
20TH ANNIVERSARY OF THE LAW
COMMISSION

Sir Owen Woodhouse
25 August 2006

First, I would like to address a brief word to the Governor-General: To say how pleased are his many lawyer friends that he has accepted that office, and how fortunate it is for the country.

Your Excellency, your wise and genial and steady feeling for all manner of people, and the fair and balanced attention you have given their interests is well known in our profession.

We know that your keen qualities will enrich the performance of your responsibilities and, aided by your wife, you will gratify your friends everywhere.

Today, it is a compliment that almost your first official act is to come here this morning, to give us a vice-regal and may I say, a fraternal blessing.

It is now 73 years since I had my own first experience of the law, I had won a tense battle to become office junior, at a dollar per week, in a family-owned firm of provincial solicitors.

They had valuable farmer clients, gained years earlier by the senior partner, now well into his eighties. Two other partners were his middle aged sons who were both wise and careful. They arranged that every fortnight or so their father would make a brief, cotton-woolled visit to the premises. He would then add a superfluous signature to trust account cheques to let his aging clients feel that his more vital functions remained in working order and at their disposal.

So much I noticed when I was very young. Today, with the position for me reversed, I can see that there is comfort in status without function. So I value Sir Geoffrey Palmer's invitation to be here. At the same time I understand why, as a careful man, he has kept me on a gentle rein.

I am not invited to look forward. Instead, I am asked to reflect upon experience, something which he thought could be elaborated quite easily in my case in a maximum of ten minutes.

My first reflection has a past and a contemporary relevance. It bears upon the *raison d'être* of the Law Commission. Spacious language is used by the parent Act. In words with an ascending order of significance, it describes itself as:

“an Act to establish a Law Commission as a central advisory body for the review, reform and development of the law of New Zealand”.

An operative s(3) requires the Commission:

“To take and keep under review in a systematic way the law of New Zealand;

to make recommendations for [its] reform and development”

and to advise “on ways in which the law of New Zealand can be made as understandable and accessible as is practicable”.

There is a further provision s3(c) to which I will return.

Twenty years ago, in an article published in the New Zealand Law Journal, I described all this as an ambitious authority as it certainly is. The article ends on a note of intention and hope.

“I feel sure [the Commission] will avoid the risks of the ivory tower syndrome. I know it will aim at standards designed to persuade Parliament that its work should not suffer the awful fate of pigeon-holing. And I trust that in accord with its statutory purpose it will make a special contribution to the development of New Zealand law which is contemporary, comprehensible, accessible, necessary and fair”.

So much for the stated, the explicit purposes of the Act.

But obviously the over-riding, the **final objective** of Parliament is not merely the production of persuasive, beautifully fashioned proposals in the form of reports. There is a further implicit and critical purpose. There is to be a consequential and subsequent achievement – the **actual** reform and development of the law by legislative implementation. In short, the Commission’s reports and the advices contained in them can never have been intended to be an end in themselves. Yet

years are allowed to pass before they are freed, if ever, from the troubled or jealous grip of departments.

Consider the sixth Report of the Commission. It answered in 1988 a request made by the Minister of Justice. (I hasten to add – as he then was!) The request was for review of limitation defences in civil proceedings.

Following detailed research within and beyond this country a discussion paper was widely circulated including a copy to all Members of Parliament. Not many responses were received. Uncomplicated and balanced proposals were then made by the Law Commission to bring into line the varying provisions of no fewer than 46 statutes. The proposals were supported by a model draft Bill. Eventually, three years later, a single issue was brought before Parliament. And since then? Silence! After eighteen years all else remains like sleeping beauty (I know you will forgive me) in a departmental pigeon-hole.

The problem of implementation is a perennial one. Parliament alone can decide what changes to the law are to be accepted and there are always the pressures of parliamentary time. But recommendations of the Commission deemed uncontroversial could well be implemented by the relevant Minister in terms of delegated authority. Most others could surely be fast-tracked. There are arrangements already in place for prior collaboration with the Legislation Advisory Committee, and the Reports will usually have the important support of a draft Bill already discussed with Parliamentary Counsel.

With all respect to well-meaning officials in the departments interpolated second-guessing of the Law Commission proposals ought never occur. Indeed a reverse process appears to be contemplated by subsection 3(c) of the Law Commission Act. It directs the Commission:

“To advise on the review of any aspect of the law of New Zealand conducted by any Government department or organisation and on proposals made as a result of review”.

Attention has been given in England and elsewhere to finding processes by which the implementation problem would be overcome. If the underlying, practical

purpose of the New Zealand Act is to be achieved surely the time has arrived for the early adoption by Parliament of an acceptable formula here.

My final reflection has me thinking of the Law Commission in its early years.

The successful launch of any enterprise depends very much upon the imagination and quality of those given the initial responsibility. On this anniversary occasion it is right and I should express my profound gratitude for the dedication to the purposes of the new Law Commission of the early commissioners and staff. They gathered round me and saved me from all the hard work.

I must not dissect them individually and in public. Their names alone suffice:

Jim Cameron, Sian Elias, Ken Keith, and Jack Hodder, Alison Quentin-Baxter, Margaret Wilson, John Wallace and Peter Blanchard. May I call them the gifted eight.

Nor can I forget those six early research officers:

Helen Aikman, Amanda McDonald, and Janet McLean, Prue Oxley, Megan Richardson, and Nicola White.

In the Law Commission, in those burgeoning days, there was no need to be reminded that the hand that rocks the cradle rules the world.

Mr President, as I have said earlier, I appreciate your invitation to offer a few words today. To be associated with my old and distinguished friend, Michael Kirby, and those able and valued colleagues who are to follow him, is both a compliment and a kindness.

Finally, and on a personal note, I believe I am entitled to say how pleased I am that you have joined the Law Commission. The lively imagination, and energy, and experience of affairs, that you bring to your role as its fifth President is a gift which will do much to ensure its future significance.

Owen Woodhouse