

Report No 26
for the year ended 30 June 1993

Other Law Commission publications:

Report series

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- NZLC R2 Annual Reports for the years ended 31 March 1986 and 31 March 1987 (1987)
- NZLC R3 The Accident Compensation Scheme (Interim Report on Aspects of Funding) (1987)
- NZLC R4 Personal Injury: Prevention and Recovery (Report on the Accident Compensation Scheme) (1988)
- NZLC R5 Annual Report 1988 (1988)
- NZLC R6 Limitation Defences in Civil Proceedings (1988)
- NZLC R7 The Structure of the Courts (1989)
- NZLC R8 A Personal Property Securities Act for New Zealand (1989)
- NZLC R9 Company Law: Reform and Restatement (1989)
- NZLC R10 Annual Report 1989 (1989)
- NZLC R11 Legislation and its Interpretation: Statutory Publications Bill (1989)
- NZLC R12 First Report on Emergencies: Use of the Armed Forces (1990)
- NZLC R13 Intellectual Property: The Context for Reform (1990)
- NZLC R14 Criminal Procedure: Part One: Disclosure and Committal (1990)
- NZLC R15 Annual Report 1990 (1990)
- NZLC R16 Company Law Reform: Transition and Revision (1990)
- NZLC R17(S) A New Interpretation Act: To Avoid ``Prolixity and Tautology'' (1990) (and Summary Version)
- NZLC R18 Aspects of Damages: Employment Contracts and the Rule in *Addis v Gramophone Co* (1991)
- NZLC R19 Aspects of Damages: The Rules in *Bain v Fothergill* and *Joyner v Weeks* (1991)
- NZLC R20 Arbitration (1991)
- NZLC R21 Annual Report 1991 (1991)
- NZLC R22 Final Report on Emergencies (1991)
- NZLC R23 The United Nations Convention on Contracts for the International Sale of Goods: New Zealand's Proposed Acceptance (1992)
- NZLC R24 Report for the period 1 April 1991 to 30 June 1992 (1992)
- NZLC R25 Contract Statutes Review (1993)

Preliminary Paper series

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Report of the
LAW COMMISSION
for the year ended 30 June 1993

Presented to the House of Representatives under section 17 of the Law Commission
Act 1985 and section 44 of the Public Finance Act 1989

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23 September 1993

Dear Minister

I have the honour to transmit to you the report of the Law Commission for the period 1 July 1992 to 30 June 1993.

This report is prepared under section 17 of the Law Commission Act 1985 and section 44 of the Public Finance Act 1989.

Yours sincerely

K J Keith
President

Hon Douglas Graham MP
Minister of Justice
Parliament House
WELLINGTON

PART 1

Report on the Year Ended 30 June 1993

THE LAW COMMISSION'S AIM

The Law Commission is an independent, publicly funded, central advisory body established by statute to undertake the systematic review, reform and development of the law of New Zealand. Its aim is to help achieve coherent and accessible laws that reflect the heritage and aspirations of New Zealand society.

AN OVERVIEW

During the year the Law Commission issued two major publications: a report, Contract Statutes Review (NZLC R25), presented to the Minister of Justice in May 1993, and a discussion paper, Criminal Evidence; Police Questioning (NZLC PP21), published in September 1992. It made substantial progress towards other high priority publications.

At the request of Ministers, other agencies and Parliamentary select committees, the Commission also undertook an increased amount of advisory work. Because of the urgency with which the advice is usually required, that work took precedence over some of the Commission's lower priority projects. One consequence of the pace of change in the public sector is that many legislative and policy proposals are put forward in a form that is not consistent with other aspects of the law or with basic principle. The Commission's function of advising on reviews of the law by other agencies is therefore an important way of improving the quality, coherence and accessibility of the law as a whole. With the same object, the Commission again made a substantial contribution to the working of the Legislation Advisory Committee.

While some of its existing projects cannot be carried forward until resources are available, others have recently been, or will soon be, completed. In conformity with its objective of ensuring, so far as possible, that its programme as a whole covers a reasonably wide range, the Commission decided to take up new projects for the review and reform of the law of succession, remedies for wrongs to goods, and the law of guarantees.

During the year the Commission held a number of seminars to which it invited outside participants. Most are referred to in reporting on the relevant project. Two, however, were designed to promote the Commission's commitment to ensuring that the reform and development of any one area of law, by the Commission itself or by other agencies, take account of wider legal and policy issues.

In December 1992, Professor Peter Hogg QC of the Osgoode Hall Law School, York University, an expatriate New Zealander who is a leading expert on the Canadian Constitution including the Charter of Rights, again spoke about recent developments in those areas, many of which are relevant to the interpretation and application of the New Zealand Bill of Rights.

In April 1993, the Commission took up an offer by the RT Hon Sir Ivor Richardson, a member of the Court of Appeal, to lead a seminar on law and economics, in particular on the application of economic analysis to the development of the law in New Zealand, whether by the courts or through legislation. Bob Dugan, Reader in Law at the Victoria University of Wellington, and Matthew Palmer, Senior Analyst in The Treasury, also presented papers.

