

The conference occurs at a watershed period in New Zealand and internationally for social justice generally. Equality, diversity and inclusion are hardest to progress during periods of global economic recession and social dislocation caused in part by increased unemployment, fuelled by public sector cuts in many countries, and specifically in OECD countries, rising youth unemployment. In tough times when survivability both at the business and the community levels is the dominant thought pattern we all hunker down and think about ourselves first. Whether or not we're in a new age of austerity, we're certainly at a period in history where introversion, narrowed horizons and resistance to change are likely to dominate. This means that those of you present today have specific challenges and responsibilities that I'd like to return to at the end of my address in an open discussion with you.

From my perspective as a human rights commissioner the environment in which we work to progress public and political understanding about the multiple characteristics of injustice, has seldom been tougher. I say that against a background of eight years- I'm half way through my second term- with responsibility for equal employment opportunities, disability rights, women's rights, civil and political rights including freedom of expression and work in areas such as business and human rights and human rights and the environment. In some of the areas in which I work nationally, and internationally, I am feeling the chill winds of regression- either in terms of a distinct slide backwards, patterns that show retreat or static progress- particularly in relation to women's rights. For that reason I've stretched the conference metaphor, Views from the Edge, to Standing on the Precipice.

In a media interview after the success of the defining book, *The Spirit Level*, co-author, the epidemiologist Richard Wilkinson, said he felt the world was full of closet egalitarians, who were pushed into the closet by right wing political ideology, monetarism and neoliberal economics. Scratch anyone of us and we'd subscribe wholehearted at a conceptual level to equality, diversity and inclusion, leaving aside definitions of the terms that we might want to argue over or differences in political beliefs, ideology and experiences. We may come at it in different ways but we're all in the same room.

So if we're wholehearted in our minds, why is it that equality, diversity and inclusion are not dominant value systems in our politics, in policy development, in everyday practices, in our behaviour and attitudes- in short in how we live our lives? Has the world in which we live made us nastier, grumpier, more selfish human beings? One of the big questions this conference can help illuminate is: *How can we rekindle new thinking about equality, diversity and inclusion so that they are mainstreamed and non-negotiable in political agendas, policy making, organisational and community life, every day and everywhere?*

In my time today, I want to do two things. I will use three specific examples to address the conference headlines of equality, diversity and inclusion related to work done by the New Zealand Human Rights Commission and make some observations on the patterns and trends that emerge from this work. The Commission is a national human rights

institution with a broad mandate to promote human rights and prevent discrimination and to monitor the State's obligations with respect to economic, social, cultural, civil and political rights as reflected in the broad suite of United Nations treaties, so I hope there will be some relevance in the examples to other country and cultural contexts in which international conference participants operate. In the second part of my presentation I want to pose three questions about what we need to do in practical terms to ensure social justice is embedded (to use that journalistic euphemism).

I want to use a disability rights case to discuss equality, to consider sexual orientation in terms of diversity, and to use women's labour force participation to consider inclusion. The examples, of course, are intersectional but for the sake of convenience I've slotted them each a category.



Equality

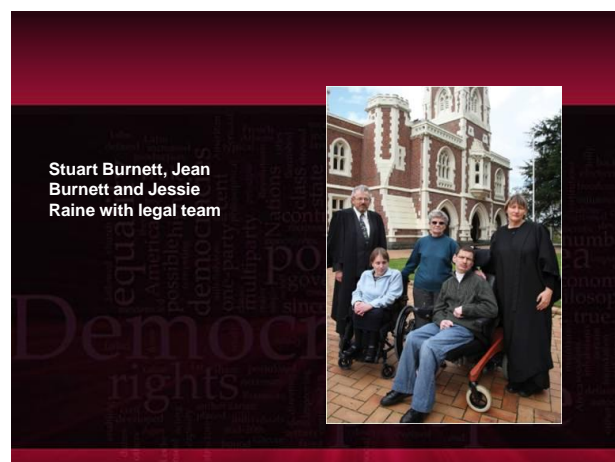
Before talking about the equality example there are two introductory points. The first is that despite the inherent limitations of litigation, history shows social justice is advanced by strong legislation and developed case law. Most jurisdictions have some form of anti-discrimination and equality legislation. We're light on reference to equality in New Zealand legislation. It is not mentioned, for example, in section 19 of the New Zealand Bill of Rights Act which specifically addresses freedom from discrimination, s.19(1) Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993. However, under the Human Rights Act disability, relatively widely defined, is a prohibited ground of discrimination and the legislation also prohibits discrimination on the grounds of family status, both of which are relevant to the example which I want to move to in a moment.

