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ETHEL BENJAMIN - NEW ZEALAND'S FIRST WOMAN LAWYER

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A B.A. (Hons) dissertation submitted in partial fulfilment for the requirements of a history degree at the University of Otago

30 October 1985
Plate I: Ethel Rebecca Benjamin (1875-1943), Graduation Portrait
I am indebted to my supervisor, Dr Dorothy Page, for her advice and encouragement. I also wish to thank David MacDonald of the Hocken Library, for his untiring assistance; Bill De Costa, for salvaging valuable archival material and for his personal reminiscences; Anne Johnston, my typist; and Sally MacQuarrie, and my Mother, for proof-reading the script. Finally, I am grateful to Pauline and Mandy for being there.
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ILLUSTRATIONS

Plate I: Ethel Benjamin Graduation Portrait.

Plate II: Ethel Benjamin and the profession, 1902 (Hocken Library).
ABBREVIATIONS

SPWC Society for the Protection of Women and Children

SPCA Society for the Prevention of Cruelty to Animals

OGHS Otago Girls' High School

In Chapter Four, the names of individuals involved in the cited cases are not those of the original.
CHAPTER ONE - INTRODUCTION

New Zealand women owe much to the efforts of pioneer professional women who broke the bounds and defied the conventions of a male-dominated society. Ethel Benjamin, as New Zealand's first female lawyer, epitomised the pioneering approach of these women. Born in Dunedin in 1875, she was conscious of the limited role nineteenth century society prescribed for women. The prevailing doctrine of separate spheres and its corollary, the cult of true womanhood emphasised the womanliness of the home environment and the essential manliness of the outside world. Hence they represented two quite separate spheres, one woman's special realm, the other, to a large extent forbidden to her. A body of restrictive legislation reinforced this convention, and men, the creators of the law were also the guardians of its practice. The legal profession was an exclusive male preserve belonging to the "real" outside world which was alien to women. Law for women was thus a difficult profession, one of the very hardest that could be chosen. Yet Ethel Benjamin chose it. She could not have done so however, without the support of the women's movement.

Ethel Benjamin emerged from a generation in which women had made significant advances in the pursuit of political rights and education. The value of higher education for women and girls was realised in the founding of girls' high schools and the admission of women to Universities from the
1870's; in 1884 the property rights of married women were recognised in New Zealand law; and in 1893 women gained the right to vote. This general attack on the inequalities of women in New Zealand society, encouraged and enabled determined women to break out of their traditional sphere. Ethel Benjamin joined a small group of progressive women who took advantage of the new rights which were afforded women and entered into the career of her choice.

In Chapter Two Ethel's education at School and University level is discussed. Education gave women the opportunity to gain the qualifications necessary for entry into careers previously denied them and it increased their awareness of the "outside" world. The higher education Ethel Benjamin received thus facilitated her breaking out of the traditional sphere designated for women.

Chapter Three deals with Ethel's entry into the legal profession and the response to her entry. The legal profession was one of the most reluctant professions to admit women on equal terms with men. Ethel Benjamin's success in becoming New Zealand's first female lawyer in 1897, therefore represents a considerable achievement. However professional status was not enough to make women accepted; having entered the profession, they had to prove themselves capable of the role they took on in the public sphere.

The remaining chapters examine aspects of Ethel's professional career. In Chapter Four her involvement in the
Society for the Protection of Women and Children is described, and the particular areas of her work for this organisation are covered in some detail. Ethel's handling of adoption, divorce, and wife abuse cases illustrates her concern for the well-being of women and her commitment to the wider objectives of the women's movement. Placed within their social context, these cases also provide insights into relatively unknown aspects of family law.

The final Chapter deals with Ethel's work for the liquor trade. Ethel challenged the moral expectations of the "ideal woman" by becoming intimately involved in the liquor industry. Her prominent role in the anti-prohibition movement reveals that, like most progressive women, Ethel Benjamin was a rebel.

Education, and the women's movement, were formative influences on Ethel's decision to enter the legal profession but equally important must have been her home environment.

Unfortunately, few details survive on Ethel's family background. Her parents were Lizzie Benjamin (nee Mark) and Henry Benjamin. Her father, a well-known Dunedin businessman, emigrated from England in the late 1860's to set up a furrier business with his brother Mark. He later entered into a mercantile business and was engaged in sharebroking. The Benjamin family eventually swelled to nine members, Ethel had four sisters and two brothers. They were ortho-
dox Jews and belonged to Dunedin's small Jewish community. In the late 1890's the family returned to England where Henry Benjamin established himself in a London business. Ethel however stayed behind in Dunedin to continue her legal practice.

The limitations of the available sources do not allow for a more complete biographical study of Ethel Benjamin. But perhaps it is significant that her sole surviving personal records are those concerned with her professional career. They provide a fitting legacy of her contribution to the history of New Zealand women.
In an interview with the Christchurch Press in September 1897, Ethel Benjamin described her motivation for pursuing law as a career,

Because in my own mind, I saw that any talent I had lay in that direction, and because, even as a child, I loved the study of law.

Clearly her home environment was liberal enough to allow her to entertain the idea. Indeed, growing up in a Jewish family which placed a high value on education, Ethel was given every opportunity to fulfil her ambition.

A pre-condition of her success in the endeavour was the education she received at Otago Girls' High School. Established in 1871, the School offered the most comprehensive education available for girls in New Zealand. Margaret Burns, the founding Principal, still headed the School, when in 1883 Ethel's parents enrolled her in the Lower Form. However Mrs Burns was soon to retire, in 1885 she was succeeded by the School's first male principal, Alexander Wilson. As principal of the School from 1885 to 1895, his education policy furnished Ethel with the education requirements for University study and the resolve to succeed in her chosen career.
Ethel excelled in her studies, as the repeated appearance of her name in the School's prize lists reveals. In 1885 she was rewarded for her hard work with the prestigious Dalrymple "Victoria" prize for order, diligence and punctuality. However more important was the winning of an Education Board Junior Scholarship in 1888. The Scholarship was valued at twenty pounds and was held for two years, after which, Ethel entered the Upper School where her education was more directly influenced by the education policy of the School principal.

A Scotsman from Inverness, Alexander Wilson, brought to the school, both a strong belief in the value of education for men and women, and, after ten years as English Master at the Boys' High School, a wealth of experience. He had high expectations of the abilities of his students; he encouraged them to do well in exams and to consider university education and professional careers as attainable goals. His education policy at the Girls' High School was thus shaped by his commitment to higher education.

Mr Wilson held that a girl's education should be directed at developing the four aspects of her being - body, mind, soul and art faculty. During his tenure at the School he extended the syllabus to equip students with a more complete education in these four areas. In addition to the core subjects of English, Maths, Science, French and
Latin, domestic subjects - cooking and sewing, also physiology, art and music, were added to the syllabus. The "body-training" of students was provided for by a large gymnasium in which compulsory weekly gym classes were held, and by the provision of fives and tennis courts and a playing area. As a pupil of the School throughout the period of Wilson's tenure, Ethel Benjamin directly benefited from the extended range of subjects it offered and the provision for a "balanced" education. She was also to benefit from the emphasis placed on exam success.

The course curriculum at all levels of the School was directed at preparing pupils for examinations. Regular examinations were held in all classes and pupils in the senior forms were encouraged to sit external exams, of which the most important were for matriculation and university scholarships. Study for these dominated the work of the two highest forms in the School.

Although Mr Wilson encouraged pupils to enter themselves for exams, he was cautious in his inducements. The amount of work expected of exam candidates, led some parents and social commentators to observe that pupils in girls schools were being over-worked. Their observations were based on the widely held belief that the body was a closed system of fixed energies, and that its over-use through competitive exam work inhibited the healthy development of a pubescent
female's reproductive organs. In 1893 in response to public debate on the subject, Mr Wilson was drawn to comment on over-work. He believed that the nature of women predisposed them to over-work but that a careful balance of exercise and study could prevent its occurrence. In exceptional cases, where over-work was evident, Wilson was willing to compromise his expectations of a student's ability by reducing her workload, however generally speaking, he held to the belief that "if parents enter their daughters for a race they must expect to see them hard driven".

The success of the School in training girls for external examinations was self-evident. In 1889, out of the thirty-two Scholarships awarded in New Zealand, five went to pupils of the School, who were placed third, fourth, sixth, ninth and twentieth overall. The continued success of pupils in this exam led Mr Wilson to comment in the following year that his School had achieved the highest standard of any school in the colony.

Mr Wilson encouraged his pupils to sit external exams as success in these provided an entree to university study. Through direct encouragement and example, he instilled in students the value of a university education. In his first report, Wilson initiated the custom of acknowledging the university successes of ex-pupils. In the same year, 1885, Caroline Freeman, the first female graduate of Otago
University was capped. Mr Wilson joined with the other academics present at the ceremony, in congratulating Miss Freeman on her success (although he may have been disappointed that it was not an ex-pupil of his who achieved the honour). Wilson went on to comment that he hoped it would not be long before women would graduate not only in general degrees, but in professional courses of study – medicine, and even law.

In the following year, Marion Steele became the first ex-pupil of the School to graduate from Otago University. Wilson praised her achievement in his School Report and expressed the hope that her example would be numerously followed in years to come. From 1886 a steady stream of ex-pupils did go on to complete general University degrees. Wilson remained hopeful that students would also tackle specialised degree courses, and he published an article to this effect, in the 1889 School Magazine, but unfortunately there are no surviving copies of the publication.

Catherine Moss, a former dux of the School was the first woman to take up Wilson's suggestion. In 1891 she finished the BA degree and had completed the first section of the L.L.B. degree. However she did not continue her studies; withdrawing from University, she left to Ethel Benjamin the initiative in becoming the first woman to complete the law degree. Margaret Cruikshank and Emily Siedeberg fulfilled
Wilson's expectations when, in 1892 they left school to take up professional training and ultimately medical degrees. Ethel Benjamin, who was a class behind these women, followed a year later and began her legal studies\textsuperscript{16}.

As the early feminists realised, the nature and level of education available to women was fundamental to their perceptions of the variety of roles from which they could choose and the realisation of opportunities which were thereby made available\textsuperscript{17}. Otago Girls' High School provided the most comprehensive range of subjects available for young women of school age in New Zealand. Under Alexander Wilson, students were made aware of the possibilities for utilising the education they received in ways traditionally considered inappropriate for "young ladies". Thus by the time Ethel Benjamin passed the University Scholarship exam in 1892, she was well prepared to meet the demands of University education and for admission into Law School.
In 1893 Ethel Benjamin enrolled at Otago University for the first section of the L.L.B. degree. Although women had been admitted to degree courses at the University since the mid-1870's, she was the first woman to be admitted to the Law School1. By the time of her arrival, an estimated thirty women had taken degrees; twenty of these were B.A.'s and ten M.A.'s. The majority of these graduates utilised their degrees in traditional fields of employment, particularly in teaching2. Ethel Benjamin joined a select group of women who initiated women's entry into the University's professional schools, and ultimately into the professions of medicine and law.

The first woman to attempt entering a Professional School at the University was Mary Tracey. In 1884 she enrolled at the Otago Medical School. However confronted with persistent male hostility, she was forced to withdraw. The exclusiveness of the medical school was not again tested until the arrival of Emily Siedeberg in 1892. She applied to the School in 1891, and although six of the nine staff opposed her application she was granted entry. A year later she was joined by Margaret Cruikshank. The place of women in the Medical School was thus secured, however reluctantly it was accepted by male staff and students3.

Although women entered the Medical School with relative ease this did not necessarily ease the way for women who
wished to enter law school. Female medical students could justify their entry into a "male" profession by claiming it to be an extension of their caring and nurturant functions as women. They could also claim that women doctors would be able to protect female modesty by ministering to members of their own sex. By contrast, women lawyers were clearly intruding on the public domain explicitly reserved for men. Aspiring female law students could hardly claim that the world of business, finance, and the law courts was complementary to the ideal of nineteenth century womanhood. In fact, women considering entering the legal profession risked "unsexing" themselves as one Member of Parliament warned.

Neither did New Zealand women have the precedent of female entry in British law schools to rely on. Whereas women were admitted into British medical schools from the late 1860's, they were prohibited from entering British law schools until the turn of the century. The length of tradition and the degree of institutionalisation within the British legal system and law profession contributed to the lateness of their entry. The Otago Law School in the 1890's was a fledgling institution, with only three lecturers. In the absence of the long established traditions of the English Law Schools, it was more likely to be conducive to a liberal policy regarding female entry.

Ethel Benjamin appears to have been permitted to enter Law School without antagonizing its male staff. However,
like the early British women students, she entered the School without a guarantee that she would ever be able to practise. The 1882 Law Practitioners Act restricted the right to men. Undeterred by this discriminatory legislation Ethel pursued her law studies with determination. She reflected on her decision:

When I heard that being a woman I could not be admitted to the practise of the law, I was very indignant, and I suppose, being a true daughter of Eve, the fruit, because forbidden, became all the more attractive and desirable, and I grew all the more determined to follow the legal profession.

In 1893 Ethel began the preliminary course for the L.L.B. degree. Fellow women students welcomed her to the University, and the "Cloak Room Society", praised her brave entry into Law School. Male students also expressed their approval though this had sexist overtones.

The law course which Ethel embarked upon was a four to five year degree, divided into three parts. The first section consisted of Latin; English Language and Literature, or the alternative Mental Science; and Jurisprudence and Constitutional History and Law. Unlike other papers offered by the School these were all presented as lectures by the Professor and other lecturers in the University. By passing the Section One subjects a student was entitled to carry on to Sections Two and Three of the degree. These consisted of nine groups of subjects: Contracts and Torts; Roman Law; International Law; Equity; Criminal Law; Real and Personal
Property; Evidence; Practice and Procedure in the Supreme Court; and the Statute Law of N.Z. In 1893, the Law School was severely understaffed, and, with the exception of Real and Personal Property, all of the above subjects had to be studied by the student alone, there being no appointed lecturer or lectures set down for them. During Ethel's time of study at the School, some improvements were made as new lecturers were appointed. However in 1897, two of the most difficult subjects in the degree course — Roman and International Law, continued to rely on the individual effort of students. As the students themselves noted, the current system placed a great deal of strain on them for concentrated hard study. In the light of this, Ethel's success at University is all the more outstanding.

After achieving good grades in her first year of study Ethel went on to the degree course proper. She proved her ability by excelling in all subjects and in the final examinations she gained the highest marks in her class for constitutional history and law, and jurisprudence. An anxious male student was drawn to comment on her success. He sarcastically cautioned his fellow male students:

Let the weaker sex — the men of course — look to it they are not eclipsed as happened last session, by the other representatives.

The threat of women surpassing the male students in exam success was keenly felt. A year later the student paper published an article titled, "Have Women as Good Brain Power
as Men", in which the writer searched for explanations for their success. He concluded that as only the top female scholarship exam candidates made it to University, they put the men at an unfair disadvantage. However he failed to realise that female students had to work doubly hard not only to get into University, but, once there to prove themselves "worthy" of higher education¹³.

Some male students expressed their opposition to female students in more direct ways. In 1895 the Ladies Faculty complained of the treatment of female medical students by male students. Emily Siedeberg and Margaret Cruikshank had doors slammed in their faces and were frequently prevented from viewing demonstrations by the broad shoulders of their male counterparts who stood in front of them at the dissection table¹⁴. The participatory nature of the medical course provided numerous opportunities for symbolic discriminatory behaviour. In contrast, the Law School was much smaller and held fewer classes: a room of thirteen male students was less daunting and could prove less hostile than a lecture theatre full of men¹⁵. Ethel appears to have been confronted with less blatant discrimination than her sisters in the Medical School. As the sole female member of the Law School, she won the approbation and respect of her class mates. Their support was officially acknowledged when, in 1894 the Legal Club commented on a bill which included a provision for the admission of women to the bar,
This met with unanimous approval, and we all vowed that when our candidate was "admitted", we would do all sorts of pleasant things for her. The clerk said he supposed it would take the form of a banquet.\textsuperscript{16}

The smallness of the law classes and the necessity of working independently for much of the time, promoted a common bond among law students. One student described the Constitutional History class of which Ethel was a member, as the "happiest family in the University.\textsuperscript{17}

The enthusiasm of Ethel's peers in the Law School is in contrast to the reluctance of the official organ of the profession - the Otago District Law Society, to recognise her as a student. The Law Society administered the Supreme Court library which held the most extensive range of law texts in Dunedin. Access to the library was essential to all law students. However the Council of the Society could exercise its discretion in determining who was permitted to use the facility. In the first of a series of symbolic actions the Council created difficulties for Ethel by denying her access to the library. In March 1895 Ethel applied to the Law Society for permission to use the Law Library. The Council responded that there was "no rule applicable to your case". But although she was excluded from the library itself, Ethel was granted permission to read in the Judges' Chamber Room, and to take books out of the library, providing she obtained the consent of a Council member. In this way the male members of the profession
would be preserved from "unnecessary and distressing contact with a woman". The attitude of the Council demonstrated their belief that law was a man's profession and indicated that as a woman Ethel would only grudgingly be accepted, and even then only on their terms. In her reply to the Council Ethel refused to be daunted by her ostracism:

As there is no rule applicable to my case I must ask you to convey my thanks to the Council for what is then their very liberal treatment of me. For the present it will answer every purpose and I am more than satisfied to be allowed to consult your many valuable books even though apart from the library and the profession.

