



The Stories of Kathryn and her Daughters:

Intergenerational harm due
to the investigation and
imprisonment of a parent for
alleged “relationship fraud”

by Yvonne van Dongen
Including *Kathryn's Story*
by Catriona MacLennan (2016)

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The Stories of Kathryn and her Daughters: Intergenerational harm due to the investigation and imprisonment of a parent for alleged "relationship fraud"

ISBN: **978-0-473-58108-4**

by Yvonne van Dongen

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Description: A reprint of *Kathryn's Story* by Catriona MacLennan (2016, CPAG), accompanied by an update and new interviews by Yvonne van Dongen, and new commentary by the Child Poverty Action Group

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Contents

(new 2021 material bolded)

- Acknowledgements.....2**
- 2021 Foreword3**
- 2021 Policy Recommendations5**
- Kathryn’s Story:.....7
 - 1. Childhood8
 - 2. Children and work..... 10
 - 3. Robbie..... 11
 - 4. Getting the children back..... 19
 - 5. Prosecuted.....23
 - 6. Convicted.....25
 - 7. Release from jail26
- Timeline.....31
 - Timeline update 2016-2019..... 33**
- The Court proceedings.....34
 - 1. Criminal court proceedings against Kathryn for benefit fraud34
 - District Court sentencing40
 - Court of Appeal decision.....43
 - 2. Civil proceedings relating to debt recovery.....45
- Court proceedings update 2016-2019 53**
- The Stories of Kathryn’s Daughters..... 57**
 - Elizabeth 57**
 - Eloise 62**
- Afterword: Child Poverty Action Group 65**

Acknowledgements

2021 acknowledgements

Child Poverty Action Group (CPAG) is indebted to Yvonne van Dongen who wrote *The Stories of Kathryn and her Daughters*; to Susan St John and Janet McAllister for managing the project; and to Len Cook and Rosa Gavey for contributing invaluable data and to members of the CPAG team for their encouragement and support. But most of all, we acknowledge and honour Kathryn's daughters, and thank them for gifting us their stories.

2016 acknowledgements re *Kathryn's Story*

CPAG acknowledges and thanks *Metro* and Lesley Max for permission to reproduce her 1991 article; Catriona MacLennan who represented Kathryn in the initial phases of the appeal and who wrote this report; Frances Joychild, QC who is currently representing Kathryn. We also acknowledge a kind bequest to CPAG from Helen Yensen to cover publication costs. Grateful thanks to Malcom Evans for his cover page illustration, and to Associate Professor Susan St John for her substantial contribution in managing this project. Finally, CPAG is grateful to Kathryn herself for allowing her story to be told.



A note from Kathryn to her son Robbie, killed in 1989.

2021 Foreword

Five years ago, in 2016, CPAG commissioned Catriona MacLennan to research and write the original *Kathryn's Story*, to highlight the injustices experienced by mothers accused of the so-called crime of "relationship fraud". This 2021 update extends the timeline of legal actions taken in the hope of getting justice for Kathryn from 2016 up to her untimely death at the all-too-early age of 58 in August 2019.

The Stories of Kathryn and her Daughters also records the experiences of two of her children, to further broaden the understanding of the wider family context in which cases like Kathryn's are heard in the courts. As these narratives show, the children of mothers hounded by the system are profoundly impacted. Writer Yvonne Van Dongen gives voice to Kathryn's daughters, and by doing so, shines light on the damaging intergenerational ripple effects of our archaic and punitive system.

We had hoped that the original publication of *Kathryn's Story* would improve the understanding of those working in the welfare and judicial system and encourage the long overdue reforms of social security law and its interpretation around relationship issues. However, despite widespread interest in *Kathryn's Story*, few decision makers or leaders in the political and judicial fields have championed the fundamental changes that are required so that women in the welfare system experience dignity and all processes adhere to the principles of natural justice. Twenty years since Kathryn's conviction and imprisonment, there is still little systematic acknowledgement of the long-term impact of post-traumatic stress disorder that many women suffer from due to abusive situations, or of the injustice of relationship fraud prosecutions.

While we are very pleased that a less aggressive pursuit of relationship fraud and less use of imprisonment for convicted mothers has emerged over the last few years (see afterword), this is far from the radical kinds of legislative and regulatory changes needed to protect people – mostly parents and people whose disabilities prevent them from working full-time from fear of punitive measures. We have been saddened by the lack of political action and bureaucratic stalling on this issue. Not even the internationally disgraceful rates of domestic abuse in New Zealand, the ongoing deep child poverty and deprivation, the poor mental health of many low-income women, nor the growing acknowledgement of structural racism within the court system and benefit system, have spurred structural change.

The issues are multiple: there are problems with the definition of "relationship" and its application; and with the definition of "relationship fraud" and its investigation. Regarding the definition, so-called "relationship fraud" emerges as a result of ambiguous rules that do not align with the complex realities of people's lives. Relationships are volatile and can change over time, making the timeline of when (if ever) a benefit recipient becomes financially 'dependent' on a partner impossible to determine. The ambiguity surrounding what constitutes a 'relationship' within the welfare system therefore creates significant uncertainty and anxiety for benefit recipients, who are already living in precarious circumstances through inadequate income and associated stresses.

The 2017-2020 Labour-led Government's Welfare Expert Advisory Group (WEAG) recognised the harms associated with the current rules around relationships in their 2019

report, and recommended multiple changes to address the issues, which have not yet been implemented.¹ The afterword to this report contains more detailed commentary from CPAG on the data on relationship issues, and explains our recommendations.

Kathryn's untimely death at the age of 58 on 18th August 2019 ended her personal quest for justice. But the issues for women accused of relationship fraud, and their children have not gone away.

Kathryn did not want to be seen as a victim. She never resiled from two things. The first was that she did not commit the crime of relationship fraud. The second was that she and her children had paid a very high price for her incarceration, and that she would fight to the highest court to prevent the \$20 weekly deductions from her already-inadequate invalid's benefit to pay the \$120,000 debt MSD claimed she owed.

Anyone who interacted with Kathryn over the years quickly began to understand her deep unresolved grief around the tragic death of her son Robbie at the hands of his stepfather in 1989. This sadness permeated her life and her untreated PTSD from this trauma never left her. Both daughters who speak in *The Stories of Kathryn and her Daughters* have also suffered PTSD. While Kathryn herself experienced profound shock at Robbie's death, her eldest daughter Elizabeth actually witnessed the murder. The youngest daughter Eloise was just four at the time Kathryn was sent to prison in 2000 and experienced the trauma in the court of seeing her mother being taken away into custody.

The Stories of Kathryn and her Daughters exposes the fragmentary nature of marriage-like relationships, especially in cases like Kathryn's where the 'partner' had been abusive to her daughters and failed to provide financial support to Kathryn and her children. While an overhaul of the rules around relationships and benefits is well overdue, such changes are too late to help Kathryn and many others in similar situations. She received no compensation for the years she lost and the harms she suffered, including her deteriorating physical health in recent years.

CPAG is grateful to the daughters who have spoken out in *The Stories of Kathryn and Her Daughters*, and in honouring their wishes, have used the names they are given in *Kathryn's Story* to provide anonymity. We ask that their privacy is respected.

We challenge the Government to redress the terrible indignities and harm suffered by Kathryn and her family by making a posthumous apology and an award for damages. As outlined in the CPAG postscript to this publication we are renewing our calls for an urgent reform of relationship rules, and for an official investigation of the harms done to many families like Kathryn's from criminal prosecutions in the 1990s and early 2000s periods.

In this publication, *Kathryn's Story* is reproduced and augmented with new additions to the timeline and the narrative about her legal battles to cover the years 2016 - 2019. Then, separately, Kathryn's daughters tell their stories, before CPAG offers an afterword.

Child Poverty Action Group, August 2021

1. Welfare Expert Advisory Group (2019). *Whakamana Tāngata: Restoring Dignity to Social Security in New Zealand*. <http://www.weag.govt.nz/assets/documents/WEAG-report/aed960c3ce/WEAG-Report.pdf>

2021 CPAG Policy Recommendations

Regarding relationship rules and their application

1. Ensure relationship definitions and responsibilities in all legislation are consistent, fair and culturally appropriate for Māori and all people in Aotearoa New Zealand. This will require widespread and wide-ranging public discussions and consultations in a range of settings, and should include consideration of policy which enables people to decide for themselves when they are in a relationship.
2. Ensure the application of relationship definitions by government agencies is always transparent, clear and consistent to enable benefit recipients to live their lives and make decisions without fear.
3. Continue to change income support settings so they are more neutral in their impact on relationship decisions.
4. For JobSeeker and Supported Living Payment recipients in relationships, allow a partner's income of up to at least the average wage to be disregarded when assessing entitlements.

Regarding past and present pursuit of "relationship fraud" allegations

5. Change the Ministry of Social Development's (MSD's) approach to one of "whakamana tāngata" as recommended by the Welfare Expert Advisory Group in 2019, which empowers people, and acknowledges that many people requiring assistance from the state have undergone trauma and/or may be still undergoing trauma.
6. In order to reduce malicious allegations, consider disregarding anonymous allegations, and allegations made by former partners and co-parents of the person subject to the allegations.
7. Abolish the use of criminal conviction and prison sentences for infringement of welfare-system relationship rules for caregivers of dependent children.
8. Ensure MSD has discretionary power to waive all debts, re-align MSD debt-waiving ability to that of the IRD, and make this alignment permanent.
9. Mandate an independent assessment of the impact of current MSD investigative processes on individuals, whānau and families, including children; and use this to ensure investigative processes follow the principles of natural justice and do not cause undue harm.
10. Hold an official independent investigation into the harms done to the many families accused of relationship fraud, especially in the 1990s and early 2000s. The independent investigation should have the authority to determine and order debt forgiveness, and its process must be respectful of the huge vulnerability of affected women and children.