The secondary introductory point concerns the global fight for disability rights. Disabled people are the most marginalised, of what are commonly known as the targeted vulnerable groups, in the world. The Convention on the Rights of Persons with Disabilities is the most modern United Nations treaty setting out States obligations. Once signed, and 147 countries have, governments are tasked with doing. In the NZ context, the NZHRC receives annually the most number of discrimination complaints and enquiries from disabled people across a wide range of activity- provision of Government services, health, education and employment.

Now to the example. Six years ago in December 2004, nine complainants-seven parents with adult disabled children and two adult disabled people - applied to the Commission's litigation arm, the Office of Human Rights Proceedings, for legal representation to help them fight an anti-discrimination case. They alleged unlawful discrimination under Part 1A of the Human Rights Act 1993 in relation to the practice and/or policy of the Ministry of Health of excluding specified family members from payment for the provision of funded disability support services. The parents said their exclusion from payment was unlawful and the adult children claimed that they were discriminated against and that they were denied any choice of caregiver under the policy because their parents giving the care were in a particular relationship with them.

The crux of the case was that if a non-family member provided the services they were paid. Also relevant to the case is that in New Zealand under the no-fault compensation scheme, called the Accident Compensation Scheme, payment of non-contracted family members to provide care is an integral part of the strategy of caring for persons disabled by injury in the home setting. As well as the clear inequality issue of non-payment on the basis of family status argued by the nine brave and persistent complainants, a clear policy paradox is at play-disabled at birth no family member payment for support services, disabled by injury at home payment for family members.

Meet Stuart Burnett and his mother Jean.



In the High Court decision¹ released just before Christmas their claims are outlined thus:

Stuart has experienced residential care, and prefers care from his mother, Jean. About residential care he stated::

While the resident's basic personal and hygiene needs are met – their other needs as human beings are sometimes neglected, from my observations. They have much less mental stimulation and far fewer opportunities for participation. They are mostly cared for by transient caregivers. They seem to lead restricted stifled lives with a loss of control over their own situation.

He prefers his “safe and comfortable” home environment and the care of this mother to that of contracted caregivers who, he says, are generally untrained and do not understand his disabilities. He owns half of the house with his mother and wants to continue living there.

Ms Burnett confirms her son's strong desire to remain living in the home. She understands his needs and is able to communicate with him despite his inability to verbalise because she can read his body language and hand signals. She believes she is the best person to care for him and to help him continue to achieve success in his life. She and Stuart Burnett want individual funding. She was critical of the Ministry's refusal to fund her and had this to say about residential homes:

The community stops at the door. People sit there – just sit for hours in their wheelchairs – wall gazing. The community doesn't come to these people and their disabilities prevent them from participating in the community There is no family atmosphere at most of these places that I have detected – no community involvement. Just isolation. Casual caregivers, who develop no bonds with them.

While being cared for by his mother at home, Stuart Burnett earned School Certificate in six subjects and Sixth Form Certificate. He completed a course in computer science and graduated with an advanced certificate in business computing. He is an avid wheelchair sportsman and has completed nationally and internationally.

Without rehearsing the legal arguments, this long running case involves a battle for equality and justice. The Human Rights Review Tribunal found in favour of Stuart and Jean and the others. The Ministry of Health policy breached the rights of both disabled parents and disabled children to freedom from discrimination on the basis of family status. The Ministry of Health had failed to demonstrate that the infringement on the right to freedom from discrimination constituted by the policy was justified in a free and democratic society. The Ministry of Health was unsuccessful in its appeal to the High Court. To the astonishment of many, the Ministry is now seeking leave to appeal the High Court decision. One of the parents has passed away during the time the case has taken.

¹ Ministry of Health v Peter Atkinson and Others HC AKCIV-2010-404-000287 pars 29-32.