Despite being segregated from other law students in the library, and being deprived of useful contact with members of the profession, Ethel's academic record did not suffer. In the second section of the degree she gained the highest marks in New Zealand for Roman Law, and in her final exams for the third section, she was placed first in Equity and Evidence, bracketed first in Criminal Law, and bracketed first in Real and Personal Property.

By the end of 1896 Ethel Benjamin had completed an outstanding university career. In July of the following year her achievement was officially recognised in the University's graduation ceremony.

Ethel Benjamin's graduation was a momentous occasion, not only for herself and her family but also for the University. A feature of the ceremony which took place on 9
July 1897 in the University library, was the speech made by Ethel on behalf of the graduates. The choice of speaker was an important one, it was the first time that a current graduate rather than a past graduate had made the reply, and it was also the first occasion on which a woman made an official speech in the University.

The Vice-Chancellor, Edward B. Cargill presided at the ceremony. In his opening address he made special mention of both Ethel Benjamin and Margaret Cruikshank. He laid particular stress on the progressiveness of Otago University; the first University in Australasia permitting women to obtain a law degree. Cargill hoped that other "more important and older institutions" would follow Otago's example and admit women to professional degree courses. The benefits of higher education amongst women were, according to Cargill, self-evident. The transformation of the "sheltered" lady into the self-sufficient woman enlarged the range of women's influence throughout society. He commented:

We have the satisfaction of knowing that a fair proportion of women - women is the right word - not ladies - have taken their place as graduates and are carrying their culture into the various spheres in which they move.

Following Cargill's speech, Mr A. Hamilton, rose to present the new graduates, capped and begowned to the Vice-Chancellor. Four of the twenty-seven graduates were women: Ethel Benjamin L.L.B.; Margaret Cruikshank MB,
B.Ch.; M.C. Webster B.A.; and Margaret Smith M.A. The accolade which was bestowed upon these female graduates by the audience, was a meaningful gesture in support of women's progress. As one student observed:

Quite a shower of bouquets was rained upon the "sweet girl grads" as they advanced to the dais, Miss Benjamin and Dr Cruikshank coming in for a special share of attention in this respect.

Ethel Benjamin was even more warmly received by the audience when she rose to reply to Cargill's speech. Unfeignedly frank, she admitted to being somewhat nervous; it being the first time she had spoken in public and she had only been asked to do so the day before the ceremony. Nonetheless she spoke confidently. In a pointed speech, she reviewed the advances made by women in the professions and proposed directives for their further emancipation. She cited examples of occupations which had been "invaded" by women; New Zealand now had her lady butcher; her lady commercial travellers; her lady auctioneer, her lady opticians; her lady dentists; her lady watchmakers; even her lady blacksmiths. These were but a few of the occupations which had been taken up by women and which were previously unknown to them. Ethel believed it was important to have a wide range of employment options, as they allowed women the opportunity to become economically independent. She realised that economic independence was a pre-condition of women's emancipation from the confined roles of the
Victorian age. Only through economic independence could women become self-actualised, fully integrated beings. As Ethel expressed it:

Formerly women were compelled to marry that they might not have lived in vain. How dreaded was the thought of "being on the shelf", and for how many unhappy marriages has this same dread been responsible. But now women's lives are becoming fuller, freer. They have at last come forward and claimed their right to work as and how they will. The struggle for their rights has not yet ended. It is growing keener and keener day by day and year by year\textsuperscript{27}.

Ethel spoke convincingly of the progress being made by women, which was affecting all levels of their involvement in Society. She went on to comment on the need for women to become integrated persons, but she warned against using a "masculine" approach in the new spheres in which they moved.

Higher education has done much for us women. In bygone years the intellectual life of women was as a general rule starved out of existence. The heart only was developed and often at how great a cost! But here I would sound a warning note \ldots\ldots\ldots\ldots let us see to it that we do not go to the other extreme - that our women do not become mere thinking machines; that they do not lose that individuality that every man and woman should prize above all else. The heart must be developed as well as brain. The ideal new woman will perfect herself, body, mind and soul\textsuperscript{28}.

This idealised "new women" exhibited the personal qualities which Alexander Wilson attempted to instil in his students.

As a strong-willed independent young woman Ethel Benjamin was prepared to confront the world of the legal
profession and judicial system and force her way in. She would carry with her a basic belief in the equality of men and women and a determination to enforce that equality in the spheres in which she moved. When Ethel spoke of the potential of late nineteenth century feminists she spoke of her own experience as the epitome of the feminist-rebel:

For centuries women have submitted to the old unjust order of things, but at last they have rebelled, and as Sarah Grand has it:

'It is the rebels who extend the boundary of right, little by little narrowing the confines of wrong and crowding it out of existence.'
CHAPTER 3 - ENTERING THE PROFESSION

(1) The Female Law Practitioners Act

Before Ethel Benjamin was permitted to enter the legal profession, a bill had to be passed permitting her to do so. In July 1895, the MP for Riccarton, George Russell, gave notice "amid laughter", of a bill empowering women to practise law\textsuperscript{1}. The Female Law Practitioners Bill coincided with a more general bill for the removal of women's disabilities. However neither bill was successful and they were both discharged\textsuperscript{2}. In 1896 Russell again introduced both bills. Ethel had by this time completed the second part of her law degree and this added weight to Russell's arguments for their introduction.

During the second reading of the Female Law Practitioners Bill, Russell quoted from a newspaper clipping which stated that Ethel Benjamin had gained the highest marks in the country for Roman Law and had completed the second part of the L.L.B. degree\textsuperscript{3}. New Zealand had entered upon a system of higher education for women which equipped them for roles within the legal profession and public sector but which laws restricted them from entering. Russell, a Christchurch educationalist saw little reason for educating women if they were not permitted to utilise their education.

If we are going to lay down that the sphere of women should be confined solely to the household and the nursery. Of what use is the higher education of women, which is one of
the most prominent features of the education system.

MP for Otago, Mr Bolt, spoke in support of Russell's bill. The enfranchisement of women had been but a prelude for women to come forward and claim further privileges. He believed that it was only right therefore, that women should be permitted to enter the legal profession. Bolt pointed out that with the exception of law, nearly every other profession had been invaded by women, "but the law seemed to be a Tom Tiddler's ground that women were not to be allowed to enter upon at all". Women had proved their abilities in journalism, medicine and business - but law remained outside their domain.

An Auckland MP, Mr Jennings expressed his disappointment with the slow progress being made by the women's movement since female enfranchisement in 1893. Despite the opening of University degree courses to women and the qualification of many with degrees, there remained a great deal of objection to women pursuing careers. Jennings claimed, that if women were qualified to practise law or any other profession, there remained no justification for debarring them from entering these careers.

Not all MP's supported Russell's bill. G.S. Whitmore, doubted that the general public would be confident in a female lawyer, he thought women were incapable of discussing matters of "importance". He feared an invasion into the
profession of a "great mass of Portias", who would neglect their "ordinary female duties" and create an enormous amount of unnecessary litigation in New Zealand's courts. Mr Scotland, the MP for Taranaki voted against the Bill, he claimed it encouraged women to "unsex" themselves, and would make New Zealand look ridiculous in the eyes of the world. One MP opposed the bill stating that he preferred to support a wider measure for the removal of all legal disabilities against women. Such a bill was before Parliament at the time, but its passage was more likely to be impeded than a limited bill allowing women to become lawyers.

The Removal of Women's Disabilities Bill, as introduced by George Russell in June 1896, was intended to do away with legal disabilities and open every avenue of public office to women. The Bill included a provision for women's entry into the legal profession, as only by permitting women to become lawyers would they be able to occupy the position of Judge in the District or Supreme Court or any other position in the Civil Service requiring legal qualifications. The bill also aimed at allowing women to enter the House of Representatives, to be nominated to the Legislative Council, and to serve on juries. As the women's movement realised, the right of women to fill these positions was of paramount importance, not only would they extend the range of occupations available to women but they would also place women in positions of responsibility where they could represent women's interests.
Russell held to the belief that the extended role of women in society would re-direct public opinion to issues of interest to women. Women's voice in public policy would turn attention to the needs of the sick and the elderly, and articulate the demands of women and the needs of their children. Society as a whole would therefore benefit from the advent of women into public life. Few parliamentarians agreed with Russell's reasoning, they were unable to reconcile their image of womanhood with the real world in which they moved. Mr Allan represented the consensus of opinion against the bill when he declared that it went too far. He described it as, "... a wholesale measure placing the women on an equal footing with men in all those spheres of life which for so many years have been occupied by men ...".

The strength of opinion against the bill was sufficient to impede its progress and it was eventually thrown out. Its sister bill, the Female Law Practitioners Bill, nearly suffered a similar fate. This bill, which passed successfully through the House of Representatives, was later rejected by the Council. However the MP for Otago W.M. Bolt salvaged the bill and re-introduced it at the next sitting. This time the bill was passed by the Council, though with only a bare majority, and in September, it was enrolled in the Statutes of 1896 as the Female Law Practitioners Act.

By pursuing her legal studies Ethel had prompted the legislature into responding with an act permitting her to
practise law. She was indebted to George Russell and W.M. Bolt for representing her interests and the interests of all women, by introducing such a bill and supporting it through it various stages. But had Ethel not acted in anticipation of the act being passed it is unlikely that they would have been successful, and the bill would have suffered the same fate as the Women's Disabilities Bill. Like many advances made by the women's movement, progress relied upon the individual effort of outstanding women. As Ethel herself was later to realise:

My admission to the Bar at all is no doubt somewhat of a departure from the customary and had I not been of a progressive turn of mind, but content to accept the conditions as unalterable, I should not be practicing here today 12.

The Female Law Practitioners Act 1896, entitled all women who were suitably qualified to practise the profession of law. In May 1897, Ethel gave effect to the new legislation when she was admitted by his Honour, Mr Justice Williams as a barrister and solicitor of the Supreme Court of New Zealand 13.
(2) Commencing Practice

In the personal column of the Otago Daily Times, 11 May 1897 it was announced that:

"Miss Ethel Rebecca Benjamin, L.L.B., was on Tuesday admitted by His Honour Mr Justice Williams as barrister and solicitor of the Supreme Court of N.Z.".

The event marked the fulfilment of Ethel's career ambition and a further inroad into the professions by women. But despite official recognition of women's entry into the legal profession, the profession itself was not wholly receptive to the innovation. Ethel's subsequent experience in dealing with the profession revealed that despite the lifting of legal restrictions to female entry, the legacy of the restrictions and the ideology which supported their existence persisted. This incongruous situation determined both Ethel's level of interaction with the profession's "guardians", and perceptions of her as a lawyer.

Women who attempted to break out of their "proper" domestic sphere were frequently accused of "unsexing" themselves. However, once they attained professional standing, their femaleness was emphasised, and it was thus their sex which coloured impressions of how such women behaved in their new surroundings. Contemporary accounts of Ethel's first few months in practice, reveal these expectations. A law student in anticipation of Ethel's first appearance in court noted the feminine characteristics which he assumed a woman-lawyer would employ to her advantage in the Courtroom.
The seductive charms of a lady pleader have long been a source of premonitory conster­nation to judicial circles, but as yet, Miss Benjamin has fluttered the heart of no jury, nor even made to tremble the judicial equilibrity of a justice of the peace. The patronising tone of his comments suggests that he had little confidence in her career as a lawyer. Other commen­tators feared that Ethel's participation in New Zealand's courtrooms would lead to a lengthening of litigation, as women were prone to rely on emotional and sympathetic argu­ments rather than sound logic and reasoning.

The Otago Daily Times "Civis" resorted to romantic ima­gery to express his expectations:

So Miss Benjamin has duly arrived at her coveted destination. Now that she has attained the privilege of wearing wig and gown it only remains for us to hope that briefs will come as thick as autumnal leaves that strow brooks in Vallanbrosa, and that since she has become a member of that joyful company whose motto is "Let us Prey", her predatory raids might be mitigated by feminine com­passion, and her pleadings mindful of the susceptibilities of juries who are only human afterall.

His poeticism conceals the underlying condescension of his comments. Literary allusions were also employed in descriptions of Ethel. Unable to resolve the conflicts inherent in their impressions of a woman working in a male preserve, commentators likened her to Shakespeare's Portia, who disguised herself as a male lawyer in order to save the life of her lover. Contemporary accounts frequently allude to Ethel as a personification of Portia. The occaision of
her debut in Court led the Student Review to publish a poem in her honour titled, "Miss Portia L.L.D.". "Civis" wrote of the same event, "Portia will thus step straight from the pages of the dramatist and from the stage to real life in our very midst". The analogy was, however, limited in its appropriateness. To gain acceptance in the Courtroom, Portia concealed her sex and posed as a man. Whereas Ethel, who had no disguise to hide behind, entered the male preserve of law as a woman. She was, therefore, the more conspicuous interloper of the two and her efforts to gain acceptance within the profession were all the more difficult.

The principal difficulty experienced by Ethel, and fellow women lawyers in Canada and America, was that they were viewed and treated as women rather than as lawyers. As a contemporary put it:

The one weak point in the women lawyers panoply so far as may be gathered from her own admissions, is her consciousness that she is a woman, and the continually obtruding consciousness that her men confreres and contemporaries never once lose sight of this fact.

Ethel Benjamin was constantly being reminded that she was a woman. The law and the Courts were viewed as distinctly masculine fields of activity; by intruding into this domain she threatened its male-orientation. Her distinctiveness as a woman thus set her aside from the other members of the profession who asserted their exclusiveness and homogeneity as a body of men.
The Otago District Law Society, the official organisation of Dunedin lawyers, expressed its opposition to Ethel's encroachment into their male world. Through a series of small and apparently insignificant acts, the Society discriminated against Ethel both professionally and socially. When, after the passing of the 1896 Act, it became evident that she would soon become a member of their profession, the Society, troubled by the prospect of a woman in Court, tried to impose regulation Court dress for her. Mr Hosking, a member of the Society's Council proposed a resolution.

In view of the fact that women are now admitted to the privileges of the Bar it is desirable that some dress should be prescribed, and it is suggested that the Judges should make a regulation and this Council submits that the regulations should be as prescribed by the Ontario Law Society.

A newspaper clipping supplied by a Mr William Gordon described the regulation dress for lawyers in Ontario. Women who appeared in Court wore a black dress, under a black gown, with white collar and cuffs, and were bare-headed. The author of the article stressed that the absence of a hat or wig placed women lawyers at a distinct disadvantage - both to other women present as audience, who generally wore hats, and to male lawyers who wore the traditional court wig. Hosking's resolution represented a manoeuvre to distinguish Ethel apart from the profession. The Court dress of the judiciary was deeply rooted in tradition and custom and was symbolic of male authority. It is not surprising therefore, that men, who were reluctant to
share their control should also object to women wearing their traditional dress. Hoskings attempt was not however successful, after being seconded by Alf Hanlon it was sent to Mr Justice Williams who declined jurisdiction on the matter, and two meetings later the issue was dropped. When Ethel did appear in Court she was attired in the officially recognised garb of wig and gown.

In reviewing the problems encountered by pioneer female lawyers, one woman observed that the difficulties in gaining acceptance in the profession would be eased once the present incumbents at the Bar were replaced by younger Judges. Indeed, Ethel's experience with the profession reveals that the younger members were more likely to accept her on equal terms than the older. At Law School, she had won the respect and admiration of fellow students, but on entering the profession she was confronted by the strong indifference of its "guardians". Symbolic of the divergence of attitude, was at one level, the willingness of the University Legal Club to hold a banquet in Ethel's honour, and on the other, the repeated refusal of the Law Society to include her in their annual dinners.

The first occasion of Ethel's exclusion from this event was in 1898, when it was proposed that a Bar Dinner be held to celebrate the founding of the Otago Settlement. Invitations were sent out to all Dunedin lawyers, but
although Ethel signified her intention of attending the function she was not invited. A second Bar Dinner was held in the following year; Ethel's name was once again excluded from the invitation list. This time however, she retaliated to the slight. In a firm, uncompromising letter to the Secretary of the Society, Ethel objected to the discriminatory behaviour of his organisation.