11. Make a posthumous apology to Kathryn and an award for damages to her children for the harm caused to them by MSD's harsh, punitive and aggressive prosecution of Kathryn, her subsequent imprisonment and MSD's attempts to recover disputed debt.
12. Abolish the Benefits Review Committee, establish a review process independent of MSD, and provide beneficiaries with legal aid to assist them in preparing their cases.

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

In 1996, the Court of Appeal in Ruka v Department of Social Welfare held that a de facto relationship for the purpose of social security entitlement comprised two essential elements: financial interdependence and emotional commitment. On these terms, a relationship marred by extreme levels of physical, psychological and financial violence is not a relationship in the nature of marriage.

- Researcher Rosa Gavey, 2020

[W]hilst imprisonment is about punishment for [Kathryn's] offending, it does not constitute restitution of her debt.

- Social Security Appeal Authority, 2010

Everything we are is because of her. She taught us lots of skills. Her life might have been shit but she still gave us the best start she could. Everything I learned was from my Mum.

- Kathryn's daughter Elizabeth, 2020

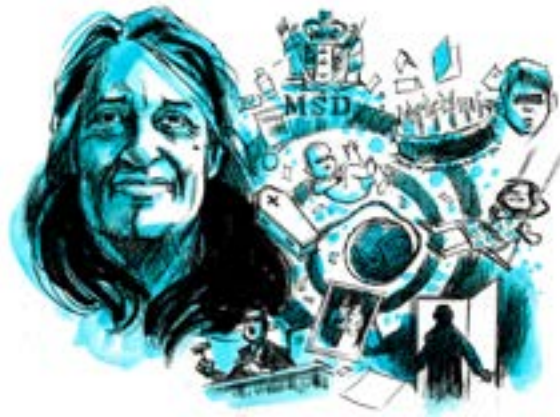
Kathryn's Story:

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

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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Cover of first publication

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 arsehole. 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 1957 and Tom in 1973.

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."

2. 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..."



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.



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 traumas 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.”

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.

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 crying 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 4, 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 no, 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.

New Zealand Herald story "Takanini man denies beating boy to death."

22nd Dec 1989.

To my Darling Robbie,

Love is like a rose it Blooms with tender^{love} 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 Cuddles and Kisses he had for you and we 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

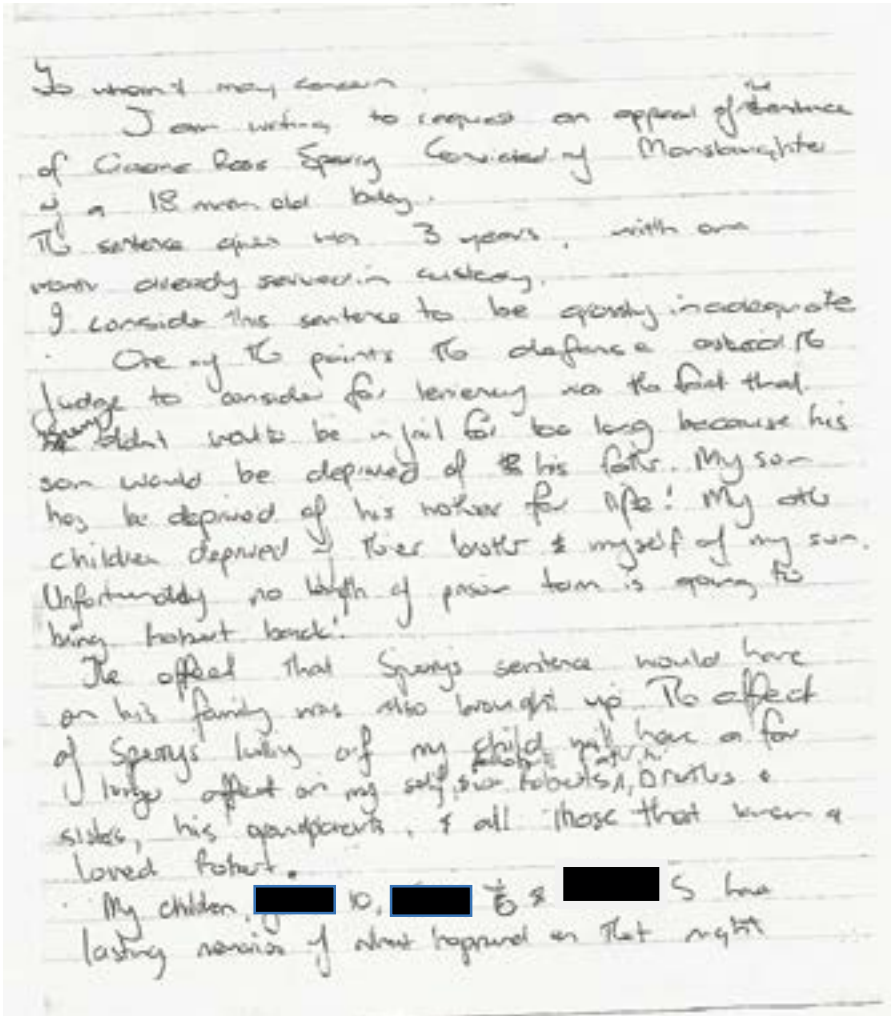
Ever hurt you again, and we will always be with you, because you also take part of our heart with you. So we will lay you down to have a beautiful sleep with our love, so Sleep my darling you are always with us all.

Lots of love.
Mummy.

Kathryn's tribute to Robbie, 1989

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.”



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’.

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 Wellsford 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 defense.

“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 bandaid. 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 til 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.”

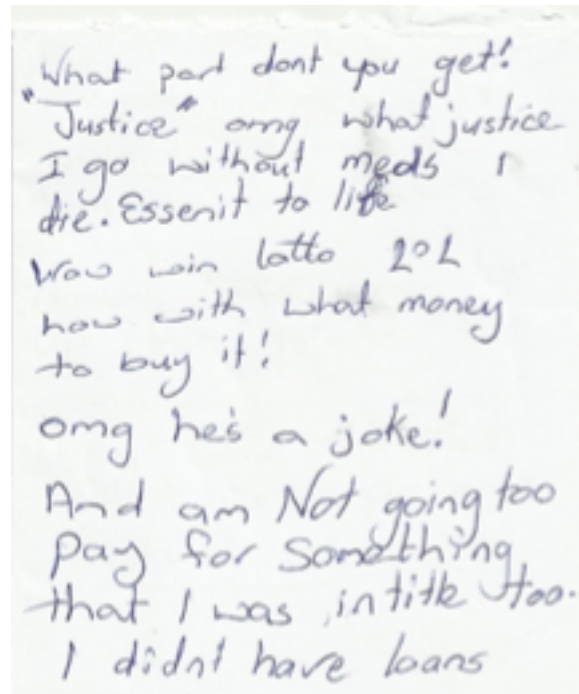
Kathryn has a burning sense of injustice about her convictions and about the ongoing efforts by the Ministry of Social Development to make her pay \$117,598.84. She has been fighting since she was convicted in 2001 to overturn the convictions and have the debt against her cancelled.

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 –



A photograph of a handwritten note on a piece of paper. The text is written in cursive and reads: "What part dont you get! Justice omg what justice I go without meds I die. Essenit to life Was 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".

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	Sept 16	<ul style="list-style-type: none">• Kathryn born
1965		<ul style="list-style-type: none">• Kathryn's father goes back to jail, and again in 1968.
1969		<ul style="list-style-type: none">• Kathryn's step-father begins sexually abusing her, for about 8 years.
1973		<ul style="list-style-type: none">• Kathryn's brother Tom born
1980	April 4	<ul style="list-style-type: none">• Kathryn's first child, Keith, is born and she and Keith's father marry three months later
1983	Sept 1	<ul style="list-style-type: none">• Timothy is born.
1984	Dec 8	<ul style="list-style-type: none">• Elizabeth is born.
1988	March 1	<ul style="list-style-type: none">• Robbie is born.
1989	Nov 8	<ul style="list-style-type: none">• Graeme Sperry kills Robbie.
	Dec 22	<ul style="list-style-type: none">• Robbie is buried in Hamilton.
1990s		<ul style="list-style-type: none">• 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		<ul style="list-style-type: none">• Kathryn goes on Domestic Purposes Benefit because she is not in a relationship in the nature of marriage, and needs to support her children.
1995	Sept 21	<ul style="list-style-type: none">• Eloise is born
1999		<ul style="list-style-type: none">• Mr E reports her to Work and Income
2000	Feb 9	<ul style="list-style-type: none">• 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	Feb 12-14	<ul style="list-style-type: none">• Kathryn tried and convicted in District Court on 26 counts of benefit fraud.
	March 9	<ul style="list-style-type: none">• Kathryn sentenced to 15months jail for benefit fraud.
	April 12	<ul style="list-style-type: none">• Court of Appeal dismisses Kathryn's appeal against conviction and sentence for benefit fraud.
2001		<ul style="list-style-type: none">• 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	Nov 3	<ul style="list-style-type: none">• Kathryn attends Benefits Review Committee hearing seeking review of Work and Income decision that she repay her debt.
	Nov 4	<ul style="list-style-type: none">• Benefits Review Committee upholds Work and Income decision.

