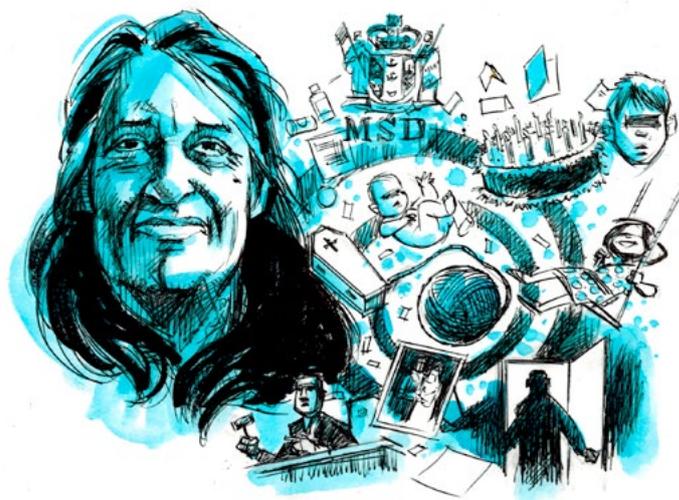




Kathryn's Story

How the Government spent well over \$100,000 and 15 years pursuing a chronically-ill beneficiary mother for a debt she should not have.

By Catriona MacLennan



A Child Poverty Action Group Background Paper
Catriona MacLennan

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About Child Poverty Action Group

Child Poverty Action Group (CPAG) is an independent charity working to eliminate child poverty in New Zealand through research, education and advocacy. CPAG believes that New Zealand's high rate of child poverty is not the result of economic necessity, but is due to policy neglect and a flawed ideological emphasis on economic incentives. Through research, CPAG highlights the position of tens of thousands of New Zealand children, and promotes public policies that address the underlying causes of the poverty they live in.

If you would like to support CPAG's work, please visit our website: www.cpag.org.nz

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Preface

New Zealand's social security framework is based on outdated ideas of the nature of relationships and too often fails to protect the needs of children. In CPAG's report **The complexities of relationship in the welfare system and the consequences for children** (Dec 2014) we found serious misunderstandings and anomalies in the way mothers with children are treated in the welfare and judicial system. We wrote about the famous *Ruka v Department of Social Welfare* case on the role of domestic violence in establishing relationship status. We also discussed the learning from that case, and the subsequent evaluation by Barrister Frances Joychild in 1999. We also became aware of many unsettling, highly disturbing stories, including that of Kathryn H.

While we discussed Kathryn's case in our relationship report, we became aware that there was much more to her story that needed to be told. We believe that Kathryn's Story will rank as does Ruka, as a landmark case to promote progressive reform, and this report will be a vital resource tool for policy makers, lawyers and judges, teachers and social workers and politicians.

Kathryn was accused of fraudulently claiming benefits totalling \$117,598.84 over five years, convicted and sent to jail in 2001. She has always denied this charge and refused to plead guilty. Regardless of the prison term she served, Work and Income has insisted on recovery of the full debt by means of a \$20 a week deduction from her invalid's benefit. Over the past 15 years, this decision has been subject to protracted and expensive court appeals, with the last hearing to date being in the High Court in 2015.

While it was over twenty years ago when she was alleged to have fraudulently obtained a benefit, this case has a history that starts well before that. The cycle of poverty and abuse began, as so often is the case, in her own childhood. It is fair to say that the way she has been treated in the judicial process, both the criminal conviction, her imprisonment, and the subsequent pursuit for reparations has been extremely damaging for her children and compounded her own Post-Traumatic Stress Disorder arising from her previous traumatic experiences. The NZ Treasury has recently shown that poor outcomes for children by the time they are young adults are highly correlated with having *"a finding of abuse or neglect, time spent in care of child protection services; most of their lifetime supported by benefits; a parent who has received a community or custodial sentence; a mother who has no formal qualifications."* NZ Treasury 2016.

Kathryn's story is published in the hope that the story of her earlier life and experiences will provide some insights and a richer picture of the chaos, ill-health and tragedy that afflicts many women who fall foul of the welfare system. CPAG is particularly concerned for the well-being of the children involved in this long complex story, and for others who face similar accusations and demands for financial reparations well beyond what would be reasonably expected.

CPAG is extremely grateful to Barrister Catriona MacLennan who undertook the task of telling Kathryn's story by painstakingly piecing together her personal reflections and court records. The names of Kathryn's children and others as appropriate have been changed to protect their privacy. Kathryn herself is chronically unwell and ekes out an existence on a Supported Living Payment (previously the Invalid's Benefit). She has shown enormous courage and resilience in the face of relentless bureaucratic and compassionless pursuit by a well-resourced and formidable administrative and judicial process.

CPAG believes there must be a complete review of the treatment of relationships in the welfare system, as the authors argued in the CPAG 2014 report. In the meantime there must be more scrutiny of the process of establishing relationship fraud and reparations. No mother with young children should be sent to prison for relationship fraud. However, if there has been a prison term imposed, that must surely cancel the debt. Amounts alleged to have been taken fraudulently also need to be analysed for accuracy by an independent expert body trained to know the eligibility of that person for other entitlements.

There is much work to do to make our welfare system more in tune with the needs of children in the 21st century.

“A relationship that has all the hallmarks of a marriage is no less a marriage just because one of the partners might have sexually abused one of the children.”

Judge Macdonald, 2001, talking about Kathryn’s former partner.

“He was involved with one of her children and in fact was convicted of manslaughter.”

Judge Macdonald, 2001, describes the beating to death of Kathryn’s son by her partner.

“[W]hilst imprisonment is about punishment for her offending it does not constitute restitution of her debt.” Social Security Appeal Authority, 2010.

This is a complex story. Part One is Kathryn’s story, told in her own words in seven sections. It begins by describing her childhood experiences that helped to shape her future, and the traumatic events surrounding killing of Kathryn’s child Robbie by her partner. The context of this history shines a light on subsequent events in her life, including the investigation for relationship fraud, her prison sentence and her subsequent fifteen year fight against harsh reparations. Part Two is an account of the Court proceedings to date. The Timeline on page 29 will help the reader to navigate some key developments in Kathryn’s life and the Court proceedings.

PART ONE: Kathryn's Story

1. Childhood

Kathryn almost died when she was only two weeks old. She was born at National Women's Hospital on 16 September 1960 but, within a fortnight of going home, was back in hospital after she was found to have pyloric stenosis. This is a rare condition in babies, usually identified in the first few weeks after birth.

"My bowels weren't developed and I had a transparent lump for a stomach. I could throw up from here to that curtain without a problem."

Kathryn's early days were spent projectile vomiting, as pyloric stenosis means that the muscles of the pylorus, which help keep food in the stomach until the next stage of the digestive process, are too thick and prevent food from entering the baby's small intestine. Emergency surgery saved Kathryn's life by 20 minutes but left her with a six inch scar on her stomach that she has always hated. She spent a lengthy period in hospital after the operation.

"I always wished to God that I had died. Then everything that's happened in my life wouldn't have happened. My Mum had to get married because she was pregnant with me. My father was very violent and abusive and nasty. He never worked a day in his life. He was a con man. He was an asshole. She finally left him when Jon was a baby and [my father] went back in jail."

Kathryn is one of six children – three siblings and two half-siblings. The oldest child, Therese, was Kathryn's mother's first child and Kathryn's half-sister. Therese was adopted out as Kathryn's mother was unmarried at the time Therese was born. Kathryn's father was already married and he had to obtain a divorce so he could marry Kathryn's mother when she became pregnant with Kathryn. After Kathryn there are brothers, Jon, Matthew, and then Tom. The youngest child and Kathryn's half-brother, Nick, was also adopted out and did not grow up with his family. Therese was born in 1958 and Tom in 1967.

Kathryn was five by the time her father went back to jail and she and her family moved to Mangaweka, in the Manawatu-Wanganui region, which she "absolutely loved". But, two years later, the family returned to Auckland when her father was released from prison.

"He said he would be different but he was nothing but abusive. I was forced to say the Lord's Prayer and couldn't. He sent me to bed without food. I got the same meal for breakfast the next day. I still couldn't say the prayer. The same food was served up at each meal until I could say the prayer. It took a week. My mother didn't know about it because she was at work."

Kathryn used to hide under the house or in a wardrobe to keep away from her father.

"My father beat the boys around the back of the leg with a razor strap, from their waists to their knees. When I was 12, he tried to run me over in the car park. I was always to blame for them having to get married. I was always the black sheep of the family."

Kathryn's father attacked her on another occasion as well. Her mother had said she could fill up a paddling pool for her brothers. When she had the hose on to fill the pool, her father arrived home. He came along with a pitchfork and chased her and she ran and hid as far back as possible under the house so he could not reach her.

"When he couldn't reach me, he stabbed my bunny. My father died last year. I was quite happy. It didn't affect me at all. It was actually good to hear he was dead. If I see the house [where we lived] it makes me feel like vomiting."

When she was 7, Kathryn's father wanted breakfast and he and she were the only people at home.

"I had to make him bacon and eggs and burnt them and ended up wearing them."

Kathryn's mother left her husband again, and he lived in the family home with his girlfriend and her three children. Kathryn and her mother and her siblings shifted to a one-bedroom flat in Otahuhu, Auckland, with another couple and their new-born baby.

While Kathryn's mother worked, Kathryn was left at home and given the task of caring for the baby while the baby's mother went out.

"Mum got us a house but Dad tracked us down so we had to move again."

The family moved a lot, trying to hide from Kathryn's father. They lived in Jellicoe Road in Manurewa for a while. Kathryn's mother worked to support the children.

"It was shoddy people who used to look after us while she was at work."

When Kathryn was 8, her mother found out that Kathryn's father was back in jail.

"She broke into our house and moved his shit out and we moved back into that house, because Mum always paid the mortgage."

She recalls a church group paying for her and two of her siblings to go to a camp at Raglan.

"In that time, my Mum met Charlie, my baby brother's father". Kathryn's stepfather was an alcoholic who sexually abused her and raped her. She started smoking when she was 10 and was also driving at that age. "Women are still second class [citizens]. We've had domestic violence in our country for so long – dating back for centuries, for so long that everyone thinks it's normal. Charlie started sexually abusing me when I was 9. He lived with my mother until I was 16 or 17."

"My Mum had to be picked up from work at night. My stepfather would be drunk. I used to drive a little Morrie from Manurewa to Papakura down Porchester Road. Mum worked seven days a week doing shift work."

"When I was 13, my stepfather was going to take my baby brother Tom. I picked my stepfather up and put him through the front door window. I nearly killed him, the police said. There was no food in the house. Only flagons of alcohol. I tipped it all down the sink."

Kathryn tried to escape the violence at home by running away.

"I kept trying to leave home when I was younger. One time I used to sleep in a hollow tree in Albert Park. The police would come and take me home. They would ask why [I ran away] but I wouldn't tell. I just kept running away."

Kathryn also missed a lot of high school. After her younger half-brother Tom was born, her mother placed him in daycare while she worked. Kathryn became like a second mother to the little boy. She would wag school, catch a train and take Tom to the movies and on other outings.

Kathryn didn't get School Certificate but eventually got a job. Her first full-time work was at the SuperValue in Roselands in Papakura. Prior to that, she worked part-time at New World and at a takeaway shop after school. Once she started working full-time, she used her income to move out of the family home and get a flat.

2. Children and work

In her late teens, Kathryn met the man who would be the father of her first child.

"I ended up going with this guy, Keith's dad. He used to beat me. The beatings were a lot better than getting sexually abused by my stepfather and raped."

She continued working.

"I went into sewing and became a qualified machinist. Then I had a child. That was scary. I was three months pregnant and still getting my period so I didn't know."

Kathryn was on the pill when she became pregnant with Keith and was five months away from her twentieth birthday when he was born on 4 April 1980. She was living at the family home at the time of Keith's birth, after being forced to move out of her flat because it was cold and damp and leaked when it rained. (By that time, her stepfather was no longer living with her family.) The baby's father lived with his parents but came over to visit Kathryn.

"It was the worst summer, I reckon, that year. It's so hot, you feel like a duck walking."

Kathryn recalls being terrified during her pregnancy with Keith.

"Would I be good enough for him? Mum said I was going to have a girl because we always had girls first. I said 'No, I'm having a boy.' And I did."

"Timothy was meant to be a girl. I wanted a girl then but, no, I had a boy again. Two boys, then Elizabeth. Robert. Then Eloise."

Kathryn married Keith's father, when Keith was three months old, but the baby's father did not sign his son's birth certificate and never paid anything to financially support his son. When Kathryn eventually formally applied for maintenance from him, Inland Revenue assessed him as liable to pay \$186 a week.

"So he quit his job."

Kathryn's son Timothy was born in 1983. Kathryn had a cyst at the time and was also using an IUD, so did not think she would become pregnant. After Timothy was born, she wanted to have her tubes tied but doctors refused to allow it.

Kathryn's first daughter, Elizabeth, was born in 1984. Kathryn at the time had been using Depo Provera and did not expect to become pregnant. She again asked for a tubal ligation but was told that she was too young and that she might want to have children in future, particularly if she had a new partner.

Kathryn's youngest son, Robert John Herbert H, was born on 11 March 1988. Kathryn by that time had stopped using contraception as no method had worked for her. Doctors told her that she was extremely fertile.

Kathryn still has Robbie's hospital bracelet, as well as her other children's first teeth and their hairbrushes.

Kathryn has worked in paid employment for most of her life. She was the first woman employed on the extrusion line at manufacturing company AHI, working alongside men to make guttering and piping.

"Women can do anything. I was the first woman employed on the line and they all took bets on how long I would last. I was 'I've got news for you...' I just applied for the job and said I was a fast learner, which I was. Then I went down into the blender room and I was the first female there as well. We lugged bags of powder weighing 60kgs. It was a good job. I enjoyed it."

In the extrusion room, the workers put powder into hoppers. The material would go through a moulding machine and come out as guttering or downpipes. In the blender room, employees poured powders and resins into huge machines resembling cake mixers. The machines mixed the substances and then they were cooked.

At the time, Kathryn had three children, including baby Elizabeth. Elizabeth's aunt looked after her while Kathryn worked. Kathryn also drove a fork hoist at AHI. However, she did not work there for long.

"My ex-husband ended up beating the shit out of me and I left the job and went to the Women's Refuge with the kids."

3. Robbie

Kathryn met Graeme Sperry before she was pregnant with Robbie. He and she were part of the same group of friends and used to hang out together.

"How I met him I can't even remember. There was just a group of us who knew each other. We would turn up at a party and the others would be there. He used to go out with a friend – I can't think of her name.

Kathryn and Sperry became closer after some frightening events.

"He actually came to my rescue because someone was breaking into my house. I didn't know how. They poisoned my goldfish and I didn't know how. I could hear noises at night. He came to my so-called rescue. He helped me pack up and get a rental place. Then I started seeing him – worse luck."

The couple moved in together. While Sperry worked, Kathryn looked after his child Ian. Her children at that time were Keith, who was 9, Timothy, 6, Elizabeth 4 years and 11 months, and Robbie, who was 18 months old.

On 8 November 1989, Kathryn and the children's lives changed forever. In the morning, Kathryn took Robbie to Princess Mary Hospital for Children as he was suffering from reflux and a hernia.

"I knew about hernias because Timothy had two hernias and had surgery. They decided not to do surgery for Robbie's reflux and hoped he might grow out of it by the age of 3. They were going to do surgery on the hernia. Robbie always had to be elevated for feeding and for sleeping."

Kathryn and Robbie came home and Kathryn then dropped Sperry off at his workplace. He planned to take the children for a ride in the digger there.

That day was the first time Robbie had used a potty.

"His first and only day."

Kathryn and Robbie made fudge together.

"The last time I've ever made chocolate fudge."

Dinner was lamb's fry, bacon, gravy and mashed potatoes.

"The last time for that. I haven't made it since."

Kathryn waited for Sperry to come home from work so she could go out and buy cigarettes. She had started smoking a lighter cigarette as she was trying to give up. When Sperry arrived home, Robbie was already in bed. Kathryn drove to Manurewa to a shop she knew sold light cigarettes. Keith went with her.

"When I came back, Robbie was on the bed. He was there with the kids. He made this horrible noise I will never forget in my entire life. I wanted to take him to the hospital. Sperry wouldn't let me. I ran to the top of the road to use the phone. A friend waited at the top of the road to show the ambulance where to go. They asked me to do CPR. I didn't know how to do it."

The paramedics got Robbie's life signs back and placed him in the ambulance.

"Just being in the ambulance with him, I didn't even think about the other kids. I just had to go. They wouldn't let me sit in the back with him. They thought I had done something to him. The driver drove slowly. We got to the hospital. They took him into one room and me into another room. The police came. Eventually the doctor told me he was not a very well boy and probably wouldn't make it. I screamed at him that he was a doctor and his job was to save lives and 'Get back in there and save Robbie's life'."

Later, the doctor came back and told Kathryn that Robbie had died.

"I went running out the door to get into the theatre. They locked it. There was a dirty laundry chute. I climbed back through there to get to my baby. They had him lying on a bed with nothing on, lying on his face. I picked him up and wrapped him in a blanket and asked for a flannel. The nurse brought a cold flannel. I told her 'You don't use a cold flannel.' I just sat there holding him. They told me they needed to take him for testing. They gave me four more minutes with him. Then I had to work out how I was going to tell the children their baby brother was dead. But, no. The police dragged me into a car and took me to the police station and questioned me for hours."

Kathryn was utterly distraught and could not understand why she was at the police station and being kept away from Robbie and her other children.

"I told him [the police officer] to go fuck himself with a carrot and all sorts. Apparently I was so close to getting locked up. I didn't understand. I just wanted to get to the hospital. Your baby's hurt. You want to get to the hospital."

Sperry had told Kathryn that Robbie had smashed into the ranch slider as he was running outside.

"The police said 'So you believed him?' You don't think at the time. You just want to get to your baby. Your whole world is falling apart. It was the same when [years later] Eloise got hit by a car and her head missed the kerb by millimetres. I couldn't talk to the driver. I was irrational. She was my baby. I had to look after her."

Kathryn had run into an old friend when she went to the shop that evening to buy cigarettes. She stopped to chat with him.

"It was darned lucky I saw him because he was my alibi. It wasn't until about five or six in the morning [after police questioning] that I got to go home to see my children. [Then,] not even a couple of hours after I got home, we all had to go to the doctor's surgery to be stripped down to nothing and poked and examined for bruises and checked under the fingernails for blood. Elizabeth was crying the whole time."