I wish to ask you why I was not notified of the Bar Dinner recently held under the auspices of the Law Society. I am exempted from none of the obligations imposed on members of the Profession, and I consider all privileges extended to them as such, should also be extended to me. Whether or not I avail myself of those privileges is surely a matter for me to decide. It may be of course, that the omission of my name was an oversight, but, if purposely omitted on account of my sex, I have to enter a protest against such treatment. As a matter of fact I should not have attended the Dinner, but that does not lessen my right to be notified as were all other Solicitors practising in the District, and I resent the omission of a courtesy which I consider my due. Moreover, I do not think that without protest I should allow a precedent to be established that may affect the rights of other members of my sex who will follow in my footsteps.

At a meeting of the Society, later that month, Ethel's letter was read to the Council and it was suggested that the Secretary see Miss Benjamin on the subject. It is unknown how the matter was resolved, but in 1902, when a third dinner was held (in conjunction with the opening of the new law courts), Ethel was again excluded. Although she reminded the Secretary of his duty it is unlikely that she attended the function.
Plate II: Ethel Benjamin and the Profession
The opening of the new law courts in 1902 led to a further incident in which the legal profession showed their discomfort with Ethel's presence. When members of the profession assembled for the formal procession to the new law courts, no-one was willing to be partnered with her; only at the last minute did J.M. Galloway volunteer to walk alongside and save her from conspicuous isolation.\(^{14}\)

Ironically, in a photo taken at the conclusion of the procession on the steps of the new law courts, the photographer has placed Ethel in the centre front, allowing her diminutive presence to dominate the group. Her upright bearing projects a dignity and pride in her outstanding achievement, assuring her confident place alongside the profession's ablest lawyers.

Not all Dunedin lawyers objected to Ethel's presence. Amongst her colleagues were men with whom she had gone through Law School, such as Mr Platts, and others who were also members of the local Jewish community, such as Saul Solomon, a prominent Dunedin lawyer; with these lawyers she established friendly and occasionally useful relations.\(^{15}\) However, on the whole, Ethel appears to have received little of the customary assistance new members were granted by established lawyers.\(^{16}\)

Women who entered the profession at this time, generally had to prove themselves capable of the role they
took on in the public sphere. But without the assistance of senior men or the support of fellow women within the profession, women experienced difficulties in becoming established. A common complaint made by women lawyers was that few briefs came their way. Indeed, Ethel Benjamin noted this when in 1907 she moved to Wellington, "I know from experience that no business will be put my way by other solicitors, and I must look to the public for support."  

Ethel was aware that without the support of the "old boys network", her position in the profession was a marginal one. She could not afford to rely on clients being recommended to her so she resorted to advertising her practice. The success of Ethel's career came to depend upon this mode of publicity as she herself realised:

I consider that it is imperative that I should make myself known by constant and attractive advertising ..... I intend to push my business all I know.

It is significant therefore that both the Wellington and Dunedin District Law Societies attacked this aspect of Ethel's business conduct. Some time after taking up her practice in Dunedin, Ethel was informed by the Law Society that her period of advertising had extended beyond the customary length of time deemed appropriate, and in 1907 the Wellington District Law Society passed a resolution declaring Ethel's frequent advertising both "unprofessional" and "unacceptable". With her usual boldness, Ethel rejected
both organisations' recommendations and continued to advertise her practise. She informed the Wellington Law Society, "I reserve the right to conduct my business as I think desirable."20.

The form of publicity used by Ethel included advertisements in newspapers and the distribution of printed circulars. Her advertisements in the *Otago Daily Times* listed her as a barrister and solicitor available for all types of legal work from her offices in the Albert Buildings, Princes Street21. Although business was initially slow, Ethel gradually built up her practice as her reputation as a capable lawyer become known. Some of her earliest clients were married women with financial interests, in property and shares. Aware of the difficulties experienced by pioneer professional women, these women may have intentionally transferred their business to Ethel as a sign of support in her venture22. The Jewish community also supported Ethel, amongst her earliest clients were members of the community, such as the Jacob family23. The location of Ethel's offices, next door to Wains Hotel was fortuitous. The Hotel's proprietor, Walter Binsted became one of her largest clients. His influence in the liquor industry may also have been useful for her, in attracting other hoteliers to her practice. But despite the support of these clients the development of Ethel's practice was very gradual. It was not until 1904 that she felt confident enough to withdraw
her advertisements from circulation and rely on her reputation as a lawyer to guarantee her work\textsuperscript{24}.

Although most of Ethel's work was as a solicitor, she did occasionally appear in Court to represent her clients. The first such occasion was much publicised, although the actual case was relatively unimportant. On 17 September 1897, she represented Joseph Cox, plaintiff for the recovery of a debt of sixteen pounds. The case was undefended. The court reporter described her representation as "one of interest", as it was the first time that a female lawyer appeared as counsel in any case in the British Empire\textsuperscript{25}.

In 1909 the editor of the \textit{Commonwealth Law Review} noted the conservatism of the legal profession and the exceptional qualities which were thus required of women-lawyers if they were to succeed within it:

\begin{quote}
Not alone courage and persistence, but a more than careful preparation, and a resolve to win through are essential to a woman who can dare enter a profession which is practised not alone before the eyes of the public, but before the highest members of the profession - the Judges\textsuperscript{26}.
\end{quote}

Ethel Benjamin's entry into the legal profession was a bold undertaking but one for which her tenacious nature was well-equipped. The success of her subsequent career proved that women were capable of being lawyers and that their sex did not detrimentally affect their ability to administer the law. If anything, Ethel's ability as a lawyer was heightened by her awareness of her sex.
CHAPTER 4 - SOLICITOR TO THE SOCIETY FOR THE PROTECTION OF WOMEN AND CHILDREN

G.F. Greig, the first woman to practice law in Australia, noted the altruistic objectives of professional women who, in seeking the advancement of their sex, worked towards wider improvements in the conditions of women in society as a whole. The dual nature of late-nineteenth century feminism in New Zealand confirms Greig's observation. On one level, individual women like Emily Siedeberg, Margaret Cruikshank and Ethel Benjamin, sought autonomy and self-determination through higher education and professional careers. The second level of feminist consciousness was realised when many of these women went on to form organisations whose objectives aimed at improving the legal, economic and social standing of all women.

Ethel Benjamin, as a professional lawyer and as a founding member of the Society for the Protection of Women and Children (hereinafter SPWC) exemplifies both levels of feminist consciousness and thus fulfils Greig's criteria.

The SPWC was formed in Auckland in 1893. Its formation was initiated in response to the rising level of social distress amongst women and children in urban areas. The effects of urbanisation and a fluctuating economy created a concentration of social problems in New Zealand cities. Women and children deprived of the legal, economic and
social advantages of men, were the victims of these problems⁴. High levels of unemployment placed a strain on the family unit and often led to wife desertion. Maintenance payments were difficult to enforce, particularly when absconding husbands fled to Australia. Socially aware New Zealanders expressed their concern with the prevalence of wife and child abuse, and its exacerbation by a husband's drunkenness. The rising level of illegitimacy was also a concern, particularly as the double standard of nineteenth century morality led so many men to evade their responsibilities to illegitimate offspring. Existing institutions such as the Salvation Army and the Churches were inadequately equipped to cope with these problems. The SPWC was formed to provide both a supplement to the services offered by these institutions and a new service for women whose distress stemmed from the marriage situation itself.

From its inception in Auckland the SPWC extended by forming branches in other major cities. A Wellington branch was established in 1897, Dunedin followed in 1899, and Christchurch in 1908⁴. Support for the formation of a Dunedin branch of the Society was first voiced in February 1899. A leader article in the Otago Daily Times described the work of the SPWC in Wellington, praising its ability to "alleviate suffering and promote a virtuous life". The author suggested that such a society would be of great benefit in Dunedin where there existed similar social problems
to those which had prompted its formation in Wellington. Ethel Benjamin responded to the article in a letter to the editor, in which she expressed her support for the proposal and the hope that it would be acted upon. She believed that the work of such a society was "peculiarly suited to a woman's province" and that it would be preferable to have female officers within the organisation. She volunteered her services:

If, as I hope will be the case, a Society will be formed here for the protection of women and children, I shall be glad if they will permit me to become the honorary solicitor and to do what lies in my power to help make it a success.

A few weeks later a public meeting was held for the formation of a Dunedin branch of the SPWC. Ethel Benjamin was a prominent participant at this meeting. She reiterated her belief that the Society would be most effective if women were responsible for the handling of the cases:

Some of them would be rather delicate and any woman who had necessity to seek the help of the Society would rather confide in a woman than a man.

It was agreed that the position of visitor (that is the person responsible for visiting a woman's home) should be held by a woman, but the other officers were open to members of either sex. The inaugural meeting of the Society was held in May. Ethel Benjamin was duly nominated honorary solicitor along with two other prominent Dunedin lawyers, Messrs A.S. Adams and F.R. Chapman; the Dunedin Mayor, Mr
R. Chisholm took on the role of President; Reverend Curzon-Sigger, and Mrs Rachel Reynolds shared Vice-Presidential duties; Dr Emily Siedeberg volunteered her services as honorary medical officer; and Misses Statham, who was also Secretary of the Dunedin Women's Christian Temperance Union, and Bigg as honorary secretaries. Thus, socially concerned and socially prominent men and women assumed the major positions within the Society. The calibre of its membership proved to be important to the overall success of the organisation.

The objectives of the Society were first, to initiate proceedings in cases of cruelty, seduction, outrage or excessive violence to women and children; secondly, to give advice and aid to women who had been cruelly treated; thirdly, to provide neglected children with homes; and finally to agitate for improvements in the law in respect to the protection of women and children. Within its first year of formation, many women sought the Society's help. They approached the Society for a variety of reasons. A large number of cases concerned complaints from separated wives who were unable to maintain their children, there were also complaints from women who had adulterous or drunken husbands; others involved specific incidents of wife and child abuse; unmarried mothers approached the Society, hoping that suitable homes could be found for their illegitimate children; and women in violent unsatisfactory
marriages sought the help of the Society in arranging divorce or separation.\textsuperscript{10}

The procedure for dealing with cases involved a series of consultations by the visitor with both the husband and wife. If these failed to resolve the conflict or distress, then legal action was threatened. At this stage Ethel Benjamin, or one of the Society's other lawyers, became involved. The threat of legal action was often sufficient to settle the dispute but if it failed, legal proceedings were initiated.\textsuperscript{11}

As honorary solicitor to the SPWC, Ethel Benjamin became intimately involved in the work of the Society. The annual reports acknowledge the Society's debt to her; she offered her services freely and ungrudgingly. The major areas of her involvement were in cases of wife abuse, the arranging of separations and divorces, also enforcing maintenance, and negotiating adoptions. Each of these areas will be examined individually. Placed within the context of evolving social legislation and an emerging women's movement Ethel Benjamin's casework provides insights into the status of women within the family unit and within the law.
(1) **Domestic Violence**

The founding objective of the SPWC was to provide relief and assistance for women and children who suffered from violence in the home. Although in practice, the scope of the Society's role extended beyond the needs of battered wives and children, a large proportion of its cases concerned women who were abused by their husbands. This aspect of the Society's work led members to compare their role in preventing cruelty to women and children to the role of the Society for the Prevention of Cruelty to Animals. The similarities were such, that in 1899 a member of the Society, Rev. Bowden suggested that the Dunedin branch follow Auckland's example and merge with the SPCA. Women, children and animals were all victims of men's brutality. The proposal was not acted upon, and the Dunedin SPWC remained autonomous of its "sister" organisation the SPCA.

The need for a Society to protect women and children from the brutality of husbands and fathers, suggests that the level of domestic violence in New Zealand society was becoming increasingly unacceptable. However the extent of domestic violence in the late nineteenth century is difficult to determine, as the available source material is fragmentary and limited. Judicial and police returns, provide only a fraction of cases, as victims of domestic violence were often reluctant to prosecute. The records of the SPWC, and the correspondence of Ethel Benjamin in connection with the
Society's work, give some indication of the level and pervasiveness of domestic violence in New Zealand society. The women who approached the Society for help were all too often the victims of long-term abuse, resorting to outside help only when desperate or when they considered their lives or the lives of their children to be endangered. Many more women, lacking the courage to seek help, must have endured their husbands' brutality and suffered in silence.

The available evidence suggests that the threat of personal assault to women and children of all classes was very real. In a society in which men settled most disputes by a show of strength, it is unlikely that they held their brute force in check when aroused to aggression in the home. Thus the home, which was idealised as a safe sanctum from the world, could also be a dangerous place for many women and children.

The SPWC was the only organisation battered wives could turn to for support from other women. Women who complained of domestic violence were consulted by the Society's visitor; and where appropriate, the female visitor would visit the husband. If he proved intractable and the original complaint was justified, the Society's solicitors were consulted. Ethel Benjamin handled numerous cases of domestic violence. Her initial step in dealing with such cases was to threaten legal action against the husband if he failed to
improve his behaviour. Acts of violence in the home were not usually isolated incidents, but sporadic outbursts over a long period of time. The threat of legal action led some husbands to hold in abeyance their recourse to violence. However a long-term problem of wife abuse could often only be solved by the separation of husband and wife.

New Zealand Law had not evolved adequately to provide for the needs of battered wives and children. Under the 1898 Divorce Act a woman could obtain a divorce from her husband on the grounds of cruelty, only if he had been convicted of attempted murder and sentenced to seven years imprisonment. The 1907 Act extended this provision to include as a grounds for divorce a husband or wife's conviction for the attempted murder or murder of his/her child. Section 3 (3) of the 1898 Divorce Act also included cruelty as a grounds for divorce but only where it accompanied a husband's habitual drunkenness over a period of at least four years. In practice however, a Judge might apply a "liberal" interpretation of the law and grant a divorce where a woman's life was threatened by continued cohabitation with her husband. In Smith v Smith, the Judge granted a divorce on the grounds that the husband seemed to have left his wife and that for her to live with him again would be to invite risking her life. In his concluding remarks, the Judge pointed out a major gap in the divorce legislation:
It had been held in many cases that if a man so acted that living with him was a risk to the wife's life and injurious to her, leaving her meant desertion by him. The order was made to prevent the respondent [husband] going to the petitioner's house and to protect her life, and that being so it was only morally right, whether legally right or not, that that should count as desertion by him.

These provisions for divorce could be over-ruled if the Judge believed that the wife's conduct induced or contributed to the offence. A wife's complicity in her husband's matrimonial offence lessened the chances of gaining a divorce. This is evident in Ethel's advice to a client, seeking divorce on the grounds of adultery and cruelty, that her case was not clear-cut. Mrs Loader, by turning a blind eye to her husband's misconduct, had implied her consent to his adultery; and, by continuing to correspond with him in a "friendly tone", had further implicated herself by apparently overlooking his "unkind" treatment of her. These facts strengthened the defence and weakened Mrs Loader's case.

Divorce on the grounds of cruelty, had a limited application and was difficult to prove. Women seeking legal remedies from violent husbands were better advised to obtain a Separation Order under the Destitute Persons Act. Section 22 of the 1894 Act provided that where a husband was convicted of aggravated assault upon his wife, the wife was not bound to cohabit with him. Under these circumstances, a Separation Order, on the grounds that the woman had been
"deserted", could be made by the Magistrate. The husband could also be compelled to pay maintenance for his wife and children, and the costs of the proceedings. However this order could be nullified by the wife's adultery (unless condoned) either before the separation or during it.\textsuperscript{10}

Violence in the home may have been subject to law, but legal intervention was far from easy. An abused woman could voice her complaint in Court but having done so, she faced the problem of substantiating it and, above all, of sustaining it while in fear of further violence, particularly if still living in the family home.\textsuperscript{11} Taking a man to court achieved little. The sentencing of a man to gaol for assaulting his wife, punished the husband rather than aiding the wife. Whilst a husband was in gaol his wife would often be left destitute; ultimately the husband's release led to a return to his wife and further outbreaks of violence.\textsuperscript{12}

Interpretations of the level of domestic violence which constituted an indictable offence were highly dependent upon social considerations. The degree to which cultural standards of behaviour influenced the levels of violence tolerated in a marriage is made apparent in a Police Court case for a separation order, Parker \textit{v} Parker, and its follow-up, Supreme Court case, Rex \textit{v} Parker. In Parker \textit{v} Parker, Ethel Benjamin, acting for the SPWC, made an appeal
for a Separation Order for Mrs Parker. The case was based on Mrs Parker's allegations of the severe cruelty of her husband towards her. Her case was substantiated by the evidence of five witnesses. One particularly shocking incident was described to the Court by several of the witnesses who were neighbours of the Parkers. William Moore recalled the incident: he described how Mrs Parker was beaten by her husband outside their home for refusing to go inside with him. Mr Parker used the crooked end of a stick to beat his wife repeatedly on the head and shoulders whilst she clutched perilously to a picket fence, until finally she collapsed, covered in blood from her wounds. All five witnesses were aware of the regular "thrashings" Mr Parker gave his wife but they seldom interfered. One witness who was asked if he had assisted Mrs Parker replied that he had "interfered by standing and looking on for a while". Despite the evidence Ethel brought against Mr Parker, he denied all charges of assault. Frustrated with Parker's attempt to defeat the passage of justice Ethel initiated proceedings to charge him with perjury. In the subsequent Supreme Court trial, Mr Parker was represented by Mr Alf Hanlon, a prominent Dunedin lawyer. Hanlon's litigation echoed contemporary attitudes to the norms of marital behaviour. He claimed that Mrs Parker's return to her husband's house eighteen months after an initial Separation Order had been granted was tantamount to
inciting a violent response. Mr Hanlon also criticised Ethel for wasting the court's valuable time on a case which did not warrant its appeal to a higher authority.