2008	Dec 3	<ul style="list-style-type: none"> • Social Security Appeal Authority hearing
2009	April 20	<ul style="list-style-type: none"> • Social Security Appeal Authority issues interim decision on Kathryn's challenge to repayment of the debt established against her.
	Dec 1	<ul style="list-style-type: none"> • Social Security Appeal Authority hearing.
2010	Feb 23	<ul style="list-style-type: none"> • Social Security Appeal Authority releases decision requiring Kathryn to repay full amount of debt established against her.
2011	April 6	<ul style="list-style-type: none"> • Social Security Appeal Authority files case in High Court relating to whether or not Kathryn should repay debt.
	August 30	<ul style="list-style-type: none"> • Hearing of case stated in High Court
2012	April 4	<ul style="list-style-type: none"> • 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	Dec 16	<ul style="list-style-type: none"> • Social Security Appeal Authority releases further decision holding that debt stands.
2015	August 4	<ul style="list-style-type: none"> • Hearing in High Court (HC) of Kathryn's appeal against Social Security Appeal Authority's December 2013 decision.
	Oct 29	<ul style="list-style-type: none"> • Justice Faire releases HC decision dismissing Kathryn's appeal.
2016	May	<ul style="list-style-type: none"> • Kathryn awaits further leave from the HC 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 MSD.

Timeline update 2016-2019

2016	August 17	<ul style="list-style-type: none">• Hearing in High Court on application for leave to appeal and for permission to apply for leave out of time.
2016	August 22	<ul style="list-style-type: none">• Justice Faire grants leave to appeal out of time but dismisses the substantive application for leave to appeal.
2016	October 1	<ul style="list-style-type: none">• Application to Court of Appeal for special leave to appeal.
2016	Nov 28	<ul style="list-style-type: none">• Hearing in Court of Appeal applying for special leave to appeal against a High Court judgment under 12Q of the Social Security Act 1964
2016	December 22	<ul style="list-style-type: none">• Justice Cooper's decision released declining leave to appeal to the Court of Appeal.
2017	February 7	<ul style="list-style-type: none">• Notice of application for leave to bring civil appeal from High Court to Supreme Court filed
2017	March 7	<ul style="list-style-type: none">• Submissions filed on application for leave to bring civil appeal under S14 Supreme Court Act from the High Court.
2017	June 12	<ul style="list-style-type: none">• Supreme Court releases decision for leave to appeal. The application is dismissed.
2018	June 29	<ul style="list-style-type: none">• Letter from Frances Joychild to Regional Commissioner, Auckland Region, MSD, Mark Goldsmith asking to waive the debt.
2019	August 18	<ul style="list-style-type: none">• Kathryn dies, after a period of chronic illness.

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 recanvass 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.

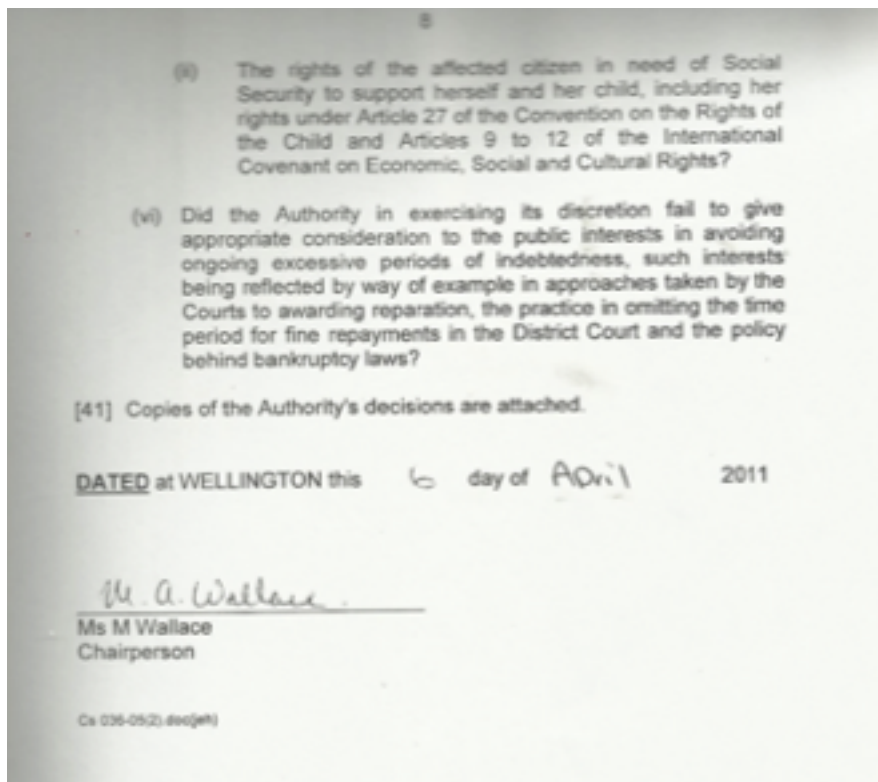
So that in effect these application forms are untrue, aren't they?...For what they were meant to be for, not all of them, no."

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?

Court Proceedings Update 2016-2019

The first publication of "Kathryn's Story" ended with the 2015 Justice Faire decision in the High Court that declined her appeal. The next three years, documented here, were a frustrating time-consuming legal fight, culminating without resolution in her untimely death at the age of 58 on 18 August 2019.

Frances Joychild QC applied for leave to appeal the High Court decision to the Court of Appeal. The Crown pointed out that Kathryn was caught in the transitional provisions. Submissions then had to be made to the Court on what the proper court was. The Court of Appeal determined on the papers that Kathryn had to first seek leave to appeal from the High Court.

In order to get leave to appeal Kathryn had to establish that the issues in the case were of general or public importance.

A complicating factor was that after the 2012 High Court decision of Justice Courtney the Government changed the law by removing entirely the discretion MSD had to waive a debt. Justice Courtney had sent Kathryn's debt back to the SSAA to reconsider the appeal taking account of the rights of the child to an adequate standard of living and adequate food, clothing and shelter. The new law became the Social Security (Fraud Measure and Debt Recovery) Amendment Act 2014. The new law allowed discretion to pause repayment of a debt for a period of time under certain criteria. But the debt could no longer be waived. It remained forever - a lifetime millstone around a beneficiary's neck. Frances Joychild notes no other debts owed to the Crown are treated this way. The IRD, for example, waives debt on a regular basis including debt incurred by fraud.

The effect of the law change was that no beneficiary could ever challenge a decision by MSD to recover a debt. However, Kathryn's rights, along with others who had debts established under the old law, remained. Another complicating factor was that appeals under the Social Security Act are by way of a 'case stated'. Such an appeal is more limited and restricted than a 'general appeal'.

The same judge who declined Kathryn's appeal heard the application for leave to appeal it. Frances Joychild argued Kathryn's case still raised a question of public importance

as hundreds of beneficiaries' debts, besides Kathryn's, that were established before the law change, were also impacted. Her submission pointed out that Kathryn was a 55-year-old woman living in poverty with multiple serious health and disability issues and no foreseeable way to change her circumstances. Her sole income was a supported independent living benefit of \$303.54 per week, \$82 less than the minimum required for her weekly necessary expenses as had been calculated by Dr Brian Easton in an affidavit dated 14 July 2015. The submission said that debt impacted negatively on every aspect of her life including the ability to obtain supplementary food grants, access to lower interest loan facilities and her already fragile psychological health. Her child did not have an adequate standard of living and this debt would make that situation worse. At repayments of \$20 a week it would take her 111 years to pay back the debt established by MSD. At \$10 a week it would take 225 years.

Justice Faire declined leave for Kathryn to appeal to the Court of Appeal on 22 August 2016. The Court did not believe the threshold had been met.

Then on 1 October 2016 Frances Joychild applied to the Court of Appeal itself for special leave to appeal.

Frances' argument to the Court of Appeal was that the debt should have been waived since Kathryn had already served her time in jail, was living in poverty with a child and unable to pay a debt by even a small deduction. She argued that in these circumstances the Chief Executive of MSD should have exercised his discretion not to recover the debt or to reduce it substantially.

The Court of Appeal delivered its decision on 22 December 2016. It declined special leave to appeal. It said it was bound to apply a statutory scheme that had set, quite deliberately, narrow limits on the kinds of appeals that might be brought (the case stated issue). Also, it did not consider that Kathryn had identified questions of law that, by reason of general or public importance, were appropriate for the Court of Appeal to decide. Justice Cooper said there appeared to be nothing that distinguished Kathryn's circumstances from those of any other beneficiary who had defrauded the benefit system or a beneficiary who owed debt innocently obtained. The debt was to be recovered.

Frances Joychild describes that decision as one of the lowest points in her legal career and said it left her in profound despair. "I felt completely hopeless. I could do nothing for Kathryn. She had nowhere to turn. She could not get justice from the government and she could not get it from the Courts. The legislative, executive and judicial branches of government had each failed her and all people like her."

Not only were Kathryn and her child and thousands of other beneficiaries and their children deliberately being kept in poverty by the government decision to maintain inadequate benefits levels but it was deliberately worsening their poverty and hardship for their children by using the law to take money from their inadequate benefit. At such low levels there were minimal financial benefits to the Crown, deterrence had already been met by the prison sentence and the poverty that Kathryn and her child were living in was being worsened by the government.

Yet the government had signed and ratified the International Covenant on Economic, Social and Cultural Rights thereby committing to provide social security to people who could not support themselves. The Convention was explicit that the level of support had to be an 'adequate standard of living'. The government had reaffirmed that commitment to that standard in the Convention on the Rights of the Child and the very recent Convention on the Rights of Persons with Disabilities.