**Lynda Stoneham with
daughter, Kelly**

Plaintiff – parents as caregivers
case

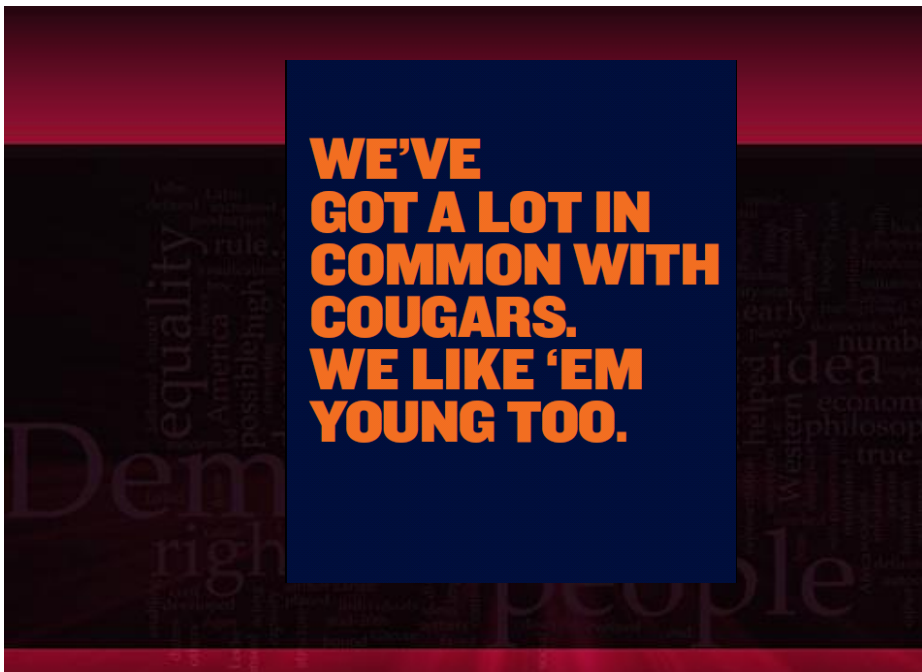


There are several observations that can be made more generally from this example, in my opinion. First, litigation is only one but an important intervention, to progress equality. Second, there always have to be those who will step forward for discrimination cases and we should salute Stuart and Jean, Lynda and Kelly and others who make huge financial, emotional and psychological sacrifices as reluctant but high profile champions in an increasingly media-centric world. Third, the case has revealed murky policy objectives around the discrimination against parents as caregivers and the absence of equality and non-discrimination as starting points in policy thinking. Fourth, equality and social justice considerations are often secondary to dubious fiscal and economic rationale advanced as “floodgate” costs. We’re witnessing wholesale retreat to fiscal consequences and economic costs rationale as justifications for not progressing social justice globally.



Diversity

The diversity example I want to use relates to the unanticipated consequences of organisational recruitment to redress demographic diversity. The following advertisement was recently briefly run in print media before it mysteriously vanished. I want the Kiwis in the audience to remain silent while I ask international visitors who they think the employer might be?



What type of organisation would run this ad?

If you Google the word Cougar this is what comes up - three dating websites linking older women (sexy) with younger men, followed by Wikipedia's definition of the cougar as a mountain lion, and then the Urban Dictionary's definition of a cougar as an "older woman who frequents clubs in order to score with a much younger man."



The NZ police stated they launched the campaign aimed at school leavers and under 25s to redress their ageing organisational demographic. The Police recruitment marketing manager was quoted as saying that if current recruitment and attrition trends continued, a quarter of all officers would be 50 or older by 2019, compared with 6.9 per cent in 2000. This could seriously impact on the numbers acting in 24/7 frontline response roles.²

Ignoring the ageism inherent in the assumption about response roles, can I ask you who was likely to be offended by the ad? Which diversity imperative is addressed and which is overlooked?

Before the advertisements were run, the Commission provided informal advice to the NZ Police that the EEO Commissioner (me) felt the cougar advertisement was unwise on the basis of sexism and ageism. This was particularly given the nature of the police as an agency and its recent highly publicised attempts to alter dominant police culture. One of those who rang the Commission on its telephone Infoline after the

² Leask.A. (January , 2011) 'Cougar' cops seek young recruits, NZherald.co.nz <http://WWW.NZHERALD.CO.NZ/NEWS/PRINT.CFM?OBJECTID+10698256> ACCESSED ON 26/01/2011.

advertisements were published identified his area of concern with the ad as its macho, non-diverse appeal for gays and lesbians as potential, desirable police recruits, given the intrinsic heterosexuality of cougar relationships.

As an aside, why was public money spent at all on this campaign at a time of public service austerity when youth labour supply outstrips demand? New Zealand, like many comparable countries, has an unacceptably high rate of youth unemployment, marked by disproportionately high rates for Māori and Pacific youth. In January 2011 OECD figures reported New Zealand's youth unemployment at 19.4%, the highest since the early 1990s and above the OECD average. It is heartbreaking to have daily contact with young, talented men and women who are job-seeking as they pass through the cycle of hope to frustration, depression and despair. Given current youth labour surpluses, cougars were poor judgement on a number of levels.