After she [Benjamin] was defeated she hunted up the matter and instigated the police to bring a case for perjury. If Miss Benjamin is going to devote her time and attention to trying to make up perjury cases where there was a little exaggeration, she would find plenty to do, especially in marital cases. In those cases the wife naturally made things out against the husband to be as black as possible and the husband threw the blame on the wife.

Hanlon further castigated Ethel by claiming that it has no part of the private business of a solicitor to hunt up perjury cases and instigate intervention by the police, that was the role of the bench.

Ethel responded to this criticism, by replying that she considered it her duty as a solicitor to try and get a prosecution initiated if she considered perjury had been committed. The presiding Judge agreed with Ethel that the case warranted a further hearing; and, commenting on the original offence stated that the "crime [aggravated assault on a wife] is not uncommon, but is one that is not brought to the attention of the court as often as it should be."

Sexual violence was undoubtedly a factor in many incidents of wife abuse. However, the hidden nature of rape within marriage makes this form of violence virtually inestimable. Married women had no legal remedy against rape by their husbands therefore they were unlikely to appeal to
the police when it occurred. The Criminal Code Act of 1893 redefined rape specifically as a forcible sexual act by a man "upon a woman who is not his wife". The only exception to this was where sodomy was also involved. With no legal protection from sexual violence, the SPWC, as an organisation for abused wives, was probably one of the few sources of help for its victims. Although none of the cases dealt with by Ethel specifically cited rape as a factor in the abuse, it is highly probable that it was a component in many cases. Women who had separated from their husbands remained susceptible to their violent advances, which in all probability also had sexual overtones as the following warning by Ethel to an offending husband suggests,

I have been consulted by your wife, Mrs Mullins, about her domestic affairs. She informs me that you came to her residence in Maitland Street a short time ago and treated her with great cruelty... I have to warn you against coming to Mrs Mullins again and molesting her as on your last visit. If you again trouble her she will immediately take such action against you as she may be advised.

The absence of a legal remedy for women who suffered from sexual violence inhibited many women from voicing their complaint in more specific terms. Given the limitations of the available evidence, it can only be surmised that sexual violence was a component of more general "wife abuse". The failure of the law to recognise rape within marriage as a criminal offence, reveals that although the property rights of married women had been acknowledged by law as autonomous
to their husbands; their bodies remained the property of the male spouse who could sexually violate them at will.

Most social commentators viewed wife abuse as a lower class phenomenon produced largely by drunkenness. However the high number of divorce cases involving brutal assaults, suggests that domestic violence was not confined to women of the lower classes\(^9\). Reverend Curzon-Siggers during his term as President of the SPWC stressed the prevalence of domestic violence in all classes of Society. In the 1905 Annual Report he expressed his claim at the high incidence of domestic violence and the social backgrounds of the principal offenders:

We have more cases of cruelty to wives amongst men who boast of their thousands, than amongst those who have little of the world's goods. The former, because of their money influence, are received as respectable citizens; the latter suffer in the eyes of their fellows\(^20\).

Curzon-Sigger pointed out that the respectability of many of Dunedin's citizens protected them from being exposed for violent offences against their wives. Wives who were conscious of their social standing and who lacked economic independence, were reluctant to pursue court injunctions against their husbands for violent behaviour. It was an objective of the Society to encourage such women to take legal action against husbands who were persistent offenders. Reverend Curzon-Sigger proposed that through legal action, a husband's brutality would be exposed and he would be
socially ostracised. Only then would improvements be made\textsuperscript{21}. However social ostracism and fear of the "public disgrace" of having one's "domestic affairs dragged through the Courts", were also the main factors inhibiting women from seeking prosecutions against their husbands\textsuperscript{22}. This indicates the extent to which domestic violence was implicitly tolerated.

The origins of wife abuse lie in the subordination of women and their subjection to male authority and control. Hence the meaning and scale of domestic violence can only be fully assessed in the context of contemporary patterns of power and authority within the family\textsuperscript{23}. The fact that the level of domestic violence in late nineteenth century New Zealand society was becoming increasingly intolerable, is evidenced by the emergence of an organisation to protect women and children from assault, and, by the agitation of feminists and social reformers for changes in the laws protecting them. The women's movement had an important effect on attitudes to domestic violence, it may also have had an impact on the nature of the violence itself. Domestic violence was often provoked by the failure of a woman or a child to respond to a husband or parent in the way deemed appropriate\textsuperscript{24}. Contradictory trends in New Zealand society on one level opened up new freedoms to women, and on the other restricted them to an ideal of womanhood through the "cult of domesticity". When a woman failed to fulfil her
husband's expectation of a "good wife" by challenging the "old unjust order of things", violence may have been used by the husband as a form of social control. The fact that domestic violence occurred in middle and upper class homes suggest that the women who were in a position to benefit most directly from the advances made by the women's movement, also risked becoming victims of men who tried to reinforce their dominance and authority through physical force.

The pattern of power and authority in the colonial New Zealand family, supported the notion that a husband and father had the right to inflict pain and suffering on the other family members if they failed to do what was expected of them. The emerging women's movement in New Zealand, challenged this assumption by seeking legal remedies to protect women and children and by providing relief and assistance for women whose "distress stemmed from their marital situation. The work of Ethel Benjamin exemplifies the approach of the feminist movement. As a feminist working within the patriarchal legal system she could work effectively towards relieving the suffering of many individual "hidden" women.
Through her connections with the SPWC, Ethel Benjamin became involved in a variety of cases involving domestic disputes and marital breakdowns. Although the policy of the Society was to promote reconciliation rather than separation, in some cases a divorce or judicial separation was unavoidable. Where a woman insisted upon a complete break with her husband, the Society referred the case to Ethel Benjamin who was instrumental in securing many divorces and separations on its behalf. Ethel's handling of these cases earned her a reputation as a capable and sympathetic family lawyer. By claiming this aspect of law as a special interest to which she was, by virtue of her sex, peculiarly suited, she attracted to her practice many women from outside the Society's care who also sought a way out of unsatisfactory marriages.

The period of Ethel's involvement in family law cases (1898-1907), is an interesting one, as a variety of forces - social, legal and economic, were changing the character and permanence of marriage. Changes in the divorce legislation had some of the most far-reaching effects on this process. In the period 1867 to 1907 the grounds for divorce were extended and amended largely in response to demands from pressure groups particularly feminist ones, within society. The debates which surrounded the liberalisation of the
divorce laws highlight the degree to which divorce became a focus for a variety of social and moral issues. Divorce raised questions regarding the stability of the family unit, male-female roles, the place of children, and the economic dependence of women. It is not surprising therefore that reform of the divorce laws was taken up by the women's movement as an important issue in their bid for equality.

Fundamental to the debate on divorce and the issues it raised was an awareness of the changing character of marriage. From the late nineteenth century there was a declining need for spousal selections to be based on economic criteria. The pattern of marriage in early colonial New Zealand followed Wakefield's model based on economic necessity. The early New Zealand family was an integrated economy in which the wife and husband had defined and active roles and functions. The process of modernisation reduced the importance of economic consideration in the choosing of a marriage partner (although economic considerations remained important in rural areas). Emotional and physical needs became more important in spousal selection. This transformation of attitudes was a slow process, which incorporated a new emphasis on marriage and an alteration of a spouse's expectations of the partnership.

The first piece of divorce legislation in New Zealand was the 1867 Matrimonial Causes Act. It followed the
English example, set in 1857, by making divorce available through the Courts rather than through Parliament. Adultery had to be proven before a divorce could be granted. Simple adultery by a wife constituted a matrimonial offence under the Act, but aggravated adultery that is, adultery accompanied by incest, bigamy, rape, sodomy, bestiality or cruelty had to be proven before a wife had reasonable grounds for divorcing her husband.

From the early 1890's pressure mounted on Parliament to extend the grounds for divorce and to amend the inequalities of the current Act. In 1898 the Divorce Act was passed. Under this Act simple adultery by either spouse constituted a matrimonial offence. Additional grounds for divorce were also introduced. The new matrimonial offences were desertion for five or more years; habitual drunkenness on the condition that a husband had habitually left his wife without means of support or had been guilty of cruelty towards her, and in the case of a wife, on the condition that her drunkenness had caused her to neglect her domestic duties; and finally the conviction and imprisonment of either spouse for seven or more years for the attempted murder of the other spouse. The women's movement appeared to have won a minor victory in that New Zealand Law now recognised that a husband and a wife had equal grounds for divorce.
Given this backdrop of freer divorce laws and changing expectations of marriage, it is not surprising to find that in the late 1890s, the level of divorce in New Zealand considerably increased. In the period 1898-1900 the number of divorce petitions doubled. The increase was largely due to the extensions in the divorce law particularly as they applied to women. Whereas up to 1898 two-thirds of all divorce petitions in the country had been by men, after the Divorce Act in 1898, the imbalance reversed, by 1900 two-thirds of all divorce petitions were filed by women.

Although the 1898 law gave women equal access to divorce for reason of adultery - the number of women's petitions on the grounds of adultery scarcely changed. Hence the liberalisation rather than the extension of the divorce laws provided the major impetus for the increase in women's petitions in the period. This trend lay contrary to the intentions of the women's movement in its campaign for divorce law reform. Both the Women's Christian Temperance Union and the National Council of Women, as the leaders of this campaign, emphasised equal access to divorce rather than liberalisation as the main prerogative. Women did not more readily exploit the adultery provision of the new law because the applicability and availability of the law inhibited them from doing so. Although they possessed equal grounds for divorce, the fundamental inequality of women within society meant that the law was uneven in its applica-
tion. An examination of the divorces arranged by Ethel
Benjamin reveal the difficulties involved in securing a suc-
cessful divorce, and subsequently the consequences of its
outcome, which affected men and women in different ways.

Restrictive provisions within the 1898 Divorce Act and
the persistence of nineteenth century attitudes to
sexuality, inhibited many women from seeking divorce on the
grounds of adultery. The double standard of morality was
unlikely to become unacceptable simply because of a change
in the divorce legislation. Adultery by a wife continued to
be considered a more serious offence than by a husband. The
importance of the family to a woman's life and the moral
influence she was expected to exercise within its realm and
the realm of society were antithetical to any moral laxity
on her part. Yet a certain level of infidelity by a husband,
provided it was discretely carried out, was tolerated by
many wives, and by society at large. The courts, as the
arbitrators of domestic break-down, could also reflect these
attitudes10.

All grounds for divorce within the 1898 Act were tem-
pered by the proviso that, "If in the opinion of the Court
the petitioner's own habits or conduct induced or contri-
buted to the wrong complained of, such petitions may be
dismissed ..."11. This provision gave Judges a degree of
flexibility in deciding on a divorce case, by allowing their
interpretation of the facts to be swayed by subjective factors, such as contemporary attitudes to morality. Ethel Benjamin was aware of this risk to which female petitioners in particular, exposed themselves when pursuing divorce on the grounds of adultery. In Lane v Lane, Ethel warned Mrs Lane that her lack of objection to her husband's extramarital affair could be interpreted by the Judge as implying her consent to the relationship and would thus weaken her case for divorce. The grounds for divorce on the basis of adultery by a husband were not as clear-cut as they had initially seemed under the 1898 Act. It was therefore to a woman's advantage to be able to call on additional offences, such as cruelty, to further substantiate her case for divorce and not rely solely on the adultery provision.

Where a woman did attempt to divorce her husband on the grounds of adultery, she was required to produce evidence of her husband's infidelity. This could take the form of either written or oral evidence, for example, in one of Ethel's divorce cases the personal correspondence between a married man and his mistress was read in court. The intimate nature of much of this evidence, must have inhibited many couples from seeking a court separation or divorce. The terms of the 1898 Act did allow the Court to use its discretion by hearing divorce cases in Chambers and by forbidding the publication of any report. Nonetheless, as in the above-mentioned case, the necessity of providing suf-
ficient evidence against the husband led Ethel to consult a variety of sources for information on the adulterous relationship. In these circumstances privacy was practically impossible. A woman conscious of her social standing and respectability was reluctant to expose the illicit details of her husband's infidelity, particularly when the couple also had the sensitivities of their children to consider.

The necessity of proving a case against both the respondent and co-respondent in charges of adultery added to the cost of the trial. Even in cases where it was claimed that the co-respondent was of little value to the action being brought before the Court, the Judge generally required his/her attendance in Court to answer to the charges being laid. In Foster v Foster, despite Ethel's insistence that the co-respondent was "not worth powder and shot" the Judge refused to proceed until she was presented in Court\textsuperscript{14}. Costs for an undefended trial were set at fifteen pounds, but where a respondent and co-respondent appeared they could be as high as forty-five pounds. For a woman without an independent source of income this was a prohibitively high sum\textsuperscript{15}.

Divorce on the grounds of adultery was difficult to prove, it was also embarrassing and it was more costly than other forms of divorce. The social and economic inferiority of women determined that they were more affected by these
limitations than men, and this explains why, despite the extension of the provision for divorce on the grounds of adultery under the 1898 Act, women did not exploit the provision more freely. Where it could be proven (or fabricated), divorce on the grounds of desertion or drunkenness provided a more attractive alternative for most women.

Although a minimum period of five years needed to have lapsed before desertion constituted a grounds for divorce, this may have been compensated for by a less gruelling experience in Court. Cases of desertion did not necessitate the same embarrassing evidence and there was less risk of unpleasant publicity. Also collusion between a husband and wife may have been less detectable where a case of desertion was fabricated to end an unhappy marriage. William Shiels, a family lawyer who was a contemporary of Ethel's, commented that ninety-nine out of one hundred deserting husbands committed adultery, but that poor women were precluded from getting the evidence needed for the Divorce Court.

Drunkenness and desertion were more popular grounds for divorce amongst women than amongst men. A deserted wife and a woman with a drunken husband were more likely to take into account their economic prospects when considering divorce. In 1906 a Mrs McKay was represented by Ethel Benjamin in a petition for divorce on the grounds of drunkenness and desertion. Ethel explained to the Court Mr McKay's habitual
drunkenness over the preceding seven years and his desertion of his wife for five years. The evidence of a detective revealed that Mr McKay was currently in a Wellington gaol for theft. Ethel described how Mrs McKay had been left on her own to bring up their child with no financial assistance from her husband. Clearly the divorce, although an expensive undertaking by Mrs McKay provided some hope for deliverance from her current poverty, as it offered the prospect of re-marriage. The divorce was granted but under the circumstances (that is due to Mr McKay's imprisonment), alimony was not recommended.

Long-term financial considerations were a determining factor for dissatisfied wives. Whereas a woman with an adulterous husband might condone his behaviour whilst he continued to provide for her, a woman with an unsupporting drunk or deserting husband acted in her best interest in the long-run by freeing herself for the marriage market.

To several of Ethel's clients the ability to maintain themselves was an essential prerequisite to their seeking divorce. Section 9 of the 1898 Act made provision for alimony to be paid by the husband at a level to be decided upon by the Judge. However whatever level of alimony was set, it generally meant a considerable decline in the living standards of a married woman. A Mrs Hannah consulted Ethel on the feasibility of her procuring a divorce from her husband.
In negotiating their separation and ultimately divorce, Ethel made certain demands on behalf of Mrs Hannah for maintenance and for the return of her personal property. Mr Hannah, represented by Mr Alf Hanlon refused to meet his wife's terms. Despite Ethel's efforts, an impasse was reached. Rather than remain destitute, Mrs Hannah returned to her husband.

A Mrs Mahoney was faced with a similar prospect when she decided to divorce her husband. Although a maintenance order was made on him, Mr Mahoney was unreliable in making payments to his ex-wife. Rather than back down from the divorce, Mrs Mahoney decided to assert her independence by establishing her own business. A loan was obtained from her ex-husband's brother and Mrs Mahoney established a lending library in Auckland. The success of her business reduced Mrs Mahoney's dependence on the irregular maintenance paid by her husband, and ultimately she became self-reliant.