The Commission took several initiatives to better equip itself to carry out its statutory duty to take into account te ao Maori. These included participating in

conference and courses, holding internal seminars on Treaty of Waitangi issues, arranging for introductory classes in te reo Maori for Commissioners and staff members, and inviting a small group of Maori leaders to meet with the Commission early in 1993/94 and after that on a regular basis.

THE LAW COMMISSION'S OUTPUTS

Part V of the Public Finance Act 1989, as repealed and substituted by section 31 of the Public Finance Amendment Act 1992, requires the Law Commission (and other Crown entities to which Part V applies) to include in its annual financial statements ``a statement of service performance reporting the classes of outputs produced by the Crown entity during the financial year as compared with the classes of outputs established at the beginning of the financial year and specified in the statement of objectives''.

The Public Finance Amendment Act 1992 did not become law until 21 December 1992. In the opinion of the Law Commission, it did not purport to impose on the Commission, or on any Crown entity similarly placed, an obligation to establish, except in the most general terms, the classes of its outputs at the beginning of a financial year commencing before that date. Nevertheless, in the expectation that it would eventually become bound by Part V of the Finance Act 1989, the Law Commission voluntarily included its in its Report for the period 1 April 1991 to 30 June 1992 (NZLC R24) a detailed statement of objectives and performance measures for the financial year ending on 30 June 1993. Similarly, it has voluntarily included a statement of service performance, as compared with those objectives, in its Financial Statements for the year ended 30 June 1993 and has submitted that statement to audit. (See page 30.)

The Commission has decided, in addition, to maintain its practice of including in its annual report a narrative account for the work done during the year.

PROJECTS

Evidence

The Commission's reference from the Minister of Justice requiring it to examine the law of evidence and make proposals for its reform with a view to codification continues to have a high priority. However, during the year it again had to take second place to the completion of a substantial discussion paper on the closely associated areas of the right to silence, police questioning and confessions. (See under Criminal Procedure.)

Nevertheless, draft discussion papers on documentary evidence and on privilege were completed and circulated to the Commission's expert consultants. Each topic proved to be complex, and gave rise to difficult policy issues. Substantial work was also done on evidence of conduct, character and credibility, on the evidence of children and other vulnerable witnesses, and on identification evidence, with a view to the publication of a discussion paper at least in the first two cases, and in the third if necessary.

Submissions and other feedback received on the Commission's discussion papers already published (Evidence Law: Principles for Reform (NZLC PP13), Codification (NZLC PP14), Hearsay (NZLC PP15), and Expert Evidence and Opinion Evidence (NZLC PP18) show that there is widespread support for the codification of evidence law as well as for the abolition of the hearsay rule in civil cases and its rationalisation in criminal cases. One of the Commission's major proposals, that expert evidence should be admissible if it would help the court or jury to understand other evidence in the proceeding or to ascertain any fact that is of consequence to the determination of the proceeding, was commented on in the case of *R v Decha-Iamsakun* [1993] NZLR 141, 148. The Court of Appeal stated that ``in our view the common law, applied reasonably liberally, is at least not far removed from that which the Commission thinks desirable.'' Valuable comments on

the detail of the proposals in all four papers will be reflected in the Commission's final recommendations.

Criminal procedure

As explained in earlier reports, the Commission must necessarily take up in states the reference from the Minister of Justice which requires it to examine the whole of the law governing criminal procedure. The main focus in the period under review was the continuation of work on the right of silence, police questioning and confessions - issues relevant also to the Commission's closely-related reference on the law of Evidence.

In September 1992 the Commission published a substantial discussion paper, Criminal Evidence: Police Questioning (NZLC PP21). In considering what reforms are required, the Commission identified three sometimes competing, public interests:

- first, that the law is upheld by prosecuting alleged offenders, bringing relevant evidence before the court and convicting those found to be guilty;
- second, that the Police and other officials of the State follow a lawful process;
- third, that the law is clear, accessible, coherent and fair, so that it can be easily understood by the public and equitably applied by law enforcement officers and the courts.

It found that the existing law does not always make clear or satisfactory provision for meeting these interests or reconciling them where necessary. In its discussion paper, the Commission suggested only minor reform of the present rules about comment on the silence of the defendant in response to official questioning and failure to give evidence at the trial. It proposed a real liability rule and an oppression rule to govern the admissibility of confessions, and also a rule that all improperly obtained evidence is presumptively inadmissible unless the court is satisfied that the exclusion of the evidence would be contrary to the interests of justice. Factors to be weighed in making this decision were identified.

The Commission also put forward draft rules which would permit the police to question for a defined period a person who has been arrested (in accordance with the existing law) on the ground that there is ``good cause to suspect'' the person of having committed an offence. The initial period of detention would be that which is reasonable in the circumstances, with strict time limits for that maximum period and any extension of it. An arrested person would not be able to be questioned against his or her will; that is to say, the right of silence would remain.