The police also questioned Sperry, who told them a number of different stories, before saying it was Kathryn who had assaulted Robbie. "He changed his story about seven times before he came out and said it was him but it was an accident. How could it be an accident? You don't hit a child. You don't split his spleen with one blow. He dropped Robbie's head into the computer screen and cracked it. I can't understand how anyone can hurt a baby to that extent. I can understand a parent being so angry and yelling but to beat..."



Box 1- Newspaper article about the police investigation 21 November 1989

Kathryn's other children were traumatised by Robbie's killing and felt guilty that it was their youngest sibling who was dead.



Box 2 - Newspaper article about Sperry being charged with manslaughter

“Elizabeth witnessed the whole thing. Timothy thinks he should be dead instead of his brother. Keith thought he should have been there to save his brother instead of going for a ride with Mum.”

Robbie's body was not returned to the family for weeks.

“We didn't get him back to bury until two days before Christmas because they had to do all these tests. There was an autopsy.”

The post-mortem showed that Robbie's death had been caused by injuries to his brain, liver and bowel, and that the injuries had occurred within three hours of his death.

Sperry was not arrested for some time.

“I think it was Christmas. It would have been in December. I went to court. He got bail. They took a photo of him running away from the courtroom.”

Sperry, who had given the police three different versions of the events of 8 November, was charged with manslaughter.

“About the only thing I can be thankful for is I had eight weeks before I buried him so I could write something to be read out. All my dreams and hopes – everything was just shattered that day. When you're pregnant, all your dreams are about the baby. It would have been a lot easier if I had miscarried, or if he had died in his sleep, but to die like that, when I was not there to protect him – I should have been there. You trust someone but you don't know if you can trust them.”

Robbie was buried three days before Christmas.

“You can imagine what Christmas was like. I bought four stockings instead of three. When I realised, I cried. When I saw a mother with a child, I cried. So did Elizabeth. She was having night terrors because she witnessed the whole thing. Her whole body would lift off the bed. I had to bath her and carry her. Wherever I went, she had to go. That's how much she reverted. She just wouldn't leave me alone. She refused point blank to go to the doctor for testing because the day after Robbie died the police had us all down at the doctor. We had to go in one by one. They took all her clothes off and

photographed her. I was not allowed to go in with her. To hear her crying and screaming out for me... It's still an ongoing nightmare to this day."

There was extensive media coverage of Robbie's killing and the trial. Kieran Raftery appeared for the Crown and Barrister Chris Field represented Sperry. The *New Zealand Herald* ran a story headlined "Takanini man denies beating boy to death." The report said that Robbie had extensive bruising on his head, face and neck; bruising to the left elbow, the back of the left knee, his buttocks, his scrotum and his back, with evidence of bleeding in both eyes. There was a split in his liver and haemorrhages in the small bowel.

Kathryn has all the clippings in a scrapbook alongside photos of Robbie and mementoes such as his hospital ankle tag. The trial was held before a jury in the High Court at Auckland. Dr Timothy Koelmeyer told the court he believed the injuries had been caused by numerous blows. Kathryn could not sit through the medical evidence at the trial and had to leave the courtroom. I was there but I went out holding my mouth. It made me sick. I couldn't handle it."

Takanini man denies beating boy to death

By CLAIRE GUYAN

A man accused of beating a 19-month-old baby to death tried to stop the child's mother calling the ambulance when she found him giving the unconscious child mouth-to-mouth resuscitation, a court heard yesterday.

Graeme Ross Sperry (36), of Takanini, has denied a charge of manslaughter following the death of Robert John Harlan.

Sperry appeared in the Papakura District Court for a depositions hearing yesterday.

Doctors who examined the baby said he had extensive bruising to his head, face and neck, bruising to his left elbow, back of left knee, buttocks, scrotum and back, with evidence of bleeding in both eyes. He had a split in his liver and haemorrhages in his small bowel.

Doctor Timothy Koelmeyer said he believed the injuries were caused by numerous blows.

The baby's mother, Katherine Harlan (29), told the court she had been living with Sperry, his boy and her four children in a Porchester Rd unit since August 1989.

On the night of November 8, she returned home from the shops to find Sperry bending over Robert's body, giving him mouth-to-mouth resuscitation. She was told Robert tried to follow her when she left and fell down a step.

"I said I would go and call an ambulance and he (Sperry) said 'No, he's fine, he'll be all right'."



Graeme Ross Sperry

Ms Harlan said she noticed Robert's face was heavily bruised and, as Sperry carried out mouth-to-mouth resuscitation, blood began to pour from Robert's nose.

She ignored Sperry's order and drove to a friend's house to call the ambulance, she said.

Returning home, Ms Harlan said, she held Robert's hand but he did not respond at all.

The ambulance arrived and, after resuscitating Robert in the lounge, took him to Middlemore hospital, where he later died.

Ambulance officer Noel Alvin Beavers said he felt the injuries were not compatible with the accident described.

Detective Constable

Andrew Siemlink said Sperry told him during an interview that Robert had fallen down the step trying to follow his mother.

Sperry said he tried to revive the child by slapping his face and putting his head under the shower and finally trying mouth-to-mouth resuscitation.

He denied beating Robert.

Sperry was remanded on bail until March 22 for a date to be set for a trial in the High Court in Auckland.

22nd Dec 1989.

To my Darling Robbie,

Love is Like a rose it Blooms with tender^{care} Use Love right it Blossoms and Blooms all year for life, My love for you will never die, I have a rose in my heart for you which will bloom and Blossom for the rest of my life. Even thou we are apart, you are still with me and always will be. We Share so many things together. you help me remember what it was like when I just had [REDACTED] with me, and all the Fun we had, which I forgot how to enjoy having the children around untill I had you, Like all the memories we have left which are so precious which noone can take away from us at all. Like the time you would walk a couple of steps for everyone else but not in front of me but as soon as [REDACTED] came home from health camp you got up and walked for him. And [REDACTED] all the cubbles and kisses he had for you and he would push you around on the train you loved it. And [REDACTED] and I made a sandcastle, you tried to help too but you broke it and thought it was funny. Down at Nana's place, when you said "Nana" and pointed for a drink. And when you were a baby your dad was so scared to hold you that he might hurt you. We have all got so many memories we shared with you in the short time we had you. Now I had to let go but you will never be alone. Greatpop is there to look after you and noone else will

ever hurt you again, and we will always be with you, because you also take part of our heart with you. So we will lay you down to have a beautiful sleep with our love, So SLEEP my darling you are always with us all.

Lots of love.
Mummy.

Box 3 - Kathryn's tribute to Robbie, 1989

Kathryn was reported as testifying that she had returned from the shops on the evening of 8 November to find Sperry bent over Robbie and giving him mouth-to-mouth resuscitation.

Sperry's lawyer said his client had inflicted Robbie's injuries accidentally, telling the judge that he bitterly regrets the death of the little boy." Mr Field said a prison sentence for Sperry would mean the latter's four-year-old son would be deprived of his father. The lawyer said that –

"In relation to that child and others, there has never been a hint of misconduct or violent conduct."

The judge in sentencing Sperry said he accepted Sperry's submission that the injuries were accidental and that "in a sense" he had not intended to kill Robbie. Sperry was sentenced to three years' jail. Kathryn was devastated by the light penalty.

"He only got three years minus a month already served and that's 'justice'. I don't believe in the death penalty but the average man lives 78 years and a woman 82 years. A life sentence should be 70-plus years. Robbie – I had so many plans for him. I was robbed in so many ways – all the cuddles and kisses. His 21st. School. What he would have been and what he would have done. It wasn't just me that was robbed. It was the kids too – just all taken away."

At the time Robbie was killed, Elizabeth was a month off starting school. Kathryn had intended to place Robbie in a crèche during the day and enrol at university to study to be a social worker.

Sperry was out on bail during his trial and Kathryn bumped into him one day. He told her: "This isn't over". Kathryn was terrified and intimidated by his threat and remembers it to this day and remains fearful of what he would do if he found her or any of her children. She has taken pains to conceal her own and her children's whereabouts ever since then.

The Crown considered the jail term for Sperry was too short and appealed to the Court of Appeal. Detective Gary Lendrum of Papakura Police asked Kathryn to write a letter to the court in support of the appeal. She wrote a 4 ½ page letter detailing Sperry's history of violence and the impact his killing of Robbie had had on Kathryn and her children.

"Detective Lendrum was nice to me and told me to write a letter about the appeal and he would pass it on."

To whom it may concern

I am writing to request an appeal of the sentence of Graeme Ross Sperry convicted of manslaughter of a 18 month old baby.

The sentence given was 3 years, with one month already served in custody.

I consider this sentence to be grossly inadequate.

One of the points the defence asked the judge to consider for leniency was the fact that ~~Sperry~~ didn't want to be in jail for too long because his son would be deprived of his father. My son has been deprived of his mother for life! My other children deprived of their brother & myself of my son. Unfortunately no length of prison term is going to bring Robert back.

The effect that Sperry's sentence would have on his family was also brought up. The effect of Sperry's killing of my child will have a far longer effect on my self, ~~his~~ ^{his} Robert's, Doreen's & sister, his grandparents, & all those that knew & loved Robert.

My children, [redacted] 10, [redacted] 6 & [redacted] 5 have lasting memories of what happened on that night.

Box 5 - The first page of the 4 ½ page letter Kathryn wrote requesting a longer jail term for Sperry

The Court of Appeal doubled Sperry's jail sentence, agreeing that the original term was inadequate to reflect the gravity of the crime.

Kathryn joined the Sensible Sentencing Trust after Robbie was killed. She attended a couple of the organisation's conferences and was unimpressed by politicians' claims that crime rates were falling.

"When I joined the Sensible Sentencing Trust, there were not many of us. Now there's a whole hall. I cornered [Labour MP] Annette King about her saying the crime rate was coming down."

Kathryn also spoke to John Key at one of the conferences soon after he entered politics, but believes neither National nor Labour understands the impact of violent crime on the victims and their families.

"The only person who was decent was [New Zealand First MP] Ron Mark. He had a whole speech written out but he tore it up when he stood up. He said he could see how sad it was for all of us. If I had the chance to vote, he'd be the one I'd vote for. I'd like to see all rapists and child offenders with their fingers and private parts chopped off and branded on their forehead with what they are. No-one's ever stopped to think about the kids – the innocents who've had their childhoods taken off them."

Kathryn says the Sensible Sentencing Trust later told her Sperry had previous convictions for violence. The SST's website entry for Graham Sperry in its Offenders' Database states:

Offences: Killed an 18 month old boy, Robert [...], in Takanini in November 1989. Had prior convictions for violence.

In 1991, *Metro* ran an article by Lesley Max about the death of Robbie: it was billed on the front cover as 'Stepfathers who kill. A modern horror story'. This is reproduced with permission in Appendix 2.

4. Getting the children back

Kathryn moved to Hamilton after Robbie was killed, but she later returned to Auckland. Child Youth and Family was involved with the family and a Family Group Conference was held.. Kathryn agreed that her grief and guilt over Robbie's death meant that she was not coping either with life or with the children. She was told that the children could be taken away for a short time to give her a break. She had no idea they would not be returned to her care when she said she was ready.

"The kids got taken away. They used the excuse of when they gave me a break for going to court that I wasn't stable enough. I needed a week at the High Court so they sent them away and then they used the excuse that I wasn't coping. I had needed another week for the depositions hearing. They used those excuses to say I was not coping even though they knew I had no-one else for the kids and knew I was not going to drag the kids to court. That still gets held against me today."

Child Youth and Family told her that she would only get her children back when she could demonstrate that she had a stable home and stable life, and that being in a relationship would help that. She was so desperate to have her children returned to her care that, in 1990, she briefly married an acquaintance so she could show her life was stable.

The marriage did not work out and Kathryn then began a relationship with Mr E. Her car had not been going properly and her neighbour said he knew someone who could fix cars and Mr E would pop up to look at Kathryn's car.

"That's how I met him, believe it or not. He didn't charge me for the work – I wonder why? He asked me out on a date and opened the car door like a gentleman. He took me out to dinner and drinks."

Kathryn and Mr E began a relationship, but lived in separate houses. Kathryn's main aim was to get her children back living with her. They were cared for partly by her grandmother, but were also placed at a Social Welfare home called Dingwall Trust in Papatoetoe.

Kathryn did not know that, after Mr E and his wife Helen separated and divorced in 1989, the Family Court ruled that Mr E was to have only supervised access to his children because of concern that he might sexually abuse them. Mr E was convicted in 1990 of sexually abusing his niece and was directed to attend treatment for paedophilia. He also had convictions for burglary and property offences.

"We were living apart but the house got broken into and robbed and we just started spending more time either at his place or at my place and he said 'Why don't we get a place, it'll make it better for you getting the kids back'."

"I was working and we started looking for a house. After I was robbed, I moved from Manurewa to Mt Eden, to a state house. He eventually moved in there and we started looking for our own house."

Kathryn was working at Wendy's in the city and Mr E was employed at Fletcher's in Penrose.

The couple found a property in Mays Road in Onehunga and bought it together. They started painting the house and doing repairs to it. Elizabeth was returned to her mother's care, and then Timothy came back to her. Keith was living with his father and Kathryn was told he did not want to see her but wanted to visit his siblings.

"In the end I found out it wasn't that he didn't want to see me. He was missing me. So he ended up coming home."

The family struggled to deal with Robbie's death. Elizabeth was wetting her bed.

"I put it down to Robbie. The kids were always fighting."

Timothy's father had been jailed for life after being found guilty of involvement in the killing of a farmer. He drove the getaway car. He was released from jail a month before Sperry was due to be let out of prison.

"I had to go and pick up Keith from school. I was coming back and there was a car outside the driveway. I thought it was from across the road. But it was Timothy's Dad, who'd just been released from jail and turned up. Sperry was due to be released a month later. So I thought, if Number One could find me, what's to stop Number Two?"

Kathryn decided she had to move to keep her family safe and she and Mr E accordingly resolved to sell their Mays Road property.

"In the process of selling the house, Mr E and I broke up. He was over the crying, the bed wetting, me being so fat – I wasn't skinny like when he met me. It was the grief over Robbie."

Mr E moved out of the house but lived in a camper van on the Mays Road property as he had nowhere else to go. Later, he arranged to park his van at his brother's home.

Kathryn wanted to move out of Auckland to ensure the safety of herself and the children by being somewhere that Sperry wouldn't find them. She found a property at Wellsford with 10 hectares of land and used money from the sale of the Mays Road house as well as an ACC payout to purchase the home. The ACC payout was for the trauma suffered by Kathryn, Keith, Timothy and Elizabeth as a result of Robbie's killing.

The Wellsford property was set back from the road and had land around it, so Kathryn thought it would provide security and privacy for her and the children and ensure that none of them would be seen by those passing along the road.

Mr E and Kathryn remained on friendly terms although they were no longer in a relationship. Although it was Kathryn who was buying the Wellsford property, it was registered in Mr E's name to hide Kathryn's whereabouts. Kathryn's lawyer helped with the arrangement and a caveat was placed on the title to protect her interest. A caveat tells people searching a title that the person lodging the caveat claims an interest in the property.

"It was my home but I trusted him. He said he'd always be there as a friend if I needed him."

Kathryn put in most of the \$115,000 needed to buy the Wellford home but Mr E put in some of the money he had received from the sale of Mays Road so he wouldn't spend it. It was agreed that Kathryn would repay the \$10,000 to him at a later date.

Kathryn went onto a benefit in the mid-1990s after she and Mr E broke up, and she was on a benefit at the time she bought the Wellsford property. Work and Income knew about the arrangement for buying the property and understood why the home was placed in Mr E's name. Kathryn had also asked that her Work and Income records be secured to protect her whereabouts.

"WINZ knew all about me buying the house and how it was done and why it was done. I couldn't put the house in my name. That's why it was in Mr E's name, with a caveat. The way I looked at it: if Timothy's father could find me, Sperry could find me."

Mr E would come to visit Kathryn at the Wellsford property from time to time to see if she needed anything. They had sex occasionally and Kathryn became pregnant with her last child, Eloise, at the end of 1995. Kathryn did not think she could become pregnant again, as she had experienced bleeding for three months after Robbie's death and had then extremely irregular periods subsequently. Kathryn had again requested a tubal ligation after Robbie's birth, but had been refused. She repeated her request after Eloise's birth and the doctor asked her what would happen if her child died, not knowing of Robbie's killing by Sperry.

"I turned around and said I already had a child who died. He was beaten to death. I'm not a cow to be put out to pasture."

Kathryn had been diagnosed with Post-Traumatic Stress Disorder after Robbie's death. She had scans during her pregnancy to find out her baby's gender.

"I needed to know because I didn't want a boy like Robbie. She (Eloise) would have her legs crossed and her hands down there and I didn't know if there was a boy or a girl. I was in hospital with high blood pressure and swelling in the legs. I felt like they were on fire. I was in hospital for about six months with her through the pregnancy."

Eloise was born on 21 September 1995. Two weeks after her birth, Kathryn again had high blood pressure and Eloise was suffering from jaundice.

Mr E refused to sign Eloise's birth certificate. Kathryn asked him to do so each time he came to visit, but he did not want to be financially responsible for Eloise or have to pay child support.

"He never paid a dime."

Kathryn and the children were still struggling to cope with Robbie's death and with the separation of the family when the children were removed. There was also another trauma that Kathryn did not yet know about.

"Elizabeth wanted to go and live with her Dad. She and I had raging fights. She said all I cared about was Eloise, not her. She goes to live with her Dad. Timothy wanted to go and live with his Dad, so he did. Elizabeth then turns around and wants to go to the Parakai Hot Pools. While we were sitting in the spa pool, she ended up telling me what Mr E had done to her and what a family member had done. She chose that place so I wouldn't lose my head. They both had been sexually abusing her for years. The family member started when she was in care with them. The same with Timothy. And Mr E had raped her. Keith was sexually abused from the time Robbie died."

Kathryn knew she had to keep herself under control and get the children home.

"I couldn't lose it or anything. My face said it all. I turned round to the kids and said 'Get changed'.

On Monday I went to the lawyer to get a Trespass Order served on Mr E to stop him coming round. I spoke to the kids and then rang the police.”

Kathryn reported Elizabeth’s disclosures to the police. Mr E was investigated for sexual abuse and arrested and charged with indecent assault on 31 July 1999. Kathryn served him with a Trespass Notice dated 1 July 1999 preventing him from going back to the Wellsford property.

“Mr E sexually abused Timothy as well. Elizabeth refused to go to the doctor to get tested, so there was no physical evidence. The reason she refused was because of the memories from when Robbie died – she had to go to the doctor and get stripped. Victims are getting revictimised and revictimised and revictimised. It’s all just abuse.”

