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**THE LAW COMMISSION'S NEW  
PROGRAMME**

Address to the Council of the New Zealand Law  
Society

Thursday, 12 October 2006, 7pm

Rt Hon Sir Geoffrey Palmer,  
President Law Commission

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## **INTRODUCTION**

Thank you for the opportunity to speak to you. I spoke to the Board of the Society on 17 February 2006 outlining the way I saw the future for the Law Commission.

In that speech I said the first priority was to secure favourable decisions from the Government on projects completed by the Commission, but upon which no Government decisions had been taken. I am pleased to say those efforts have borne fruit. Three Bills from the Commission's previous reports have been introduced to the House – these were the Wills Bill, which is a re-write of the 1837 English legislation in modern language, the Succession (Homicide) Bill and the Arbitration Amendment Bill. More are on the way. In particular, the Property Law Bill resulting from the Rt Hon Justice Blanchard's 1994 report is in its final approval stage and the Bill will be seen before the end of this year.

## **CURRENT WORK**

Since I last spoke to you, the Commission has tabled in the House of Representatives its *Access to Courts Records* Report NZLC R93. This contains an important and far reaching set of recommendations that are important to the legal profession and to the administration of the criminal law.

The Commission has also published its *Waka Umanga: A Proposed Law for Maori Governance Entities* Report NZLC R92. The Commission has also tabled in Parliament its *Sentencing Guidelines and Parole Reform* Report NZLC R94. This report has the unique distinction of having been adopted by the Government before it was even printed.

The *Custom and Human Rights* Report dealing with 22 Pacific countries, makes recommendations about how custom law and human rights can be reconciled. It has been completed. The long running project on *Entry, Search and Seizure* is nearing completion and will result in an integrated set of recommendations bringing all the provisions on entry, search and seizure in the Statute Book together in one place, and exhibiting a systematic framework.

## **NEW REFERENCES**

For the financial year beginning 1 July 2006, the Law Commission and the Minister of Justice, the Hon Mark Burton who is also Minister Responsible for the Law Commission, have agreed upon a fresh set of references. These will be important to the Law Society and most of them will be of interest to the Society. Some of them were stimulated by representations made by the Society. Since I assumed the Presidency, I have had regular meetings with the staff of the New Zealand Law Society in order to apprise them of the Commission's thinking and receive comments on what reform projects should be undertaken.

## **INDEXING AND ARRANGING STATUTE LAW**

Accessibility of New Zealand statute law is a topic central to the statutory purposes of the Law Commission. This project, which the Commission is running in conjunction with the Parliamentary Counsel Office, will investigate and recommend methods of making New Zealand statute law more accessible by the introduction of a more systematic method of classifying and/or indexing Acts of Parliament.

This project will investigate statutory classification or indexing in other jurisdictions. It will review electronic subject-based indexing and searching methods. It will develop a paper for public consultation.

The appointment of Professor John Burrows QC as a Commissioner, commencing on 1 February 2007, will strengthen this project. He has been involved with it since its inception and, as a full-time Law Commissioner, his contribution to it will be invaluable. Professor Burrows is New Zealand's leading authority on statute law.

## **SEDITION**

A smaller project involving a review of seditious offences in the Crimes Act should be completed by March 2007. It is well advanced now, and a Consultation Paper will be placed on the Law Commission's website on 17 October. Our task in carrying out this project has been much assisted by the fact that the Australian Law Reform Commission has had a similar project that is now completed. In essence, the consultation paper we are publishing will say that, in a free society, defaming the Government should not be

an offence. We do not need the Crimes Act provisions against sedition. The elements of that offence that should remain criminal are covered by other existing provisions in the criminal law.

## **PUBLIC INQUIRIES**

The Commission also has a reference to review and update the law relating to public inquiries in New Zealand. This review includes inquiries established as Royal Commissions and other Commissions established under the Commissions of Inquiry Act 1908. But it also covers ministerial inquiries, ad hoc inquiries under specific statutes, and departmental inquiries. The Department of Internal Affairs is happy about this project that was suggested by the Wellington District Law Society.