Following the granting of a divorce decree or separation order, Ethel Benjamin tried to ensure that ex-husbands paid the maintenance or alimony awarded to their wives. Many ex-husbands evaded their responsibilities. Hence it was frequently necessary to take such cases to court. However, maintenance orders were difficult for a Magistrate to deal with. Prison was not a satisfactory solution as it meant the State would then have to support both the man and his
family. The recurrence of maintenance cases prompted the SPWC to demand that the Government set up "farm colonies" for defaulting husbands. The Society's suggestion was not acted upon. The responsibility for chasing up maintenance payments continued to be the work of the Society's solicitors and although persistent defaulters were threatened with legal action it was seldom practicable to pursue this course of action.

Social and economic factors affected the likelihood of a woman petitioning for divorce. The costs of divorce were considerable. They included both the actual cost of the divorce suit and the real or long-term cost of dividing the resources of a household and maintaining the dependent members of the family. The costs of a divorce depended on the nature of the trial but they could be as high as forty-five pounds. The divorce costs fell unevenly on the couple. A petitioning husband had to finance his suit, he was also generally responsible for any defence offered by his wife. A petitioning wife could claim all her expenses from her husband. However if a husband absconded to Australia, an order for costs could not be enforced there, unless it was incorporated in the decree absolute. Some husbands of course just disappeared without a trace. The ultimate penalty for non-payment was imprisonment, but this hardly increased a husband's capacity to pay. In some cases of defaulted payments Ethel settled for payment by instalment.
and in others she was forced to reduce her fees in order to obtain any costs at all.

A wife's decision to petition for divorce was not necessarily affected by the short-term problem of financing a suit; it was more likely to be influenced by the long-term difficulty of maintaining herself. A separated wife was still legally entitled to her husband's support but the right could not be easily enforced. A deserted woman could apply to the Magistrates Court for a maintenance order but the amounts awarded were usually inadequate. For example, in 1909 a Mr Brown was compelled to pay 5s per week maintenance for his ex-wife Elizabeth and 10s per week for each of his two children. Privately negotiated settlements were often more satisfactory if a husband was willing to oblige. In petitioning for divorce a woman could take a gamble and hope that the Judge might award permanent alimony. However, even if alimony was granted, unless a woman was totally financially independent, she could anticipate a reduction in her living standards.

A pre-condition of divorce was the independence of both spouses. Hence most women were restrained from petitioning for divorce because they were more economically dependent than men. Limited career options, low wages and the traditional obligations of home and family made married women less likely to seek employment outside the home. Their ina-
bility to provide for themselves and their children led many to tolerate unsatisfactory marriages.25

Although by 1909 Anna Stout could boast a victory for the New Zealand women's movement in the securing of equal grounds for divorce for men and women, for a variety of reasons women were more reluctant to exploit this provision than men.26 Whilst the divorce law recognised the dependence and vulnerability of women in the married state, the help it offered was uncertain in availability and often inappropriate in action. Ethel Benjamin was fully aware of these difficulties. She sought to minimise the risks involved by making her client's cases as clear-cut as possible and by securing adequate maintenance for divorced wives. In this way Ethel Benjamin acted in her client's best interests by attempting to ensure that their cases were not jeopardised by the fact that they were women.
(3) Adoption

The SPWC brought Ethel into contact with many women who experienced problems maintaining their children. Husbands could not always be held accountable to their families. Widows left with children and no source of income had problems finding suitable remunerative work. Single women, who, through an untimely indiscretion, were burdened with supporting a child, were often without the means to do so. Failing the applicability of the Destitute Persons Act to an individual's case, the Charitable Aid Board, offered some assistance to women whose poverty stemmed from their absence of financial and, or matrimonial support. However, assistance from the Board was marginal, it did little to ease the long-term poverty of an unsupported woman and her child/ren. One way to ease an unsupported woman's financial burden was to eliminate her responsibilities to her children. Adoption was a final resort for many women unable to cope on their own. It was also resorted to for reasons other than a woman's indigency. Adoption was one way of legitimating an illegitimate child.¹

Late nineteenth century New Zealand society had little tolerance for solo mothers and their offspring. If the putative father could not be made to come forth and accept responsibility for his offspring, either by marrying the woman or by providing maintenance payments for the child, a
solo mother was often compelled either to place her child under temporary foster care or to have him/her adopted.

During the later years of her legal career in Dunedin, Ethel Benjamin became involved in many adoption cases by acting as an intermediary between birth mothers and prospective adoptive parents. Her work in this field reveals some interesting aspects of the evolving legislation relevant to adoption procedures and of the adoption practices and customs themselves.

Government regulation of adoption in the late nineteenth century led most people to seek legal advice and assistance when arranging the formal transfer of a child. Ethel Benjamin became initiated into this field of law through her contact with the SPWC. The Society, which stressed the importance of a balanced family unit, advocated adoption only in cases where an unmarried woman was unable to maintain her child and was unlikely to marry the putative father. Legitimate children, suffering from parental neglect or abuse were placed in reputable foster homes as a temporary measure until the problem was resolved or mitigated.

In the ten year period 1886-1896 illegitimate births rose from 3.1% of all live births to 4.4%. Although the proportion of spinsters in the child-bearing ages also increased in the same period, the rise in illegitimate
births was frequently taken as evidence of moral laxity. The SPWC, aware of the double standards applied to birth mothers of illegitimate children, sought ways to relieve the disparity and hold putative fathers of illegitimate children accountable for child maintenance. Under the Destitute Persons Act, 1894, the father of an illegitimate child could be made to pay maintenance up to the sum of 20s for the upkeep of his child. He could also be ordered to pay the expenses of the woman's confinement. The Society enlisted the help of Ethel Benjamin to ensure that the fathers of illegitimate children did not evade their responsibilities. She spent a considerable amount of time on affiliation cases on behalf of the Society. Preferring not to take these cases to court, Ethel usually found that the threat of legal action was sufficient to force a man to admit paternity and agree to maintenance.

Motherhood in late nineteenth century society, acquired a new dignity and importance within the emerging cult of domesticity. However, motherhood was only tolerated within the confines of a traditional European marriage. Unmarried mothers were "fallen women", unworthy of the customary honour of motherhood. The needs of unmarried pregnant women were a concern for the Dunedin SPWC. In 1906, Reverend Curzon-Siggens stressed the need for a maternity home to facilitate the confinement of unmarried pregnant women. The St. Helen's Maternity Hospital, established in 1905,
admitted only married women. By the end of 1906, largely
due to the efforts of Dr Batchelor, the Forth St. Maternity
Home was established for unmarried mothers⁸. Prior to its
establishment the Salvation Army Hospital was the only
institution providing care for single pregnant women.

The SPWC's visitor was responsible for calling on women
in these institutions. She offered assistance and advice and
initiated proceedings for the child's adoption or fostering
where the birth mother agreed. Fostered children were
placed in reputable family homes by the visitor. Cases of
adoption, due to the legal nature of the procedure, were
usually handed to the Society's solicitor to be dealt with.

New Zealand was the first country in the British Empire
to introduce legislation for adoption⁹. The Adoption of
Children Act was introduced in 1881, amended in 1885,
revised in 1895 and finally incorporated into the Infants
Act in 1908¹⁰. An application for an adoption order could
be made by any individual or married couple, and filed for
hearing by a District Court Judge or stipendiary Magistrate.
According to the 1895 Act an eligible adoptive parent was to
be of "good repute" and, if single of the same sex as the
child¹¹. The consent of the birth parent/s or guardian of
the child was essential. If a married woman applied for an
adoption order the consent of her spouse was also required.
In assessing the application, the Judge had to be satisfied
that the adoptive parents were of sufficient means to bring up the child and that the interests of the child would be promoted by the adoption. These were the formal requirements of the adoption; in practice however, the arranging of an adoption could be more complex than the Act suggests.

Of the sample of adoptions arranged by Ethel Benjamin in the period 1904-1907, all of the applications were filed by married women. It appears that although the Act provided for the adoption of children by single persons, this was an unlikely occurrence. The Dunedin magistrate who heard the applications was intent on ensuring that the child was going to a stable family home. Although spousal consent was an essential prerequisite of any application made by a married person, the Magistrate often insisted on more than a written approval. A woman applicant was required to produce her marriage certificate and her husband would be expected to appear in Court in support of the application. One of the applications for adoption filed by Ethel was turned down because of the applicant's failure to present her husband in support of the application. She was unable to do so, because the couple were separated.

The necessity of proving that the prospective adoptive parent was of "good repute" required the applicant to produce character references and/or other material testifying to her "respectability". Where an applicant or her husband
had a police record, this was also to be included with the application. Its existence could seriously jeopardise the success of the application. A Mrs Payne was advised by Ethel that she would have to return a child to the Salvation Army Home as the Magistrate had found her husband's police record unsatisfactory and had in consequence refused the Order of Adoption.

The responsibility for matching suitable parents with adoptees was often undertaken by a lawyer, who acted as an intermediary between the two parties. Women who wished to have their children adopted made themselves known to Ethel either through the Society or independently. Ethel also relied upon newspaper advertisements as a source of adoptee children, and to advertise for adoption herself. Under pseudonyms like "Mater", "Mother", "Viva", women advertised in the classified columns of the daily papers, their willingness to offer their children for adoption. Ethel replied to many of these, stating that she had clients who would be interested in adopting. Presumably Ethel's reputation in handling adoption cases led many childless women to make their case known to her. In the preliminary stages of the adoption procedure Ethel requested details of both parties circumstances to be sure that the child's best interests would be advanced by the adoption. A Mrs Franks from Kaitangata replied to an advertisement in which Ethel offered a baby boy for adoption, on behalf of his unmarried
mother. In her reply to Mrs Franks, Ethel requested the following information: the age of her husband, the number and ages of her children, the number of rooms in their house, details of her husband's position, and a character reference from a well-known person in Dunedin. In return for supplying this information, Mrs Franks wished to be informed as to the child's background and parentage.  

The 1895 Adoption Act did not include any provision stipulating the legality of money being exchanged in the adoption procedure. The Rules of Procedure accompanying the Act set the legal costs at around four pounds for the filing in court and hearing of an adoption. With at least another two pounds being incurred through lawyers' fees, the cost of an adoption was not inexpensive. In 1905, one woman having her two children adopted was charged thirteen pounds, another woman with two children who lived in the North Island was quoted seventeen pounds for legal costs and fees. However these were not the only expenses involved in the adoption procedure. Although it was not required by law, it was customary for the natural mother to also pay a premium to the adopting parent. Premiums were paid to adoptives in lieu of maintenance for the upkeep of a child. The custom of paying premiums appears to have been relatively common and at various times it was conspicuous enough to arouse consternation amongst social reformers.
The customary premium payment to have one's child adopted, was open to abuse by individuals who saw it as a way to make money. The public outcry at the exposure of "baby farming" in the 1890's highlighted the risks involved in the practice.

After the passing of the 1881 Act which institutionalized adoption, a form of "baby farming", under the pretense of adoption, emerged in New Zealand. In 1893 the Commissioner of Police reported,

Attention is called to what appears to be a growing evil in this colony - N.Z., "baby farming". That this evil exists there can be no doubt; and it appears that children, either by advertisement or otherwise, are placed in most unsuitable homes, where it is perfectly well understood that the sooner the child dies the better pleased all concerned will be... Another system of disposing of infants is by so-called adoption, where children are taken for a lump sum entirely off their mothers hands; provided no more questions are asked. Sums from six to twenty pounds are paid down as premiums and for such helpless infants there is absolutely no protection.

Public attention to the "evil" was aroused, and in 1893 the Infant Life Protection Act, was passed to combat the problem of "baby farming". However this Act, which provided for the licensing and inspection of foster homes did not apply to adoption. Premium paid adoptions continued, at least until 1906 when the custom was made illegal.

Not all adopting parents insisted upon the payment of a premium. On several occasions Ethel informed the adopting
parent that the mother was incapable of paying a premium in addition to the legal costs of the adoption\textsuperscript{21}. The premium demanded by adopting parents could be as high as forty pounds. This was a prohibitively high sum for many women, particularly for those who chose to give up their children for financial reasons. One woman, a Mrs Tyrell owed ninety-five pounds for the premiums and legal costs incurred by the adoption of her two children\textsuperscript{22}.

The adopting parent determined the level of the premium by considering the costs of maintaining a child for \( x \) number of years. However it was in her interests to see that the level of payment was not beyond the ability of the natural mother to pay, as only when the fees and the premium debt had been paid off would the adoption order be forwarded and the adoption finalised\textsuperscript{23}. Many women were prepared to pay a high sum to place their children in adopted homes, as the "baby farming" scandal of the 1890's placed in disrepute the system of foster care.

The custom of premium paid adoptions was opposed by the SPWC. As an organisation concerned with the welfare of children they objected to a child's future being "bought and sold". A campaign for reform of the laws relating to adoption procedure, particularly to control the practice of premium payments, was undertaken\textsuperscript{24}. By 1906-7 pressure had mounted on the Government to the extent that the legislative reform sought by the Society was introduced.
Under the Adoption of Children Amendment Act 1906, section 2, and as consolidated in section 20 of the Infants Act 1908, notification was to be made of any premium paid in regard to adoption. Section V of the Infants Act required a licence or a warrant of exemption to be included in an application for adoption whenever a child was adopted for a payment. The Education Department's Special Division was given the task of reporting and administering adoption premiums.25

The strict control of premiums was introduced for two distinct reasons. One objective was expressed when the clause which became S.20 of the Infants Act was introduced in 1906: "Every possible difficulty should be put in the way of anyone who attempted to make a profit from the adoption of children"26.

The other aim was explained by Sir John Findlay in 1907:

There should be a provision that no foster mother and natural parent should be permitted to make a bargain at a rate which will not fairly pay for the child's maintenance, and that before such a rate is agreed upon, it must be approved by the Minister or by some qualified officer. Children are sometimes taken at an absurdly low rate.27

The new provisions of the Act represented an important development in the evolving adoption legislation, as the needs of the child, rather than the adoptive parents, gained relevance. The exploitability of the adoption procedure was thus curtailed under the new legislation.28
The legal provisions controlling adoption premiums provided an interesting forerunner to social security legislation. When the natural parent had agreed to make payments for the maintenance of the child, the State became a guarantor of the agreement, and on default, the State paid the instalment and undertook the task of enforcing the liability of the natural parent.\(^{29}\)

The social stigma of illegitimacy and the vulnerability of unsupported wives and mothers assured a constant supply of adoptee children in late nineteenth century New Zealand. At a time when increasing importance was being placed on the home and the care of children, the State intervened; settling conditions in which adoptions could take place and providing facilities for the registration and licensing of all adoptions. The gradual emergence of State responsibility for the health and welfare of adopted children was supported by the SPWC. The Society was anxious to eliminate the abuses of the premium system of adoption and the practice of "baby farming".\(^{30}\)

Ethel Benjamin's role in arranging adoptions, both on behalf of the Society, and independently, represented a transitional stage in the change from adoptions arranged by formal agreements in exchange for a sum of money, to state regulated adoptions culminating in the eventual takeover of responsibility for adoptions by a Government department.\(^{31}\)
Ethel Benjamin was an unconventional woman. As a lawyer she defied traditional expectations of what a woman should be and set herself apart from the majority of her sex. She joined a small group of women who were active in the public sphere but she did not fit the image most of these women projected. The usual model of the late nineteenth century socially prominent woman was one who was concerned with women's rights, social reform, and the prohibition of alcohol. Ethel was a committed feminist and a supporter of social reform but she was also an enemy of the prohibition cause.

A principal motivation for women's suffrage had been emancipation in the political sphere so that through the medium of prohibition, women could reform society. Once enfranchised, many women sought to fulfil these expectations through active participation in New Zealand's largest women's organisation, the Women's Christian Temperance Union. The prominence of women in the leadership of this organisation and the Christian values it espoused, led many to believe that women were natural adherents to the prohibition movement.1

The movement supported the idea that through the intervention of morally pure women in the home and in public life
the "evils" of liquor would be curtailed. But by promoting these values, supporters of the prohibition movement indirectly reinforced many of the attitudes which the women's movement attempted to change. Their emphasis on the purifying and stabilising force of women, encouraged their restriction to the home and economic subjection to husband or father. As a firm advocate of economic independence for women, Ethel Benjamin was unlikely to agree with the movement's ideology, and, as a Jewess, she lacked the Christian background on which it was based.