The police charged Mr E. He pleaded Not Guilty, meaning there had to be a trial. The family member was also arrested and charged with sexual assault.

Kathryn’s grandmother could not believe the family member would do such a thing and gave evidence in his defence.

“The Crown Prosecutor we got, it was his first time and he was useless. He basically fed my kids to the wolf yet again. He wouldn’t listen to anything I was saying.”

Kathryn’s children were devastated when their evidence was not believed in court.

“Keith broke down into tears. Timothy wanted to commit suicide. Liz hated my guts even worse. I wasn’t there to protect her. I taught them no-one ever touches your private parts. If they do, come and tell me. Keith’s sensitive. He has not shed a tear or anything since that day. He refuses to acknowledge it. Elizabeth on the other hand acknowledges it by not letting me see my grandchildren. Timothy went the easy way – he drinks and has tried suicide more than once. Timothy after court was never the same. It was like he had this massive chip on his shoulder that was cemented in. He uses drugs to forget. I told him ‘It’s only a band-aid. It’s going to be there when you wake up’.”

Auckland psychologist Dr Suzanne Blackwell in 2008. carried out ground-breaking research into the way juries reach verdicts in cases involving charges of sexual assault against children. Dr Blackwell found that juries increasingly wanted corroborative evidence before finding defendants guilty, even when they believed the children. She reported that only six per cent of cases of sexual assaults on both children and adults reported to the police resulted in convictions. Dr Blackwell found that she could predict the outcome of a child sex-offence trial before it began, with statistically significant accuracy, based on a set of nine variables. If three of those were present, the accused would be convicted on at least one charge. If not, the defendant would be acquitted, even if the jurors believed the child. The nine factors included the child being under 12 at the time of the trial, similar fact evidence such as previous convictions, recent complaint evidence, penile penetration, the presence of DNA or other medical evidence, and a partial acknowledgement of guilt by the accused.

Mr E was acquitted in February 2000. Any pretence that he was Kathryn’s friend or had her best interests at heart was at an end. The family member was also acquitted at his trial.

5. Prosecuted

In retaliation for Kathryn informing the police about his sexual abuse of her children, Mr E wrote to Work and Income about Kathryn in September 1999, complaining that she was not paying rent at Wellsford and implying that she was his tenant. He complained that she had been receiving a benefit to which she was not entitled. Mr E had sometimes taken Kathryn's rubbish back to Auckland for her as there was no rubbish collection in Wellsford. Kathryn alleges he went through the rubbish to find details of the benefit payments she received.

When Mr E's court trial for abusing Kathryn's children was coming up, Kathryn was visited at home in Wellsford by two women.

"These two ladies came down the drive and I naturally thought it was CYFS because apparently Mr E wrote a letter to CYFS trying to take my baby Eloise off me. I told the kids to lock the doors and windows and not to let anyone in but me. Before [the ladies] could say anything, I told them to go back where they came from. One lady tried to say something. I said 'Did you not hear me? I told you to fuck off.' It took me a while to twig that they were not from CYFS. I thought they were there to take my baby. They followed me round the back and saw Eloise had a playhouse and asked me how much I paid for it. Eventually they left and I got a letter or a phone call from the one I told to fuck off that told me I had to attend a meeting or my benefit would be cut off. "

Kathryn attended a meeting at a Work and Income office on 17 January 2000 at which she was asked questions about Mr E. The WINZ staff said people had said he and Kathryn were in a relationship and were living together.

Kathryn denied that she was in a relationship with Mr E. She explained about Sperry killing Robbie and her fear for the family's safety once he was released from jail. She yet again told them that this was the reason the house was in Mr E's name, and likewise the car.

"I said about the car – nothing could be bought in my name because I couldn't be found."

"They ended up cutting my benefit down so I couldn't even make the mortgage payments. They said they had allegations."

Work and Income wrote to Kathryn on 9 February 2000 advising her that it was satisfied that she had been in a relationship in the nature of marriage with Mr E between 1994 and 1999, and that accordingly she had not been entitled to receive a benefit. The letter advised that the Ministry had established a debt of \$120,355.26 against Kathryn and that recovery of the debt would begin on 15 February 2000 when \$20 a week would be withheld from her benefit. Work and Income also advised that Kathryn's case had been referred to its Legal Services for advice as to whether proceedings should be issued. Not long after that, Kathryn was charged with 26 counts of benefit fraud.

"It was when I was going through hell with court, to do with Mr E and the family member. I got served papers not even in my name. They said 'Kathryn E.' Not me. I never used his name – but he said I had been served."

Kathryn was given a date to appear in court. She went to court and saw a Duty Lawyer, who helped her fill out a form to apply for Legal Aid. She was granted Legal Aid and a lawyer was appointed to represent her.

“He wanted me to plead guilty and take a deal. He said it didn’t need to go to court. I said ‘Didn’t you listen to me? I’m not guilty.’ He said it didn’t matter: they were going to win. The Crown was seen as having the money. I said I wanted a lawyer who was going to fight for me. So I got rid of him. The second one was the same. The third one was the same: make a deal and plead guilty. They just didn’t get it. Why should I turn round and plead guilty to something I didn’t do? What – to make their jobs easier? How is that justice? You’re telling them you’re innocent and they’re telling you to make a deal.”

Kathryn obtained another lawyer shortly before the trial date. It was the lawyer’s first time appearing in a case involving Work and Income.

“Mike Darke of the Combined Beneficiaries Union said she wasn’t even asking the right questions.”

Kathryn’s Not Guilty plea meant she was supposed to have a jury trial.

“They were short on judges. This judge had come up from Dunedin. He was an arsehole. He couldn’t see the point in me wanting a jury trial. He told my lawyer that and talked me out of it. I had witnesses that turned up late. He wouldn’t even hear from them.”

The trial lasted for three days. Mr E, the family member and Kathryn’s grandmother gave evidence for the prosecution. One of Keith’s friends, Karl, gave evidence for Kathryn.

“Keith went to school with Karl. Karl’s Dad was abusive to him and every weekend and school holidays Karl was at my place. He told the judge he never saw anyone [Mr E] there but the judge didn’t believe him.”

A neighbour who was supposed to appear for the defence could not get to court, while a friend of Kathryn’s who could have backed up her evidence did not want to get involved because she was fearful about repercussions with her own benefit.

“I didn’t really have many friends. I stuck to myself with the kids. WINZ had [the family member’s] so-called girlfriend, and they had a WINZ worker who used to drive past my place as witnesses. I tried to point out the distance from my house to the road. She would only see it for 10 seconds.”

Kathryn’s grandmother gave evidence against her.

“They all fucking lied, even my grandmother with her high principles. I was shocked. She lived in Wellsford for a while. I used to take Eloise to visit her to learn how to behave. She had no transport and never came to my place but she lied through her teeth and said she saw Mr E slap money down on the table.”

As well as the stress of Mr E and the family member’s trials for sexual abuse and the benefit fraud charges against Kathryn, she was terrified that Child Youth and Family would remove her children.

“Mr E wrote a letter to CYFS saying I was not a good Mum. That’s why I was mixed up when the WINZ ladies came down the driveway – I thought it was CYFS.”

6. Convicted

In the District Court on 14 February 2001, Judge Macdonald found Kathryn guilty of 26 counts of benefit fraud and 9 March was set as the date for her sentencing. Kathryn met with a Probation Officer so a pre-sentence report could be completed.

“She didn’t write down about me being sick with high blood pressure. She said I wouldn’t be going to jail – I’d just get a fine. So when I went to be sentenced, I thought I’d get a fine. The WINZ lawyers told my lawyer they didn’t want me in jail. They were quite happy for me to stay out and repay the money I owed them. Then at sentencing they turned around and pushed for me to go to jail.”

The pre-sentence report writer asked about family and Kathryn said there was no-one but her to look after the children.

“I wasn’t joking. There was no-one but me for the kids.”

The judge sentenced Kathryn to prison.

“My lawyer was horrified. I wasn’t allowed to cuddle the kids or anything. I was just taken straight away. The children were at court when I was sentenced, all of them. Eloise’s arms were out, she was crying her eyes out and screaming for me. They didn’t even let me say goodbye. I was completely shocked. So were they. Nobody said how they were going to look after the kids.”

Kathryn was transported to Mt Eden prison.

She was horrified when she arrived there.

“If I didn’t lose all my dignity with my lost child, I would have lost it with the prison shame. You have to strip all your clothes down so they can see you haven’t got anything. It’s really horrible. Why people keep on doing things to go back to jail, I don’t understand. I’d rather starve to feed my kids.”

She missed her children and was particularly upset that she could not do anything to celebrate Keith’s 21st birthday.

“It was on Valentine’s Day I was found guilty. Then I was sentenced in March. My son’s birthday is in April. He was 21 that year so I spent the whole week in prison bawling my eyes out for his birthday. Birthdays are special to me. I might not be able to afford things, but I used to enjoy making cakes. Then they put me in the suicide watch room. I would have been quite happy to stay in that room for the rest of my jail time. I was blackmailed into going out – I was told if I didn’t go out and mix with the others I wouldn’t be seeing the children at the weekend when they came to visit.”

Kathryn had a stand-off with one inmate, who asked the wife of a Black Power president to sort Kathryn out physically. However, Kathryn spoke to the woman and resolved the matter.

“That was the only bit of a problem I had in there, basically.”

The children, already traumatised by Robbie’s killing, their earlier removal from Kathryn and the sexual abuse they had suffered, were once again separated from their mother and faced an uncertain future.

“They were just left by themselves. They ended up getting kicked out in the street. Keith had to go on the benefit and try and get a house to rent. A shit house.”

Eloise's father, Mr E, did nothing to help his daughter.

"He's the father of Eloise but when I got put in jail he went and kicked my kids out on the roadside, even Eloise. They weren't even allowed to pack up and get my furniture."

As well as the Wellsford home, Kathryn and the children lost virtually all their furniture and other possessions. Eloise lost her clothes and Kathryn lost mementoes of the children's early life and developmental stages. Kathryn was in jail for 3 ½ months while she applied for home detention. It was then found that she could not be granted home detention, as it was not available in Wellsford.

When Kathryn did come out of jail, she was directed to live at the house Keith had rented. She and Timothy had an argument after he cut the cords to her computer. Kathryn was then recalled to jail.

While Kathryn was in jail, Eloise was taken into Child Youth and Family care and placed in a foster home where she was beaten. Keith went initially to stay with his father. Elizabeth later applied for custody of Eloise.

7. Release from jail

When Kathryn was released from jail, she was paroled to Pillars, a charity which supports children and families of prisoners, but was only allowed to stay there for a month. She and Eloise had a room with two beds, but Eloise slept in the same bed as her mother until she was 10.

On their last day at Pillars, Kathryn found a state house for her and Eloise to live in. She dealt with Housing Corporation in Dominion Road.

"The lady was lovely, the best person I ever dealt with. We walked from Pillars to Mt Roskill Housing Corp. The lady gave us money so we could get the bus back. We got the house on the day we were getting kicked out into the street with nowhere to go. It would have been interesting: me and a five-year old in the street."

"When you get paroled, you get three days to meet with your probation officer. You've got to go to where you're going to live and you've got to get hold of your probation officer and see them. I went to Wellsford to get my daughter. That was my main priority. When I was on the way to the house I was ringing [the probation officer] to make an appointment on the second day. I said I was going to the police. She said if I didn't hurry up she was going to put me back in jail. I said I was getting my daughter, that was my priority. So I started on bad terms with my probation officer. She was an old dragon, but we got on better terms eventually. We had weekly meetings. I had to go and see her until the end of my prison term." The state house provided stability for Kathryn and Eloise – they lived there for 13 years.

"I hate moving. I really dislike moving."

However, the home was in a poor state of repair.

"In the winter, from the clothesline back, when it rained it would flood. From the front door step, you literally had to jump out when it rained. The drains blocked up with sewerage. It was cold and cramped. For seven years, every time they did a home inspection I told them about the bathroom. They put the shower over the bath, not taking into account that the windows were rotting. The whole back where the shower was had to be pulled out. When they fixed it, we were two weeks without

a bathroom. At night we didn't turn on the light because you could see from the road right into the bathroom. They ended up breaking the old bath trying to get it out."

Kathryn and Eloise also had to start almost from scratch to obtain household items. Almost everything had gone.

"Elizabeth gave me a stereo but it got stolen when the house was broken into."

At the meetings with the probation officer, Kathryn was asked whether she was living at the same address, whether she had done drugs or alcohol, and whether she was looking for a job.

"I got a job at The Warehouse in the end, but it was horrible because I had a criminal record. You get totally treated differently. My boss was an arse. I would ask my boss stuff and he would just blow me off because I had a criminal record."

Kathryn worked in The Warehouse's store development section. She helped set up shelves and merchandise when a new store was being opened, and took down fittings when outlets were closed. Merchandise was placed on pallets and the pallets were then jacked up with car jacks and pushed up ramps. Although the boss knew Kathryn could drive a forklift, she was not allowed to do so. Other staff without forklift licences used the forklift but she had to drag pallets up a ramp.

One day, she was pulling a pallet and felt a twinge when she was half-way up the ramp.

"I felt something in my back go. I thought it must be the muscle. There was half an hour left till knock-off time. My boss told me to go and do nets like the other ladies. At the end of the day, I had to drive home from Puhinui Road to Meola Road in stop/start traffic. It took over an hour. When I got home and opened the car door I couldn't even get out. I toot, tooted on the horn and Keith looked out the window. He had to help me up and out of the car. I couldn't move. When he got me inside, I had a hot shower and went to bed and stayed there for three days. When I had to get out of bed, I had really bad pain and was screaming my lungs out. I had to wait till it was a bit better to go to the doctor."

Kathryn had pain in her back, her legs and her ankles.

"My ankles had never played up beforehand. They started bloating.

She went back to work but there were no light duties for her to do.

"I was doing burn and bust. We were brought up on a farm with my grandparents. Everyone had a job to do. When you had a job to do, you did it properly. No slacking off."

Kathryn's injury severely affected her mobility and she suffers the results to this day.

"I used to be able to do the dishes in five minutes. Now it will take me all day. I do some and then sit down and have a rest. I have a collapsed disk. I can't do surgery because of being overweight. I still have a lot of problems with it."

After her injury, Kathryn had to give up work and go back onto a benefit. She has never been able to work since then.

"Things took a dive. There was no swimming for Eloise, no gymnastics and no drama, because there was no money. She wanted to do photography but I couldn't even do that for her.

Eloise was 7 when Kathryn was injured. She is now 20.

“The person who has mainly been looking after me is Eloise. She had her schooling and she was only a child. I can’t even get a housekeeper because I’m not in the old bracket. I’m still not a senior so I still can’t get someone into help.”

Kathryn’s kidneys were working at only 28 per cent capacity but have now improved to 38 per cent. Kathryn suffers from incontinence and needs to wear incontinence pads. They are expensive but neither Work and Income nor the health system will help with funding for the number of pads Kathryn requires. Work and Income told Kathryn to seek the pads through the health system. However, only one pad a day is provided. Kathryn needs to wear them all the time.

“If someone could give me a new body for Christmas and also give me a brain transplant and take all the ugly stuff out. I’d be a new person again. If only life worked like that: ‘Take that piece off. It’s broken. Replace it’.”

Kathryn has an L5 S1 collapsed disk in her back, severe arthritis and gout in both ankles and arthritis in her left knee. Her right knee pops out because it is weak and she is obese. Kathryn still has high blood pressure and suffers badly from depression. She had an operation to remove her gall bladder and accordingly needs to be very careful about what she eats.

“Every day is a new day and a new struggle. Benefit pay days are already worked out the week before you get it because you know what you’ve got to pay. I pay my bills and get my [incontinence] pads and then I buy food. So food’s the last thing. Food always has been the last thing. Before that, it’s a roof over your head and the bills paid. When it comes to food, as long as the kids have been fed, I’ve gone hungry. I’ve done that heaps.”

Kathryn struggled to raise Eloise on a benefit after her injury meant she could no longer work. Eloise did not have a raincoat and the school and other activities in which she could participate were very limited, due to the family’s straitened financial circumstances.

By 2012, Kathryn was 51 and had a revised debt of \$117,598.84 to Work and Income. It would take her 113 years to repay the debt at \$20 a week, or 226 years at a rate of \$10 a week.

Kathryn moved from Meola Road to another state house in October 2013. One of the houses in the street is a gang house where drugs are sold. A man was killed there recently.

The Ministry of Social Development continues to assert that Kathryn should repay the debt it has established against her. Economist Brian Easton provided an affidavit for the 2015 court proceeding, stating that the minimum weekly income needed to provide an adequate standard of living for Kathryn and Eloise in 2015 was \$540 a week. She was receiving \$469.78 at the time.

“Time doesn’t heal when you go through so much in your life. People say ‘Move on’ but I’m still here. My son says I need to move on and stop dwelling on it. Out of everything, I wouldn’t trade my kids for the world. The only decent thing I ever did right in my life was my children. They were never a mistake.”

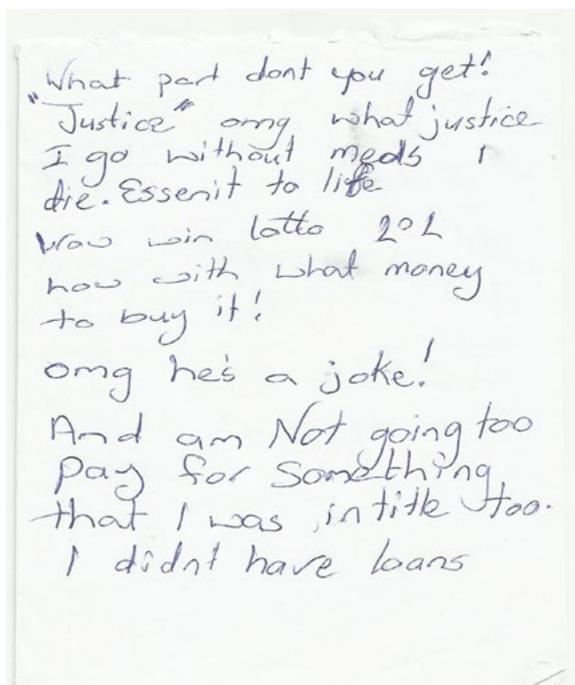
Kathryn has a burning sense of injustice about her convictions and about the ongoing efforts by the Ministry of Social Development to make her pay \$117,598.84. She has been fighting since she was convicted in 2001 to overturn the convictions and have the debt against her cancelled.

Kathryn appealed to the Court of Appeal against her District Court convictions and sentence. The court dismissed the appeal.

"I still don't get it. They [Mr E and Nick] go to court for something wrong they did and walk away 'innocent'. I go to court for something I didn't do and get 'guilty'. I still don't get it. It's like: where is the justice?"