Frances asks "Where is the justice for this group of the poorest people? Since the 80s, an ethos had grown in this country that viewed people who need financial support from the state as lazy, unmotivated bludgers. The multiple injustices, misfortunes, accidents and miseries that befell people at times in their lives, which brought them to the government asking for social security support, were conveniently ignored. Fairness and compassion went from the social security system in 1992 with the benefit cuts and had never been restored. Though there were legal discretions being exercised under the Act every day, the higher Courts had made plain they were not going to get involved."

Frances and Kathryn decided to give it one more try. Frances applied for leave to appeal to the Supreme Court on 7 March 2017. Again she argued there was sufficient public interest because many hundreds of people were in Kathryn's position, that is, in poverty with large debts. She added to the argument by pointing out that most people convicted of benefit fraud before July 2014 were women supporting children while the partner was let off the hook, even when they were complicit in the fraud and benefitted from it.

Frances acknowledged that her legal arguments were novel. She argued that with the growing divide between rich and poor, the human rights obligations of government were increasingly important and must be taken into account in exercising legal discretion. She argued that the current view that debt must be recovered from the aging, ill and the poor to protect the integrity of the Society Security Act needed review.

But Justices Elias, Young and France did not accept that the exceptional circumstances test had been satisfied. They concluded in a judgement on 12 June 2017 that the new law placed the Chief Executive under 'a positive duty to recover payments.' Hence a decision for Kathryn under the old law would not impact the public widely.

On June 29, 2018 Frances wrote to Regional Commissioner, Auckland Region, Mark Goldsmith at the Ministry of Social Development asking him to waive the debt, since both the private and public sector waived debts daily despite being legally entitled to recover them. However, after Mark Goldsmith had spoken to the relevant civil servants, he reported that he could not do anything about Kathryn's debt.

Kathryn died a debtor to MSD, with a sense of injustice still raging inside her. She never accepted the debt was owing. Attempts to challenge it were unsuccessful and attempts to have it waived were unsuccessful.

"What appalled me most about the case was that the Crown never challenged Dr Easton's evidence – it could not argue with it," says Frances Joychild. "Yet it insisted the debt must be recovered from her, despite the family's dire financial circumstances with no foreseeable change in them. Worse still, the Social Security Appeal Authority had supported MSD's stance."

Frances Joychild called the attempt to retrieve the debt in Kathryn's circumstances 'cruel' and a breach of Kathryn's human rights with no benefit to the taxpayer. She pointed out that the policy of recovering social security debt over the lifetime of a person was only introduced in the last 20 years. Prior to that courts would order repayment for a limited period of two to three years, taking account of the beneficiary's circumstances. However with increasingly harsh state responses to beneficiaries, prosecutors no longer asked courts to order reparations. Instead a full repayment obligation was established by civil servants in-house, in situations where they did not have to take account of the means of the person when determining it.

Another alarming aspect is that the government changed the law to make sure that ALL beneficiary debt had to be recovered. This policy is applied nowhere else where persons have debts to the Crown. Certainly not the Commissioner for Inland Revenue when determining debt recovery for fraud on the taxpayer. Much debt to IRD is waived on a yearly basis. Yet IRD does not consider this a threat to the integrity of the Income Tax Act.

"The lack of empathy and punitive and inhumane policies developed by MSD towards human beings needing state-provided income support in recent decades has left me continually aghast," said Frances Joychild to CPAG later.

Despite the law now providing for pauses in debt recovery, hundreds of women supporting children in Kathryn's situation continue to have deductions taken out of their meagre benefits while they are living in poverty. For hundreds, if not thousands, this will continue, as the current law stands, for the rest of their lives.

In 2001, when conducting a review of MSD's non-compliance with the law when investigating fraud and debt, Frances Joychild argued for an Independent Social Security Ombudsman separated from MSD to review decisions of MSD. The inevitable bias and negative cultural values towards beneficiaries that an internal system brought to decision making would be removed. Also beneficiaries would be more confident seeking a review and not feel so intimidated, bullied and fearful that, if they challenged the debt, their situation would be made worse by MSD.

These last three years took a further toll on Kathryn's health and likely contributed to her untimely death. The legal representations were excruciatingly painful and time-consuming for Kathryn's counsel. CPAG acknowledges the tireless and selfless efforts of Frances Joychild QC for Kathryn and for many others over the past 25 years.

The Stories of Kathryn's Daughters

Elizabeth

The impact of all that happened in Kathryn's life didn't end with her death on 18 August 2019, says her oldest daughter Elizabeth. It continues to this day through her children and even her grandchildren.

For Elizabeth, the trauma began with the death of Robbie.

"After he died CYFS put us in the care of our grandmother where my uncle, who was a known sex offender was also living. He had previously been charged with sex offences, one involving a two-year old. Mum didn't know this. I was about four or five at the time. I don't remember how long I was there though I went to school. But I didn't like it. I hated my grandmother and my uncle. My uncle sexually abused me."

After that CYFS placed Keith and Elizabeth who was seven by now at Dingwall, a children's home in Papatoetoe, with Timothy who was already there for respite care since he had ADHD. The children were put in care to give Kathryn a break to deal with the trauma of her son's death. Later Elizabeth learned that Timothy had been sexually abused at Dingwall by another child.

Elizabeth's behaviour regressed to babyhood after witnessing Robbie's murder. She began wetting the bed and ceased to talk. If a man entered the room she would grab a weapon such as a pair of scissors, to protect herself. She wet the bed until she was 13. She said it was so traumatic that, for years, she managed to block many of the memories. Later, at counselling she learned that she had probably blocked out a lot to make it easier for herself. "It's possible something else happened that I have blocked out."

By the time CYFS returned Elizabeth to her mother's care, Kathryn was living with Mr E. Elizabeth says CYFS required Kathryn to be in a "stable relationship" even though Mr E had been charged with sexual abuse of his niece. Elizabeth is not sure CYFS was aware of this.

Kathryn eventually bought a house with Mr E in Onehunga. While the family were never well-off, Elizabeth recalls that in those days money never seemed to be a problem. Kathryn was working full-time at Wendy's then.

"When we were younger the benefit was liveable. It got harder as time went on. There were a lot of trips to WINZ because Mum owed them money."

Nevertheless Elizabeth said she didn't miss out on school sports or trips as a child. Her mother usually joined her, driving Mr E's campervan. This enabled Elizabeth to sleep with her mother so no one would know she was still wetting the bed. Elizabeth says her mother put everything into her since she provided a focus for her grief.

But while living with her mother, she was sexually abused by both Mr E and also the uncle who lived with her grandmother.

Although Keith discovered she was being abused by their uncle he never discussed it with her. Elizabeth thought it was because he was Keith's favourite uncle but years later she learned it was because he too was being abused and didn't want anyone to know. "He was scared too."

After Timothy's father came out of prison, Kathryn bought land at Wellsford, albeit under Mr E's name, so no one would know where she was. A caveat was placed on the property so Mr E couldn't sell it without Kathryn's approval. The rest of the ACC money was put in a trust fund for the children though Kathryn used Keith's trust fund money (with his permission) to build a double garage as a sleep-out for the boys.

Kathryn went into hiding to protect her children from the threats posed by Sperry. It worried her that Timothy's father was able to find out where she lived as soon as he got out of prison, turning up on her doorstep the day of his release. Since Sperry was due out not long afterwards she worried that he too would find them all too easily.

Also while in jail Timothy's father and Graeme Sperry had a few altercations. Kathryn learned that Sperry claimed he should have killed Timothy, not Robbie. Plus Sperry had threatened Elizabeth's life at one point so Kathryn had good reason to be cautious. He swore that when he got out of jail, he would take all Kathryn's children from her.

"Mum has always been in hiding. She's never voted. We haven't always been the name he was prosecuted under; we've had many other names."

Mr E continued to visit the house where he and her uncle continued to sexually abuse Elizabeth, who was nine at the time. When Elizabeth was 14, she learned he had also sexually abused Timothy.

In 1996 her mother became pregnant to Mr E with Eloise. She became very ill during the pregnancy and ended up in hospital several times.

"When Eloise was born, I took a lot of time off school to look after Mum and Eloise. I was 12 then and I was stoked to have a sister."

Elizabeth also looked after her mother often.

"Mum was never better after Robbie. There were times when she would just hold me and cry. She was emotionally up and down. You'd know when you had to shut up. She never hit me but I knew I didn't want to upset her. I could see she was hurting. She would just stay in bed all day or zone out on the computer. She became very disconnected."

Mr E came in the weekend ostensibly to help out but Elizabeth said he never did anything. Occasionally he would take her to netball when her mother was sick but he would never watch the games. The boys were living in the sleep-out by now. Keith and Kathryn played a lot of computer games together, leaving Elizabeth to take care of her baby sister.

At 14, Elizabeth became increasingly distressed, desperate for the abuse to stop. Eventually she went to live with her father, not because she really wanted to but because she wanted to feel safe.

"When you're in an abusive situation you learn how to keep yourself safe. On the weekends Mr E came over I slept in Mum's bed or made sure I had friends over."

Before she moved to her father's house, she confided in her best friend that Mr E was abusing her and this was why she was moving. Her best friend told Kathryn about Mr E's abuse of Elizabeth.

"My Mum rang my dad that evening who then showed up first thing in the morning. I had to sit down and talk to my parents about what had happened to me. They asked what I wanted to do. That's when I was supported to go to the police station."

