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**Media Release  
Rt Hon Sir Geoffrey Palmer  
President, Law Commission**

**Provocation no excuse for murder**

“Section 169 of the Crimes Act 1961 must be repealed,” Sir Geoffrey Palmer, Law Commission President, said today.

Sir Geoffrey was announcing the release of the latest Law Commission report, *The Partial Defence of Provocation* (NZLC R98).

“The Law Commission reported on this issue in 2001, and recommended repeal then. In 2004, we were asked by the government to consider several further matters. This report is the result of that additional work.”

“Every law reform body that has considered what should be done about provocation – and there are half a dozen, dating back 30 years to 1976 – has recommended repeal of this partial defence. The time has come to act on those recommendations.”

The report explains why the problems with the partial defence are such that they cannot be overcome by redrafting it. In particular, the Commission does not believe that the policy basis for the defence is sound.

The Commission was asked to consider the implications of repeal for battered women, and the mentally ill or impaired. It found that provocation is successfully relied upon by very few such defendants.

Instead, Crown prosecution files show that during a five-year period, provocation was successfully relied upon in only four out of 81 murder cases. Two of the four – half – were so-called “homosexual advance” or “homosexual panic” cases.

“We do not believe that such circumstances offer a valid excuse for murder.”

“More broadly, and more importantly, intentional killing in anger in any circumstances is inexcusable. Section 169, as interpreted by the courts, requires the defendant to have demonstrated the self-control of an ordinary person. But even when very angry, no ordinary person responds to any provocation by deliberately killing. That is an extraordinary and inexcusable response.”

“If provocation is repealed, only one thing will change for defendants who would formerly have relied upon it. They will be convicted of murder instead of manslaughter. That is all that a partial defence achieves.”

Sir Geoffrey said that the provoked, by legal definition, are intentional killers, and all other intentional killers are convicted of murder.

“The Commission does not consider that the provoked should be treated any differently. This will not exclude them from recognition of any relevant mitigating circumstances. That can occur on sentence.”

The life sentence is no longer mandatory for murder in New Zealand. Under the Sentencing Act 2002, sentencing judges have discretion to impose a finite sentence.

“Sentencing judges may be better equipped to deal with the issues in a way that is consistent, and therefore just, than juries are. Sentencing guidelines presently being drafted by the Sentencing Establishment Unit based at the Commission are expected to assist judges, and offer public reassurance that the interests of particular groups of defendants will not be overlooked,” Sir Geoffrey Palmer concluded.

The report can be downloaded free of charge from the Law Commission website: [www.lawcom.govt.nz](http://www.lawcom.govt.nz).

For comment, contact either Dr Warren Young, **04 914 4838, 021 55 77 83**, or Sir Geoffrey Palmer, **04 914 4815, 021 55 77 82**.