Kathryn has also spent the last 15 years taking civil action to challenge the Ministry's decision to establish a debt of \$120,355.26 against her. (The debt was reduced to \$117,598.84 after the Ministry decided it could not claim \$2756.42). She applied first for a hearing at the Benefits Review Committee. When she was unsuccessful there, she appealed to the Social Security Appeal Authority.

Kathryn attended the hearing of her case challenging the Ministry's decision to seek payment of \$117,598.84 from her in the High Court at Auckland on 4 April 2012. Justice Courtney asked the lawyer for the Crown about the feasibility of Kathryn being able to repay the debt. He responded that a change in her circumstances might enable her to pay the sum – for example, he suggested, Kathryn might win Lotto. Kathryn wrote the following note to her lawyers as she listened to what was happening in court –



What part dont you get!
"Justice" omg what justice
I go without meds I
die. Essenit to life
Wao win lotto 20L
how with what money
to buy it!
omg hes a joke!
And am Not going too
pay for something
that I was in title too.
I didnt have loans

Box 6 – Note Kathryn wrote to her lawyers as she listened to what was happening in court

Since 2012, the case has gone to the High Court, back to the Social Security Appeal Authority, back to the High Court and, in 2016, Kathryn is seeking leave from the High Court to appeal Justice Faire's decision (the correct expression is "to" the Court of Appeal).

Kathryn remains resolute about fighting to clear her name and have the debt cancelled.

"Picture a big ball of wool with no beginning and no end. That's what it's like. Believe it or not, I live with this every day. It's like it only happened yesterday. I'm still stuck with Robbie. It's never going to go away until everything's sorted, until my name's cleared."

Kathryn therefore does not believe it is right to admit to offences she did not commit.

“Why should I plead bloody guilty to something I didn’t do? Mum taught us when we were younger to tell the truth. If you told the truth about something you did wrong, that was ok. We were taught there were two roads in life: one right and one wrong. If you went down the right road, everything should be rosy.”

Eloise in December 2015 completed a Bar and Brasserie course and has also studied at Unitec and is now looking for a job.

“All I ever wanted in life was to protect my children. I never wanted them having anything like I had as a child. I feel like I failed them.”

Timeline

- 1960 September 16: Kathryn born.
- 1965 Kathryn's father goes back to jail, and again in 1968.
- 1969 Kathryn's step-father begins sexually abusing her, for about 8 years.
- 1973 Kathryn's brother Tom born.
- 1980 4 April: Kathryn's first child, Keith, is born and she and Keith's father marry three months later.
- 1983 1 September: Timothy is born.
- 1984 8 December: Elizabeth is born.
- 1988 1 March: Robbie is born.
- 1989 8 November: Graeme Sperry kills Robbie.
22 December: Robbie is buried in Hamilton.
- 1990s Kathryn meets Mr E, not knowing his previous convictions for sexual abuse of a child, and burglary. There is a short-term relationship.

Kathryn buys a home but puts it in Mr Es' name so that Sperry will not discover where she and her children live
- 1994 Kathryn goes on Domestic Purposes Benefit because she is not in a relationship, and needs to support her children.
- 1995 21 September: Eloise is born.
- 1999 Mr E reports her to Work and Income
- 2000 9 February: Work and Income writes to Kathryn advising that it has investigated her circumstances and decided she was not entitled to a benefit from 1994-1999 and asks her to repay \$120,355.26, with deductions of \$20 a week from her benefit to start on 15 February 2000.
- 2001 12, 13, 14 Feb: Kathryn tried and convicted in District Court on 26 counts of benefit fraud.
9 March: Kathryn sentenced to 15 months jail for benefit fraud.
12 April: Court of Appeal dismisses Kathryn's appeal against conviction and sentence for benefit fraud.
- 2001 Kathryn jailed and spends three months in jail before being released, but is then later recalled to prison. She spends approximately 6 months in jail.
- 2004 3 November: Kathryn attends Benefits Review Committee hearing seeking review of Work and Income decision that she repay her debt.

- 4 November: Benefits Review Committee upholds Work and Income decision.
- 2008 3 December: Social Security Appeal Authority hearing
- 2009 20 April: Social Security Appeal Authority issues interim decision on Kathryn's challenge to repayment of the debt established against her.
- 1 December: Social Security Appeal Authority hearing.
- 2010 23 February: Social Security Appeal Authority releases decision requiring Kathryn to repay full amount of debt established against her.
- 2011 6 April: Social Security Appeal Authority files case in High Court relating to whether or not Kathryn should repay debt.
- 30 August: Hearing of case stated in High Court
- 2012 4 April: Justice Courtney's decision released partly allowing Kathryn's appeal but refusing to quash the debt and ordering that the case return to the Social Security Appeal Authority for it to reconsider Kathryn's case in light of the High Court ruling.
- 2013: 16 December: Social Security Appeal Authority releases further decision holding that debt stands.
- 2015 4 August: Hearing in High Court of Kathryn's appeal against Social Security Appeal Authority's December 2013 decision.
- 29 October: Justice Faire releases High Court decision dismissing Kathryn's appeal.
- 2016 May: Kathryn awaits further leave from the High Court to appeal to the Court of Appeal against Justice Faire's decision. Kathryn's case is also still to return to the Social Security Appeal Authority for a final determination as to repayment of the debt established by the Ministry for Social Development.

PART 2: The Court proceedings

1. Criminal court proceedings against Kathryn for benefit fraud

District Court trial and decision 2001

Kathryn was charged by Work and Income with benefit fraud after her former partner, Mr E, contacted the department to say that she had received a benefit to which she was not entitled. Mr E made the allegation to Work and Income after Kathryn's children disclosed to her that he had sexually abused them and Kathryn informed the police. Mr E was charged with sexually abusing the children. He pleaded not guilty and was acquitted at trial

Work and Income laid 26 charges against Kathryn alleging benefit fraud.

She was charged with –

- 6 counts of misleading a social welfare officer under section 127 of the Social Security Act 1964; and
- 20 counts of using a document for pecuniary advantage under section 228 of the Crimes Act 1961.

The charges under the Social Security Act alleged that Kathryn had wilfully omitted to advise the department that she was in a relationship in the nature of marriage, for the purpose of misleading an officer and receiving a benefit. The Crimes Act charges related to declarations Kathryn made when she confirmed that she was entitled to the Domestic Purposes Benefit, the Accommodation Supplement, a Special Benefit, a Disability Allowance and a Training Incentive Allowance between January 1994 and June 1999.

The Crown claimed that Kathryn should not have received the payments and that she had only been granted them because she had failed to advise the department that she was in a relationship in the nature of marriage with Mr E.

Kathryn pleaded not guilty, and her trial was held before a judge alone on 12, 13 and 14 February 2001. The key issue at the trial was whether or not Kathryn had been in a relationship in the nature of marriage with Mr E at the relevant time.

The legal test for a “relationship in the nature of marriage” is complex, and Work and Income has in the past often applied it incorrectly. This was most clearly illustrated in the 2001 Joychild Report. Associate Minister for Social Services, Ruth Dyson, commissioned Barrister Frances Joychild to provide an independent review of the way in which the department was applying the law in the wake of the Court of Appeal decision in *R v Ruka*. The Court of Appeal quashed Isabella Ruka's convictions for benefit fraud after holding that she had not been living in a relationship in the nature of marriage. Ms Ruka was subjected to vicious beatings by her partner four or five times a week for 16 years. The Court of Appeal said that the severe and ongoing violence, and lack of emotional and financial commitment by her partner, meant there could be no relationship in the nature of marriage.

The Joychild report found “strong evidence” that the law was being applied incorrectly, and recommended that all 15,600 relevant cases between 1996 and 2000 be reviewed. The department did not do that, instead opting to place the onus on benefit recipients to ask the department to review their files.

Judge MacDonald delivered a 13-page oral judgment on 14 February 2001, finding Kathryn guilty on all of the charges. The judge said at the start of his judgment that, if he took the view that Kathryn was living in a relationship in the nature of marriage, then the only reasonable inference open to him would be “that her actions were deliberate and were designed to either obtain or to continue to receive a particular benefit.”

The judge referred to a letter of 9 February 2000 from the department to Kathryn which set out the basis on which the prosecution would be taken.

“In determining whether two parties have entered into a marriage-type relationship, various factors are taken into account including whether the parties shared the same residence, were supportive of each other in terms of emotional, financial and practical support, shared a sexual relationship, and how they were viewed by the community.

“The investigation into your circumstances has determined that you and [Mr E] shared the same residence although he was away working Monday to Friday. There was support between the two of you in that you purchased a home together, and [Mr E] purchased various appliances for the home. Furthermore you had a child together, and were viewed by the community as a couple, and not a single parent.”

Judge MacDonald went on to state that, in terms of the Crown case “and whether or not it is able to succeed on this prosecution, it very much depends on the evidence of [Mr E].” He said that there was also important evidence from others who had observed the relationship between Kathryn and Mr E, as well as documents which the Crown said supported a conclusion that there had clearly been a relationship in the nature of marriage.

The judge said that the defence position was entirely the opposite: that during the relevant period, Kathryn and Mr E were only friends.

Judge MacDonald said that he would deal with evidence “as briefly as I can and in a fairly general way.” He said it was agreed that there had been a relationship between Kathryn and Mr E. Mr E asserted that it began in late 1991 and did not end until July 1999, whereas Kathryn said it ended earlier.

The judge noted that Kathryn had given evidence at the trial, as had two of her neighbours and two of her children. Judge MacDonald said that Kathryn’s position was that, at the relevant time, she and Mr E were not in a relationship.

“The denial by the accused is of course understandable on one level in any event, but there emerged in the evidence, strongly I would have thought, another reason that the accused might want to deny the existence of any relationship with [Mr E]. That is because she remains convinced that [Mr E] sexually assaulted two of her children... Having listened to the evidence in the case over the last two and a half days or so, I have to say that it is impossible not to feel some sympathy for the accused and her life experience. Things may have happened to her children, and I acknowledge that. However, I am not here to decide the case on the basis of sympathy or prejudice for that matter. The relevance

of what has happened in her life may be limited, it seems to me, in terms of why the relationship with [Mr E] started in the first place. It is also relevant, it seems to me, to the possible motives of others involved in this case, including of course [Mr E], but those matters as I say are limited.”

The judge traced the history of Kathryn and Mr E’s relationship, including the purchase of the property at Mays Road, where they lived until 1994. The judge observed that

“Then there was the significant event, as far as this prosecution is concerned, and that is the purchase of this property near Wellsford in 1994. The property was purchased in the name of [Mr E], but there was a document, a Deed of Co-ownership dated 4 October 1994, that provided certain things. Amongst them was that although the property would be purchased in [Mr E]’s name, the accused was to register a caveat against the title so as to protect her interest in the property.”

Judge MacDonald said it was acknowledged that “throughout this period that at some stage, and the dates are somewhat unclear, or slightly vague I would have thought, that they became engaged. There was an engagement ring that was purchased.” The judge recorded that “at some point” Mr E decided to live in Auckland during the week in his camper van and only went to Wellsford at weekends and on holidays.

“That is accepted, although the frequency of [Mr E]’s returns to Wellsford is a matter that is in contest. What is also in dispute is where he slept on the weekends and on occasions when he returned. The issue of his involvement in the lives of the accused and her children is also disputed. On the one hand I have [Mr E] saying that he and the accused always slept together and essentially lived throughout this period as a normal couple. That is supported by [...] the accused’s grandmother. Admittedly her visits were not all that frequent and she was certainly cross-examined on that aspect. It is also supported by the accused’s [family member] and by two mutual friends, or they were mutual friends at the time. There was [the family member’s] former wife, and she too supported something similar.”

Judge MacDonald said that the proposition of a relationship put forward by those witnesses, and Mr E in particular, was supported by various documents which the Crown said suggested there was some financial interdependence involved.

“There are also other features that were entirely consistent with the fact that this was more than an arrangement between friends and was a true relationship. I am not being exhaustive but I just mention some matters. There were the cards that the accused gave to [Mr E]. One had the words “for my husband with love,” another one “to my husband.” She was taxed on why she would send such a card to [Mr E] if she was not in a relationship like a marriage. There was some uncertainty as to precisely when those cards might have been sent to [Mr E]. The Crown’s position was that it was about 1996. It was certainly after they went to Wellsford. There were in addition various financial matters that were referred to, for example a motor vehicle account with a local garage for repairs. The account is in the name of Mr and Mrs [H], and it appears that the accused Mrs [H] organised the repairs to be carried out. There is the purchase of a Ford Telstar car on 3 June 1994. The contract specified the marital status as being married and on the face of it suggested that this was a joint purchase. There was a document from John Andrew Ford which specified the accused’s name as [Mrs E], which again is supportive of the same thing. There was a Warehouse credit card which the accused used, even though it was [Mr E]’s card. There was a loan from AVCO Financial Services in December 1997, that was for a holiday in Rotorua over the Christmas period. The application was made in both their names with the accused using the surname [Mrs E]. There was a Consumer

Group Credit Insurance Plan again in the name of Mr and Mrs [E]. There was an AGC Credit Loan application which referred to [Mr E] having three dependants. The ages coincided with the accused's children. There was a Chrisco Christmas Hamper Club taken out by the accused with a direct debit from [Mr E]'s bank account. There was a Country-Wide Bank account as well in the name of both of them. That was in June 1997. What all this various documentation served to do, as far as [Mr E] is concerned, is really just to confirm that it was the accused who was responsible for the day-to-day running of the farm, the payment of bills and the banking. That is how the relationship was organised."

Judge MacDonald also said there was evidence as to further loans obtained from the Fletcher Challenge Employees' Credit Union of which Mr E was a member.

The judge then went on to examine the defence case.

"As against that the defence position was to very much to attack the credibility of those crucial witnesses that I have mentioned, particularly [Mr E]. His character was under focus. He has a previous conviction for indecent assault. He was also charged with sexually assaulting [Elizabeth] and [Timothy], those are two of the accused's children, and also a neighbour's child [...]. Although acquitted, the acquittals plainly were not accepted by the accused, and I take it that I am asked to infer nonetheless that he committed these crimes. It was also suggested that he was dishonest, an example being the loans that were obtained that were not used for the purposes that they were granted for. It was also suggested to him that he knew throughout that the accused was in receipt of a domestic purposes benefit, and to that extent he was plainly a party, or part of a conspiracy, to any offending by the accused that was established, The defence also attacked the credibility of other witnesses including [the family member], who was charged with sexual assaults against one of the accused's children. This family member's previous convictions and his character was likewise attacked. As for her grandmother, [...] it was also suggested to her that she had some purpose of her own to serve."

Judge MacDonald said Kathryn had given evidence as to how often Mr E had been at the Wellsford property and her evidence was supported by two neighbours as well as two of her children.

The judge noted that Eloise had been born on 21 September 1996 and that Mr E was Eloise's father.

The judge said it was his job to decide which of the two versions of events was correct.

"In terms of credibility I have already mentioned that [Mr E]'s credibility is very much in focus. I acknowledge that he has a past and has previous convictions. The same goes for [Mr S] and possibly [[the family member], but in any event I have to remind myself that the mere fact that they have previous convictions does not mean that I automatically reject their evidence. The position of course with [Mr E], and these other witnesses, is that there is other evidence to support their accounts as being true. What I am referring to are the various documents to which I have referred already. Those documents, if viewed a particular way, support the evidence of [Mr E] and those other witnesses."

In relation to the defence case, Judge MacDonald said he accepted in respect of Kathryn "that by and large she had an answer to most of the propositions that were put to her. She did have, I would have thought, some difficulty in answering some of the questions. She tried to distance herself for example from the Deed of Co-ownership document, where [sic] on its face seems to be pretty clear evidence, I would have thought, as to the basis upon which the property was being purchased."

Judge MacDonald based his final conclusions on the documents presented to the Court.

“The difficulty in the end, and I will state this as briefly as I can, is that she is faced with the various documentation, which in my view is very difficult to explain away other than on the basis that this was something more than simple friendship as she would have it. There was a merging of their financial affairs and in my view that is an inescapable conclusion.”

The judge went on to state that –

“Without wishing to sound entirely cynical I accept her concerns about a man by the name of Mr Speary [misspelling of Sperry]. He was involved with one of her children and in fact was convicted of manslaughter. I accept for that reason she may have wanted to remain anonymous. Of course the other possibility is that she wanted to remain anonymous so that what she was doing was kept from the Department. That could be an explanation why [Mr E]’s name was not on [Eloise’s] birth certificate. It could also explain why her name was not on the Wellsford property. It could also explain why the power and telephone accounts were in [Mr E]’s name solely.”

Judge Macdonald also referred to the Deed of Co-Ownership.

“I take the view in the end too that as I have already hinted at, she has difficulty explaining the Deed of Co-Ownership. If it was a question of trying to enter into some relationship with [Mr E] to give the appearance of a stable situation which might have allowed the Children and Young Persons Service to return the children to her, and that was an issue earlier in the piece, that is fine. The Deed of Co-Ownership goes beyond mere appearances. It is not something I imagine that the Children and Young Persons Service would even know about, and it is hardly the kind of document that two persons who are simply friends would enter into anyway. I have a similar reaction to the cards. It really is difficult to understand why she would have sent cards like that to [Mr E], and I infer that it must have been after Wellsford, if [Mr E] was simply a friend.”

The judge concluded that reaching any conclusion other than that there had been a relationship in the nature of marriage -

“..is simply to fly in the face of reality and common sense, and I am afraid from the accused’s point of view that is precisely the conclusion I reach. I am satisfied beyond reasonable doubt that that is the case, that she was in a relationship akin to marriage with [Mr E].”

Judge Macdonald said that this conclusion meant that “each element of each count must by necessary inference be proved beyond reasonable doubt.”

Kathryn was accordingly found guilty on all 26 counts. She was remanded on bail for sentence on 9 March 2001.

The lawyer who drew up the Deed of Co-Ownership was not called to give evidence and explain the circumstances of the drawing up of the deed and the reasons why it was prepared and executed. Judge MacDonald also failed to ask what had changed in the interaction between Kathryn and Mr E to cause a different arrangement to be made for the purchase of the Wellsford property. They had bought their Mays Road house in joint names, and it would accordingly have been logical for the Wellsford property also to be in joint names if the two were still in a relationship.

The central event of Kathryn and the children's lives was the killing of Robbie by Sperry. The impact of this has been the key determinant and motivating factor to this day in Kathryn's and her children's lives. Kathryn has always been extremely fearful about Sperry tracking her and the children down after his release from jail and subjecting them to further violence. In the dock, Sperry threatened the lives of Kathryn and her children. For that reason, she still conceals her whereabouts and does not record her name on any public documents identifying her address.