Elizabeth's best friend also claimed she too had been abused by Mr E but Elizabeth didn't believe her.

"My best friend didn't like all the focus on me. She had basically moved into my mum's house when I left. My mum was very heart broken over my moving out.

"If he touched her he would have touched all my friends. He would never touch me when friends were over plus why would she come back if he did that to her?"

Her best friend, Elizabeth and Timothy took Mr E to court. Elizabeth and her best friend had their case heard together but their stories didn't line up. Elizabeth believes this is the reason why they weren't believed and the case failed. It didn't help that their grandmother was also hostile to her.

"I had pending charges on my uncle at the same time. My grandmother didn't like this so went to court against me with Mr E calling me a liar. Mum was up against her family, supporting me and cutting them off."

Elizabeth dropped out of school because she felt everybody knew she'd been to court in the sexual abuse case.

In 1999 Mr E reported Kathryn to Work and Income. In 2000 WINZ told her their investigations revealed she was ineligible for the benefit she had received from 1994-99. She was accused of owing about \$120,000. In 2001 she was convicted on 26 counts of benefit fraud. Elizabeth was back home by this time.

When the news of Kathryn's case was published in the local paper, Elizabeth's friends were confused. Every time they visited only her mother was home, never Mr E. But half the town also thought Eloise was her daughter, said Elizabeth. "People had no clue but they were very judgy."

Meanwhile WINZ had all the paperwork explaining her mother's situation. They knew she was in hiding and why. Her file was always locked. When Kathryn went into WINZ, someone had to unlock it. Elizabeth remembers that one of the case workers was a parent of a child at the school she attended and says even she knew that no-one but her mother showed up to family days and parent/teacher interviews etc

"If she had been doing benefit fraud, then he was doing it too. If she was in a relationship, how was she paying the bills because she wasn't working?"

When Kathryn was jailed, immediately after her court case, the children were left without any support.

"No one came to help us. We were left with no mother. My boyfriend took us to visit Mum. It was strange and scary seeing her in prison."

Motherless and alone, the children were under immense pressure.

“Everything went to shit. Mr E tried to kidnap Eloise. Someone smashed a window in mum’s bedroom where Eloise also slept and the boys ran outside with torches. They said it was Mr E. Eloise grew up calling her father the big bad wolf because he came to the window when she was four.”

The children had to pack up the house quickly, leaving a lot of mementos and things they needed behind, and rebuild their lives again. Keith took Eloise since Elizabeth, 16, was pregnant with her first child. Timothy also went with Keith. Kathryn was in jail.

Elizabeth stayed with her boyfriend who went farming. She was able to access her trust fund to buy things for her baby. Timothy got into trouble with the police. He and Keith drank a lot and did drugs.

Then Kathryn got out on bail. But after an argument with Timothy, Kathryn cut the cord to the computer. In retaliation, Timothy told police his mother had hit him so she was locked up again.

After the boys had a party that saw the police being called while Eloise was in the bedroom, Child Youth and Family uplifted the little girl and put her into a foster family for four days where she remembers being smacked for dropping peas on the floor.

Elizabeth, who was living on a youth benefit by now, got custody of Eloise. She returned her sister to Kathryn when she got out of jail. Before her own baby was born, she broke up with her boyfriend and went back to her mother’s house. It wasn’t an easy relationship. She said she loved and respected her mother but they clashed, in part because she blamed her for not protecting her or Eloise.

“Before Mum died we talked about it. I told her I forgave her and didn’t blame her. I understand you can’t always be there and don’t always know what’s going on. I didn’t blame mum for what happened, I just couldn’t understand why she couldn’t see it. But then all she saw was her own grief over Robbie.”

Elizabeth also noticed a change in Eloise’s behaviour towards her mother’s current husband, Michael. Eloise wouldn’t tell her what had happened but Elizabeth guessed and raised the possibility of abuse with her mother who didn’t want to know.

“I think if you look closely enough you see things. I was looking closely at Eloise and I just knew it. I think mum didn’t want to see, as Eloise was her last child to get right. She always called Eloise her second chance.”

So Elizabeth rang CYFS for help. Instead they wanted to uplift Eloise. This enraged her mother who told CYFS and her daughter where to go. This was not the outcome Elizabeth wanted either.

“She didn’t contact me for the rest of my pregnancy (her third). But when I was in labour I rang her and everything went back to normal.”

Elizabeth has three children with the same father. She broke up with him several times due to his violence, often returning to her mother’s home. On one occasion Timothy attacked her. She doesn’t hold it against her brother though she holds him accountable for his actions.

Her first child, a son, is missing the bones in his legs and has had 20 surgeries to date. He resembled Robbie, being blonde and blue-eyed and he was also the first grandchild. Elizabeth remembers her mother clung to him.

After she finally split from her ex, Elizabeth stayed single for many years because she wanted to shield her children from potentially abusive men. During this time Kathryn was a tremendous support.

Elizabeth began studying and achieved a certificate in community skills intending to do her Bachelor of Social Practice when the youngest was at kindergarten but she never completed the first year. The pressure of looking after Eloise and her mother on top of everything was overwhelming. She also struggled with her mother's poor health.

"I was on the edge of coping. Mum was very sick which over time got worse. A tear in her main artery to her heart, kidney and lung issues, high blood pressure, gout, arthritis, collapsed disk in her back and asthma. To top it all she was overweight and couldn't lose it due to everything that was wrong with her. Mum's physical and mental illnesses made it a struggle to support her at times making it very hard on Eloise and myself."

She then sold everything and moved to Australia to be with her father, returning seven months later, to her mother's house until she found a place in Huntly. Here she met her current partner. They have been together for eight years.

The man who abused Elizabeth and Keith is currently in jail in Australia for abusing his own children.

"If we could prove that these two men were lying and did those things to us, it would prove Mum wasn't lying because Mum's case happened afterwards. I thought about confronting him. I got fixated on it but in the end I decided to leave it. There was no guarantee he would admit anything anyway."

She's also angry her grandmother accused Kathryn of abusing her children. Elizabeth says she was only ever slapped once and that was after Elizabeth had sworn at her mother when she was 14 and wanted to live with her father. The truth is her mother spoiled her.

In the intervening years Elizabeth has thought a lot about what happened to her and has learned how to deal with the trauma.

"This story is my past but it is not who I am. I can tell people about this and it's like I'm reading a book. I can emotionally detach myself. I emotionally detached from life when mum died in order to get things sorted but I fell apart afterwards. I had put everyone else before me. That's what Mum taught me. That's positive but it's negative as well."

Elizabeth now works as a team leader looking after four autistic adults. She has a level four community skills certificate and loves her job.

"I wouldn't do anything differently because I am happy where I am now. I have a really good life. You can change one thing in your life and that changes everything."

But Elizabeth says all credit for the life she leads now must go to her mother.

“Everything we are is because of her. She taught us lots of skills. Her life might have been shit but she still gave us the best start she could. Everything I learned was from my Mum. Counselling helped me sort out some not healthy things like holding on to grudges and gave me a more positive way of looking at life rather than absorbing the negative stuff. But, like Mum, I want my children to break the cycle.”

Eloise

The earliest memory Eloise has of her childhood is how upset she was when her mother was taken away from her at court and immediately imprisoned. She was four at the time.

After her mother was imprisoned she lived with brother Keith but CYFS uplifted her because of Timothy’s erratic behaviour in the home. Drink and drugs have been the downfall of Timothy’s life, she says.

“Part of the problem is that no one believed what Mr E had done to him.”

CYFS placed her in a foster home for four days where she was smacked by the carers for spilling food. She was then placed in Elizabeth’s care. Most weekends her sister would take her to visit their mother in prison. Elizabeth also gave Kathryn money when she could. Looking back, she describes the experience for her four-year-old self as confusing.

“I wasn’t allowed to hug or even hold her hand. I didn’t understand why she was gone.”

The pair had been very close. She co-slept with her mother until she was eleven. “I was a terrible sleeper. It was a co-dependent arrangement for both of us.”

When her mother came out of prison Eloise returned to her mother and they stayed at Pillars (a home-based charity supporting the children of prisoners) in South Auckland.

“I loved it there. There was a playground. We went back for Christmas there till I was eight or nine. But you could only stay there for three months.”

Eventually her mother was provided with a Housing New Zealand house in Meola Rd, Pt Chevalier.

“I was very confused about everything. One moment we were in Wellsford and I had a playroom, then I was in foster care, then Pillars and after that, Pt Chev.”

Her mother had begun online dating when Eloise was about three years old. This is how she met her next husband, Michael, who was from Canada. He was no safer for Eloise than Mr E had been for Elizabeth.

“I was touched by my mother’s last husband. I never told her that until I was 12 and that’s why I slept with Mum because I was safe there. But there were times when she would be working and that’s when she left me with her husband or Keith. I thought that man was my real Dad.”

Eloise was enrolled at Pt Chevalier Primary but on her first day she cried so much that her mother took her back home for a month.

“I was a shy kid, pretty sheltered since I’d never been to kindy, though I did go to daycare for a while before Mum went to prison. I had older siblings so they were my social life.”

Kathryn was very concerned about her daughter's safety following Mr E's kidnapping attempt. So Eloise was always picked up and dropped off from school. If this arrangement ever failed, her mother would get very angry,

"I remember I went to a friend's place after school once. When she found me Mum yelled at me during the whole car ride. Mum had reasons for everything but she couldn't always express them."

Later Kathryn did several counselling and clearing anger courses.