Although Ethel did not support the prohibition movement she had a realistic view of the dangers of alcohol. On several occasions she issued prohibition orders against men whose drunkenness was causing harm to others, particularly in cases where women and children were being affected. Ethel realised that drink in excess was damaging, but that a moderate intake of liquor was unlikely to cause harm. She supported the liquor trade both on a personal level, as a shareholder in the industry, and within her professional capacity, as a lawyer for members of the trade.

The degree of Ethel's involvement in the liquor trade was evident in her role in the day-to-day running of several hotels in Otago and Southland. The business affairs of Wains' Hotel, one of Dunedin's larger hotels, were managed by Ethel, who was a personal friend of its proprietor, Walter Binsted. She was responsible for settling the
Hotel's accounts, obtaining its annual licence and arranging publicity\(^5\). She was also involved in managing hotels in Palmerston, Milton, Kaitangata and Wallacetown. In the case of the Club Hotel in Palmerston, she hired and organised the staff, ordered provisions, decided on the menu, and chose the decor\(^6\).

The period of Ethel's involvement in the liquor trade was one in which the prohibition movement was gaining momentum in Otago and Southland. Renewed interest in the prohibition cause coincided with the operation of local option polls. This combination of activity posed a potentially damaging threat to the survival of the trade. In the years 1902 to 1905 Ethel Benjamin acted on behalf of the trade in an effort to counteract this threat.

By 1896, the local option polls had become the most important vehicle for the fulfilment of the prohibitionists' objectives. The polls were held in conjunction with the General Election and entitled all electors to vote for continuance, reduction, or no license, in their district. Reduction or prohibition required a three-fifths majority to be carried and continuance, a bare majority, providing at least half of the electors on the roll had voted.

Despite their campaigning throughout the 1890s, prohibitionists failed to make much of an impact at the polls until the early 1900's. In 1902, the national vote for no-licence
rose above continuance for the first time. Besides Clutha, which went dry in 1894, five more electorates achieved the required three-fifths majority for non-license: Newtown, Ashburton, Chalmers, Bruce and Mataura. But victory was not assured for prohibitionists in these areas. Following their defeat at the polls, the publicans and brewers organised themselves and accused the prohibitionists of improper dealings. A series of Court cases followed in which the polls were examined for irregularities. Popular opinion rallied to either side of the dispute, renewing the vigor of the liquor debate and calling into question the viability of the licensing legislation.

The 1902 poll was a turning point for the liquor trade as it began a fight to save itself from extinction. After their defeat at the polls, the Bruce Licensed Victualler's Association employed Ethel Benjamin to advise them on appropriate legal action and to take up their battle through the courts. Of the 6,050 votes at the Bruce poll, 1,525 voted continuance, 2,157 voted reduction, and 2,372 voted no-license. Thus, a majority of 847 electors voted no-license as against continuance. Despite this clear majority, Ethel Benjamin was confident that the Bruce publicans had a case for invalidating the poll. She researched the relevant legislation and made inquiries into the operating of the polls. By March 1903, Ethel, with the assistance of a colleague, Neil Paterson, had prepared her
case for the Bruce publicans. Aware of the serious nature of the case, she enlisted the support of three distinguished Dunedin lawyers to act as counsel in the inquiry, Messrs F.R. Chapman, W.A. Sim and D. Reid. The Temperance party was similarly represented by prominent men, Messrs A.S. Adams and J.F. Woodhouse. On 15 March Magistrate, G. Cruikshank, heard the inquiry in the Dunedin Supreme Court Chambers.

The inquiry was based on a petition that the local option poll be declared void on the grounds that various irregularities occurred in the conduct of the election. The precedent for the inquiry was established in Bastings v Stratford, 30 March 1900. In this case, the Judge determined that inquiries into licensing polls were to be held in the manner provided for under the Regulations of Local Elections Act 1876, even though the actual poll was conducted in the manner provided by the 1895 Electoral Act. The wording of the 1896 Licensing Act was responsible for this anomaly, which placed liquor poll inquiries under much stricter guidelines than might otherwise have been the case.

Ethel Benjamin's litigation relied on the conditions which could defeat a poll as set out in the Local Elections Act. The Act required that the poll's regulation hours be strictly adhered to. She provided evidence of three inci-
dents whereby polls in Manuka Creek, Berwick and Waitahuna Gully had been improperly closed. A further provision within The Act determined that, "If upon any inquiry it appears that any other irregularity occurred in the proceedings which, in the opinion of the magistrate, tended to defeat the fairness of the election, the whole election shall be void". Ethel provided evidence of violations of secrecy in several polling booths, which she claimed "tended to defeat the fairness of the election". In assessing the evidence, Cruikshank found that the polls had been improperly closed and the violation of secrecy had impaired the poll's fairness. He declared the poll null and void, but he was not without reservations in doing so. In his concluding remarks, Cruikshank pointed out the inadequacies of the licensing legislation, which, however right or wrong it may appear to be, it was the duty of the judiciary to apply, "we have nothing to do but to obey it, and administer it as we find it".

The Bruce publicans were delighted with the outcome of their inquiry which they presumed guaranteed the continuance of alcohol in the district for at least another three years. In prohibition circles, the invalidation of the poll caused a public outcry. Representatives of the movement claimed that the will of the people had unjustifiably been defeated by legal technicalities. They criticised the Government for the inadequacies of its legislation which allowed a poll to
be held under one law and inquired into by another, thus allowing its outcome to be negated. Reverend P.B. Fraser, a staunch prohibitionist, mounted a speaking campaign to condemn Cruikshank's judgement and to rally support for a petition to Parliament to reverse his decision. Addressing audiences in Milton, Kaitangata, Stirling and Waitahuna, Fraser accused the petitioners to the inquiry of digging up their case:

"The publicans went scouring all over the country in search of irregularities ... having got hold of a lot of trivialities, they submitted these to the ingenuity of the ablest lawyers to see if by any technicality they could attack the verdict of the people." 

When, a few days after Fraser's speaking campaign the Licensing Committee elections were held in Bruce, candidates on the no-license ticket headed the poll. Reverend Fraser, was one of the five men to gain a place on the Committee. The publicans went through the customary procedure of applying to the committee for licenses, but the committee claimed that as there had been no valid poll in Bruce, they did not have the jurisdiction to grant them. Frustrated by the behaviour of the Committee, the publicans defiantly kept their bars open. The police intervened and prosecuted the hotelkeepers for selling alcohol without a license. Ethel Benjamin acted on the publicans behalf, filing a writ of motion in the Supreme Court to compel the Licensing Committee to grant the licenses, as there had been no valid poll in Bruce to prevent them from doing so.
A similar Court case was already in progress in Wellington. The Newtown local option poll had been voided under similar circumstances to those in Bruce. Mr Phineas Levi and Mr Skerrett acted for the Newtown publicans in their appeals to the Wellington Supreme Court, and the Court of Appeal, to compel the Licensing Committee to grant them liquor licenses. As the outcome of the Newtown case would be binding on the Bruce case, Ethel negotiated an agreement between counsel engaged in the Bruce case to withhold their application for an injunction to the Supreme Court until the result of the Newtown case was known\textsuperscript{16}. On 31 July 1903, the full court in Wellington decided that the Newtown Licensing Committee could not be compelled to grant licenses, prohibition would therefore prevail in Newtown. The Judgement of the Court was a shock to the trade; they decided to take their case to a higher authority - the Privy Council. Hence, Ethel Benjamin and her clients, the Bruce publicans, were subjected to a further interval before the outcome of the Privy Council hearing would clarify the situation in Bruce\textsuperscript{17}.

The Privy Council did not issue a definite statement on the case until the following year. In the interim, both sides of the liquor debate focused their attention on Parliament, particularly on Seddon who, as Premier, was singled out for criticism. Prohibitionists, outraged that the "will of the people" had been thwarted by a carelessly
drafted statute, demanded that he introduce legislation to remove the statute's loopholes. A delegation of prohibitionists, headed by A.S. Adams, presented their demands in a petition to Seddon. They desired that no poll should be liable to be upset through mere technicalities and, that where irregularities had occurred a poll could only be voided when it did not express the will of the people. They also demanded that a fresh poll be taken immediately after an original was upset\textsuperscript{18}.

In his reply to the delegation, Seddon defended his Government's policy on liquor licensing, claiming that the awkward situation in Bruce and Newtown was no fault of the Government or the judiciary, but that, "the defect was in the law itself". He claimed the anomalies in the legislation had arisen from the Government's attempt to save expense by utilising the machinery available for local body elections. Seddon agreed that fresh legislation was necessary to remove these anomalies but he was reluctant to commit himself to the timing of its introduction or the form it would take\textsuperscript{19}.

On 15 July 1903 the M.P. for Bruce, James Allan, acted on the prohibitionists' demands by introducing the Bruce Licensing Poll Validation Bill. However Seddon and several other M.P.'s, refused to support the bill: firstly, because it would be a form of retrospective legislation, and
secondly because it concerned matters that were sub judice
that is, they were unwilling to allow the power of Parliament to pre-empt the decision of the law courts. Consequently the bill was negatived after its second reading.

The liquor trade counterbalanced the prohibitionists' approaches to parliament with their own deputation and set of demands. These included a plea from publicans in Bruce and Newtown for compensation for loss of license. Other reforms suggested by the delegation, included a national option poll every nine years, instead of the triennial local option polls, and the substitution of a bench of stipendiary magistrates for the current elected committees.

In his reply to the liquor trade's deputation, Seddon revealed his increasing anxiety to remove the licensing issue from its prominence as "centre stage politics"; he felt the people of New Zealand deserved a "rest from the issue". As a result of the two deputations to Parliament, and following the invalidating of the local option polls in Bruce and Newtown, the liquor question was receiving more attention as a political issue than it had done since 1895. But although Seddon was anxious to reduce the heat of the licensing debate, and whilst he agreed that an overhaul of the statutes controlling the sale of liquor was necessary, he was reluctant to initiate proceedings for
their reform and thus resolve the issue. It was not until he received a message from the Governor on 20 October 1903, recommending that something be done, that Seddon introduced a licensing bill23.

Ethel Benjamin had her own ideas on how the new legislation should be framed. In a series of letters, written in her usual audacious style, she communicated these ideas to Seddon. The first, dated 29 September, proposed that provision be made in the new legislation for fresh polls to be taken. Ethel volunteered that if Seddon was successful in introducing this reform, the Bruce publicans would withdraw their case from court. She warned Seddon to word the bill carefully so as to provide for the situation in Bruce, to ensure that her clients' needs were adequately catered for, she proposed that a preliminary draft be sent to her for perusal so that she could check it and suggest alterations where necessary. In concluding, Ethel stressed her letter's confidentiality; it being impolitic to make known the fact that the legislation for a fresh poll was introduced "at the request of the publicans"24.

Ethel was perceptive to the needs of her clients. Of the possible legislative options for licensing reform, provision for a fresh poll was the most practical for the Bruce publicans. A fresh poll would eliminate the need for a lengthy and expensive wait on the Privy Council decision,
and, by encouraging their supporters to stay away from the poll, the trade could ensure the prohibitionist's defeat by denying the poll its necessary fifty percent electorate attendance. However Seddon dispelled the publicans' hopes for a fresh election when he announced that he would not support legislation which would affect the situation in Bruce and Newtown, whilst these cases were before the Courts.

Ethel responded to this by amending her suggestion on licensing reform. In a letter dated 12 October 1903, she asked Seddon to introduce legislation granting temporary licences to the Bruce publicans, so they could remain open until the Privy Council arrived at a decision. She wrote:

> The publicans of Bruce have all along been willing to submit to the will of the electors duly expressed, and, as the remedy of a fresh election cannot meanwhile be given them. I think it only just that provision should be made for granting them temporary licenses until such time arrives.

By granting temporary licenses to the publicans the Government would be saved from compensating them for lost trading time, should the Newtown appeal prove successful. Ethel suggested to Seddon that he use this as an economic argument in the debate:

> I think a point should be made of this in the debate as seeing that funds are so low it will doubtless weigh with some of the members.

The confidential nature of the correspondence was once again stressed by Ethel who concluded with the hope that Seddon
would attend to the matter and that, "if possible provision will be made in the new licensing bill to meet the position in Bruce"27.

Seddon did introduce a licensing bill that Parliamentary session to tighten the administration of liquor polls and to allow fresh elections to be held where an original poll was invalidated. Its clauses also included proposals to introduce total prohibition in no-license areas, and to remove the reduction option. But neither trade supporters nor prohibitionists were appeased by these provisions and the bill was eventually dropped28.

After the defeat of the 1903 Bill, interest in the licensing issue was keener than ever, however dissatisfaction over the system of licensing was unlikely to be resolved until after the Newtown case was decided. In May, the following year the decision of the Privy Council was finally released. The Privy Council allowed the Newtown licensing appeal in favour of the publicans. Licenses were to be reinstated in both Newtown and Bruce29.

The Privy Council decision was a serious blow to the prohibition movement. Reverend Isitt, Secretary of the New Zealand Alliance, described the movement as, "bereft of all hope of holding any victories they might gain in the future". Admittedly there was the possibility that legislation would be introduced to exclude the loopholes which had
permitted the legal "trickery" employed by the trade, but even this was a dim hope, as Reverend Isitt explained,

   Legislative reform is our only hope, and that is a poor one when the constitution of the present Upper House is considered, and the actions of the Government in regard to recent licensing legislation remembered³⁰.

The Privy Council decision appeared to remove all obstacles to the granting of licences in Bruce. However the subsequent obdurate behaviour of the Bruce Licensing Committee placed one further and final barrier in the way of the publicans. Ethel Benjamin and Neil Paterson went through the customary procedure of applying to the Committee for license renewals, but the Licensing Committee ignored the legal obligation they were under by refusing to meet and review the applications³¹. Ethel wrote to Mr Adams, who represented the Committee, warning him against the stalling tactics being employed by its members:

   If the Committee wish it to be believed that they are not animated by strong bias it will be well for them to meet forthwith and consider the applications in a fair and judicial manner³².

Adams replied to Ethel assuring her that the Committee would meet without delay. But she believed it was unwise to leave the matter to the "sweet will" of the Committee and applied to the Supreme Court for a mandamus to compel them to meet³³. To avoid being forced into meeting against their will, the five Committee members resigned. Valuable trading time was being lost through this further delay, so the
publicans urged Ethel to take prompt action. She telegraphed the Colonial Secretary and Minister of Justice requesting the immediate appointment of a new committee, adding her own suggestions as to suitable candidates. The Minister of Justice did not appoint Ethel's nominees but selected five men of his choosing. The annual meeting of the Licensing Committee was finally held on 27 June, having been delayed since the beginning of the month. The new Committee reviewed all of the applications submitted by Ethel Benjamin and Neil Paterson and granted licenses to the thirteen hotels they represented.

Prohibition supporters responded bitterly to the Government appointment of a new Licensing Committee and the renewal of licenses in Bruce. As one writer explained,

> Of law we can have as much as we can afford to pay for, but of justice none. Our prayers for redress have been laughed at, and finally we are taken in charge by the Government as incapable.

The lamentations of the prohibitionists did not fall on deaf ears. The Government was well aware of the unsatisfactory situation which the consequences of the 1902 local option polls had created. Once the courts had dispensed with the issue the Government was free to act. It introduced fresh legislation to prevent such anomalous situations from recurring.

The Licensing Acts Amendment Act, was an effort by the
Government to clean up the licensing legislation. Under the Act, disputes on the outcome of polls were to be held within six days, and inquiries into irregularities were to commence within fourteen days of the petition being filed. The irregularities which justified an inquiry were specified, and provision was made for fresh polls to be held within forty days of an election. Section 12 of the Act provided the definitive statement on the validity of a poll:

The Court shall determine whether by reason of some irregularity that in its opinion materially affected the result of the poll, the poll is void; or whether any and what proposal was duly carried; and such determination shall be final and shall not be removed or questioned by certioram or other process.

Ethel Benjamin's role in invalidating the 1902 Bruce local option poll, played a significant part in prompting the Government to introduce the amended licensing legislation. The Bruce and Newtown licensing cases highlighted the inadequacies of New Zealand's licensing legislation and provided a focal point around which the liquor debate was fought. As the liquor debate intensified, Seddon became increasingly anxious to remove the issue from centre stage politics. It thus became imperative for the Government to reform the unsatisfactory licensing legislation, and attempt to appease the increasing frustration expressed by prohibition and temperance supporters.

Ironically, Ethel's wholehearted efforts on behalf of the Bruce publicans were not adequately rewarded. The
publicans were reluctant to pay Ethel her full legal fees and expenses. It was only through threat of court action, and the reduction of her fees through a generous discount that she was finally able to recover her losses37.