The law in this area has not been looked at for a long time and the need for a review is long overdue. The increased use of ministerial inquiries that lack power to compel evidence requires some consideration. And there are many other issues. This project was suggested to the Commission by the Public Law Committee of the Wellington District Law Society.

## **STRUCTURE OF TRIBUNALS**

The Commission, in conjunction with the Ministry of Justice, is also committed to providing a final report on issues involved in establishing a unified Tribunal structure, including the operational implications of the incremental inclusion of Tribunals in the new structure. This is unfinished business left over from the Government's response to the recommendations set out in *Delivering Justice for All: Review of Courts and Tribunals* NZLC R85, conducted by the Hon Justice Robertson. The recommendations of that report in relation to Tribunals are important, and they need to be implemented by the production of a draft Bill to establish a new unified Tribunal structure. This is what the project will do. The principle sounds fine, but there is a lot of detail to be worked through. This project could take two years or more, given the complexity of the task and the press of other work.

## **PRIVACY**

Privacy has been a subject that has concerned New Zealand lawyers ever since the passage of the Privacy Act 1993, if not earlier. Changes in technology have been so rapid and so far ranging that it is difficult to keep up. The Law Commission is going to undertake a large Privacy project that will last for several years. First, there will be a high level policy overview to assess privacy values, changes in technology, international trends, and their implications for New Zealand civil, criminal and statute law. Again, there is a big project going on in Australia on this which will be of considerable assistance to us. I had discussions about this in Sydney with the Australian Law Reform Commission last week.

Another plank of the privacy project is a review of the law relating to public registers to see whether it requires alteration.

The project will also consider and report on the adequacy of New Zealand civil law remedies for invasions of privacy, including tortious and equitable remedies. We will also look at the criminal law dealing with invasions of privacy, and finally we will review the Privacy Act 1993. It should be understood that the Ministry of Justice is proceeding with technical changes in the Act to improve its operation. We will not begin to review the Privacy Act itself until the nature of those changes is clear.

## **SENTENCING AND PAROLE**

In the area of criminal law, the Law Commission has a lot on. There is a large continuing project, for which separate appropriation has been provided, to work through the preparation of sentencing guidelines as a result of the Government's decisions on the Commission's Sentencing and Parole Report. We are working with Judges on this, and the process is likely to take two years. The Chief Justice and Chief District Court Judge have been kind enough to provide assistance to the Commission, by making available Hon Justice Lowell Goddard, Hon Justice Graham Panckhurst and Judges Geoff Rea, Phil Cooper and Colin Doherty. There will also be a visit to the United Kingdom in November to conduct discussions with the Sentencing Council of England and Wales and to explore how we might collaborate in the development of guidelines.

The Commission's Senior Consultant, Dame Silvia Cartwright, will also help with this project.

## **CRIMINAL PROCEDURE**

In addition, working with the Ministry of Justice, the Commission will produce a piece of comprehensive criminal procedure legislation. The purpose of this project is to streamline and simplify criminal court processes, in accordance with policy approvals that were made some time ago. It is likely that criminal procedure provisions from the Crimes Act 1961, the District Courts Act 1947 and the Summary Proceedings Act 1957 will be consolidated in one Act.

The policy issues under consideration involve possible amendments to the summary and indictable distinction in the statute book; the option of producing criminal procedure rules; whether there should be provisions for representative charges; whether the middle band should be abolished or reformed; and inclusion of improvements to pre-trial criminal processes proposed in earlier Commission reports and the Ministry of Justice's Service Improvement Programme.

## **FUTURE PROJECTS**

Two other areas that the Law Commission is examining for future projects involve the reform of the statute law relating to trusts and charitable trusts, and a comprehensive review of the Land Transfer Act 1952. The Commission is of the view the time has come now to address both of these important issues, and no doubt that will be of vital interest to the Society. But if they come to pass, it will not be until next year's programme.