However, Judge Macdonald referred to the killing of Robbie in only three brief sentences –

“Without wishing to sound entirely cynical I accept her concerns about a man by the name of Mr Speary [misspelling of Sperry]. He was involved with one of her children and in fact was convicted of manslaughter. I accept that for that reason she may have wanted to remain anonymous.”

There is no reference to any inquiry into Sperry's other violence, and no indication that the judge had any appreciation of Kathryn's fear for the safety of herself and her children. The sentence “He was involved with one of her children and in fact was convicted of manslaughter” utterly minimises Sperry's brutal and fatal assault on Robbie.

Kathryn was diagnosed with Post-Traumatic Stress Disorder, but no evidence was placed before the court by her lawyer about the condition, her experience of the condition, and its long-term impact on her actions.

After referring only briefly to Sperry and the killing of Robbie, Judge Macdonald suggested that the other reason Kathryn might have wanted to remain anonymous was so that what she was doing was “kept from the Department.” However, Work and Income knew about the arrangements for the purchase of the Wellsford property and about the Deed of Co-Ownership. As Kathryn was receiving a benefit, Work and Income would always be aware of her whereabouts and have full details of her finances and expenses.

Mr E in his evidence at trial confirmed Kathryn's account of why her name was not placed on documents relating to the Wellsford house. When asked whose name the mortgage was in, he said on page 4 at line 30 –

“My name only.

Why was that ? ... That was because some years ago Kathryn had a problem with a guy that was supposed to have deceased her, deceased her baby, and he was in prison at the time, um, when he got out of prison she was a bit worried that he might come and find her, and hurt her and her children, and that was the reason why it was put in my name.”

Judge Macdonald also placed emphasis on the fact that Mr E was Eloise's father. However, this is plainly an unreliable determinant of whether or not there is a relationship in the nature of marriage. Otherwise, everyone who had a one night stand and became pregnant would be considered to be in a relationship in the nature of marriage.

The judge referred to the fact the Mr E was charged with sexually assaulting Elizabeth and Timothy but did not spell out, and did not appear to appreciate the full significance of, the fact that he was the one who made an allegation against Kathryn of fraud to Work and Income, and that he did so after she had lodged the complaint of sexual assault of her children with the police.

Judge Macdonald did not refer in his decision to a single piece of evidence demonstrating that

Mr E financially supported Kathryn and her children, apart from the direct debit from Mr E's bank account for a Chrisco Christmas Hamper Club. The judge did not mention evidence of Mr E paying the mortgage or paying for food or other expenses. Financial support is the crux of the legal test of whether or not there is a relationship in the nature of marriage.

The decision also did not spell out that it would be natural that Mr E would visit the Wellsford property as he was Eloise's father and it would accordingly be expected that he would want to see his baby, even if he was no longer in a relationship with her mother. As Mr E had stayed in a camper van at the property in Auckland where he and Kathryn had lived after they broke up, his staying in a camper van where she was living was an established pattern, and this pattern continued.

When Kathryn and children lived at Wellsford, Mr E was living in his camper van on his brother's property in Auckland. He had no home of his own and it is natural that he would want to give his brother and his family some privacy at weekends by going somewhere else. As heavy traffic often makes the drive from Auckland to Wellsford a lengthy one, it is understandable that Mr E would prefer to stay overnight rather than driving backwards and forwards.

Judge Macdonald referred only in passing to Mr E knowing earlier that Kathryn was in receipt of a domestic purposes benefit. It is difficult to conclude anything other than that he was aware of it, as he must have known she was not employed at the time. The court also downplayed Mr E's dishonesty in lying on loan applications he made.

In his decision, Judge Macdonald stated that it was acknowledged "throughout this period that at some stage, and the dates are somewhat unclear, or slightly vague I would have thought, that they became engaged. There was an engagement ring that was purchased." However, those comments are contradicted by the evidence given by Mr E at trial. He said on page five of the transcript, at line 14, that –

"We got engaged at Mays Road, we actually got engaged um, I bought her an engagement ring at Michael Hill Jewellers at St Lukes."

District Court sentencing

Kathryn was sentenced in the Auckland District Court on the 26 counts of benefit fraud on 9 March 2001 by Judge Macdonald, the same judge who had presided over her trial and found her guilty.

The judge delivered a five and a half page decision in sentencing Kathryn. He noted that the maximum penalty on the using a document for pecuniary advantage charges was seven years' jail, while the maximum penalty for the wilful omission offences was 12 months' prison.

Judge Macdonald said that the offending had covered the period January 1994 to June 1999 and had resulted in Kathryn receiving \$120,355.26 to which she was not entitled.

"I accept from what [Kathryn's lawyer] Ms Kennedy says on your behalf that you probably have little to show for that and indeed you may still have struggled financially over the period that you offended."

Judge Macdonald referred to submissions made by Ms Kennedy at Kathryn's trial, but which the judge did not mention in his decision finding her guilty.

"At trial Ms Kennedy did advance an argument that she mentioned again today – that as [Mr E] was not committed to the relationship, because he was sexually abusing your daughter, it was therefore

a dysfunctional relationship in line with the case of *Ruka*. That case involved violence but the effect was the same, and that is that this is a dysfunctional relationship and should not therefore have been regarded as being in the nature of a marriage. I did not accept that argument then because I felt that there were two distinct issues involved. A relationship that has all the hallmarks of a marriage is no less a marriage just because one of the partners might have sexually abused one of the children. Of course, [Mr E] claimed that he did not know the full extent of the benefits you were receiving, and the other difficulty was that although you maintain that he did these things to your daughter, it is not a matter that I can really resolve because it did go to trial and ultimately it did not end in a conviction. So I was not prepared to accept that argument.”

Judge Macdonald noted that Kathryn maintained her innocence and said that Mr E and [the family member] had made allegations against her in revenge for her disclosure of their sexual offending against her children.

He referred to the number of sad features in Kathryn’s life.

“Ms Kennedy on your behalf uses the word ‘tragic’ that may be perfectly appropriate. You have in the past been the victim of serious violence or members of your family have, and for years you have held genuine fears for the safety of yourself and, of course, your children. However, without wishing to sound totally heartless, it is still no excuse for being dishonest in your dealings with the Department, and that is precisely what I have found.”

Judge Macdonald said that the offending was serious property offending, involving deliberate deception.

“There is the period over which the offending took place and there is the substantial over-payment. In my view, and as I understand it Ms Kennedy does not argue with this conclusion, those features amount to special circumstances for the purposes of s 6 of the Criminal Justice Act and make the imposition of anything other than a full-time custodial sentence clearly inadequate or inappropriate.”

Judge Macdonald said that Ms Kennedy accepted that imprisonment should be imposed, but argued that it should be suspended under section 21A for a number of reasons.

“The strongest feature I would have thought in listening to what she says, is the submission that you could not possibly cope with a prison sentence. I did tackle her on that matter and wondered if that was the case then I might have been assisted by some report from a psychologist or doctor. To that Ms Kennedy responded by saying that I should take it into account on the basis that I am a parent and I should understand.”

Judge Macdonald said that he had considered all the matters raised, and was not persuaded that they were sufficient to suspend any prison sentence. He said that the offending was “too serious for that, and it would also be out of kilter with sentences for offending of this kind.”

The judge said that Kathryn could not claim any credit for guilty pleas – which would have resulted in a discount on the sentence – and imposed a prison term of 15 months. Fifteen months’ jail was imposed for the charges of using a document and six months’ prison on the wilful omission charges, with the sentences to be served concurrently. Judge Macdonald refused to suspend the sentence but granted Kathryn leave to apply for home detention.

Kathryn was taken into custody directly from the dock and was not permitted to speak to or say goodbye to her children, all of whom were present in court.

There was no mention by Judge Macdonald at the sentencing of the welfare of Kathryn's children, or any arrangements for their care and safety while she was in jail. The judge made no inquiries about what would happen to the children. He did not ask whether there were other family members who could care for the children, and failed to inquire whether Child Youth and Family had been advised of the children's situation. Judge Macdonald could have delayed the sentencing while inquiries were made about arrangements for the children, but did not do so.

The judge could also have remanded Kathryn to a future date for sentencing while psychological or medical evidence was obtained to provide to the court, but he did not do that either.

Judge Macdonald said on page 6 of the sentencing notes that suspending a prison sentence would be "out of kilter with other sentences for offending of this kind." However, on page 5 he said that he had been unable to find any cases comparable to Kathryn's. The cases he had looked at were in most respects less serious.

Dr Lisa Marriott of Victoria University has done extensive research comparing sentences for benefit fraud with those for tax offences. She found that, over a three year period, tax frauds involving an average of \$287,000, carried a 22 per cent chance of jail for the fraudster. By contrast, beneficiaries charged in relation to average amounts of \$67,000 had a 60 per cent chance of jail. That is, they were almost *three times* more likely to be imprisoned, even though the amount was only a *quarter* of that of tax fraudsters. Further, benefit fraud in New Zealand totals at most \$23 to \$30 million a year - a tiny amount compared to tax evasion and white collar crime.

In his sentencing decision, Judge Macdonald said he accepted that "for years" Kathryn had held genuine fears for her safety and that of her children. That contradicts the judge's comments in his earlier decision finding Kathryn guilty on the benefit fraud charges. He said then that Kathryn "might" have wanted to remain anonymous because of fears about Sperry but "Of course the other possibility is that she wanted to remain anonymous so that what she was doing was kept from the Department."

Judge Macdonald did not at sentencing refer to reparation at all. He imposed the sentence he considered was appropriate for Kathryn, based on the offences of which she had been found guilty. However, he did not refer to the fact that Work and Income had established a debt of \$120,355.26 against Kathryn and that it would take action itself to recover that money from her and would pursue her for the rest of her life to try and obtain the money. Kathryn therefore received two punishments for the offences of which she was convicted. Usually in criminal cases other penalties such as a jail term are discounted if reparation is to be paid.

Court of Appeal decision

Kathryn appealed to the Court of Appeal against her convictions and sentence. The Court of Appeal hearing was held on 9 April 2001 and an 11-page judgment was delivered on 12 April 2001.

The Court of Appeal does not hear evidence again from witnesses. Instead, it makes decisions based on written submissions and oral arguments made by the defence and prosecution lawyers. Five Court of Appeal judges heard the appeal, including the then-President of the Court of Appeal, Justice Richardson. The Court of Appeal's judgment was delivered by Justice McGrath.

The judge spent five paragraphs of the judgment reviewing the evidence in the case, including at paragraph 3 again mentioning the engagement ring although stating that the date of its purchase was unclear.

The Court of Appeal judgment devoted only one sentence to dealing with Kathryn's appeal against conviction.

"The appellant has appealed against both conviction and sentence. At the outset of the hearing of the appeal, her counsel, Ms Kennedy, who was also counsel at the trial, advised us that the appellant did not accept she was guilty of welfare fraud and continued to blame the Department for her involvement with [Mr E]. In those circumstances we have ourselves considered the evidence and the judgment convicting the appellant. We are satisfied there was more than adequate evidence for the Judge to find the appellant guilty of the charges and that there is no basis for reversing his decision. The appeal against conviction is accordingly dismissed."

Justice McGrath then moved to consider the appeal against sentence. He referred to Ms Kennedy's submissions on behalf of Kathryn –

- Section 7 of the Criminal Justice Act required the court to take account of the desirability of keeping offenders in the community
- Separation of young children from their mothers generally led to psychological distress and trauma which could have devastating and permanent effects
- New Zealand's obligations under the United Nations Convention on the Rights of the Child 1989 required that the best interests of the child be a primary consideration in decisions relating to children
- As the convictions related to offences against property, section 6 of the Criminal Justice Act required the court not to impose a full-time custodial sentence unless there were special circumstances.

Ms Kennedy also advised the court that Kathryn had been unable to apply for home detention because Wellsford was not an area administratively available for home detention – a fact not known either to Judge Macdonald or to Ms Kennedy at the time of sentencing.

The lawyer for the Crown argued that the case involved special circumstances because a large amount of money was involved and the offending took place over a lengthy period. He submitted that the family situation of the offender was simply one factor to be taken into account and the effect on the youngest child should not be the primary consideration in fixing a sentence.

The Crown told the court that 56% of female inmates had been living with at least one child under 18 in their care prior to entering prison. 75% of those women were sole caregivers. The lawyer said that changing sentencing policy to make the welfare of the children the key factor would entail a massive change and, if it was to be done, it should be done by way of legislative change rather than a court decision.

Discussing the court's reasoning, Justice McGrath said that the family situation of a convicted person, including where applicable the well-being of offenders' children, would always be among the personal circumstances taken into account by sentencing judges.

"What however must be recognised is that the family situation of an offender, including the well-being of the offender's children, is only one of a number of relevant factors. How much weight it can be accorded in any particular case depends on its circumstances."

Justice McGrath also downplayed the issue of Wellsford not being administratively available for home detention. He noted that less than half of those given permission to apply for home detention actually obtained home detention.

“The appellant falls into the category of those who for administrative reasons are likely to serve their entire sentence in prison. She no longer has a home in Wellsford and, since her sentencing, had been unable to establish one in an area in which home detention was administered.

Justice McGrath also referred to Ms Kennedy’s submissions based on the United Nations Convention on the Rights of the Child.

“In this case the court’s responsibility for determining the appellant’s appeal against her sentence is guided by ss 6 and 7 of the Criminal Justice Act. That is not to say New Zealand’s international obligations are necessarily irrelevant, as there is a presumption of statutory interpretation that, so far as its wording allows, an act should be read in a way which is consistent with international obligations.”

The court said it was satisfied that Articles 3 and 9 of the convention did not require a reappraisal of the way in which sections 6 and 7 were applied. Justice McGrath said that the appeal was accordingly to be determined by applying the principles in the earlier court decision of *R v Prior*, which stated that there were compelling reasons for leniency when both parents faced jail sentences.

Justice McGrath said it had clearly been open to Judge Macdonald to find that the large sum and lengthy period involved in Kathryn’s offending amounted to special circumstances making any sentence other than a full-time custodial sentence inappropriate.

“While the judge did not expressly refer to s 7, we consider his approach reflected the policy of general limitation on imprisonment, including the term of the sentence imposed, which s 7 sets out. The appellant’s position as sole caregiver for her four year old daughter is a factor indicating leniency but that family circumstance must be weighed against the fact that the offending was rightly regarded by the judge as a very serious course of dishonesty... in our view, the sentence of 15 months imprisonment is one which accords to the appellant’s family situation leniency to a degree that is consistent with the statutory policy.”

The appeal against sentence was also dismissed.

2. Civil proceedings relating to debt recovery

Although the District Court in sentencing Kathryn on the benefit fraud charges did not make an order that she pay reparation, the Ministry of Social Development has the power to recover debts itself.

Following the criminal court case, the Ministry accordingly established a debt of \$120,395.26 against Kathryn and asked her to pay that amount.

Kathryn at every point maintained her innocence of the charges and challenged the decision to establish the debt against her. She applied for a Benefits Review Committee hearing. That was held on 3 November 2004, and the committee in a decision dated 4 November 2004 decided to uphold the Ministry’s decision to establish and recover the debt. The committee held that the principle of *res judicata* applied to the issue of whether or not Kathryn had been living in a relationship in the nature of marriage. That meant that this matter had already been determined by another forum and that decision could not be reversed.

The committee also decided that Kathryn's circumstances did not meet the requirements of section 86(9A) of the Social Security Act 1964 relating to the writing-off of debts. That section gave the Chief Executive of the Ministry discretion to decide not to recover a debt, and instead to write it off. A letter dated 29 November 2004 was sent to Kathryn advising her of the decision.

Kathryn then sought the assistance of the Combined Beneficiaries Union to appeal to the Social Security Appeal Authority against the committee's decision. The Ministry advised that it considered *res judicata* again applied. Mike Darke of the Combined Beneficiaries Union represented Kathryn. He advised in 2007 that new evidence was available from a witness who did not give evidence in the District Court criminal proceedings.

A statement from that witness was filed and the Ministry was given an opportunity to consider it. The Ministry again advised that it considered that *res judicata* applied. There were further lengthy delays because the Ministry failed to provide a Certificate of Convictions to the Social Security Appeal Authority recording Kathryn's convictions. When the certificate was filed, it did not cover the period July to November 1999 and the Ministry subsequently decided not to seek to recover any debt for that period. Mr E himself said in his evidence in the criminal court proceedings that the relationship ended on 31 July 1999. The Ministry's decision meant that it was not seeking not to recover Accommodation Supplement of \$1952.57 and Special Benefit of \$803.85 for the period 20 July 1999 to 30 November 1999 thereby reducing the debt of \$120,395.26 to \$117,598.84.

Mr Darke appeared for Kathryn at a hearing of the Social Security Appeal Authority on 3 December 2008. The Authority on 20 April 2009 issued an interim decision in which it held that *res judicata* applied and it would be an abuse of process for the Authority to reconsider and adjudicate upon the issue of whether or not Kathryn had been living in a relationship in the nature of marriage during the period of the charges.

The Authority ruled that it would consider –

- Whether the debt had been correctly calculated
- Whether the debt could be provisionally written off under section 86(9A)
- Whether the Chief Executive should be directed not to take any steps to recover the debt under section 86(1).

A further hearing was held on 1 December 2009 and the Authority issued a substantive decision on 23 February 2010. The Authority said that no submissions had been made by Kathryn relating to calculation of the debt, and it was accordingly accepted that it had been correctly calculated. The Authority held that an issue estoppel arose in relation to the question of whether or not Kathryn had intentionally contributed to the error made by the Ministry in paying her money to which she was not entitled. The Authority said that the parties to the criminal proceedings – Kathryn and the Ministry – were the same as the parties to the case before the Social Security Appeal Authority. The criminal standard of proof in the District Court had been higher than the civil standard before the Authority.

Accordingly an issue estoppel arose. The Authority said that it would, in any case, be an abuse of process to re-canvass the issue of whether Kathryn had deliberately contributed to the error made by the Ministry employee causing the debt to arise.

“As we are satisfied that the appellant intentionally contributed to the error made by an officer of the department we are not able to direct the Chief Executive to provisionally write off the debt pursuant to the provisions of s 86(9A).”

The Authority then went on to consider whether the debt should be written off under section 86(1A). The Ministry submitted that this was not a case in which Kathryn had truly required financial assistance from the state to provide for the basic necessities of life.

