



# THE RIGHT TO BREASTFEED\*

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When, Liz Weatherly was told by the Montessori Early Childhood Centre, where her child attended, to either stop breastfeeding or don't bring him back, a series of negotiations followed, including with the Association Montessori Internationale in the UK - without success. Liz was no more successful with other agencies and eventually she laid a complaint with the Human Rights Commission claiming that the denial of the right to breastfeed her child was sex discrimination.

In March 2004, the Human Rights Commission told Liz that her complaint did not fall within the commission's jurisdiction – because "*it did not seem to fit within any of the prescribed grounds or areas in the Act*" (Ruling from HRC 30.03.04<sup>1</sup>).

It was time to go to the media. Following her appearance on TV One's Holmes show, women began to contact her with personal accounts of breastfeeding discrimination. In August 2004, Liz began a petition requesting the House of Representatives take action to address the lack of protection for the rights of breastfeeding women and their children. This received almost 9,000 signatures.

## BACKGROUND

In New Zealand there is no legislation that specifically safeguards women and children's rights with regard to breastfeeding, including in public settings. Over recent years, media stories have emerged about breastfeeding mothers being asked to stop breastfeeding or leave public places, such as restaurants and parks. Even among seemingly influential women, breastfeeding has often been the source of discriminatory practice. Both Ruth Richardson and Katherine Rich are two women MPs who have experienced this type of discrimination and the twenty or so year time gap between their respective experiences highlights the way in which this has been a persistent concern both for women in relatively high powered positions as well as many more "ordinary" mothers.

In contrast, some countries have recently moved to protect the breastfeeding rights of mothers and children through legislation. Recently enacted laws in Scotland and in almost 40 US States have arisen from the need to help overcome the hostility experienced by many mothers when breastfeeding in public settings.

## IMPLICATIONS OF THE LEGAL STATUS QUO

The Ministry of Health notes that breastfeeding contributes positively to five of the 13 population health objectives in the New Zealand Health Strategy.<sup>2</sup> These are to reduce: obesity, the incidence and impact of cancer, the incidence and impact of cardiovascular disease, as well as the incidence and impact of diabetes and improve nutrition. Yet, according to the Ministry, NZ is characterised by a 'bottle feeding culture'.<sup>3</sup> This is illustrated by the fact that most pregnant mothers state their intention to breastfeed, however,

- by the time they are first seen by a Plunket Nurse, a few weeks after giving birth, 19% of babies are being artificially fed and a further 14% are partially artificially fed.

- by 4 – 7 months of age (which is as far as data collection currently extends), 41% of babies are artificially fed, and a further 35% are partially artificially fed<sup>4</sup>.

There is also significant disparity in breastfeeding rates between the various ethnic groups, with the rates among Maori and Pacific peoples remaining consistently lower than the European/Other rates<sup>5</sup>.

The 1990 WHO/UNICEF Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding identifies three components to assisting breastfeeding i.e. protection, promotion and support. While all three facets are important, in New Zealand greater attention has historically been paid to the latter two components. Yet, there is evidence of negative reaction to breastfeeding, particularly in situations where mothers are breastfeeding in public settings.<sup>6</sup> Failure to explicitly protect women and children's breastfeeding rights thus has potential implications for maternal and child health.

Given WHO recommendations for six months exclusive breastfeeding, and continued breastfeeding for up to two years of age and beyond<sup>7</sup>, mothers need to be able to freely breastfeed in public settings such as workplaces, childcare centres, parks and other recreational settings. Failure to do so negatively impacts on their opportunities and abilities to participate fully in public life.

Yet, breastfeeding discrimination has not, until now, been systematically addressed as a gender discrimination issue in New Zealand. There appears to have been little understanding, even some resistance to recognising, that safeguarding the right to breastfeed, including in public settings, represents an important gender equity and human rights concern. Despite growing acknowledgment that breastfeeding has implications for women's labour market participation, there is no requirement for employers to provide breastfeeding breaks (as stipulated by the International Labour Organisation)<sup>8</sup> or for childcare centres to have a breastfeeding policy.<sup>9</sup> For the government to achieve its goal of increasing women's labour market participation, the right to breastfeed in all public settings requires explicit protection and support.