I have set out as an Appendix to this speech, the Terms of Reference of each of the new projects approved for this year's programme.

## **LEGISLATION DESIGN COMMITTEE**

The Law Commission is also involved in servicing the Legislation Design Committee recently established by Cabinet and chaired by me. It contains representatives from the Treasury, the Crown Law Office, Department of Prime Minister and Cabinet, and the

Ministry of Justice. The purpose of the Committee is to consider issues of legislative architecture at an early stage in order to try to avoid problems with legislation after it has been drafted. The thrust of the effort is to ensure that legal issues and the choice of instrument are considered earlier in the policy development phase than they now are.

I have found as Chair of the Legislation Advisory Committee that the LAC Guidelines are often not considered until too late in the legislative process, and it is difficult to set things right unless the legislative plans are looked at earlier.

The Committee has already had some challenging assignments, and will I hope, make a useful contribution to the quality of legislation in New Zealand. That, of course, is one of the central purposes of the Law Commission.

## **20<sup>TH</sup> ANNIVERSARY SEMINAR**

The Law Commission celebrated its 20<sup>th</sup> anniversary this year. It was marked by a full day seminar held in the Legislative Council Chamber of Parliament. The host was one of the original Law Commissioners, the Honourable Margaret Wilson, and now Speaker of the House. Addresses were delivered by all the Presidents of the Law Commission, starting with Sir Owen Woodhouse, Sir Kenneth Keith, the Hon Justice Baragawanath, the Hon Justice Bruce Robertson and me. The Chief Justice, Dame Sian Elias, also one of the original Law Commissioners, also delivered an address. The seminar was opened by His Excellency the Governor-General Anand Satyanand, as his first official engagement in office.

It was a stimulating and interesting seminar, at which the keynote address was given by the Honourable Justice Michael Kirby from the High Court of Australia. The papers are to be found on the Law Commission's website, and we are hoping to include them in a book.

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## Accessibility of New Zealand Statute Law

### Terms of Reference

The Commission, in conjunction with the Parliamentary Counsel Office, will investigate and recommend methods of making New Zealand Statute Law more accessible by the introduction of a more systematic method of classifying and/or indexing Acts of Parliament. This will include:

- (a) Carrying out preliminary research;
- (b) Investigating statutory classification or indexing initiatives in other jurisdictions;
- (c) Reviewing electronic subject based indexing and searching methods;
- (d) Developing a discussion paper for public consultation; and
- (e) Making final recommendations to Government.

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## Review of Seditious Offences

### Terms of Reference

The Commission will review the existing seditious offences set out in sections 80 to 85 of the Crimes Act 1961, and make proposals for any changes to the New Zealand law that are necessary and desirable.

The matters to be considered by the Commission will include:

- (a) Relevant existing and proposed legislation, including the New Zealand Bill of Rights Act 1990;
- (b) Developments in other comparable jurisdictions;
- (c) Any other relevant matters.

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## Terms of Reference: Public Inquiries

The Commission will review and update the law relating to public inquiries in New Zealand. This review will include inquiries established as Royal Commissions and other commissions established under the Commissions of Inquiry Act 1908, Ministerial inquiries, ad hoc inquiries under specific statutes, and departmental inquiries.

The paper will not look at inquiries conducted by Select Committees, the Ombudsman, Auditor-General or by standing commissions including the Law Commission, Human Rights Commission, Privacy Commission, Health and Disability Commission, Securities Commission and Commerce Commission.

It will also not specifically consider tribunals and other agencies which exercise powers derived from the Commissions of Inquiry Act, except to the extent they will be affected by any suggested changes to that legislation. Examples of these include the Broadcasting Tribunal, Transport Accident Investigation Authority, Maritime Safety Authority and Waitangi Tribunal.