“[Mr E] was more than able to provide the necessities for the appellant and indeed the appellant’s dishonesty enabled herself and [Mr E] to live a relatively comfortable lifestyle. They owned a home, they purchased motor vehicles, a campervan and [Mr E] also purchased a tractor and a utility vehicle. We accept [Ministry of Social Development lawyer] Ms Moy’s submission that the appellant’s continued receipt of a benefit was not to enable her to meet the basic necessities of life for herself and her children. Rather the additional income from benefit enabled the appellant and [Mr E] to live a comfortable lifestyle on a rural block, purchase new furniture, a computer, a barn, a tractor, run a campervan for holidays and renovate their home. Even if we were to accept that [Mr E] had abused the appellant’s children, and we are not satisfied that that was the case, it is difficult to see the connection between that abuse and the appellant’s decision to fail to disclose her true circumstances to the Ministry and continue receiving a benefit to she was not entitled to receive.”

The Authority said it was not satisfied that the circumstances were such that the Chief Executive should exercise the discretion under sections 86(1) to (1D) to take no steps to recover the debt.

The Authority in its decision appeared not to have read the transcript of the criminal court case. Mr E in his evidence admitted that he had filled out loan applications stating he wanted to borrow money for particular purposes, but had not intended to, and did not, use the loans for the specified purposes.

In addition, Mr E already owned the campervan when he and Kathryn lived at Mays Road. At page 23 of the criminal court transcript, Mr E was asked about loan applications completed to buy a barn, a tractor and stock. When Kathryn’s lawyer put it to him under cross-examination that no barn and no tractor had been purchased, Mr E said a 4x4 quad had been bought. Asked about the stock, he initially said “Yes, we did purchase stock. It wasn’t a great deal of stock, it would’ve been only about two or three.” After two further questions, he changed his answer and admitted that no stock had been bought -

“No, we didn’t, we ended up paying bills instead.”

He was asked further questions about the loans –

“But you got the money to purchase stock ?...Yes.

And you got the money to purchase a barn ?...Yes, I did.

Did you put the barn up?...No, it was a garage instead.

But you had another loan for the garage ?...Yeah, I was, whenever we got behind on the bills and that, as I stated, that we had to put down what the loan was for, it didn’t matter what it was for, as long as we put something down.

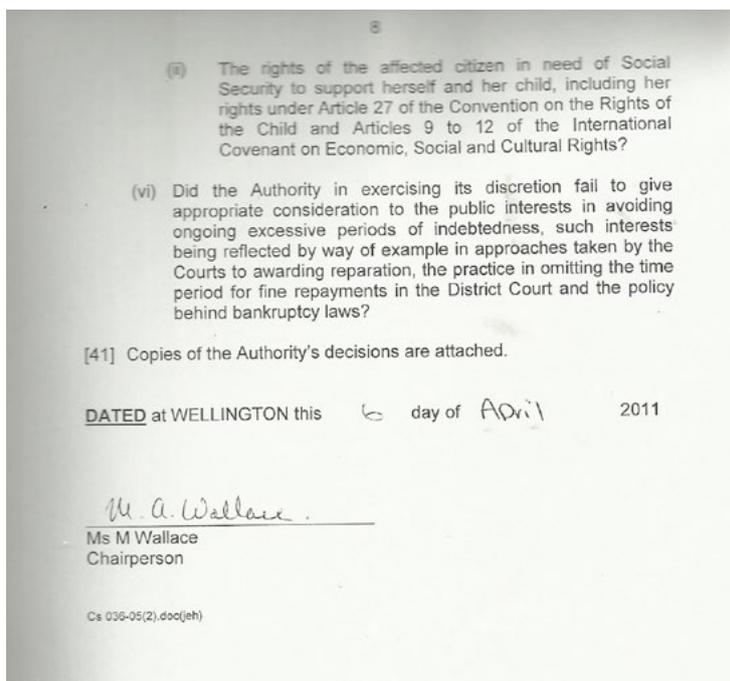
So that in effect these application forms are untrue, aren't they ?...For what they were meant to be for, not all of them, no.”

Following the release of the Authority's decision, Kathryn appealed against both the interim and final decisions of the Authority. Those appeals were amalgamated into a case stated to the High Court. A “case stated” involves the High Court being asked to answer a series of questions. The questions were put to the High Court in writing on 6 April 2011. The questions were the following-

[40] The questions of law for the opinion of the Court are:

- (i) Did the Authority err in law in finding that *issue estoppel* applied to the questions about:-
 - (a) Whether the appellant was living in a relationship in the nature of marriage during the period to which the criminal convictions relate; and
 - (b) Whether the appellant intentionally contributed to the error by an officer of the Department that resulted in an overpayment?
- (ii) Did the Authority err in law in determining that it was not satisfied that the Chief Executive should exercise his discretion under s 86(1) to (1D) of the Social Security Act 1964 not to recover the debt by failing to give sufficient consideration to the purposes of the Social Security Act 1964?
- (iii) As a matter of law was there any evidence for the Authority to:-
 - (a) Reject the appellant's contention that she had received nothing as a result of her offending; or
 - (b) Find the appellant's continued receipt of a benefit was not to enable her to meet the basic necessities of life for herself and her children?
- (iv) In an appeal by way of Case Stated is it appropriate for the Authority to pose a question in relation to a matter which was not specifically raised before the Authority by the parties namely the interests of the appellant's dependent child?
- (v) If the answer to question (iv) is yes did the Authority in exercising its discretion err in law by failing to give sufficient consideration to the effects of ongoing reductions in benefit levels on:
 - (i) The rights of the dependent child affected including under Article 26 and 27 of the Convention on the Rights of the Child.

Box 7 – Questions that were put to the High Court in writing on 6 April 2011.



Box 8 – Questions that were put to the High Court in writing on 6 April 2011.

The hearing of the case stated was held in the High Court at Auckland on 30 August 2011 before Justice Courtney. She released her 32- page decision on 4 April 2012.

Justice Courtney answered the questions in the Case Stated as follows –

- Question one – no
- Question two - yes
- Question three – yes
- Question four – yes
- Question five – yes.

The High Court accordingly found that there was a general discretion as to whether or not to order recovery of a debt and there was no presumption in favour of recovery. The Authority had failed to consider the purposes of the Social Security Act when exercising its discretion – that purpose being to provide financial assistance to those who could not adequately support themselves. The Authority did not consider Kathryn’s financial circumstances or the impact of repayment on her future ability to support herself and her daughter. It did not look at her current situation.

Justice Courtney also said that the Authority had erred in failing to consider rights recognised under the United Nations Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights. However, the court held that Kathryn was estopped from raising the issue of whether or not she was in a relationship in the nature of marriage.

Justice Courtney agreed that it appeared that the assets for which loans had been sought were not acquired.

“[Kathryn’s lawyer] Ms Joychild has submitted, with some justification, that a closer examination of the evidence in the criminal case would have shown that the evidence did not truly support the finding that Ms [H] and [Mr E] had acquired the various assets that appeared from the loan applications. Ms Joychild’s submission was essentially that the Authority’s conclusion regarding the use to which Ms

[H] put the overpayments and the benefits she derived from them was not supported by the evidence before the Authority and contrary to the findings in the District Court criminal case.”

Judge Macdonald had stated in the criminal court that he accepted in relation to the benefit money Kathryn received that “you probably have little to show for that and indeed you may still have struggled financially over the period that you offended.”

Kathryn’s lawyers had asked that, if the High Court found that the Social Security Appeal Authority had erred, the Authority’s decision should be quashed and the debt against Kathryn should be cancelled. However, the judge did not agree to do that.

“This does not, however, seem to be the appropriate course. The decision regarding recovery is one to be made taking into account the relevant considerations. The proper course is to remit the matter to the Authority for its reconsideration in accordance with the answers I have given to the questions posed. I therefore remit the matter to the Authority for reconsideration.”

Justice Courtney also observed that Mr E had benefited from the benefit money received from Kathryn and that it would have been worth investigating whether action could be taken against him to recover the money, given that at the time of Kathryn’s trial he had been in the same job for 21 years.

Kathryn’s case then went back to the Social Security Appeal Authority. It did not hold a further hearing but issued a decision on the papers on 16 December 2013. The 11-page decision dismissed Kathryn’s appeal. The Authority stated that –

“There is an emphasis in the objects of s 1A of the Social Security Act 1964 on people supporting themselves. The express provision that benefit payments are intended to help alleviate rather than eliminate hardship suggests that some hardship may remain when a person’s source of income is a benefit. We do not consider that it would undermine the purpose of the act if deductions were made from a benefit to recover overpayments, provided the amount of the repayments takes into account the beneficiary’s particular circumstances.”

The Authority also said that it was necessary to preserve the integrity of the scheme for social support in New Zealand. Not requiring repayment of a debt incurred as a result of fraud might encourage, rather than deter, fraud.

“If money recovered by fraud is not recovered it would be difficult to justify recovery of debt which has not arisen as a result of fraud. We agree with the submission made on behalf of the chief executive that if hardship to the beneficiary and her dependant child was a reason for foregoing recovery of debt incurred as a result of fraud then the integrity of the system for social support in New Zealand would be undermined.”

The Authority queried information provided by Kathryn about her living expenses and said that the repayment of debt would inevitably have an impact on the financial circumstances of a beneficiary and any dependant children “especially if the beneficiary makes unwise spending choices.”

Kathryn appealed to the High Court against the Authority’s decision. A hearing was held in the High Court before Justice Faire on 4 August 2015. He issued a 42-page judgment on 29 October 2015, dismissing Kathryn’s appeal.

Justice Faire discussed the suggestion in the earlier judgment by Justice Courtney that the Ministry should seek recovery of some of the money from Mr E. Justice Faire said that –

“It is important to repeat that [Mr E]’s share of the property proceeds was presumably only \$36,572.52. The cost of conducting a proceeding against [Mr E] is likely to have cost a similar amount. Moreover, [Mr E]’s current circumstances are unknown. Although he had a good level of steady income when he and the appellant were together, it may well not be the same situation now. Assuming that an action for money had and received was successful, the cost of bringing the proceedings, coupled with the strong likelihood that recovery from [Mr E] would be very slow, as is normally the case with defendants who are unable to pay a lump sum, would exceed the maximum amount the Ministry could recover from [Mr E]. In that sense, the Authority was correct to conclude that such a proceeding would not be an efficient or economic use of the Ministry’s resources.”

The Ministry has been seeking recovery of the debt established by it against Kathryn for 15 years. During that time, it has spent well over \$100,000. The figure for the Crown Law Office’s legal costs alone is \$84,650.75 on court proceedings. This consists of legal fees of \$35,480.60 plus disbursements of \$1269.40 on the first case stated High Court appeal. A further \$46,301.90 in legal fees and \$1598.85 in disbursements was spent on the second case stated appeal and in responding to an application for leave to appeal.

Earlier, the Crown Law Office spent \$6554 on fees for the Crown Solicitor who prosecuted Kathryn in the District Court, and \$4691 on fees for the appeal to the Court of Appeal against conviction and sentence.

On top of those figures, the Ministry of Social Development has spent a large sum in seeking recovery of the alleged debt from Kathryn. The Crown Law Office invoiced the Ministry for its legal fees and disbursements relating to the civil proceedings, so that sum was ultimately paid by the Ministry. The writer of this report sought, under the Official Information Act, details of the other costs incurred by the Ministry in seeking recovery of the alleged debt but was advised that this information did not exist.

“I am unable to provide you with internal legal costs information as the Ministry does not itemise costs for internal legal advice as it is considered a business overhead and not attributed to the costs of specific court cases. As such this part of your request is refused under section 18(e) of the Official Information Act as the information you have requested does not exist.” (Letter from Ministry of Social Development to Catriona MacLennan, 13 April 2016).

The Ministry throughout the 15-year period has had full details of Kathryn’s financial position and is aware that she has no resources to repay the sum. Further, the Ministry knows that Kathryn is in extremely poor health and it is exceptionally unlikely that she will ever be able to work again.

At the time of the criminal court proceedings against Kathryn for benefit fraud, Mr E had been in the same job for 21 years. The Ministry appears to have made no inquiries about his current circumstances, but it could be assumed – as it was by Justice Faire – that he would be earning a reasonable wage after being employed in the same work for 21 years. Further, that work record indicates an extremely stable employment history and, hence, stable income. By contrast, Kathryn only has income from a benefit, which is a very low income. The courts at all stages of the proceedings against Kathryn have had full details of her income and outgoings and have accordingly known that she cannot repay the money.

Further, Justice Faire stated that Mr E had “only” received \$36,572.52 from the sale of the Wellsford property. Kathryn received only \$11,000 from the sale yet the Ministry has continued to pursue her, so it is inconsistent to regard \$36,572.52 as a small sum.

The Crown at an earlier court hearing suggested that Kathryn might be able to repay the debt in future if her financial circumstances changed – for example, if she won Lotto. It is therefore surprising that the Ministry has taken no steps to ascertain whether Mr E's financial position might have been improved by a similar event.

Justice Faire said that how the debt was incurred was an important consideration for the maintenance of the integrity of the Social Security Act and the benefit system generally.

“The issue is also closely linked to the ascertainment of rare or unusual circumstances that would put the individual into particular hardship if discretion to recover was exercised. Where the debt was incurred by fraud and where there are no special individual circumstances, it would indeed be difficult for the court to justify why discretion to recover the debt owed should not be exercised.”

Justice Faire concluded that, although the Social Security Appeal Authority had made some errors of law in its consideration of the viability of proceedings against Mr E to recover the debt, the extent of Mr E's knowledge and the status of international covenants in domestic law, these errors were not crucial in the Authority's decision.

Justice Faire said he sympathised with Kathryn's request that the court make a final decision in the case. However, he said that his judgment concerned only whether the Chief Executive -

“*may*, not will, recover the amount of benefits paid to the appellant in excess of the amount to which she was entitled. In my view, a specialist body should decide whether recovery should actually be enforced, and if so, at what rate. A decision by a specialist body is also more easily amended than a court order. This is the more practical route if the appellant's circumstances change and require a re-assessment of the rate of recovery or temporary suspension thereof.”

The judge concluded that his decision was not concerned with the rate of recovery or circumstances of recovery, as those were matters which the Ministry had offered to negotiate with Kathryn and were best determined by government bodies in accordance with changing circumstances.

The appeal was dismissed.

In 2016 Kathryn awaits the decision from the Social Security Review Authority as to whether she must repay the alleged debt. While the law has been changed to prevent the Ministry exercising discretion in these kind of cases, Kathryn comes under previous law that did allow the Ministry to wipe the debt. There is little to suggest that the decision will differ from past ones, so that further Judicial Review proceedings and appeals are likely.

The costs of the last 15 years incurred by the Crown, the Ministry of Social Development, and the defence lawyers in legal aid are estimated at several hundreds of thousands of dollars, to say nothing of the non-monetary costs. What can justify the spending of this money for the minimal possible future recovery of \$20 a week, or just \$1040, a year from Kathryn's meagre benefit?

Postscript from CPAG

This report builds on – and puts a tragically human face to – the issues highlighted in CPAG’s December 2014 paper, *The complexities of relationship in the welfare system and the consequences for children*. It is a remarkable tale of the sheer doggedness and courage of Kathryn herself but also of the lawyers who have helped her since her release from prison.

During research for the 2014 report and since, CPAG has collected further examples of cases involving women with children on benefits who have been prosecuted and convicted of relationship fraud. Many of these women, too, have been sent to prison, and the Ministry of Social Development has taken and continues to take an extremely harsh approach to seeking to recover money from these mothers. This is irrespective of their ability to pay, and irrespective of the negative impact on their children of reducing already meagre family incomes.

Many of the children involved have also witnessed or been subjected to violence despite the best efforts of their mothers to protect them, and their experiences will leave them with life-long psychological scars. As Kathryn’s story shows, the mothers are also victims on many levels and the current punitive approaches by the state serve to re-victimise and re-traumatise, with detriment not only to the mothers themselves but also to their children.

With respect to prosecution for so-called relationship fraud, lawyers may advise the client to plead guilty to receive a lesser sentence, knowing full well the costs and likely punitive outcome of the judicial process for a Not Guilty plea. In Kathryn’s case, her plea of Not Guilty resulted in both protracted legal processes and in a sentence that was far from lenient or just. In an opinion piece on the Law Society website *Continuing the conversation ... the fading star of the rule of law* (05 Feb 2015) Frances Joychild QC says

“Access to justice is not just a human right for individuals. It is central to our constitution and social wellbeing”.

Frances Joychild goes on to observe:

Over the past three years, I have wondered increasingly if I have woken in Charles Dickens’ England. ... Some of the most alarming cases I have dealt with recently come from income-tested beneficiaries. There are increasingly large discretions held by WINZ officials, largely without legal overview by independent lawyers. ...Clearly, beneficiaries have no money to employ a lawyer. Most of the problems they encounter are not covered by legal aid. Some are lucky enough to have access to unpaid beneficiary advocates. I suspect a very large number do not. It is extraordinary that, in an area of major legal complexity, wide government discretions and deeply disempowered citizens, the rule of law is at its weakest.

What Kathryn’s case reveals is that access to the justice system, while rare for people like Kathryn, is not enough. That system itself must better reflect the principles of equality and sensitivity to the broader socio-economic issues for women with children in precarious positions. Kathryn today is physically unwell and impecunious and even \$20 a week repayment is too onerous.

Kathryn’s story raises many concerning issues.

CPAG believes that the original criminal conviction and the subsequent legal challenges to the reparations demanded by MSD show a lack of an appropriate gender analysis and exhibit a marked unconscious bias. There was no understanding either, of the Post Traumatic Stress Syndrome Kathryn has suffered for over 25 years and how that has profoundly affected her quality of life.

CPAG hopes that Kathryn's Story will be used to inform and educate. The Ministry of Social Development, the Judiciary and the Ministry of Justice would benefit from internal training at all levels of administration on gender issues and how to place the best interests of the child at the heart of all decision-making. It is to be hoped that the New Zealand Law Society will also contribute to reform of the law relating to relationship fraud so that a just system can be put in place. The current legal test is unclear and is applied differently by Ministry staff in different cases.

On the Government's and Ministry of Social Development's own figures, the amount lost in benefit fraud is a tiny fraction of the amounts lost to Government through tax avoidance and evasion, non-payment of fines, and non-payment of child support. CPAG does not condone actual benefit fraud, for example by the use of multiple names to get multiple benefits, but what is highlighted by Kathryn's situation is that the test for a 'relationship in the nature of marriage' is open to different good-faith interpretations by officials and beneficiaries alike – a poor basis for decisions about whether the state will help to financially support children, let alone for decisions about fraud.

The Government's harsh approach to beneficiary mothers penalises and disadvantages children, without recouping significant money. This is clearly shown in Kathryn's case, where well over \$100,000 has already been spent by MSD and Crown lawyers, let alone the costs for the defence and court time.