The reticence of the Bruce publicans to pay Ethel, did not dissuade her from doing business with the trade. Following the outcome of the 1905 election, Ethel was once again involved in an attempt to defeat a liquor licensing poll. The 1905 licensing poll in Invercargill voted in no-licence with the required three-fifths majority. Ethel realised the business opportunity the publicans defeat at the polls could provide and wrote to the trade offering her legal expertise,

I am indeed sorry that you have had such bad luck at the recent local option poll, and I have been asked by some very prominent members of the Trade to write you with reference to a licensing petition with the object of upsetting the poll ... I have made a very minute study of the law with regard to Licensing Petitions. I left no stone unturned to secure restoration of licences in Bruce under similar circumstances with, I am glad to say, satisfactory results. If you think there were any irregularities at all at the present Election, I would come down to Invercargill by the first train and go over the matter thoroughly, and would then advise you what course to pursue. I have very complimentary opinions from both Counsel and Magistrate in Bruce as to the way I conducted the Licensing Petition there ...38.

The Invercargill Licensed Victualler's Association was impressed by Ethel's crudentials and duly employed her, and a local lawyer, Mr Hall, to initiate proceedings for an inquiry into the poll.
The inquiry was held in January 1906. Ethel Benjamin and Mr Hall presented an extensive case against the poll, but their efforts failed to reverse the poll's result. Under the new legislation it was more difficult to prove a case for invalidating a poll as irregularities had to be shown to have "materially affected the outcome of the poll" rather than "tended to defeat its fairness" as required under the old Act. On 25 February 1906, the Court concluded that the evidence disclosed no irregularities which would justify the Bench in upsetting the poll.

Unlike the Bruce licensing case, there appeared to be little value in Ethel and her assistant, Mr Hall, pursuing further legal proceedings on behalf of the publicans. Invercargill was thus permitted to "essay the experiment of no-license without let or hindrance." Three months later the practical impact of no-license was carried to effect when sixteen hotels were closed. Ethel Benjamin's expertise had been unable to save the Invercargill publicans from the 'will of the people'.

The prominence of a woman lawyer in the liquor trade's attempt to defeat the prohibitionists cause must have aroused consternation within the movement. Ethel Benjamin was undoubtedly exposed to a share of the criticism which accrued to conspicuous supporters of the trade. As a politically active woman, working in the public sphere to defeat
their cause, Ethel's actions must have riled prohibitionists who believed that a woman's place was in the home. But Ethel Benjamin, as her professional career indicates, was not one to conform to traditional expectations of a woman's role. Nowhere is this more obvious than in her handling of the legal battles to save the Bruce and Invercargill publishe cans from extinction. The thoroughness of her approach and the tenacity with which she handled these court cases is evidence of her ability and acumen as a lawyer.
CHAPTER SIX - CONCLUSION

By 1906 Ethel Benjamin had become dissatisfied with law in Dunedin. She was restless for new challenges, so when an opportunity arose for her to take over a restaurant in the Christchurch International Exhibition, she accepted. In December she moved to Christchurch to resume her new role.

Ethel appears to have enjoyed her period as restaurant manager. Although she was kept busy managing the restaurant's forty staff and ensuring that patrons' needs were adequately catered for, she found time to socialise and attend the exhibits and displays. Her period in Christchurch was marred only by a series of incidents which were perpetrated by the Exhibition authorities to make known their objections to her presence amongst the concessionaires. The lights in Ethel's part of the Exhibition building were turned off early, leaving her patrons in darkness; she was charged excessive cartage costs; her application to sell confectionery was turned down when other concessionaries had theirs granted; and her display-cards were confiscated by the authorities from outside her premises. Outraged by these acts, Ethel appealed to the Minister in Charge of the Exhibition for redress, but the Exhibition was over before anything was done to settle her complaints.
In April 1907 Ethel returned to Dunedin where she intended to stay only briefly whilst she prepared for a bigger move, to London, in May. But her business commitments took longer than anticipated to tie up and she was forced to postpone her trip "Home" until June. This decision was fortuitous as some time during the postponement she met Alfred De Costa, a thirty-six year old sharebroker and land and real estate agent from Wellington, and like herself a practising Jew. After a brief courting period the two married on 23 July 1907 in the Wellington Jewish Synagogue. Contrary to Gardner's account of the event in Colonial Cap and Gown, the marriage did not mark Ethel's early retirement from professional life and her retreat into relative obscurity in Gisborne. To relinquish her career and take on the role of a dependent wife, would have meant not only sacrificing the rewards of her hard-won position within the legal profession, as her career was now at its height, but also defeating the feminist principles which had hitherto directed her life. Ethel began her married life as she intended to carry on. On the day of her wedding she wrote two pieces of business correspondence: one to a client explaining why there would be a delay in her attending to his case, and another to the Post Office re-directing her mail to her new Wellington address. Ethel's marriage to Alfred De Costa did not lead her to give up any aspect of her working life.
By 31 July Ethel had established herself in offices adjacent to those of her husband in the Nathan's Building, Wellington. The proximity of their businesses and the couple's personal partnership provided a convenient basis for Ethel to enter into property speculation; and it was to this field of business that she now applied her talent. Ethel experienced the same problem in getting established as she had done in Dunedin. But through "constant and attractive advertising" she was able to build up her practice, despite the efforts of the Law Society to prevent her from doing so.6

In 1908 the De Costas closed their respective businesses and moved away from Wellington. It had always been Ethel's intention to join her family in England and this the couple eventually did. On arriving in London, both found work in their respective careers. Ethel joined a legal firm, though she was prevented from practising her profession fully until after the Sex Disqualification (Removal) Act was passed in 1919.8

As a childless couple, the De Costas were free to enjoy the lifestyle of the upper middle class as they chose. Winters were spent in London working at their respective careers and summers were spent holidaying in France and Italy. It was during one of these trips that the Germans invaded France in the prelude to World War II. The De
Costas escaped from Mentone in one of the last boats to leave Southern France. They were accommodated in the hold of an old coal carrying ship along with many others. They returned to England but the coal dust to which they had been exposed during their journey proved to be fatal for Alfred. He succumbed to a chest complaint and some months later died.

Ethel stayed on in her London flat but periodically escaped to her sisters' cottage in Middlesex when bombing became severe. One night during a blackout, she was fatally injured when the building she was in collapsed. She was admitted to Mount Vernon Hospital in Northwood where she died on 14 October 1943.

Ethel Benjamin's life and career indicate that she was a strong woman, willing to challenge the assumptions of an "old unjust order". By her determined efforts she cleared the way for women's entry into the legal profession and her career in Dunedin, though brief, proved that despite discrimination and isolation, women could compete and succeed in a "male world". Indeed, her handling of cases involving sensitive areas of family law - divorce, domestic violence, and adoption - indicate how essential it was that women were in positions of responsibility within the legal system to represent women's interests. But women lawyers did not have to rely on these areas of family law to sustain their
careers. As a legal representative for the hotel trade Ethel Benjamin defied notions of appropriate female behaviour. Her legal battles on behalf of the publicans reveal her as an astute lawyer who placed the needs of her clients first and foremost.

Ethel thus set a bold precedent for other women to follow in her footsteps. But although she anticipated that women would capitalise on her success, few chose to do so. The next woman to complete the L.L.B. degree in New Zealand was Annie Lee Rees in 1911, she was followed by Harriette Vine in 1915 and Esther Ellen Ongley in 1919, however it is unknown whether these women went on to become practising lawyers. Women did not begin to seriously enter the legal profession until after World War II and even then they did so in small numbers.

As late as 1983 a Wellington Survey on women lawyers concluded that the entry of women into the legal profession was a relatively recent phenomenon and one which male lawyers and clients had not yet adjusted to. Participants in the survey recalled their difficulty getting jobs; their law promotion prospects; the problems of being treated as a "lady-woman" rather than as a lawyer; and discrimination by male lawyers. Thus the problems which Ethel Benjamin encountered in the legal profession remain; women lawyers have yet to be rid of the bounds of an "old unjust order".
CHAPTER ONE - INTRODUCTION

1. Stella May Henderson was the only other woman lawyer in New Zealand in the late nineteenth century period. Born in Kaiapoi in 1871, she attended Christchurch Girls' High School and went on to Canterbury College where she graduated with an M.A. degree in 1893. She worked for a Christchurch law firm and, under the encouragement of one of its solicitor's took up law studies at University. Although she is believed to have completed the L.L.B. in 1898, her entry in the Roll of Graduates of the University of New Zealand, does not credit her with the degree, so possibly she never graduated. She eventually left the law firm to take up a position in Wellington as a parliamentary correspondent, becoming New Zealand's first woman to do so.


5. It is unknown where Ethel was placed in the family, but it seems likely that she was the eldest.

CHAPTER TWO: EDUCATION: SCHOOL AND UNIVERSITY

(1) Otago Girls' High School

1. "Interview with Ethel Benjamin", reported in the Otago Daily Times, 14 September 1897, p. 2.

2. The Jews in Dunedin shared with the Scots, a recognition of the need for education. Many Jewish parents took advantage of the University of Otago to give their children a higher education. L.M. Goldman, History of the Jews in New Zealand, Wellington 1958, p. 159.


4. Eileen Wallis, A Most Rare Vision, Otago Girls' High School, the First One Hundred Years, Dunedin 1972, p. 40.

5. Alexander Wilson, "The Education of Girls", presidential address to the Otago Educational Institute, ca. 1905, Hocken Library.

6. Otago Girls' High School Reports, 1886-1891, O.G.H.S.


11. O.G.H.S. Report, 1890, p. 9. It is interesting to note that Mr Wilson's successor, Miss Marchant, was less approving of the scholarship exam system. She believed that the work required of girls who chose to enter for the exam was far too demanding, and proposed that they should be allowed to exempt themselves from the full range of subjects required of candidates, O.G.H.S. Report, 1898, p. 5.

12. A. Wilson, "Speech at Otago University Graduation", in O.D.T., 28 August 1885, p. 3.


16. Although Ethel was a year behind Emily Siedeberg and Margaret Cruikshank at school, they shared some classes. Mr


(2) Otago University

1. Otago University Student Review, v. 6 no. 1 (May 1893)

2. O.U.S.R., v. 5 no. 1 (September 1892) 16.


7. The 1893 University of Otago Calendar lists three lecturers in the Law School: Mr Allan Holmes (Jurisprudence); Mr W.A. Stout (Law of Property); Mr A.R. Barclay (Constitutional History and Law).

8. In Britain, the legal profession was one of several occupations opened to women by the Sex Disqualification (Removal) Act 1919. Brittain, p. 101.


10. In 1893 more than forty women were attending classes at the University. O.U.S., 6 no. 1 (May 1893) 16.

11. O.U.S.R. 11 no. 3 (May 1897) 82-83.


13. O.U.S.R. v. 9, no. 2 (October 1896) 22.

14. O.U.S.R. v. 8, no. 2 (June 1895) 50.

15. In Ethel's year there were only fourteen students.


21. O.U.S.R., v. 11 no. 3 (September 1897), 84.

22. E.B. Cargill was a son of William Cargill, one of the founders of the Dunedin Settlement. He was Mayor of Dunedin from 1897-8. Cyclopedia of New Zealand, v. 4 (Otago and Southland), p. 104.

23. O.D.T., 10 July, 1897, p. 6.

24. Augustus Hamilton was appointed Registrar of Otago University in 1890. Scholefield.


26. O.D.T., 10 July 1897, p. 6.

27. O.D.T., 10 July 1897, p. 6.

28. Ibid.

29. O.D.T., 10 July 1897, p. 6.
CHAPTER THREE - ENTERING THE PROFESSION

(1) The Female Law Practitioners' Act

1. George Russell was a prominent educationalist from Christchurch. He was author of a book for schools and a contributor to leading columns in New Zealand dailies; he sat on several School and College Boards, and was known for his progressive views on education. He was a Member of the House of Representatives 1895-96. G. Scholefield, Who's Who in New Zealand, Wellington 1908, p. 150.

2. N.Z.P.D. 91 (2 October 1895) 15.
4. Ibid. 338.
6. N.Z.P.D. 94 (1 August 1896) 368.
11. O.D.T., 10 July 1897, p. 6.

(2) Commencing Practice

1. O.D.T., 11 May 1897, p. 2.
2. O.U.S.R., v. 11, no. 3 (August 1897) 83.
5. O.U.S.R., v. 11, no. 5 (October 1897) 145.

9. Newspaper Copy Clipping supplied by William Gordon, Otago District Law Society Correspondence 1897, Dunedin Supreme Court Library. The full weight of Hosking's proposal can be realised when the inappropriateness of a woman appearing in public without a hat is considered. Probably the only women who did attend court bare-headed were prisoners but often even they wore caps.


11. In the original plan for the dinner, Ethel's name was included in brackets, the plan was later amended and Ethel's name struck off. Benjamin to Stilling, 2 March 1898, ODLS Correspondence, Dunedin Supreme Court Library.

12. Benjamin to Stilling, 1 May 1899, ODLS Correspondence.


15. For an example of Ethel's business connections with Mr Platts, see Benjamin to Platts, 13 December 1904, Letterbook G, p. 799. Saul Solomon shared with Ethel an interest in Divorce cases. Cyclopedia of New Zealand, (Otago and Southland), v. 4, p. 442.


18. Benjamin to Harrison (Secretary, Wellington District Law Society), 19 September 1907, Letterbook H, p. 922.

19. Ibid.


21. For an example of one of her advertisements, see O.D.T., 18 September 1897.

22. Two of these clients were particularly well-endowed women - Mrs H.L. Adamson and Mrs Emma Hamilton. Ethel had extensive business connections with both women, she arranged tenants for their rental accommodation and collected rents. She also invested monies on their behalf. It is interesting that Mrs Hamilton lived in Christchurch, but employed Ethel to manage her business interests from Dunedin. Benjamin to Adamson, Letterbook G and H and Benjamin to Hamilton, Letterbook G and H, (various listings).
23. Samuel Jacobs was a Dunedin tobacconist. Ethel corresponded with his wife, Benjamin to Jacobs, 9 September 1907, Letterbook H, p. 905.


It is unlikely that Ethel was the first woman to appear in Court in the British Empire, as women were admitted to the bar in Ontario prior to 1897.

CHAPTER FOUR - SOLICITOR TO THE SOCIETY FOR THE PROTECTION OF WOMEN AND CHILDREN


4. Tennant, p. 23.

5. O.D.T., 9 February 1899, p. 4.


7. O.D.T., 1 March 1899, p. 3.

8. The Society's membership was an interesting mix of people. Mr A.S. Adams was a practising barrister and solicitor in Dunedin and was actively involved in the prohibition cause. F.R. Chapman was later made a Supreme Court Judge. He served on the Dunedin City Council for some years. Rev. Curzon-Siggers, was Vicar of St. Matthews Church in Dunedin and (founder) editor of 'New Zealand Guardian'. Rachel Reynolds was best known for her work, particularly in relation to women and children. Emily Siedeberg was a contemporary of Ethel's: she became the first woman doctor in New Zealand, like Ethel, she was Jewish. Although the Society was not particularly affiliated to any Church or movement it is evident that there were strong connections with both the Christian Church, and though to a lesser extent the Jewish; the Society also had connections with the Prohibition movement.

9. Reid, p. 11.


11. Reid, p. 11.

(1) Domestic Violence

1. Few of the cases handled by Ethel Benjamin on behalf of the Society specifically involved child abuse, in most cases the incidence of violence affected women and children jointly.
2. The Auckland SPWC was merged with the SPCA from 1898 to 1927. Discussion on the possibility of a merger in Dunedin took place at the Society's inaugural meeting.


4. Olssen and Levesque, p. 3.

5. Tennant, p. 29.

6. See Appendix One.


8. O.D.T., 10 November 1906, p. 11.


12. May, 144.

13. A.C. Hanlon Archives, No. 1, Brief No. 239 (Hocken).

14. O.D.T., 18 July 1903, p. 3.

15. O.D.T., 21 July 1903, p. 7.

16. A.C. Hanlon Archives, No. 1, Brief No. 239.


21. Ibid.


23. J.S. Mill was the first feminist writer to discuss wife abuse as a symptom of the inequalities of the sexes in marriage and the subordination of a wife to her husband, in The Subjection of Women, London 1869.
24. Martin, p. 4.
25. Olssen and Levesque, p. 3.
26. Reid, p. 11.

(2) Divorce
1. Reid, p. 23.
2. In an address to the women's suffrage movement in Britain, Anna Stout claimed that the reform in the divorce laws in N.Z. had arisen largely in response to the pressure the women's movement placed on the Government. Anna Stout (Speech) "The Effects of Women's Suffrage", ca. 1908, typescript (Hocken).
9. Ibid., p. 65. Refer Appendix Two for divorce statistics.
11. s. 22, 1898 Divorce Act.
14. O.D.T., 1 August 1906, p. 4.
17. O.D.T., 1 August 1906, p. 5.


