give up their employment and go onto a domestic purposes benefit.
16. S27B Social Security Act 1964.
17. the presumed division is discussed in various contexts in the Report of the select committee on Women's Rights 1975. The Role of Women in New Zealand Society see for example page 103 in the summary and conclusion.
18. S2(2) Workers Compensation Act 1956.
19. (1913) G.L.R. 655.

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20. 4 BWDD 332
21. See Potts v Niddrie and Benhar Coal Co Ltd (1913) A C 531  
Ld Moulton at page 542 commenting on Keelings case supra.
22. S2 Workers Compensation Act 1956.
23. Widows and Their Families 1958 Routledge & Kegan Paul 124
24. The Role of Women in N.Z. Society Supra 9.
25. ibid 11.
26. Table XXII from Urban Women Society for research on women in N.Z.  
1972. 60.
27. Women with a Cause W B Sutch 1973 135.
28. Re-entry of Women to the Labour Market after Interruption in  
Employment B N Seear. Organisation for economic co-operation and  
development 1971 pp 37, 42-3, 48 86-7.
29. The Role of Women in N.Z. Society Supra 10.
30. B N Seear Supra 13
31. Supra 60-61
32. Supra 106
33. Social Insurance and Allied Services report by Sir William Beveridge  
Cmd 6404 64.
34. Supra 106.
35. Supra 106.
36. Australian National Compensation Bill Part VI Clause 51
37. Widows of Blackton Celia Jane Hobson. New Society 24th September 1966.
38. Supra 12.
39. ibid 12
40. Supra 156
41. The Role of Women in N.Z. Society Supra 13
42. ibid 13
43. ibid 66
44. Sutch Supra 181
45. Social Security Act 1964 S21.
46. Social Security in N.Z. Report of the Royal Commission of Inquiry  
March 1972.

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(23)

47. ibid page 241
48. Social Security Act 1964 S27B
49. S27 (2) (c)
50. Family Law 1974
51. ibid 446
52. (1968) 3All ER 385
53. (1950) 2All ER 311
54. ibid 313.
55. Parliament of Commonwealth of Australia Senate Committee on Constitutional and Legal Affairs, Clauses of the National Compensation Bill 1974 July 1975.

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