The mothers the Ministry is pursuing are some of the poorest people in New Zealand. It is not that they will not repay their alleged debts: they *cannot* pay them and, as shown in Kathryn's case, it is highly unlikely that they will ever be able to do so. It is highly undesirable they should be forced into unacceptable poverty and deplorable that a jail sentence, so clearly detrimental to the children is not seen as even punishment enough.

Appendix: Metro April 1991

cover story

wicked stepfathers? the de facto factor

i

n recent months Auckland courts have dealt with a spate of brutal assaults on small children by their stepfathers. They include the vicious rape of a three-year-old, the repeated rape of a seven-year-old and an assault on a two-year-old which left her blind, paralysed and without speech. Perhaps the Grimm figure of the wicked stepmother is due for a revision.

LESLEY MAX investigates the short, sad life of [REDACTED]

a victim of social change that we don't want to know about.

Lesley Max, author of *Children: Endangered Species*, is a Metro contributing writer.

The step-parent is a growing reality in the lives of perhaps hundreds of thousands of New Zealand children. But let's get one thing clear from the start. Most adults who find themselves in this role make valiant efforts to rise to it. It can be very difficult, hence the proliferation of groups and counsellors for the "blended family". There's no question that New Zealand has countless men and women who make superb step-parents, on a scale from full acceptance of responsibility and affection, to deep-down parental love. These people are not the subject of this story.

What I'm concerned about is the phenomenon of the more or less transient and violent father substitute, as seen in the court reports in the newspapers.

Often the term "stepfather" is misleading, since the man in question has formed a relationship with a woman and naturally assumes a role of authority over her children. Too often, that authority is expressed in terms of brutal, even fatal attacks, or in repeated sexual assaults.

It is, so far, an unrecognised phenomenon in New Zealand. It shouldn't be, because of the number of victims, children, women and even the men, and the intensity of suffering. The cases that end up in court and get reported are simply the tip of an ugly iceberg of unknown dimensions.

In a section entitled "The De Facto Factor" in my book *Children: Endangered Species* I noted New Zealand and American research which indicated that the likelihood of serious child abuse rose where a child was not living with both natural parents, and where a child was living with one parent and a step-parent.

I quoted an American paediatrician who told a New Zealand medical conference that "Fathers will abuse their children, but it is unusual for a father to kill his own child," noting that mothers' boyfriends don't bond in the same way with another man's child. He suggested that the abuse rarely begins and ends with the one occasion, but more often has been insidious for some while. "The thing that amazes me is that the mother stands back and lets it happen... the mother's need for a relationship outweighs the need to intervene and protect the child."

He suggested that New Zealanders needed to be particularly aware of the danger posed to a woman's children by a live-in boyfriend with criminal convictions.

Many of those "de facto factors" are evident in the short life and violent death of [REDACTED], and in the sad lives of all those closest to him.

[REDACTED] a beautiful little blond, brown-eyed boy, had lived with his mother Kathy, his brother [REDACTED] and his sister [REDACTED], from August 1989 till his death in November 1989, in the home of his mother's boyfriend, Graeme Sperry, and Sperry's little boy, three-year-old [REDACTED]

It was a pleasant, newish, two-bedroomed unit in Porchester Road, Takanini. Police photos showed a comfortably furnished open-plan lounge, dining and kitchen area, with a three-seater couch facing a television set and looking out through a Ranchslider.

Graeme, although a beneficiary — he was the solo father of [REDACTED] the child of his second marriage — worked at Geoff Brown Truck Sales in Takanini. He drove a Mazda and Kathy a Hillman Hunter.

[REDACTED] sleeping arrangements were somewhat substandard. The police officer in charge of the scene described it as "a child's bed of sorts, consisting of a thin mattress, blanket, sheet and pillow". It was squeezed into the narrow space between the waterbed and the wall in Graeme and Kathy's bedroom. This child's bed and the bloodstains on it and around it were to form the focus of much of the courtroom discussion.

The second bedroom, in which were two single beds and a mattress on the floor, was shared by Kathy's older son [REDACTED], her daughter [REDACTED], and Graeme's [REDACTED]

Kathy's second son [REDACTED] was elsewhere. Kathy told me: "[REDACTED] went to [the] Dingwall Trust home. Graham insisted. He said he couldn't control him and no child was going to get the better of him." [REDACTED] was six or seven at the time.

The family was far from isolated. Several people were in and out of the house that day and night, and Graeme and Kathy both had several encounters with others beyond the house.

One of the visitors was Lesley Sandra Sperry, Graeme's second wife and the mother of [REDACTED]. She'd come in at about 5:15 and had a cup of coffee with Kathy. She hadn't noticed anything particular about [REDACTED] that day. "All of the kids usually had bruises," she said. On another occasion she'd noticed that [REDACTED] had a big black eye, but not on this day.

Next-door neighbour Vicky Jean Bosley also came in to see Kathy for about 20 minutes. Two children were in the bath and [REDACTED] was on the potty in the lounge. She noticed only a small bruise on the inside of his left knee. He seemed happy, she thought.

Philip Robert Proffner, another neighbour, also dropped in at about 4pm. He stayed about 10 minutes and had a cup of coffee. "[REDACTED] was playing around, having a bit of fun. It was the first time I'd seen him so cheerful and happy, I suppose 'cause he was just learning to talk." Proffner noticed no bruising.

Mark Ryan, who worked for New Zealand Post, went to Susan's Takeaway Bar in Manurewa at around 9:15. While he was waiting for his food, he played the space invader machines. Kathy came up to talk to him. They used to work together at Marley's. She had a child in the car, a boy of about eight or nine, Mark thought. "She was happy. Said her baby would be two soon. She said she and her boyfriend were getting on fine. She asked after my kids. She was quite high-spirited. Then she said, 'I'd better go, just in case my boyfriend's wondering where I've got to.'"

Her boyfriend had other things on his mind when she returned. She found him bending over [REDACTED] body, giving him mouth-to-mouth resuscitation. Graeme told her [REDACTED] had tried to follow her when she left to go to get cigarettes and had fallen out of the Ranchslider and onto the concrete.

Kathy told the court: "I said I'd go and call an ambulance and he [Sperry] said, 'No, he's fine, he'll be all right.'" She noticed Robert's face was heavily bruised and blood was pouring from his nose as Sperry tried the resuscitation. She got into her car and drove to a friend's house to call an ambulance.

The friend was Noeline Adrienne Collings, who now lives in Te Kuiti, a pretty, nervous young woman with her blonde hair pulled back with a white bobble. She said Kathy came knocking at her door between 9:30 and 9:40, "upset, but not overly upset. There were tears in her eyes, but they were sitting there. She said

she'd like to use the phone, because [REDACTED] wasn't well, he wasn't breathing." Graeme had told her not to ring for an ambulance.

The last time Noeline had seen [REDACTED] he'd looked good, apart from his usual bruising on his chin, forehead, cheek, behind the ear, and grazing inside his ear.

SO WHAT HAD HAPPENED in Porchester Road that night that resulted in [REDACTED] being brought to Middlemore Hospital with extensive bruising to his head, face and neck, bruising to his left elbow, back of left knee, buttocks, scrotum and back, with evidence of bleeding in both eyes, bruising to the brain, whiplash, internal bleeding at the top of the spine, damage to his gullet, bleeding in the abdominal cavity, a split in his liver and haemorrhages in his small bowel? How many of those injuries were already present when Kathy left the house to get cigarettes? How had they been caused?

Graeme had explanations for several of them, which, Kathy told the court, had occurred in her absence. The bruising to the scrotum happened, she said Graeme had told her, when Robbie had fallen on his little bike. Some of the bruising to the head, Graeme said, occurred that day. Graeme had told Detective Andrew Simmerlink of Papakura CIB that he had taken the kids for a ride on a loader that day, he'd gone over a bump, and [REDACTED] had hit his head on the back windscreen. "Maybe he hit his head on my arm. There was no grizzling or anything."

In this interview with Graeme, Detective Simmerlink had said to him: "We consider Kathy to be irresponsible and also to have beaten the kids on other occasions. She's no angel."

Sperry responded: "I should have told the police a couple of weeks ago when she hit the kids with the hearth brush... She was knocking Jason around with the hearth brush. I think it was because he was too slow doing the dishes."

Sperry answered his counsel's question about Kathy's treatment of the children: "I'd say it was a bit rough — violently rough, the way she used to smack them and what she used to smack them with... the hearth brush, pieces of wood."

And [REDACTED] "He's always had bruising on him... I never thought it was my concern how she was bringing her children up."

However, both prosecution and defence counsel were emphatic that they did not consider Kathy had administered the blows that killed [REDACTED]. So how did he come by these savage injuries?

According to what Graeme had told Andrew Simmerlink, he had gone back to Geoff Brown Truck Sales for a shout that night. Kathy was a bit pissed off. She rang him to say his ex-missus, Lesley Sperry, had been in there. He got back after maybe four large bottles of DB. Kathy was cradling [REDACTED]. Graeme sat down on the couch, ate his dinner and gave chips to the kids. That started an argument because Kathy said they'd already eaten. Kathy put [REDACTED] to bed.

Sometime in the next hour or so [REDACTED] was beaten so hard that he died. Graeme at first denied any involvement. Eventually he told Detective Simmerlink: "I just don't know how hard I hit the kid. I may have killed it. I don't know... I just went crazy, eh."

However, in court, the defence line was that when Kathy went to get cigarettes, [REDACTED] heard her car leave and ran after her, tripping on the little ledge of the Ranchslider and hitting his head on the concrete outside. The defence suggested that most of the injuries were sustained in Graeme's desperate attempts to resuscitate [REDACTED], and may even have been compounded by the ambulance officers' attempts.

"I picked him up. I shook him. I slapped his face a couple of

Police photos showed a comfortably furnished open-plan lounge, dining and kitchen area, with a three-seater couch facing a television set and looking out through a Ranchslider.



times. I put him under the shower. Got no response from him. I threw him on the waterbed and slapped his face a couple of times. I started to give him mouth to mouth resuscitation. He started to choke. I rolled him over on to his stomach and blood came out of his nose. I wiped it up.

"I intended to revive him... I thought it was the thing to do. I find now that I should have left him alone and not tried anything."

Throughout this recital, Graeme gave no sign of horror, remorse, grief, distress or any emotion whatsoever. Kathy told me later that he had been just as calm on the night [REDACTED] died. Witnesses Phil Proffner and Vickey Bosley gave evidence that, after the ambulance had left with [REDACTED], Graeme had stayed, drinking coffee with Vicky and Phil, and had to be encouraged to go to the hospital to be with Kathy and [REDACTED].

HOWEVER, WHEN PROSECUTOR Kieran Raftery began his cross-examination with the statement: "I'm going to suggest that this act is a lie," Graeme's passivity changed. His already-ruddy face flushed with anger and he shot back: "You can suggest anything you like!"

Raftery started with the bloodstains, which did not square with Graeme's story. "How do you account for that?" Raftery asked. "I'm not going to try to account for it," replied Graeme.

"After Kathy left, he started to grizzle. You went into his bedroom and decided to make him quiet."

Graeme: "Have you got any facts to base that on or is it just hypothetical? Are you suggesting I hit him? Well, your suggestions are all wrong."

Graeme said he'd had four to five bottles of beer at work — someone's shout. He didn't like his ex-wife coming around, but "it doesn't worry me, kids grizzling and that."

"Did you hit him?"

"What'd I just say! What'd I just say! I didn't hit him at all. I just hit him around the face a few times to revive him."

In his summing up, Raftery, a suave Englishman with a soft voice and perfect diction that can be heard around the courtroom even at a whisper, set out the following scenario: "He'd been drinking for about three hours, his ex-wife had been around and he didn't like it. The child wakes and he's clingy and grizzly and he wants his mother and not the man Mummy's

living with... that sort of thing could just make a man snap. He hits him and he won't keep quiet and he hits him again. He was tired, irritable, he wanted it to shut up. He didn't mean to kill that child. He just goes crazy, just goes way over the top."

A photo album is lying open in the court. It's possible to see a picture of the dead child, blond hair, white skin, and raccoon-dark reddish bruising around his eyes.

Chris Field for the defence contended that the prosecution hadn't been able to prove beyond reasonable doubt that Sperry was responsible for the death of [REDACTED] though he conceded the logic in doubting that the injuries could have arisen from that fall. He finds it far-fetched that the Graeme who had been left sitting on the couch eating ice cream could suddenly launch into an assault of this kind. "The defence still maintains that the Crown has not succeeded in excluding the possibility that the injuries were caused in a bona fide attempt to revive the child."

Mr Justice Tompkins led the jury gently through their responsibilities and aspects of the evidence. "Most of the bruises to the face are consistent with blows from the knuckles of a fist."

Of the internal injuries, the tear to the liver and the haemorrhage to the membrane holding the small bowel could have been caused by a blow to the abdomen. The injuries to the gullet and the haemorrhage of the ligaments holding the bones of the neck together could be caused either by whiplash injury or by a blow, but could be caused by shock. Death was caused by a combination of injuries to the brain, liver and membranes of the small intestine.

OUTSIDE THE COURT, while the jury deliberated, I sat with Kathy and her friends, in the dense cigarette fogg. Kathy was very tense. "If they discharge him I'm going to fucking kill him, the arsehole. I want to hurt him the way he's hurt me. I don't take shit from any man."

I asked her if she used to care for him. She was near tears as she replied: "A week before [REDACTED] died, he asked me to marry him. He told me he loved me. We were going to move to New Plymouth, buy an old house. I've always wanted an old house. After the other kids left, it'd be just [REDACTED] and me. We had a lot planned. He took it all from me. He killed it all on the eighth of November."

"I swore my kids will never go through abuse like I did, and they have been. I feel I'm not a very fit mother. I let my baby die. If I hadn't smoked, I wouldn't have gone down the road for smokes that night."



As the jury returned and gave their guilty verdict, Graeme's utterly impassive face, in which the only movement for days had been that of his eyelids, remained impassive.

At the sentencing, Chris Field submitted: "My client bitterly regrets the death of the little boy. He is himself a solo parent. He has the care of his child, now aged four. He maintains that he has never been violent to any child in his life. He's described by people who know him as a caring and lenient father. He has only one conviction for a crime of violence, in 1984, for which he was fined. He has convictions for making a false statement and a driving charge."

At sentencing, Mr Justice Tompkins noted the devastating effect the death had had on the mother, sister and brothers of the dead child, and told Sperry that there could be no possible excuse for his conduct. He then sentenced him to two years and 11 months imprisonment, which allowed for the month he had already spent in custody.

The Court of Appeal later found the sentence inadequate to mark the gravity of the crime and doubled it.

FOR MOST OF THE TRIAL, Kathy [redacted] was a motionless, black-clad figure in the public gallery of the [redacted] dom. She always had friends to support her — a changing group of women of whom the most constant was Barbara Cronin, an articulate, practical young woman. Another was Cathie Davies, whose life had also been touched with violent death. She is the daughter of Dave Gray, who was battered to death by two young men on a west Auckland road (see *A Killing In West Auckland, Metro*, March '89).

A couple of months after the Court of Appeal had increased Graeme's sentence for killing [redacted] I went to talk to Barbara and Kathy, who was by then living outside Auckland. She had wanted to get away from the memories, and she wanted to go somewhere Graeme couldn't find her.

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We met at Barbara Cronin's home. Kathy felt some satisfaction about the Appeal Court decision, but said it would never have been taken to appeal if she hadn't pushed for it. "Cath's father [Dave Gray] got killed on the highway. Those men got life. Graham [originally] got three years for killing my baby."

This was by no means the first disaster in Kathy's life. "I was abused, physically, sexually and emotionally. [redacted] death was the icing on the cake.

"When I was five weeks old I nearly died from a bowel blockage. My mother didn't care. It was my grandparents who raced me to Princess Mary with five minutes to spare. I was transparent, apparently, skin and bones.

"Great mother, huh? She lives in Australia — didn't even come over for [redacted] funeral. I brought up my three younger brothers. I've been looking after kids and babies since I was seven. That's why I didn't have my own first baby too young. I was 19. Sometimes I feel as if my own kids are my grandchildren. All my mother knew how to do was spread her legs, have kids, and then forget about them.

"My mother had had a fantastic upbringing. She'd had an education — she was a nurse. My brothers were kept without food for three days, one time. I was kept without food for a week. Being the oldest, I got inflicted with a lot more, and I remember a lot more. I learned to build up a barrier inside of me.

"You end up that scared, you don't tell no one. My kids were too scared to tell anyone what Graeme was doing. Yes, he's been hurt in his own childhood. Men hit kids out of their pain.

"I've got morals, I know I have. My grandmother — that's where I got my morals from. I got them from my grandmother. If she hadn't had me for the time she did, I'd have had no morals. That's what's stopping me now. I want to kill Graeme, but I can't. I want him dead for what he did to [redacted] And to all of us. My other three kids are going to be bugged for the rest of their lives.

"I don't know how to start changing it. I haven't seen a counsellor since August. [It was then November.] I'm screamin' and nuttin' at the kids.

"Apart from when I lived with my grandparents for a while, I was beaten for 15 years. I ran away finally. There was a guy I thought loved me, but he beat me and raped me. Somehow you get attracted back to the same sort of life again and again. My mother didn't care. She just said, 'You made your bed. You lie in it.' You're made to feel you're shit. You'd go out shopping. You'd be black and blue. You hold your face down so people wouldn't see your shame.

"I finally left when he turned around and hurt [redacted]. He's seen his mother being abused and raped, and he's only 10 now. And he saw it again in my second marriage. [redacted] is from a guy I was going with."

[redacted] is the child of another relationship, as was [redacted] whose father was in court from time to time, and whose baby picture, very like [redacted] shares the album Kathy has made of pictures of her children, and poems she wrote to [redacted] after his death.

So have all the men in Kathy's life let her down?

"There *was* one man who was good and helpful. The trouble is, when you do find someone nice, you treat them like shit, give them a bloody hard time, because you don't know how to cope. I can be quite a hard person to get on with.

"I was starting to trust the counsellor, Philippa, but I've got another one now. She's not the same at all. I'm having such nightmares, I feel I should be committed to Tokanui. I'm not coping, I'm not doing the housework.

"We haven't got a life; we've got shit, because he's going to come and look for us. I've got two dogs, though. One's a Rottie. We're all scared. Graeme gets his family back in three years or something. I don't get my family back. We're totally fucked and always will be. Twice [redacted] has even picked up scissors and gone to stab Eddie [a friend of Kathy's]. She just snaps. She's been playing nicely and then she just snaps and starts thumping.