A final observation about this example. The role of the mass media and the advertising industry specifically, as complicit in stereotypical representations, requires continuing research scrutiny which I hope some of you might engage in or encourage. When gendered, sexist, ageist, homophobic, racist representations occur by omission and commission as they do consistently in journalism and advertising, and on talkback radio and the internet, the promotion and acceptance of diversity as having a value in itself is undermined. This in turn leads to demands for increased "social marketing" campaigns (more media spend) to correct attitudes and change behaviour. These campaigns are often publicly perceived as avenues for politically correct, moralising propaganda to be intuitively resisted by anyone with common sense.



Inclusion

Women's participation in the workforce in the developed and developing world is regarded at least by the popular media as the great, quiet revolution of the last 50 years. Here's the Economist, for example.



Labour force participation is also a critical indice of inclusion. As the ILO has said the workplace is a strategic entry point to a society free from discrimination³. However, another indice of inclusion, which is the value that is put on that participation, shows a stubborn resistance and is seldom profiled in the popular media, despite its negativity. The gender pay gap exists globally and while there have been gains in some jurisdictions including Canada, the US and in New Zealand, it is systemic, and inequitable. It is also surprisingly durable, given the dramatic increase in women's educational participation, achievement and the professionalization of women's career choices. There are multifaceted reasons for the gender pay gap including occupational segregation and discrimination. The Human Rights Commission in New Zealand actively works in advocacy, complaints resolution, policy development and litigation and I have a statutory obligation to advance pay equity.

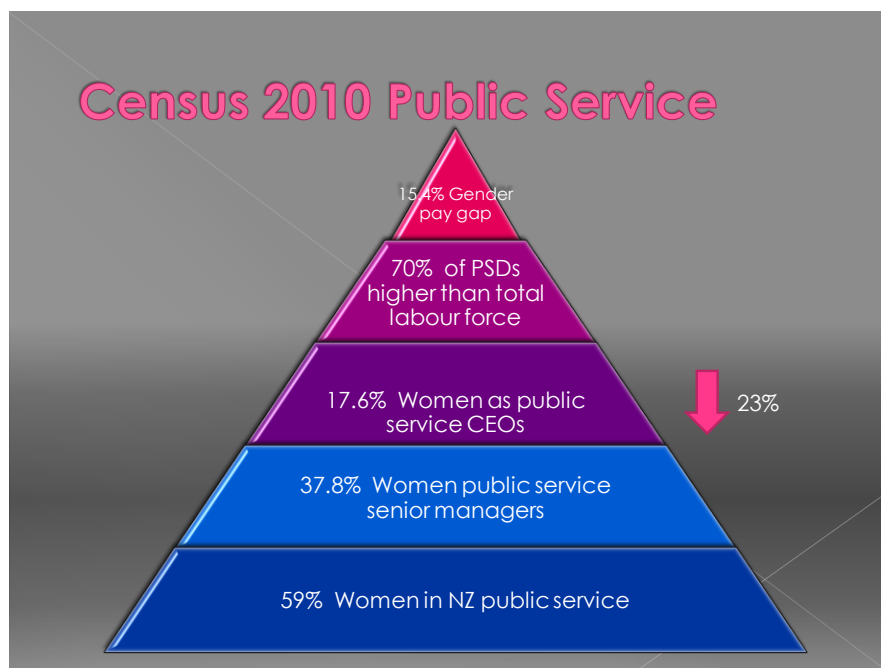
³ ILO (2003), Time for Equality at Work, Global report under the Follow-up to the ILO Declaration on Fundamental principles and Rights at Work. Report I(B). Geneva. <http://www.ilo.org/declaration>



I want to share with you some recent research contained in the latest New Zealand Census of Women's Participation 2010,⁴ the benchmark bible (even if I say it myself) on how women are faring in terms of participation and representation which the Commission produces every two years. I understand copies of the Census Report are available to you and the data I refer to is on page 56.

New Zealand has a curious legislative ambivalence about equal employment opportunities. Public sector employers have a statutory requirement to be “good” employers, to have EEO policies and to recognise the employment requirements of women in the state sector. However, it is voluntary only in the private sector where anti-discrimination and general employment frameworks are mandated by statute, but EEO per se is not. That means EEO is compulsory in the public service but voluntary for the private sector. This doesn't necessarily mean that private sector employers are worse than public sector employers, it just means we'll never really know the extent of EEO policy and practice in the private sector and there is huge variability.