### **Scandinavian example**

It is sometimes assumed that countries that place high value on breastfeeding do not place a strong value on the notion of gender equity and equal employment opportunity. Significantly, Sweden and Norway not only have the highest breastfeeding rates in the OECD, they also have the highest women's labour market participation rates as well as consistently rating among the top handful of countries on the United Nations' Gender Empowerment Measure (which measures women's participation in public and political life).<sup>10</sup> Importantly, Swedish and Norwegian mothers tend to take several months parental leave in order to breastfeed and then return to part-time work. While on parental leave, they continue to be counted, for statistical purposes, as if they were still in work (thus their high rates of labour market participation), although there is a growing number of women who are returning to work soon after the birth in line with international trends in most advanced economies.

Nordics generally also find it incomprehensible that in some countries public breastfeeding might meet with hostility or stigma. In these countries, even young women (those least likely to breastfeed in Anglo-Saxon countries) are commonly seen breastfeeding in public settings. For these reasons, there has never been a need for specific legislation to protect breastfeeding,

### **ADVANCING BREASTFEEDING RIGHTS ON THE POLITICAL AGENDA**

Spurred on by the publicity surrounding the Weatherly case, the Human Rights Commission (2004) prepared a draft discussion document *The Right to Breastfeed*.<sup>11</sup> When calling for submissions, the Commission outlined the international and various national contexts with regard to breastfeeding protection. It also articulated the following set of principles which would inform its future approach:

- 1) A woman has a right to breastfeed and is protected from discrimination for breastfeeding under the Human Rights Act and international law.

- 2) The Commission should support and promote the right to breastfeed.
- 3) When considering breastfeeding complaints, a broad analysis should be used for comparisons across groups.
- 4) A woman should be permitted to breastfeed where she and her child or children would otherwise be permitted to be.
- 5) The right to breastfeed should not be limited by any individual, group, or party unless the intervention is based on evidence of significant detriment to either the mother or the child.
- 6) Breastfeeding should, generally, be considered to be in the best interests of the child but in normal circumstances parents should be allowed to determine what is in the best interests of their child with respect to infant-feeding.
- 7) The approach to breastfeeding discrimination should encompass the view that breastfeeding mothers and their babies form an inseparable biological and social unit.

Significantly, the Commission also noted that despite there being “no specific law or case law to protect breastfeeding in New Zealand, there is general agreement that the Human Rights Act is the primary legislation to protect this right.”(p. 19).

Despite this assertion, breastfeeding - in striking contrast to both pregnancy and childbirth - is *not* explicitly identified in the *Human Rights Act*. Under the Act, **Sex** (which specifically covers “**pregnancy and childbirth**”) is one of the 13 prohibited grounds of discrimination (S22). The Act (S74) also specifies grounds for “**preferential treatment**”, namely **pregnancy, childbirth and family responsibilities**. Breastfeeding’s omission in the Act implies that it is a lifestyle choice and a lesser concern in terms of anti-discrimination than pregnancy. Including breastfeeding under the grounds of **Sex** as well as a **Preferential Treatment** concern in the Act would also serve to “mainstream” it as a fundamental human rights issue.

In May 2005, the Commission convened a forum for stakeholders opened by Steve Chadwick, MP and Chair of the Health Select Committee. The Commission also sponsored the attendance of Professor George Kent, an international expert on breastfeeding rights. Echoing the prior demands of some breastfeeding advocates, Kent advised that the *Human Rights Act* be amended to specify breastfeeding discrimination as a form of sex discrimination and called for greater government funding for NGOs to support breastfeeding. Bearing witness to this need, La Leche League, NZ’s oldest breastfeeding NGO, faced an ongoing struggle to find funds to attend the Forum.

Prior to the Forum, the Health Select Committee advised Liz Weatherly it was going to consider the evidence on breastfeeding rights and invited her, as petitioner, to make a submission. In her submission, Liz asked that the Committee:

- acknowledges that breastfeeding is a fundamental human right
- recognises and addresses the current lack of protection for the breastfeeding rights of New Zealand mothers and their children
- recommends that these rights be safeguarded through new legislation (modelled on the Scottish Breastfeeding Act 2005 – see Appendix 1) and an amendment to the *Human Rights Act 1993* to include breastfeeding in the specific grounds covered by the Act.