"It helped. Mum's instant reaction to anything that was wrong was to yell. She was a helicopter parent for me."

From an early age, Eloise learned she should never talk about Robbie because it upset her mother so much. Kathryn often wrote about how she was feeling in an attempt to deal with her grief. The order of service at her funeral featured a letter she wrote to Robbie a year after his death.

"Sitting here thinking about you and crying, and all the memories we share. Wishing there was a sun, so I would feel all bright and beautiful but all there is is rain and I feel like I am dying slowly. My heart is torn apart, my soul is crying and all I see is blackness since you went away."

Money was tight. Pt Chevalier had become a relatively expensive area and few beneficiary families could afford to live there. Nevertheless Kathryn did her best for Eloise. Although she had swimming lessons, she didn't have the packed after school schedule of most local children. "I understood that Mum didn't have much money."

Also though Kathryn was unemployed, she continued to spend as if she was still working. Eloise said there were times when she was the one who had to put the brakes on. Although Kathryn got out loans and borrowed money from her children, she always paid everything back on time. Eloise says she had an incredible credit rating.

Eloise says the most stable thing about her childhood was the support from Elizabeth. She remembers that much of the time her mother was very disconnected, spending hours on the computer. This was exacerbated after she was injured while working at The Warehouse and could no longer work.

"She was in too much pain, and this caused other health issues. I also remember my mother's mental health suffering numerous times when visiting Work and Income, to obtain clothing or food grants. Any time she requested additional help, she would get the 'debt' she owed brought up and have to explain the situation numerous times."

At one point Kathryn needed glasses and asked WINZ for financial assistance. Again the issue of her debt was raised and she left in tears. However she persisted and eventually received her glasses in July 2019.

At Pasadena Intermediate Eloise was one of twelve students selected to go on a school exchange trip to Japan for a fortnight. Just before the trip she was hit by a car while walking down Meola road. The effects of that concussion lasted until she was in high school at Western Springs College where Eloise began to skip school. She also suffered

from depression and began self-harming. She was referred to counselling at the Kari Centre in Greenlane for a year. Despite this, she remained close to her mother and describes her as “my rock through my mental health issues.”

In 2013, when Eloise was 16, she left school with level two NCEA. She told her mother she would do correspondence school. Instead she fell in with a bad crowd. She tried and failed to return to high school. She also studied for a short time at Unitec. In 2015 she did a Crown Institute food and beverage course level two and three but remained unemployed until 2017, still living with her mother whose health had deteriorated. When her mother died, she was able to stay in the family home until Housing New Zealand found another house for her.

Her life turned around when she started work and met her current partner, now the father of her son. In 2018 when her son was nine months old, she began working part-time as a debt collector.

As for the brothers, she says Keith, who is now 40, is married with no children and is financially secure. He works in credit control. Before lockdown occurred, he intended to move to Australia.

However Timothy, 36, is still fragile. He has been in and out of prison for a variety of offences including domestic violence, drug use and driving offences. He last got out of prison in December 2019. Both Elizabeth and Eloise say he has never dealt with Mr E’s abuse. Mr E has since died. As well, Timothy believes he should have saved Robbie. He has eight children with seven different women.

Eloise and Elizabeth remain very close.

Afterword: Child Poverty Action Group

Since the 2016 publication of *Kathryn's Story*, multiple observers – including the Welfare Expert Advisory Group (WEAG) have all come to similar, damning conclusions: current treatment of benefit recipients regarding their relationships is damaging and harmful, to both the recipients and their children.

Relationship rules causing considerable harm

Relationships “in the nature of marriage” affect a family’s eligibility for benefits, but what constitutes such a relationship is unclear, and the rules are inconsistently applied. Thus, even for benefit recipient families who are not investigated, the lack of transparency and possibility of “relationship fraud” allegations causes harm and fear. This can have a huge impact on important life choices, particularly for sole parents, as well as those with disabilities on Supported Living Payment (with or without children). WEAG² highlighted that the relationship rules were ‘not working’ and were ‘causing considerable harm’, providing a barrier to beneficiaries (re)partnering, and putting unnecessary pressure on women to commit to a live-in relationship even when it is not in their best interests. Yet, despite this clear identification of a broken system, there is no evidence of movement towards WEAG’s recommendations that the welfare system “allows more time before deeming a relationship to have formed” and does “not deem two people who do not live together as being in a relationship for the purposes of welfare support”.

Healey and Curtin also note that “Current relationship rules disincentivise family relationship building which is good for both adults and children.” Current relationship rules and their arbitrary interpretation are likely to contribute to the high levels of loneliness for sole parents.³

The invasive questioning – even of those who are proactively seeking to ensure they do not break the rules inadvertently – continues, as these recent accounts (June 2021) on twitter show:

Shit's about to get really interesting. Have fallen in love with someone who is in love with me. [love heart emoji]

We don't intend to live together & can't support each other financially. So far WINZ says it's 50/50 if we will be allowed to date or not.

Case worker to call in 3-5 days...

- [tweeter 1, on Supported Living Payment with dependent children]

2. Welfare Expert Advisory Group (2019). Whakamana Tāngata: Restoring Dignity to Social Security in New Zealand. <http://www.weag.govt.nz/assets/documents/WEAG-report/aed960c3ce/WEAG-Report.pdf>

3. Walker, H. (2021). Still Alone Together: How loneliness changed in Aotearoa New Zealand in 2020 and what it means for public policy. Post Pandemic Futures Series: IV. Helen Clark Foundation: NZ. <https://drive.google.com/file/d/1KAJoLNdE4EQgGfQfZYHvKhrff1pll8UP/view>

My last relationship 7 years ago ended the same way. I had to work because his income was so small, had a complete physical & mental breakdown because I shouldn't be working, & we had to break up. My sons were devastated, we all were. WINZ destroys families

- [tweeter 1]

It's so crap. A friend had this... she was a solo mum – met someone, they got engaged, no sex or living together or sharing finances (Christian) and Winz had a spaz. It's archaic. Makes no sense

- [tweeter 2]

I was in an LDR [long distance relationship] and he visits for 3 weeks in every year, I got dobbed in by my ex husband and WINZ first demanded HIS income details and then I had my benefit frozen for 3 weeks

- [tweeter 3]

In addition, more needs to be done to ensure that those who are in relationships in the nature of marriage are not penalised financially for this partnering, but instead that income support settings are as neutral as possible in their impact on relationship decisions. It is a small but positive step that increases to benefits announced in the 2021 budget are, for the first time, per-adult increases and not, as has been the case in the past, per-household increases (meaning half as much per-adult for couples). This is one step of the many required toward income neutrality between single people and couples (meaning less financial pressure to stay single or to break-up).

We recommend that the Government:

1. Ensure relationship definitions and responsibilities in all legislation are consistent, fair and culturally appropriate for Māori and all people in Aotearoa New Zealand. This will require widespread and wide-ranging public discussions and consultations in a range of settings, and should include consideration of policy which enables people to decide for themselves when they are in a relationship.
2. Ensure the application of relationship definitions by government agencies is always transparent, clear and consistent to enable benefit recipients to live their lives and make decisions without fear.
3. Continue to change income support settings so they are more neutral in their impact on relationship decisions.
4. For JobSeeker and Supported Living Payment recipients in relationships, allow a partner's income of up to at least the average wage to be disregarded when assessing entitlements.

Serious ongoing concerns regarding the conduct of MSD investigations

In some cases, MSD's treatment of people in the 21st century is beyond belief. A 2019 Office of the Privacy Commissioner (OPC) inquiry⁴ found the MSD "systematically misused its investigatory powers while pursuing benefit fraud, unjustifiably intruding on the privacy of many beneficiaries". For example:

In one instance, a beneficiary described to us how MSD obtained, from a telecommunications company, an intimate picture shared by that individual with a sexual partner. The photograph was then produced at an interview by MSD investigators seeking an explanation for it.

More recently, Rosa Gavey⁵ examined the Ministry of Social Development's actions in three areas and found its actions in all three areas to be harmful:

- its investigation process and internal practices for accessing benefit recipients' personal and private information.
- Its decision-making process for determining benefit recipients' relationship status, including the misapplication of the Ruka case which determined that a de facto relationship marred by extreme levels of physical, psychological and financial violence is not considered to be a "relationship in the nature of marriage".
- Its prosecution and debt recovery processes.

Gavey concludes that the Ministry's actions result in no less a serious outcome than breaches of human rights for children and their caregivers:

...the Ministry continues to misuse and abuse their administrative discretion... to investigate and determine benefit recipients' relationship status. This is leading to unjust and punitive outcomes for benefit recipients, particularly single mothers and their children, and results in breaches of fundamental human rights.

Similarly, Olivia Healey and Jennifer Curtin in their 2019 report⁶ found that MSD fails to uphold the rights of children:

*A new Work and Income policy introduced in June 2018 requires two senior level members of staff to sign off on any decision relating to benefit suspension. However, allegations remain highly damaging for not only the beneficiary, but also for the children. **The implications of the process of allegations and investigations can be particularly detrimental for children.** One of the important ways that children are impacted is by the loss of income which may result from a benefit cut or the termination of a payment altogether. (emphasis added)*

4. MSD fraud investigations "intrusive, excessive and inconsistent with legal requirements" - Privacy Commissioner

<https://www.privacy.org.nz/publications/statements-media-releases/msd-fraud-investigations-privacy-commissioner/>

5. Gavey, R. Digging Through its "Dirty Laundry": An Interrogation of the Ministry of Social Development's Determinations of Benefit Recipients' Relationship Status (2021 Auckland University Law Review forthcoming)

6. *Relationship Status and the welfare system in Aotearoa New Zealand (2019)* by Olivia Healey and Jennifer Curtin. Auckland, New Zealand: Public Policy Institute/CPAG.