⁴ New Zealand Human Rights Commission, *New Zealand Census of Women's Participation 2010*, accessed at <http://www.neon.org.nz/census2010/>



Nonetheless, our research which is the first we've done examining the gender pay gap in New Zealand's public service where 59% of staff are women, was a shock given the legislative requirement to be a good employer. In a nutshell only 10 of 34 public service departments had a gender pay gap less than or equal to the total labour force of 13% estimated at the time. Twelve departments, some of them major agencies, had gender pay gaps of 20% or more and two were over 30%. Predictably Defence ranked highest at 39%. However there should be nothing predictable or excusable about other large public service departments. The Treasury Department, who has 50% female staff and 36% women in senior management, provided the following delicious justification for its overall 29% gender pay gap.

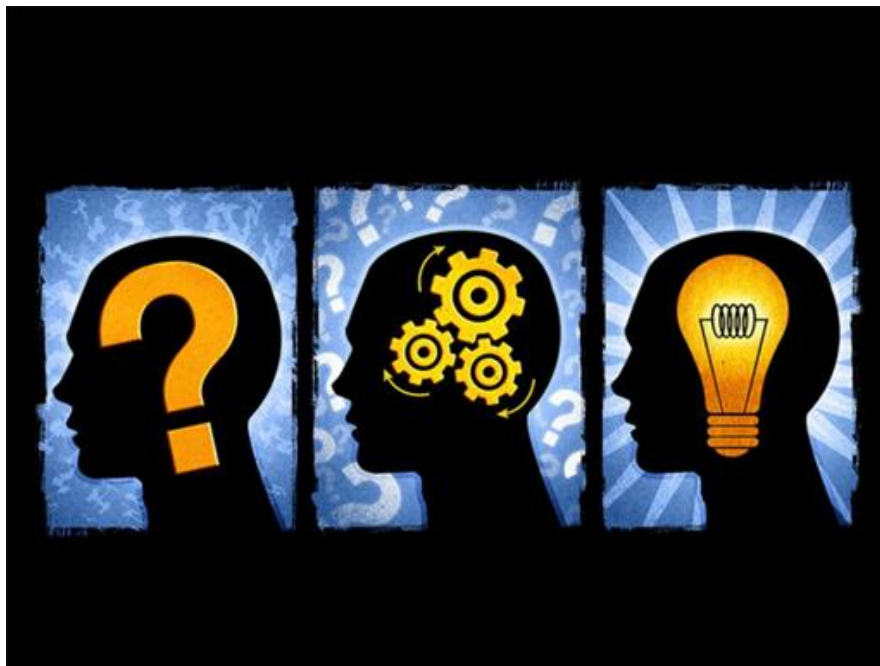
We believe this somewhat overstates the gap given that currently our senior management team is primarily male and that we have a huge cohort of support staff (primarily employed as personal assistants) who are exclusively female. If the senior executive (including both sexes) and the support group are extracted from this data this reduces the gap to 18.9%.

There are two observations about the gender pay gap. The first is the rather obvious one that inclusion should never just be measured by taking part in paid work but by the value, monetary and otherwise, that is placed on inclusion in the labour market. The second observation is that there is much, quality international research, analysis and networking amongst predominantly female researchers and think tanks worldwide on how to advance thinking about pay equity in different jurisdictions. This work *must* hold course during the global economic recession. There is considerable risk that closing the

gender pay gap will be hostage to the 'can't afford it' refrain, discounted as a discretionary extra only affordable when every other labour market anomaly incurred before, during and after the economic downturn is fixed up. Instead it needs to be viewed as a fundamental inequity, a barometer of exclusion and a powerful determinant of women's economic empowerment.

These three diverse examples demonstrate the spread of work in a national human rights institution like the NZHRC that attempts a range of interventions to progress human rights. The examples demonstrate that inequality with its multiple causes expresses itself directly and indirectly on legislation, policy and practice in a myriad of different ways. There is one thing that is constant and that is that inequality ALWAYS erodes human dignity which is at the heart of respect for human rights.

The examples lead me to three questions about our collective responsibilities as individuals with elite access to public spaces. More broadly these questions relate to how we rekindle new thinking about equality, diversity and inclusion.