The latter recommendation, if put into effect, would not only protect breastfeeding as a fundamental right of mothers and their offspring via an amendment to the *Human Rights Act*, but would also require government Ministers to encourage and promote breastfeeding (as in the case of the Scottish legislation<sup>12</sup>).

In June 2005, the Health Select Committee released its report, noting that “We believe that every woman has the right to breastfeed anywhere she is legally entitled to be, if she feels comfortable doing so.”<sup>13</sup> According to the Committee, this may take the form of an amendment to the *Human Rights Act*. However, it added that “legislation alone cannot achieve public acceptance and support of breastfeeding.” Of equal importance, according to the Committee, are education, social acceptance and the normalisation of breastfeeding. (Interestingly, the redundant qualification “if she feels comfortable doing so” would not be cited in relation to parental comfort over, for instance, whether a child wears a seatbelt, and is one of the reasons

why public health advocates need to support the removal of all social, economic and political barriers to breastfeeding, rather than avoiding the topic for fear of making mothers feel guilty or pressured).

Two other significant recommendations emerged from the Committee's considerations:

1) Strengthen the implementation of the International Code of Marketing of Breastmilk Substitutes as the "current voluntary self-regulation of the infant formula industry in New Zealand is not sufficient to ensure compliance with the code" and 2) Establish the National Breastfeeding Committee "as a matter of urgency to provide leadership and coordination for breastfeeding promotion throughout New Zealand."

On 4 July 2005, the Human Rights Commission released its final statement on the Forum on the Right to Breastfeed, noting its intention to produce a fact sheet on breastfeeding discrimination. It also recommended support for new legislation and better promotion of existing legislation (including amending the HRA to specify that breastfeeding discrimination is a form of sex discrimination) as well as more resourcing and commitment for non-legislative action to support breastfeeding. The Government's response is that it will 'consider whether legislation is the most appropriate avenue'.

These developments represent a generally positive outcome. They also illustrate the power of protest. Breastfeeding advocates await developments with interest.

\* This article draws extensively on both my own submission on The Right to Breastfeed to the Human Rights Commission (2004) and Liz Weatherly's submission to the Health Select Committee (2005), which was the result of a group effort.

#### (Endnotes)

<sup>1</sup> Human Rights Commission. (30.03.04) *Ruling on Complaint of Sex Discrimination against 1. Carol Potts and 2. Titoki Montessori Preschool*

<sup>2</sup> Ministry of Health. (2004). *Review of the New Zealand Interpretation of the World Health Organization's International Code of Marketing of Breast-milk Substitutes*. Wellington: Ministry of Health, p. 2.

<sup>3</sup> Ministry of Health. (2002). *Breastfeeding: a Guide to Action*. Wellington: Ministry of Health.

<sup>4</sup> Royal New Zealand Plunket Society. (2004). *Breastfeeding Rates: Percentages by Age*

<sup>5</sup> Ministry of Health (2002); *Breastfeeding: A Guide to Action* p.8

<sup>6</sup> Human Rights Commission. (2005). "The Right to Breastfeed." Wellington: Human Rights Commission of New Zealand.

<sup>7</sup> World Health Organization. (2003). *Global Strategy for Infant and Young Child Feeding*. Geneva: World Health Organization.

<sup>8</sup> Galtry, J. (2000). "Policies and practices to support breastfeeding in the workplace." Paper prepared and presented at the World Health Organization and UNICEF's Technical Consultation on Infant and Young Child Feeding, Geneva, March 13-17.

<sup>9</sup> Farquhar, S & Galtry, J. (2004). "Breastfeeding Support in Early Childhood Centre" *NZ Research in Early Childhood Education Journal* 7: 135-148.

<sup>10</sup> Galtry, J. (2002). "The impact on breastfeeding of labour market policy and practice in Ireland, Sweden, and the United States." *Social Science & Medicine*. Vol. 57, pp. 167-177.

<sup>12</sup> Scottish Breastfeeding Act 2005, [www.scottish.parliament.uk/business/bills/pdfs](http://www.scottish.parliament.uk/business/bills/pdfs)

<sup>13</sup> <http://www.clerk.parliament.govt.nz/Content/SelectCommitteeReports/hepet02139.pdf>