"But it's hardly surprising. She saw it all — she was a witness to what happened to [redacted]. Afterwards, she'd draw an empty house. Then she'd draw a baby, then she'd cross it out.

"At Dingwall Camp they thought I'd abused [redacted] and [redacted] which I hadn't. And those witnesses at court who said the kids had 'usual bruising'! [redacted] only got bruising when we were living with Graeme, and it always happened when I was out. He always had an excuse.

"But I never saw him beat the kids, except once I saw him go in with a strap for [redacted] and [redacted]. He missed [redacted] and got [redacted]. I was holding [redacted] and comforting him, and he came in with the belt, going to strap them again. [redacted] was just three and a half. They'd just been grizzling.

"My children talk now about how he beat up [redacted]. He's a closet beater, like people are closet drunks. [redacted] will go back to his father when he comes out, and he'll grow up to beat *his* wife and kids!

"I swore my kids will never go through abuse like I did, and they have been. I feel I'm not a very fit mother. I let my baby die. If I hadn't smoked, I wouldn't have gone down the road for smokes that night."

I ASKED KATHY what she would do if she were Minister of Social Welfare, to prevent what happened to [redacted] happening to other children.

An interesting thing happened. She had been leaning back on the couch, smoking incessantly, eyes lowered and shrouded by her hair. At that question, and the subsequent discussion about

ways to break the cycle of violence, she sat up, stubbed out her cigarette, pushed back her hair, her face and eyes and voice lightened and her style of language changed.

"I'd make sure that in custody battles kids are asked what they want. If kids are being abused, take them off the family. And make them know it's not their fault. [redacted] feels responsible because if he hadn't been naughty and been sent away to Dingwall, he'd have been there and Graeme could have attacked him instead of [redacted]. [redacted] feels responsible because he was so scared that he never did anything.

"I'd make a stronger law for children, and I'd make sure that counsellors are qualified to help children. They should see how the children feel, separately, and then do the whole family.

"Playcentres, doctors, hospitals — whoever sees a child abused should report it. Plunket should be really good to detect abuse. Plunket used to come to the house a lot to see [redacted] and [redacted]. Public Health nurses and ante-natal clinics would be good, too.

"Children *are* our future. They'll be here when we're dead. We've got to do better for them. But the way it is, it's going to be a shit world still in a couple of centuries."

SOME PEOPLE READING THIS — people who have known Kathy [redacted] for a long time — will be cynical about this. They will talk about the Kathy who regularly went raging at the Forge; the Kathy who could viciously verbally abuse her children; the Kathy who had a long history of involvement with the Department of Social Welfare because of their concern for the welfare of her children; the Kathy who was seen as manipulative and plausible; the Kathy who gets angry and threatening.

Yet I am sure that she meant every word she said on several occasions about children deserving better. I am sure that her distress for her children is genuine. Which parent doesn't know the feeling of self-disgust at the mismatch between the parent you want to be and the parent you are? Who hasn't heard themselves and seen themselves do and say things to their children that they're ashamed of?

Rob Harper, senior social worker at Papakura, said: "We'd had major concerns for Katherine [redacted] for yonks. I'll continue to have major concerns for her and for the children. It wasn't [redacted] we were mainly troubled about — it was his half-brother, [redacted]."

A considerable degree of social-work help went into helping Kathy and her family, involving practical home help, Red Cross, budgeting help and financial support, but it was not thought to be of much avail, and the DSW's care and protection team recommended discontinuation.

Social Welfare has also had some involvement with [redacted]. I asked Rob Harper why it was that [redacted] was left to live with Graeme while he was awaiting trial for [redacted] manslaughter.

The difficulty, apparently, lies in the issue of Graeme's rights. He'd not yet been found guilty. Although social welfare did not consider him to be "a great father", no grave fears were held for [redacted].

Now [redacted] lives with his paternal grandparents. I asked whether the same environment that had produced Graeme would be likely to benefit [redacted].

"Well, Graeme's siblings have turned out all right."

Wasn't Graeme's father reputed to be a hard man?

"I don't know. I haven't gone into it that deeply, but we do know from informal reports that [redacted] is all right."

While one might think that social welfare had the obligation to go into it deeply, Rob Harper is currently battling a 100 per cent increase in workload in a year, with the same resources that

were inadequate before the increase. "We have four social workers. Three of them have one week's training. I live in terror of what's going to turn up on my desk," Rob Harper says grimly.

THE ONE THING that can be agreed on in this whole sorry story is that it is populated by victims — victims of a society that continues to be unable or unwilling to protect children, and victims of their parents. But those parents were also children once. Who or what shaped them?

Chris Field, the lawyer who represented Graeme Sperry told me: "Most of the people I know as inflictors of violence have witnessed violence or had violence inflicted on them."

Graeme Sperry's first wife is Glenys Curtin. She left him after a few years of marriage and two children. Although she is strongly critical of him, she doesn't think he would have killed [REDACTED]. "We don't see eye to eye. Haven't seen him for years. But I don't think he done it," she says. "Or if he did do it, he would have had to be drunk."

"He wasn't violent towards our kids — never laid a finger on them. He was easy-going. Our daughter Cassandra had him wrapped around her little finger, but he rejected our son; wouldn't pick him up, showed him no love. Cassandra was jealous of the baby. Graeme would just watch as she rode her little bike at Ross when he was lying on the floor. He wouldn't stop her. I couldn't handle his attitude to Ross, so I left, with the children.

"He used to belt me up. But it takes a lot to push Graeme over the edge. He'd hit something else first, like he'd hit a hole in the wall first, before he'd hit someone.

"I gave him the fright of his life one night, when he'd belted me. He came back into the kitchen, and I grabbed a knife and I said, 'You try it and you're dead!' So the hidings stopped."

"His second wife, Lesley, walked out and left him with [REDACTED]. She's not a motherly person. He was very upset when she left. It shouldn't have ended like that. They were both working. They should have had no money troubles, but she just couldn't tolerate the way he treated her."

Contact between Glenys and Graeme has been nil, since disagreements over his and his successive partners' ability to look after their children on visits. They haven't seen Graeme for over two years now. The last time he brought them home at about nine o'clock at night Glenys says and they hadn't been fed and were filthy. "There'd been nothing in the house for breakfast, so he'd given Cassandra \$10 to buy breakfast. So what does any kid buy, but lollies? Then there was a row because we wouldn't let Graeme drive the kids after he'd been drinking.

"And now his parents are raising [REDACTED], which I think is wrong. Graeme's father is a very hard man. I remember, one of the boys brought home a dozen beer one day and he went out and smashed them on the drive. No drinks. No drugs. Very strict."

Glenys has recently remarried. "My husband has had to accept three children, and now we've got one of our own." It's not easy for Glenys, who, like Kathy, is now just 30.

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THE DINGWALL
TRUST IS ONE OF THE
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"I've been sexually molested. It took me years to tell anyone. My mother never got me any help. I've been raped — I kept that to myself. I was beaten. I knew I had to change the way I was brought up. There was no way I was going to put my kids through what I'd suffered.

"I got accused of child bashing too, though, by Auckland Hospital. Ross would climb anything — right up a tea tree, for example. He had stitches in his head, stitches in his feet, bruises.

"My kids have to push me to boiling point before I'll hit them. I'm lenient. I'll walk away from them if they're driving me mad. One time I shut them in the bedroom and sat in the hallway and rang *HELP* [a parents' counselling service]. Normally the way we punish them is by time out, or grounding, or jobs to do."

Glenys has been helped by the staff at the Dingwall Trust home where Ross has been living. She thinks there might be benefits for Cassandra having some time there.

It is Dingwall Trust that has also provided a home for [REDACTED], Kathy's second son. According to Glenys, it was Graeme who asked Dingwall Trust to take [REDACTED] because he felt worried about Kathy's treatment of him. "Dingwall's good," says Glenys. "Ross' schoolwork has improved heaps."

Yes, the Dingwall Trust is good. It is also one of the very few surviving social assistance agencies in New Zealand, in an ideological climate that sees even temporary residential care as anathema, that can still offer residential care as well as skilled social work to protect children and support their families.

Dingwall Trust director Fraser Faulknor tells me that since May 1990 the trust has received no funding from the Department of Social Welfare. "We applied, but we were turned down. The only funding we get from Social Welfare is for particular children we have in our care as a result of family group conferences, where the director-general is bound to finance the decisions of the conferences."

The population of Auckland, dizzy from damaging social and economic change, could fill these few places with their children in need over and over again, but the policymakers persist in the view that the extended family, in nearly every case, can provide a protective and therapeutic environment.

And, of course, many can, if — and it's a huge "if" — they are provided with the resources and practical support necessary. But many families simply cannot. And so the suffering of children, and of the adults in their lives, continues.

WHAT COULD WE DO, as a society, to try and stem some of the damage? What could we do to protect children of the future from spending their lives grossly impaired by "non-accidental injury", or by sexual abuse, or from ending up as a toddler on a mortuary slab, or from being a witness to extreme violence?

We could, as a first step, try and acquire some systematic knowledge about how tens, maybe hundreds of thousands of New Zealanders live. Changes of the greatest significance have been shaping our society and we have been unable or

uninterested to understand them and their implication. I'm talking here of those most familiar of institutions — marriage and family.

Mention "family" and most people will think of two married parents and their two or so dependent children. Yet this formulation now accounts for only 44 per cent of all families. In the years between 1981 and 1986, the numbers of two-parent families decreased by five per cent, while the number of one-parent families increased by 20 per cent.

Mention "marriage" and most people will think of it as an institution more frequently being bypassed and not quite what it was, but nevertheless still the framework within which most children are born and in which they will live their lives.

But social change in New Zealand is moving very rapidly. For the quarter ended September 1990, 52.5 per cent of all births were "ex-nuptial". For the year ended September 1990, the "ex-nuptial" birth-rate was 49.87 per cent. For the year ended September 1985, the ex-nuptial birth-rate was 37.74 per cent.

These bald statistics need a little elaboration. For example, the term "two-parent family", for the purpose of the census, does not distinguish between the legally married or the de facto, the temporary relationship or the permanent. The definition of "a couple" is "a category applied to people who, at the time of the census, described themselves as normally living as legally married or as if legally married (in a de facto marriage)."

The fact of two-parent or one-parent family is not in itself the issue. What is significant is what frequently forms the corollary of the one-parent family, or the frequently reconstituting two-parent family — namely, poverty and instability. Usually, it means to be poor. And the corollary of poverty for children is frequently poorer health, poorer educational prospects, more "accidents" and a greater likelihood of abuse.

Similarly, the factor of birth within or without wedlock is not the issue. Few people now bother to snigger about unions "without benefit of clergy". There are many de facto marriages currently, as in the past, in which children are cared for impeccably by parents committed to one another, but who do not choose to formalise the marriage.

The number of children being raised in de facto marriages, which may or may not be stable, is likely to be high, given the fact that the 1986 census showed that 10 per cent of people in their 20s were living in de facto relationships, and given the fertility rates of people in their 20s.

Yet because the formation and dissolution and re-formation of such marriages are never, by definition, registered, nobody knows how many children are being reared in these circumstances, or what the implications are for the children. However, Christchurch child and family researcher David Fergusson has shown in his long-term study that de facto marriages tend not to be as stable as de jure marriages, and the New Zealand Planning Council's report "From Birth To Death II", published in 1989, states:

"There is a relationship between social and economic disadvantage and stress and instability in families. Family breakdown often means a reduction in income for the custodial parent and may result in several changes of residence until more stable living arrangements are achieved. A new relationship on the part of a solo parent requires further adjustment by children — particularly if both partners bring children to the new family unit... Marriage breakdown has been linked to... damaging effects on children."

The report goes on to cite the six-fold rate of referral to Otago psychiatric outpatients' services of children from "separated" homes, compared with the expected rate from all households.

"Referrals from reconstituted families (parents with new, married or de facto, partners) may also be significantly high," it adds.

The Christchurch Child Development Study found not only a higher rate of aggressive and antisocial behaviour among children who had experienced marital breakdown, but also recorded even more problems where parents reconciled or mother remarried than where children remained in one-parent families. "Disturbances among children were associated with the number of changes in family history — reconciliations and remarriages being prone to high failure rates. This stresses the value of stability, regardless of family type."

David Fergusson told me: "New Zealand is facing a rising tide of step-parenthood which raises a whole series of issues for children."

Long-term studies of children and their families continue in Dunedin and Christchurch, but nowhere north of that point. Yet cumulative pieces of evidence from a variety of sources suggest that the numbers of mother/child/children groups in the Auckland area who are adversely affected by change and mobility is very significant indeed for the present and for the future of this country.

- If a school in a not-exceptional area can report a 30 per cent turnover in its roll for the year;
- If it is not uncommon for some schools to enroll children who have attended six schools in one year;
- If a major social agency can report that it is a matter of surprise to get a child client who is living with its two natural parents;
- If a major agency can report that in some 75 per cent of its troubled client families, the mother's first child was born when she was a teenager;
- If Gary Lendrum, the detective heading the Papakura police indecency squad, can say that eight or nine out of 10 cases of sexual abuse of children they investigate involve a stepfather or de facto "father";
- If defence counsel Chris Field can say "it's very rare to have the degree of violence as in the Sperry or Shaw cases inflicted by natural fathers";

one might think that somewhere in the higher reaches of the health and education and welfare and justice communities there might be focused, and conscious consideration given to, some of the issues involved in massive and overwhelming and often damaging social change.

YOU MIGHT FURTHER THINK that there might be some measuring going on, so that such consideration could be informed by objective data. The Planning Council states: "Policymakers need to know more about the effects on children of changing household and residential circumstances, such as often occur when parents are unemployed, when a marital relationship breaks down or when a solo parent forms a new relationship... The emphasis needs to be on prevention wherever possible."

I'd like to be able to report this was happening, but, in fact, people in health, education, welfare, justice and the police, with rare and valuable exceptions, are swamped by the demands of their jobs and the insufficient resources available to do them. They just cope as best they can with the men, women and children swept downstream by the floodtide of massive social and economic change.

They are also frequently hampered by management systems and bureaucratic boundaries that prevent the across-the-board consideration these issues require.

So families like ██████████ continue to suffer, with the greatest suffering being borne by those least able to withstand it.

And the picture presented by such families becomes more and more common: chronic anxiety about money; relationships, frequently hostile, with a number of agencies such as police or social welfare; parents' own history of abuse; a suspicious attitude to the world; frequent changes of address; frequent changes of father figures; offences against the law; difficult relationships with extended family; a high alcohol consumption; children's and adults' illness; frequent accidents; diminished parenting; family violence; children's poor attendance and achievement at school; frequent changes of school; sexual, physical and emotional child abuse.

IT IS EASIER to make this sort of catalogue than to suggest ways of making life more bearable for people caught in this kind of cyclical and self-perpetuating trap.

Many feel that the most useful goal in the medium term is probably to persuade girls that their future is likely to be difficult if they have a baby before they are mature enough or in a secure enough relationship to indicate a promising future for mother and child. As the Planning Council succinctly states, "Early pregnancy may curtail personal and economic opportunities for young women."

Of course, this goal is not likely to be easily met if the girls live in a subculture where it is the norm to have a baby as a teenager and without a long-term partner. Or where home is so loveless or intolerable that the prospect of a baby to love and a place of your own and a little income is magnetically attractive. Or where the habit of planning even a week ahead, let alone a lifetime ahead, is foreign. Or where the future holds no better prospect.

Jocelyn Ashby, psychologist with the Special Education Service, says: "I have intermediate school girls saying to me, 'I'm no good at schoolwork and I'm no good at games. I've got a boyfriend — he thinks I'm great. I'd like to have a baby.'"

A senior teacher in a south Auckland school told me about one girl, just 12 now, with unrealised academic promise, who has been pregnant three times, twice ending in miscarriage and once in a medical termination.

Dr Nigel Stewart, a south Auckland paediatrician, is well aware of the tragedy of abused children. "Nursing and medical staff could weep at the condition of some of those children, and at the causes of that condition." However, he is also aware that for some women whose lives are otherwise lacking in very much that's positive, "having a perfect baby is the best thing that happens in their lives".

Yet having that perfect baby can intensify the woman's vulnerability rather than protect her against an unfriendly world. Responsible now for two lives, often tired, unwell, drained, frightened, struggling against poverty, alone, she becomes hostage to the hope that the next man in her life might be the one who offers her love and support.

In the words of a British researcher into child abuse: "Relatively young women who are divorced, deserted or unwed may show a proclivity to become involved with men whose background predisposes them, as father substitutes, to abuse the

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children in the household... The risk of sexual abuse may be especially high when young mothers are involved with men who have no genetic or legal tie to the children in the household — the pattern shown by our father-substitute abusers."

Gay Bayfield, of Presbyterian Support Services, says, "What is very clear in our work is the enormous neediness of women who parent alone."

Barbara Cronin, Kathy [redacted] friend, also a solo mother, but one who chooses to live just with her little daughter, says that half the adults she knows are from one-parent families. "For the women, the only male input is from transient people who've come into their lives. People who're often violent. So the choice is — do you want to stay single, with all the loneliness, or take the chance and take what might come?"

Tragically, it is the very vulnerability of both mother and children that will sometimes recommend them to the attention of paedophiles, who, in a pattern well known to Auckland sexual abuse experts, will plan carefully to develop a relationship that gives them access to children of the age, sex and appearance that pleases them.

Felix Donnelly told me about the woman he recently accompanied to court, in a case where the abuser was ostensibly her boyfriend, but in reality the boyfriend of her 12-year-old son.

And so the cycle goes on. Joe Keown, principal of the Education Department's Waimokoia School in Buckland's Beach, says: "The physical abuse victims tend to become the physical abusers. The male sexual abuse victims tend to become the paedophiles. And people who live in a model of disturbed, malfunctioning families tend to perpetuate that malfunctioning.

"It's necessary to break the cycles of learned behaviour for both parties — parents and children. The kids are easier, but the parents who are prepared to bare their souls and who want to change, can do it."

Waimokoia School offers a home, a school and appropriate help to disturbed children and support to their parents. It serves a population of over one million and can help only 40 children a year. At a time when the need has never been greater.

AS I LEFT Kathy [redacted] she handed me this poem she had written on a sheet of paper.

*In a baby castle just behind my eye
 My baby plays with angels' toys that money just can't buy.
 Who am I to wish him back into this world of strife?
 No, play on my little baby boy for you have eternal life.
 At night when all is quiet, and sleep forsakes my eyes,
 I'll hear his tiny footsteps come running to my side
 His little hands caress me so tenderly and sweet
 I'll breathe a prayer and close my eyes and embrace him in my sleep.
 Now I have a treasure that I rate above all others
 I have known true glory, I am still his mother.*

Kathryn's Story

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