20. Reid, p. 23.


23. Maintenance Orders, Nos., 735-736, Dunedin Magistrate Court Records, 5 October 1905 (Hocken).


26. A. Stout (Speech), "Women's Suffrage".

(3) Adoption


2. 68. No doubt many adoptions continued to be arranged informally, despite the legal requirements laid down in the Adoption Acts 1861, 1895. Traditional Maori adoptions were recognised by N.Z. Law until 1910. I.D. Campbell, p. 68.


4. Tennant, p. 20.

5. 'Destitute Persons Act', Statutes of New Zealand 1894, No. 22, s. 9.


7. Olssen and Leversque, pp. 6-12.


10. The relevant sections of the Infants Act have been superseded by 1955 Adoption Act.
11. An adoptive parent did not have to be married.

12. In the available records I could find 12 adoption cases handled by Ethel Benjamin. Not all of these were successful.


16. In Benjamin to "Mater", 19 June 1905 Letterbook G, p. 1014. Ethel writes that she has a client anxious to adopt a baby.

In Benjamin to "Viva" 31 March 1905 Letterbook G, p. 916, Ethel writes that she has two clients who are interested in adopting a baby. She asks for particulars of the woman's circumstances.


18. Benjamin to Thomas, 1 December 1905, p. 213; Benjamin to Shaw, 14 December 1905, p. 226.

19. N.Z.'s most famous case of baby-farming was that of Minnie Dean, in 1895, Campbell, p. 11.


23. Benjamin to Cooke, 12 August 1905, Letterbook H, p. 79.

24. A.P. Stout (Speech), "The Effects of Women's Suffrage", 1913, p. 3 (Hocken).


27. N.Z.P.D. 140 (August 1906) 654.

28. Griffith, p. 43.


30. O.D.T., 19 May, p. 11.
31. Since 1955 all adoptions have been arranged by Social Welfare Department.
CHAPTER FIVE - FOR THE PUBLICANS AGAINST THE PROHIBITIONISTS


2. Ibid., p. 114.

3. Prohibition Orders were obtainable from the Police Court on request from a wife or another person. Dunedin Magistrates Court Records 1902-1905 (Hocken). Ethel also encouraged drunken husbands to volunteer to reduce their liquor consumption by taking the pledge. See Benjamin to Peters, 15 May 1905, Letterbook G, p. 956.

4. Ethel was a joint shareholder with a Mrs McLay in the Wallacetown Junction Hotel. Benjamin to McLay, 5 September 1906, p. 594.

5. The advertisements for Wains’ Hotel which were designed by Ethel, were placed in newspapers, in the programmes of touring groups, and printed circulars! Benjamin to Donne, 13 December 1903, Letterbook G, p. 207.


7. The no-licence vote exceeded the continuance by 3,073.

8. Thirteen hotelkeepers belonged to this organisation.


10. Frederick R. Chapman was a partner in Smith, Chapman and Sinclair, barristers and solicitors, in September 1903 he was appointed Judge of the Supreme Court and president of the Arbitration Court. W.A. Sim was a partner in Mondy, Sim and Stephens, barristers and solicitors. Donald Reid of Reid and Macassey, barristers and solicitors, was elected as a Member of the House of Representatives for Taieri in 1892. Scholefield 1908.

11. Cullen described Alexander S. Adams as "a rather dour Baptist prohibitionist of fearsome rectitude" (p. 64). He was President of the Council of Churches 1903-4; President of the New Zealand Baptist Union; President of the N.Z. Alliance; and President of the Otago and Southland No-Licence Council. He was also an honorary solicitor for the SPWC. So his dealings with Ethel Benjamin were not always from the opposing side of the Courtroom, Scholefield 1908, p. 2. J.F. Woodhouse, of Fraser, Sinclair and
Woodhouse, had been president of the Otago District Law Society in 1893. Cullen p. 185.

12. Bastings v Stratford, 30 March 1900, New Zealand Law Review, 18, p. 513. Prior to the Bruce poll inquiry, publicans in Mataura and Ashburton, had tried to defeat the outcome of the 1902 poll in their districts, by following the precedent established in this case but they were unsuccessful.

13. 'Regulations of Local Elections Act 1876', s. 50, ss. 6.

14. Fraser, p. 6.

15. Fraser, p. 4.


17. O.D.T., 1 August, 1903, p. 8.

18. O.D.T., 9 July 1903, p. 6.

19. Ibid.


23. Ibid., p. 216.


26. Ibid.

27. Ibid.


30. Ibid., p. 7.


34. O.D.T., 30 June 1904, p. 2.

35. O.D.T., 29 June 1904, p. 5.


40. O.D.T., 1 February 1906, p. 6.

41. A.J. De La Mare, Drink or Drought, Invercargill 1981, pp. 70-71.
CHAPTER SIX - CONCLUSION


4. "After practicing for some years ..., Miss Benjamin married an unqualified law clerk and retired into private life at Gisborne. It was a shabby episode in New Zealand's legal history". Gardner, p. 109.


7. The date of the De Costa's arrival in England is unclear.

8. Neither would she have been permitted to vote until 1918: these disabilities must have annoyed the progressive-minded Ethel.


10. Ethel died a wealthy woman. She left an estate of 20,000 pounds, also various shares and investments, to her brothers and sisters and their children as she had no dependents herself. Will of Ethel R. De Costa, January 1944, Somerset House, London.

11. I am grateful to Sharon Dooley for collecting this information from the Roll of Graduates of the University of New Zealand.

12. Cullen notes that Prudence Rose Collier was only the second woman to be admitted to the Bar in Otago in 1926; she was followed by Margaret Smith MacKay in 1929 and Mary Moir Hussey in 1947. Cullen, p. 141.

BIBLIOGRAPHY

Primary Sources

(a) Unpublished


Benjamin, Ethel R., Birth and Marriage Certificates, Registrar of Births, Deaths and Marriages, Wellington.


De Costa, A.H., Correspondence March-July 1985.

Dunedin Magistrates Court Records, Maintenance Orders 1900-1905, Hocken Library.

Hanlon, A.A., Archives, No. 1, Brief No. 239, Hocken Library.

Otago District Law Society Correspondence 1897-1908, Minute Books 1898-1908, Dunedin Supreme Court Library.


Society for the Protection of Women and Children, Minute Books 1898-1908; Record Books 1907-08; Secretary's Reports; Constitution and Rules. Collection of Dunedin Branch, Society for the Protection of Home and Family.

(b) Published

(i) Official Appendices to the Journals of the House of Representatives 1896, 1897.

New Zealand Parliamentary Debates, 1896, 1903, 1904.

New Zealand Statutes, 1867, 1876, 1881, 1896, 1898, 1904.

Otago Girls' High School Annual Reports and Prospectuses 1883-1897, Otago Girls' High School.
Otago University Calendar, 1893, Hocken Library.

(ii) Unofficial
Obituary of Henry Benjamin, Otago Witness, 5 April 1927.
Stout, Anna P., "Speeches and Articles on Women's Suffrage, Education of Women and other Subjects, 1896-1913", Hocken Library.
Wilson, Alexander, "The Education of Girls" presidential address to the Otago Educational Institute, private circulation, Dunedin 1905, Hocken Library.

(iii) Newspapers and Journals
Otago Daily Times 1897-1907
Otago Girls' High School Jubilee Magazine 1871-1921
Otago University Student Review 1893-1897, Hocken Library.
The White Ribbon, August 1897, John Crevar Library, Chicago.

(iv) Pamphlets
Anon. The opinions of some eminent men, statesmen, Ministers of Religion, Others, Sharing the Fallacy of No-Licence, Dunedin, 1902, Hocken.
Fraser, P.B., The Electors of Bruce versus the Law Courts of New Zealand, Dunedin 1903, Hocken.
Siedeberg-McKinnon, Emily, Fifty Years of Active Work in the Interests of Women and Children, Dunedin 1949, Hocken.

Secondary Sources
(a) Unpublished
Smith, Lynn, "The Otago Legal Profession 1848-1869", BA (Hons), Long Essay, Otago 1978.

(b) Published

(Books)

Banks, Oliver, Faces of Feminism, Oxford 1981

Beard, Mary R., Women as a Force in History, New York 1946.


Brittain, Vera, Lady into Woman, London 1953.


Cyclopedia of New Zealand, Vol. 4, (Otago and Southland), Christchurch 1897-1908.

De La Mare, A.J., Drink or Drought, Invercargill, 1981.


Wallis, Eileen, *A Most Rare Vision: Otago Girls' High School, the First One Hundred Years*, Dunedin 1972.


(ii) Articles


Kok, Daphne, "Women in the Law", Law Society Journal, (Sydney), v. 8, No. 2 (June 1970), pp. 82-84.


McDonald, Geraldine, "Education and the Movement Towards Equality" in P. Bunkle


APPENDIX I

A. Benjamin to Robertson, Glenarvon, North East Valley.
"Mrs Robertson has consulted me with reference to your treatment of her... She finds it impossible to live with you owing to your cruelty towards her, and requires maintenance from you. Unless maintenance is arranged by the 29th, I will be obliged to take legal proceedings against you for a Judicial Separation and Maintenance Order"  
(Letterbook H, 25 July 1905, p.62)

B. Benjamin to Deans, Railway Station, Dunedin.
Mrs Deans consulted Ethel with regard to her domestic affairs. She complained of "persistent cruelty" from her husband. Unable to endure such treatment any more she left him. Ethel suggests that to avoid undue publicity a Deed of Separation be drawn up between them. If the matter was not satisfactorily solved in this way, Ethel would make arrangements for court proceedings to go ahead for a legal separation.  
(LetterBook H, 17 July 1906, p.311)

C. Benjamin to Macintosh, C/o Messrs Crut & Crut, Stafford Street.
Ethel writes, "Mrs Macintosh is in a delicate state of health, and has been brutally knocked about by you. For her children's sake, Mrs Macintosh is loathe to take proceedings against you for separation, but if you again ill treat her, for her own protection, she will be compelled to do so, in which case she will apply for the custody of the children and for a Maintenance Order against you".  
(Letterbook H, 13 August 1906, p.575)

D. Benjamin to Boyd, Melville Street.
Ethel had been consulted by his wife, Mrs Sophia Boyd regarding her domestic affairs.
"Mrs Boyd can endure no longer your treatment of her, she wishes to be separated from you. She does not however wish to have her affairs dragged into the Police Court. She would prefer it if a settlement could be reached outside the Court"  
(Letterbook G, 15 April 1904, p.356)

E. Benjamin to Peterson, Brunswick Street, South Dunedin.
"I have been consulted by your wife, Mrs Peterson, with reference to your domestic affairs. She complains of your excessive drinking, bad language, and cruelty towards her. If you again treat her in this cruel manner she will be compelled to seek a separation from you... I think it would be wise for you to take the pledge"  
(Letterbook G, 15 May 1905, p.956)
APPENDIX II

THE USE OF THE VARIOUS GROUNDS FOR DIVORCE IN PETITIONS 1897-1900

<table>
<thead>
<tr>
<th>Ground</th>
<th>1897</th>
<th>1898</th>
<th>1899</th>
<th>1900</th>
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</thead>
<tbody>
<tr>
<td>Adultery(a)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wives' Petitions</td>
<td>19</td>
<td>17</td>
<td>18</td>
<td>22</td>
</tr>
<tr>
<td>Husbands' Petitions</td>
<td>26</td>
<td>33</td>
<td>40</td>
<td>32</td>
</tr>
<tr>
<td>Desertion(b)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wives' Petitions</td>
<td></td>
<td></td>
<td>30</td>
<td>41</td>
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<tr>
<td>Husbands' Petitions</td>
<td></td>
<td></td>
<td>10</td>
<td>8</td>
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<tr>
<td>Drunkenness(c)</td>
<td></td>
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</tr>
<tr>
<td>Wives' Petitions</td>
<td></td>
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<td>6</td>
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<tr>
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<td>1</td>
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<td>Criminal Conviction</td>
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<td>Husbands' Petitions</td>
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<td>0</td>
<td>0</td>
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<tr>
<td>Totals</td>
<td>45</td>
<td>50</td>
<td>111</td>
<td>110</td>
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<tr>
<td>Petitions by wives</td>
<td>45%</td>
<td>34%</td>
<td>52%</td>
<td>63%</td>
</tr>
<tr>
<td>Petitions by husbands</td>
<td>55%</td>
<td>66%</td>
<td>48%</td>
<td>37%</td>
</tr>
</tbody>
</table>

(a) Adultery includes simple and aggravated adultery.

(b) Desertion includes simple desertion and desertion compounded by drunkenness, cruelty, etc., where desertion was the principal matrimonial offence.

(c) Drunkenness is defined by the 1898 Divorce Act.

Source: Phillips p. 65.
The following is an article written by Kate Sheppard for the White Ribbon, following an interview she had with Ethel Benjamin in 1897. The article is recorded in its entirety as the lateness of its arrival in New Zealand precluded its use in the main text.

**New Zealand's First Lady Lawyer**

Thinking that some account of the first woman in this colony to take the L.L.B. degree might be interesting to the readers of the WHITE RIBBON, I resolved to take advantage of a visit to Dunedin, and seek an interview with her.

My first conversation with Miss Benjamin was through the telephone. I had written to her previously, asking if she could spare time for an interview, and telling her the name of the friend with whom I was staying. A discussion through the telephone as to a suitable time and place was the result.

On the windows of an upper floor in one of the large buildings in Princes Street I noticed the inscription:

Ethel R. Benjamin,
Barrister & Solicitor

On entering and sending in my name, I was, after a few minutes' delay in the outer office, introduced into the inner sanctum. From the side of a business-like office table rose and stepped forward a slight, girlish form. An oval face, broad forehead, and dark, speaking eyes were among my first impression of the lady I saw before me. After receiving a pleasant greeting and a cordial shake of the hand, I plunged at once into the subject of my mission.

'I have been interviewed before, but not by a lady', Miss Benjamin said, laughing.

'Do you think the ordeal will be more severe?' I inquired.

'Oh, well, it is said that women are less lenient towards women than men are', was the cautious, lawyer-like reply.
'Yes, I am the first lady lawyer south of the line, but not the first British woman lawyer. There is, you know, one in India and another in Canada'.

'I always had a liking for the profession. I knew I should have to take up something in order to be self-supporting, and the Legal Profession had more charms for me than any other'.

'No, my family offered no opposition to my taking up the profession of law. On the contrary, my father encouraged and helped me in every possible way'.

'It is true that the Legal Profession was not then open to women, and that the franchise had not yet been granted, but I had faith that a colony so liberal as our own would not long tolerate such purely artificial barriers. I therefore entered on my studies with a light heart, feeling sure that I should not long be debarred from the use of any degree I might obtain'.

'No, there were no other girl students in the law school with me, although there have been others since'.

'How did I come out in my examinations?'

'Pretty well, I think. In my first year at the School of Law (Otago University), I took first place in the first class division in Jurisprudence and in Constitutional History, and Law. In the second section, I came out first in the colony in Roman Law, and this year I was first in New Zealand in 'Equity and Evidence', bracketed first in Criminal Law, and bracketed first in 'Real and Personal Property'.'

'No, my health did not suffer in the least. Do I look like an invalid? I went to bed at 11 o'clock every night, and gave myself an allowance of nine or ten hours' rest, and, as you can see, this plan has agreed with me pretty well. I believe if students would give themselves a more liberal allowance of resting time they would do better work, and injure their health less. The minimum time in which the L.L.B. degree can be taken is four years, and I did it in that time'.
'Which branch of the profession do I intend to follow? I particularly wish to practise as a barrister, and hope some day to make my mark at the Bar. Of course, at present, I will not refuse any law work.

'Yes, I was asked to read a paper on 'Laws affecting Women and Children' at the next meeting of the Women's National Council, and thought at the time that that was rather a large order. I therefore suggested that the title of the paper be altered to 'Some of the Inequalities of the Law as regards Men and Women'. If this alteration be accepted, and nothing hinders, I shall most gladly prepare and read such a paper before the Council'.

'Yes, I am deeply interested in the Women's Rights' movement. Up till now I have been too busy to take any active part in the proceedings of the National Council. Some of the subjects have my heartiest sympathy'.

'No, I have not heard that there was an idea among some members of the National Council to raise a fund for legal assistance to poor and friendless women. I think it an admirable suggestion. One of my own pet ambitions is to be useful to my own sex, and I hope to be able to arrange to set aside a certain hour of the day for giving advice gratis to men and women who cannot afford legal fees'.

After a little friendly chitchat, I took my leave, glad to think that our first New Zealand lady lawyer should have passed through her college course with such credit, and evidently with so little mental or physical strain.

I realised also that in the legal profession there exists a noble opportunity for service by women whose hearts are touched with sympathy for the weak and helpless.