In conducting this review, reports already undertaken by the law reform agencies in Australia, Canada and the United Kingdom.

The report will consider in particular the following issues:

- Whether the legislation should extend to all public inquiries;
- Procedure at inquiries, including adversarial or inquisitorial approaches and possible standardisation;
- Powers of inquiries, including summoning witnesses etc and contempt;
- Impact of the New Zealand Bill of Rights Act 1990 including natural justice requirements;
- Secrecy and impact of the Official Information Act 1982;
- Rules relating to evidence and potential impact of a new Evidence Act;
- Immunities and privileges of commissioners and witnesses;
- Review by the courts, including stating a case;
- Role of counsel for parties and counsel assisting;

- Costs and fees;
- Role of Secretariat.

The Commission will produce a draft report for circulation and discussion followed by a final report and draft legislation.

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## Terms of Reference

### Review of privacy values, technology change, and international trends, and their implications for New Zealand law

This project will proceed in stages, with reports made at each stage.

- 1 In stage 1 of the project, the Law Commission will undertake a high level policy overview to assess privacy values, changes in technology, international trends, and their implications for New Zealand civil, criminal and statute law. The Law Commission will conduct a survey of these trends in conjunction with the Australian Law Reform Commission. A report on this overview will be published.
- 2 In stage 2 of the project, the Law Commission will consider whether the law relating to public registers requires systematic alteration as a result of privacy considerations and emerging technology.
- 3 In stage 3 of the project, the Commission will consider and report on:
  - (a) The adequacy of New Zealand's civil law remedies for invasions of privacy, including tortious and equitable remedies; and
  - (b) The adequacy of New Zealand's criminal law to deal with invasions of privacy.
- 4 In stage 4 of the project, the Commission will review the Privacy Act 1993 with a view to updating it, taking into account any changes in the legislation that have been made by the time this stage of the project is reached.

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## Development of Comprehensive Criminal Procedure Act – Terms of Reference

The Law Commission will liaise with the Ministry of Justice and the Parliamentary Counsel Office to reconvene a justice sector interagency working group.

The primary function of the group should be to draft and consult upon a Criminal Procedure Bill to consolidate and clarify criminal procedure provisions from the Crimes Act 1961, the District Courts Act 1947, and the Summary Proceedings Act 1957.

Drafting should progress largely in accordance with the Cabinet approvals for this project that were issued in 2001. However, some of the 2001 decisions will need to be reconsidered in light of subsequent developments.

The interagency group will produce an agreed draft bill for introduction to Parliament, and should address the following further matters in the course of its work:

- Whether it is necessary or desirable to amend all references to “summary” and “indictable” that appear in the statute book, as a consequence of the Cabinet agreement to abolish the summary/indictable distinction.
- Whether the Criminal Procedure Act should be supplemented by Criminal Procedure Rules; and whether some of the procedural provisions that presently appear in primary legislation could or should be shifted into Rules.
- Whether, and if so how, New Zealand should provide for representative charges, including whether they should be available in the summary jurisdiction.
- Whether the “middle band” should be abolished or reformed. The middle band comprises cases that may be heard in either the High Court or the District Court, subject to an administrative decision by a High Court judge. It is an innovation that poses significant case management problems.
- The extent to which other changes should be recommended to improve pre-trial criminal processes in the light of earlier Commission reports and the Ministry’s Service Improvement Programme.
- Any other relevant matters that arise.

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## Unified Tribunal Framework

### Suggested Terms of Reference

The Commission, in conjunction with the Ministry of Justice, will provide a final report on the issues involved in establishing a unified tribunal structure, including the operational implications of the incremental inclusion of tribunals in the new structure.

The report will include a draft bill to establish the new unified tribunal structure. In drafting the bill, the Commission and the Ministry of Justice will have regard to:

- (a) the Government response to the recommendations set out in *Delivering Justice: Review of Courts and Tribunals* NZLC R85;
- (b) any matters raised in further consultation with the tribunals affected.