On January 1st 1998 more than three years of parliamentary debate finally led to the new Dutch law on family names coming into effect. Actually the issue had been on the parliamentary agenda for more than a decade, the preliminary draft dating from 1984. The new law states that: children born within a marriage, or if born outside a marriage are recognised by their father, can be given the surname of either parent. It is thus possible to receive the mother's surname; historically this can be seen as a quite dramatic change in the law covering family names that has been in force since Napoleonic times.

The new law is a result of the attention given in the 70’s by the Dutch Government to questions of emancipation. In 1978 the then recently formed emancipation commission asked the Minister of Justice to allow research into the possibilities of changing the existing laws on naming children to make them more emancipated. That research, which ultimately led to the WODC report 'Achternamen' (family names) (Bol and Klijn, 1981), was also the basis for formulating the new law. The new proposition had to accommodate the following requirements:

1. Equal treatment for men and women;
2. Greater freedom of choice for parents;
3. The perceived unity of the family;
4. An appropriate governmental administration.

The law, which has applied since January 1st 1998, states that: parents have to make a joint decision, whether to give the child the mother's or father's surname. If possible it is better to make the decision before the birth but it can be made as late as when the birth is actually registered. If no agreement has been reached by then, the child automatically receives the father's surname. Furthermore the choice made for the first child is then binding for any further children born to the same relationship. In addition there is no procedure for a judicial appeal. It is these last points which have received fairly strong criticism and are seen as a weakness in the law from the standpoint of emancipation.

This research is a socio-legal evaluation study of the precise meaning of the new law. The basis for our reasoning was that the law should not embody any stimulus for a particular choice. The government attaches no intrinsic importance to the choice of family names. As far as the law contains a behavioural norm it is: parents, come to a joint decision based on equality? Legislation only has to supply the conditions that offer the best guarantee for mutual equivalence of men and women. Seen from this standpoint, the research has concentrated on such matters as: the degree to which the law is in accordance with the existing conception of giving names in society; how aware people are of the law; the manner in which local
councils (which are responsible for implementing the law) offer information and apply the rules, and also how the decision process between parents takes its course and the final result. In this way the research gives a picture of how, 4 years after coming into effect, implementation of the law has worked in practice.

Different sources have been used to collect material that will help answer these questions. Firstly a digital survey was carried out with a sample (N=1127) of the Dutch population between the ages of 18 and 72. As well as this, letters (65) were evaluated which had been written in reaction to a request placed in 3 newsmagazines. E-mails (118) were also received in answer to propositions posted on the website ‘Ouders (parents) on line’. Finally 99 Dutch councils participated in a digital survey and an evaluation was made of 90 council websites.

One of the most important conclusions of the research was the importance that the population gave to the freedom of choice. In 1980 at least 8 out of 10 people supported the proposal in which the father’s surname was the only option for the child, this is no longer the dominant viewpoint. Only 4 out of 10 people questioned chose this alternative. Whereas in 1980 only barely 1 in 10 choose a proposal in which the parents could choose between either surname for their child, this is now 1 in 2.

A second finding concerned how easy it was for people to obtain relevant information. On the basis of information originating from 99 local councils about their advise/information, it was concluded that this was mainly ‘reactive’, little time being spent on it. This took into account all the information available at reception desks, by telephone and that was circulated in folders. As a rule it was found that the information was supplied to a couple when the banns were read, giving notice of their intended marriage. A relatively new and attractive medium is the Internet. With this in mind the homepages of 90 local councils were visited to search for any information about the choices for children’s family names. The results showed that 4 out of 5 sites were completely, or at least in part, not satisfactory in what should be seen as reasonable criteria in the supply of information. The local councils appeared to be rather flexible with the implementation of the rules. Where possible a practical solution was sought for problems which resulted from the fact that the mother cannot usually be present when the child’s name is registered and therefore does not have the same opportunities as the father when it comes to joint choices.

Thirdly, the frequency that the mother’s surname was chosen was studied. This frequency was estimated in two different ways. The population survey resulted in an estimate of between 1 and 17 percent of children receiving their mother’s family name. The survey by the local councils gave an estimate of around 5 percent. There is no reason to believe that this percentage will increase dramatically in the short term.
Finally an evaluation was made of how the decision-making processes are actually carried out. Are the decisions made in ways that favour the working of the law? This is difficult to show but there are some indications that can be interpreted as positive. Decisions in 7 out of 10 cases were taken quickly, meaning that the couple made the decision about the surname as soon as the pregnancy had been confirmed. When asked about how difficult this decision had been and whether they were satisfied with how the mutual decision had been made, 8 out of 10 said that it had been (very) easy and that they were (very) satisfied with the decision process. These findings can be considered as circumstantial evidence in favour of how the law is working. Actually, without the choices made possible by the new law the question of a child's surname would have become even more contentious, considering the strong preference of the population for parents to be able to make their own choices. The choices offered give rise to possible different opinions. In these situations the law does not provide a mechanism for solving them. The parents, in one way or another, have to find a solution themselves. Even though disagreements appear to occur relatively rarely it is important that an acceptable compromise can be reached. There is no option of appealing to the courts, a mechanism that traditionally would fulfil this role. This forces one of the two parties to give way and as far as we can tell this appears to be the woman.

A small percentage (7%) of the population considers the choices provided too limited. They do not see why the choice made for the first child should automatically be binding on any following siblings. When considering the reason for this trend, one should primarily take into account how giving a child a surname has evolved in the last decade: more freedom of choice. The weight of this objection may well increase in due course.