1. The first question relates to who speaks, when and how? Do we take a strong enough public voice in the right place at the right time? This conference and other similar fora, provide a safe haven for engaged and intelligent discussion and critique of inequality issues. But is there an effective public voice in hard debates such as the unremitting and unsustainable rise in prison populations in some Western democracies (New Zealand has the dreadful distinction of imprisoning people at a higher rate than Australia, the United Kingdom and Canada with an average cost per

prisoner per year of \$100,000⁵), or the impact of the global recession on vulnerable groups?

Victoria University academic Todd Bridgman recently analysed the public contribution of academics to the global financial crisis which began in 2007 and continues to play out around the world through rising unemployment, falling house prices and the collapse of the financial sector. He concluded that “despite being a significant reservoir of knowledge in relation to many matters at the heart of the GFC, the public voice of our universities has been faint.”⁶

Under the Education Act 1989 New Zealand academics are uniquely charged with being the critic and conscience of society, in other words to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions. So how effectively do academics working on social justice issues, proactively promote their research and analysis, defend positions and engage with wider audiences? The net revolution and the erosion of conventional journalism and commentary have made irrelevant the notion of academics as passive experts waiting to be invited into nanosecond reactions by the conventional mainstream media. All of this invites new thinking about how public voice is exercised.

2. The second question relates to how we support other social justice advocates. Do we actively defend and network with the newer constellations of civil society, NGOs, loose alliances, groups and individuals in their informed advocacy on social justice causes? There is significant commentary about the growth of lobbying and the influence of poll driven politics and policy making- many who shout loudest usually have the most financial backing and quite often have dubious constituencies of support. While they are not necessarily representative of so called public opinion they disproportionately influence it. American commentator Joseph Nye in his new analysis of power states that in an information age those with the best story win.

New Zealand’s Chief Justice Dame Sian Elias in a thought-provoking address on the criminal justice system noted that criminal justice is currently being considered in a climate of anxiety, in which professionals are not trusted to have answers.⁷ Is there occurring a similar loss of community confidence in social justice advocacy and how can we help sponsor wider social engagement?

⁵ Department of Correction, Briefing for the Incoming Minister (November 2008), p.11.

⁶ Bridgman, T. 2010. “Empty Talk? University Voices on the Global Financial Crisis”. Policy Quarterly, Vol 6, Issue 4, p.40.

⁷ The Rt Hon Dame Sian Elias, Chief Justice of New Zealand “Blameless Babes”, Annual 2009 Shirley Smith Address

There is I think something we can all do and that is communicate support whether publicly or privately to social justice advocates who do put their heads above the parapet. At several select committee hearings on proposed parliamentary legislation in the past year I have witnessed a new level of discourtesy (over and above properly robust scrutiny of evidence and opinion) towards several civil society groups and some individuals who are speaking either for themselves or on behalf of vulnerable groups. This reaction is more likely to inhibit rather than encourage participation in a vital democratic process, at a time when communities desperately need to debate equality of outcomes as well as of opportunities and when politicians need to listen to them.

3. The third question relates to the tools we have available to measure, monitor and insist on accountability for social justice in the countries and communities in which we live. Are we using all the tools we have available to research, advocate and promote equality, diversity and inclusion? Across my working life I've been a newspaper editor, an academic and a human rights commissioner. In retrospect I would have been a better journalist and a more effective academic if I'd known about the United Nations treaty body system and how to use it when I was working in those professional areas. Given that State parties regularly report against significant covenants such as the International Convention on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the rights of children of women (CEDAW), of disabled people (CRPD) and of children (UNCRC) to name a few, the treaty body reporting process is a way in which countries and issues can be benchmarked, hypotheses formed and tested and public discussion generated. The treaty body process provides an evidential basis about the fulfilment of human rights in social justice areas that is not maximized in research. In a recent issue of the international journal, *Gender and Management*, I've urged, for example, a greater use in gender research of a human rights framework and CEDAW, given the universality of women's inequality. Using a human rights framework approach and examining country specific Treaty body reporting on progress in human rights will move research on from an over-reliance on problem definition and analysis. It may bring us closer to consideration of solutions.

My three questions for your consideration then are:

- are we brave enough?
- do we support others who risk unpopularity with alternative views on equality issues?
- are we using all the tools at our disposal?

Download a copy of this speech:

<http://www.neon.org.nz/eeoissues/eeocommissionerspeeches/>



I'd be very keen to hear your views.

It is a great privilege to have had this opportunity to speak to you and I wish you all the best for a stimulating and worthwhile conference.

Nga mihi o te ata.

Dr Judy McGregor