These findings would be concerning, even without the higher likelihood of past and ongoing trauma for benefit recipients.

WEAG's recommendations included the following in regard to fraud allegations: "...Apply the principles of natural justice in all steps, and, if the outcome is disputed, permit a review independent of the Ministry of Social Development." (WEAG Rec 17).

Most recently, the Beneficiary Advisory Service undertook research about sanctions on benefit recipients (for supposedly not meeting benefit obligations, rather than for benefit overpayment/"fraud").⁷ They recommended that MSD "ensure that welfare recipients have a clear understanding of the review of decision appeals process". Their participants reported feeling fearful of asking for review:

"I feel scared even still. I feel scared of doing review forms, because I'm scared that I'm going to piss [WINZ] off and they're going to punish me in a different way. It's like, because they have power; they have power over my financial security."

- Participant in Beneficiary Advisory Service sanctions research

Changes in Relationship Fraud prosecutions over time

While structural change recommended for so long has not yet been forthcoming (such as independent bodies to review MSD decisions; MSD discretion to waive debt; and prohibition on prison sentences for caregivers), there has been a reduction in the *numbers* of people being investigated and prosecuted in recent years. In the late 1990s, the then National-led government aggressively persecuted women (including Kathryn) for so-called relationship fraud and promoted anonymous dob-in campaigns (that are still a feature today). This was a source of pride:

"The government is strong on benefit fraud, and the increasing number being referred for prosecution is a direct result of the sharper focus of the Benefit Crime Unit in the past two years. This, along with data matching, means more than ever we are finding and prosecuting those who would defraud hard-working taxpayers."

- Peter McCardle, Associate Minister for Social Services, Work and Income, April 1999⁸

In CPAG's report [The complexities of relationship in the welfare system and the consequences for children](#) (Dec 2014) we outlined the urgent reforms needed. Nine years later, *none* of our 2014 recommendations has been implemented as far as we are aware, but we are pleased that the numbers of allegations, investigations and prosecutions into suspected relationship fraud have dropped significantly. MSD puts this down to a new three-tier approach of facilitation, intervention and investigation that the department has taken since 2015, starting under the then National-led government.⁹ WEAG endorsed this approach in 2019. As shown in Figure 1, between 2014 and 2019, investigations dropped

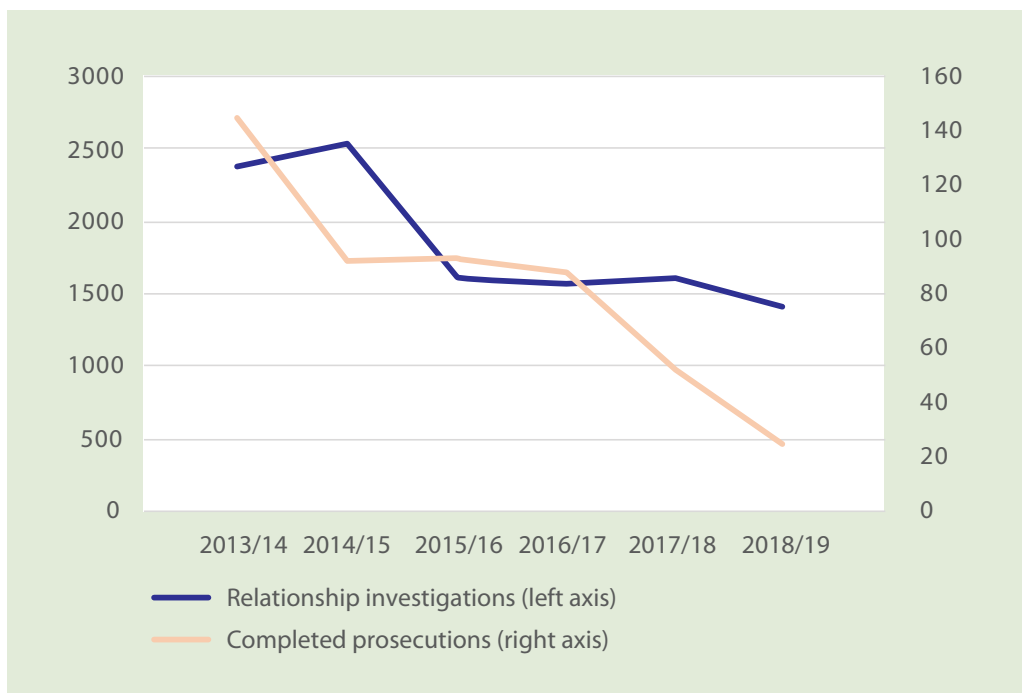
7. Beneficiary Advisory Service. (2021). *Understanding welfare sanctions in Aotearoa New Zealand*.

8. 23 April 1999. Ministerial media release "Government Clampdown On Benefit Fraud Intensifying" <https://www.beehive.govt.nz/release/government-clampdown-benefit-fraud-intensifying>

9. Neilson, M. (2021), "Benefit fraud prosecutions by Ministry of Social Development drop 90 per cent in five years" NZ Herald. <https://www.nzherald.co.nz/nz/benefit-fraud-prosecutions-by-ministry-of-social-development-drop-90-per-cent-in-five-years/SYQJ7QIU52B22PT2W7RH2K4AAI/>

by 40%, from 2382 to 1413 per year, while prosecutions have dropped by more than 80% from 143 to 25 per year. (This is for all those investigated, including people without dependent children.)

Figure 1: MSD Investigations (left axis) and Successful Prosecutions (right axis) of "Marriage Type Relationships" (source: OIA response)



For those successfully prosecuted, however, it is unclear whether the number of people (and parents) being sentenced to prison has also decreased, as we do not have access to these figures specifically for relationship fraud. However, for benefit fraud *overall*, the percentage of those subject to successful prosecution who were sentenced to prison increased, meaning that while successful prosecutions reduced, the numbers going to prison did not drop to the same extent.

Figures 2 and 3 below show prison sentences for women (more likely than men to be primary caregivers) for benefit fraud: Figure 2 over the last 40 years, and Figure 3 over the last 12 years, including as a proportion of successful prosecution. The very aggressive way imprisonment was pursued in the late 1990s and 2000s is clear from the spike in Figure 2.

For women, convictions in court for benefit fraud overall dropped 50% between 2013 and 2019 (calendar years), but prison sentences dropped by only 25% over the same period. Between 2010 and 2019, numbers of prison sentences for benefit fraud overall (for all genders) fluctuated between ~200 and ~300 per year, and, as Figure 2& 3 show, prison sentences for benefit fraud overall for women fluctuated between ~50 and ~100. In 2020, both convictions and prison sentences reduced further – but it is unclear whether this was temporary, due to Covid-19.¹⁰

10. Reliable comparisons over time by ethnicity is not possible for the period under review: ethnicity was not recorded in 62% of successful prosecutions in 2013, reducing to 13% in 2020.

Figure 2: Imprisonment sentences for benefit fraud (women) 1980-2020 calendar year (data source: StatsNZ NZ.stat Justice: "Adults convicted in court by sentence type - most serious offence calendar year" gender: "female", offence: "obtain benefit by deception")

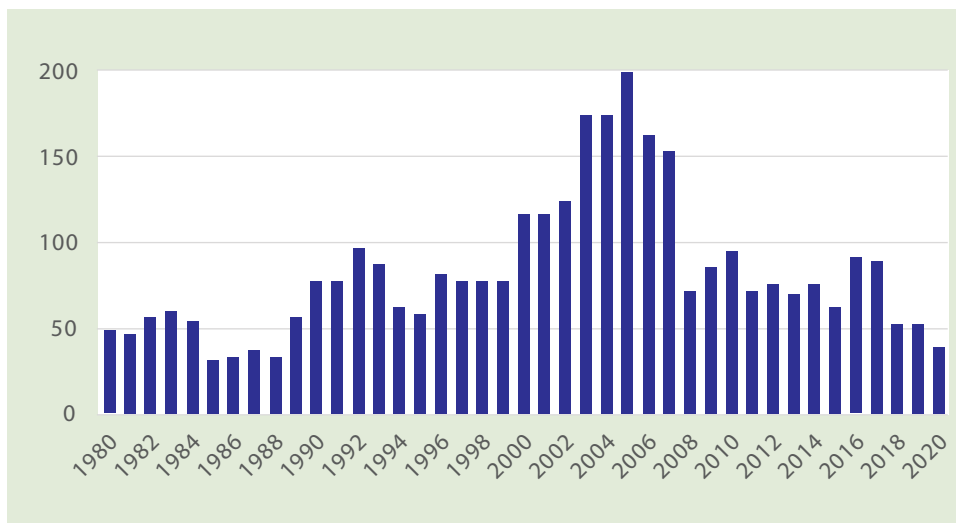
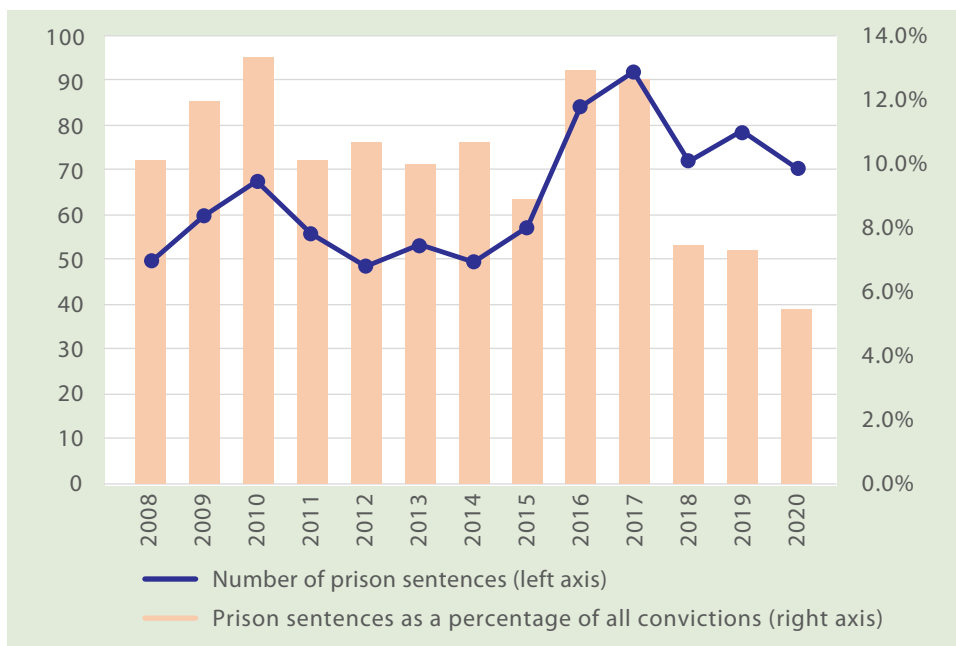


Figure 3: Imprisonment sentences for benefit fraud (women) (2008-2020) raw numbers (left axis – orange) & as a percentage of successful prosecutions of women for benefit fraud (right axis – blue) (data source: StatsNZ NZ.stat Justice: "Adults convicted in court by sentence type - most serious offence calendar year", gender: "female", offence: "obtain benefit by deception")



Disturbingly, Māori are disproportionately impacted by investigations and prosecution regarding relationship status, comprising 38% of the investigation subjects (the same percentage and number as Pākehā, from a lower population base) and 44% of the prosecutions in 2018/19, reflecting systemic racism and discrimination. However, this disproportionate impact has reduced somewhat over recent years: in 2013/14, Māori comprised 43% of those investigated and 52% of those prosecuted. We hope this trend of reduced discrimination accelerates. Discrimination of women has also reduced in recent years. In 2018/19, women were subject to 52% of such investigations completed, compared to 76% in 2013/14 (data source: MSD OIA response).

Even if they do not result in a prosecution, the investigations themselves result in a high cost to beneficiaries. **The reduced number of prosecutions does not mean that the cost to individuals of being subject to the investigative process has reduced.**

Any investigation can be invasive, stressful and traumatic, irrespective of the outcome. In contrast to the criminal justice system where individuals are treated according to the principles of natural justice and deemed innocent until proven guilty, the onus in the welfare system is on the beneficiary during these investigations to prove that they are innocent.

Investigations can be generated by anonymous tip-offs, which Work and Income still encourages, leaving open the possibility of manipulation by vengeful and abusive ex-partners as in Kathryn's case. A law change in 2014 has meant that a beneficiary's partner can also be held liable, which may protect some women from being blackmailed by abusive partners.¹¹ However, this does not prevent vindictive family members or others from 'dobbing' them in– and could, in fact, provide *more* incentive for abusive ex-partners to do so.

The power imbalance in these investigations makes it difficult for the accused to assert their rights. Fear of losing their benefit may prevent individuals from challenging a decision or outcome. In some cases, mothers accused of relationship fraud may be threatened with prosecution unless they accept whatever debt the MSD say that they owe. Those prosecuted are advised to plead guilty and show remorse in order to get a reduced sentence. We have heard of cases where women (whether or not they are innocent) are told their options are to plead guilty and receive a home detention sentence, or plead not-guilty and go to prison. While the landmark Ruka case¹² established that domestic violence must be taken into account, this has been too often ignored.

Ben Hoffman, a Community Law advocate specialising in benefit law has had significant success having MSD cancel debts from poor quality relationship investigations as far back as 1992. To date, he reports achieving over \$220,000 of cancelled debt and \$56,000 in wrongly collected repayments refunded. He has also helped people under investigation to avoid having debts created as an outcome of the investigation process and a number to avoid criminal prosecution when the effect of this was significantly disproportionate to their alleged offending. This shows the results achievable if someone dealing with an MSD investigation has skilled legal help. Sadly, it indicates there will be others dealt with unjustly as they had no such help. Only a tiny number work in the area of benefit law. There is also only a tiny number of people who will challenge the MSD decision to create debt for an alleged relationship. Ben Hoffman reports, in the past decade, the Social Security Appeal Authority only dealt with approximately eight alleged relationship cases. This shows there are serious barriers to people exercising their rights, mainly a lack of legal representation. Legal Aid is not available for MSD investigations, most Community Law Centres do not have the capacity or capability to assist, and impoverished beneficiaries cannot afford a private lawyer, even if any were able and willing to assist.

While the nature of the sentences and the numbers of children involved are not published, anecdotally it appears a lesser sentence of home detention and community service may be

11. Office of Hon Chester Borrows 6 August 2014 Combatting Welfare Fraud Fact Sheet: Relationship Debt Sharing https://www.beehive.govt.nz/sites/default/files/Update_on_Welfare_Fraud_Reforms.pdf

12. <https://www.justice.govt.nz/assets/Documents/Decisions/38-ssaa-31-16.pdf>

more likely today when children are involved. Typically, the judge starts with a lengthy jail sentence and then reduces that for extenuating circumstances or a guilty plea and remorse so the person convicted may not be actually imprisoned. Even so, community sentence and/or home detention as well as a criminal conviction are still a significant price to pay for a disputed overpayment. The absence of a transparent evidence base means that the cumulative societal impact of individual cases is impossible to assess and oversee. This is especially so when a guilty plea is agreed so that the person would not be subjected to a lengthy intensive and intrusive inspection of their private life including their social and economic circumstances from years ago. Given that this outcome has been well known for some time, failing to have it investigated independently it is itself an abuse of process.

Not only are these investigations detrimental for those involved, but they are costly to the taxpayer. Even after the number of investigations reduced considerably, the total operational costs for benefit fraud investigations in the year ending June 2019 amounted to \$13.8 million, over half of the total amount of benefit fraud overpayments according to MSD for that year¹³ – with little likelihood of recovering any significant percentage of assessed overpayments. One is left wondering how this is an effective use of resources, to spend such large amounts administering a broken system.

Further, these income support settings are fundamentally at odds with the goal of realising a more appropriate and effective justice system in Aotearoa.

It is for these reasons Child Poverty Action Group also recommends the Government:

5. Change the Ministry of Social Development's (MSD's) approach to one of "whakamana tāngata" as recommended by the Welfare Expert Advisory Group in 2019, which empowers people, and acknowledges that many people requiring assistance from the state have undergone trauma and/or may be still undergoing trauma.
6. In order to reduce malicious allegations, consider disregarding anonymous allegations, and allegations made by former partners and co-parents of the person subject to the allegations.
7. Abolish the use of criminal conviction and prison sentences for infringement of welfare-system relationship rules for caregivers of dependent children.
8. Ensure MSD has discretionary power to waive all debts, re-align MSD debt-waiving ability to that of the IRD, and make this alignment permanent.
9. Mandate an independent assessment of the impact of current MSD investigative processes on individuals, whānau and families, including children; and use this to ensure investigative processes do not cause undue harm.

13. <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/official-information-responses/2020/june/r-20200625-request-to-know-how-many-people-have-been-prosecuted-of-benefit-fraud-since-2014-to-date-and-what-cost-benefit-fraud-has-every-financial-year.pdf>

10. Hold an official independent investigation into the harms done to the many families accused of relationship fraud, especially in the 1990s and early 2000s. The independent investigation should have the authority to determine and order debt forgiveness, and its process must be respectful of the huge vulnerability of affected women and children.
11. Make a posthumous apology to Kathryn and an award for damages to her children for the harm caused to them by MSD's harsh, punitive and aggressive prosecution of Kathryn, her subsequent imprisonment and MSD's attempts to recover disputed debt.
12. Abolish the Benefits Review Committee, establish a review process independent of MSD, and provide beneficiaries with legal aid to assist them in preparing their cases.

*

As we wrote in the Postscript to Kathryn's Story 2016:

"[M]any of the children involved have 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. 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 observed:

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. [The 2019 Safe and Effective Justice Advisory Group's report laid out a clear vision for the justice system as one that upholds the values of Whanaungatanga and Aroha, and one that prioritises the wellbeing of children, whānau and families.¹⁴]

"Kathryn's story raises many concerning issues.

14. Turuki! Turuki! Move together! Transforming our criminal justice system: The second report of Te Uepū Hāpai i Te Ora Safe and Effective Justice Advisory Group 2019 <https://www.justice.govt.nz/assets/Documents/Publications/turuki-turuki.pdf>

“CPAG believes that the original criminal conviction and the subsequent legal challenges to the reparations demanded by MSD show a lack of 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.

“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 was 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.”

*

In order to be appropriate and effective, the justice and welfare systems must enable people to foster meaningful relationships, and strengthen communities. Further, the justice system must be -empathetic and compassionate to those who come into contact with it, particularly where children are involved. Current relationship rules are fragmenting communities, isolating beneficiaries, and inflicting trauma on those investigated, undermining progress towards this vision.

Afterword by Child Poverty Action Group, August 2021