To ensure that improper pressure is not brought to bear on suspects, the rules would include safeguards requiring suspects to be given advice concerning.

- the reason for questioning
- the right of silence
- the right to consult a lawyer
- access to a friend or relative
- access to an interpreter
- access to consular assistance.

These safeguards would apply when

- a person is formally arrested or could lawfully be arrested;
- a police officer has grounds to suspect that a person has committed an offence and that person
 - is at a police station, or
 - has reasonable grounds to believe that he or she is being detained.

A failure to observe the questioning safeguards would render any evidence obtained presumptively inadmissible.

The Commission considers that the proposed questioning rules comply with the New Zealand Bill of Rights and International Covenant on Civil and Political Rights, to which New Zealand is a party. It would, however, be unable to recommend the enactment of the questioning rules unless arrangements are put in place to make legal advice available to suspects who would otherwise be unable to afford a lawyer. In the Commission's view, the right to consult a lawyer should not be regarded as likely to frustrate police questioning.

After the publication of the discussion paper (as well as beforehand), the Commission held a number of discussions with interested agencies, groups and individuals. A well-attended two-day seminar organised by the Victoria University Centre for Continuing Education in conjunction with the Law Commission provided a valuable opportunity to explore the issues with participants from a range of backgrounds.

During the year the Commission continued work on two other aspects of criminal procedure. As a follow-up to its issues paper *The Prosecution of Offences* (NZLC PP12),¹ the Commission began work on a discussion paper on that topic. The paper will explore ways of achieving autonomy and accountability in taking the decision whether or not to prosecute a suspected offender, and ensuring that decisions are taken with perceived fairness, objectivity and consistency, both within particular agencies and as between different agencies which undertake prosecutions. Any new arrangements must

- be efficient and effective in achieving the objects of the criminal justice system;
- be cost-efficient in themselves;
- preserve valuable features of the present New Zealand arrangements for the conduct of prosecutions.

The Commission also continued research on the history, present-day status of, and rationale for, the privilege against self-incrimination. The question is relevant to work on such questions as the grant of immunity from prosecution and also has important implications for the Commission's work on Evidence.

In addition the Commission completed preliminary research on issues arising in relation to jury trials.

Advisory work associated with the Criminal Procedure project included;

- Participation in an interdepartmental working group including representatives of the Department of Social Welfare, the Department of Justice, and the police which was set up to consider the recommendations of the Mason Report on the need for amendment of section 215 of the Children, Young Persons, and Their Families Act 1989. The Commission believes that the section does not in fact have such a restrictive effect on the questioning of children and young persons by the Police as might at first appear. It is not opposed to clarification of the section, but considers that any revised rules should afford

children and young persons an adequate standard of protection and should not in any case give them less protection than the rules which the Commission has now proposed for adults.

- Participation, at the request of the Department of Justice, in that part of the work of the interdepartmental Working Part on Enforcement, Prosecution and Sentencing, which was concerned with the power to require the giving of DNA samples and the storage in a data bank of the results of tests carried out on samples once given.
- The provision of comments to the Police on draft internal guidelines for the operation of the police diversion scheme.

Contracts

The Commission presented its report *Contract Statutes Review* (NZLC R25) to the Minister of Justice on 4 May 1993. The report includes a draft Contract Statutes Amendment Act which gives effect to the Commission's recommendations.

These recommendations were largely based on papers prepared by specialists in contract law from university law faculties and the legal profession, who had been asked to evaluate the operation in practice of the six Acts passed in New Zealand between 1969 and 1982 as a development of the common law of contract. The papers themselves form the greater part of the report. They are a valuable source of information and ideas about the general law of contract and the effect of the distinctive New Zealand legislation. The report also includes an earlier paper on frustration of contract prepared for the former Contracts and Commercial Law Reform Committee.

As the papers show, the contract statutes generally work well. For the most part, the Commission's recommendations for legislative amendments therefore involve only a fine tuning. Two matters, however, are more fundamental.

When work on the report was already well advanced, the introduction of the Consumer Guarantees Bill (since enacted) prompted it to decide, at the expense of some delay in publishing the report, that the opportunity should be taken to avoid the worst consequences of the likelihood that three distinct regimes would become applicable to sales of goods:

- Local consumer sales would for the most part of governed by the new Consumer Guarantees legislation.
- Local non-consumer sales would be governed by the combined effect of the Contractual Remedies Act 1979 and the Sale of Goods Act 1908. (So too would consumer sales, as regard matters not covered by the Consumer Guarantees Bill.)
- International sales would, in some instances, be governed by the
- provisions of the Vienna Convention on Contracts for the International Sale of Goods. (See NZLC R23.)

As first step in removing unnecessary fragmentation of the law, the Commission arranged for a further paper to be prepared on the best way of applying the general provisions of the Contractual Remedies Act to contracts for the sale of goods, except so far as the special characteristics of sale of goods required those rules to be modified. The Commission's recommendations, based on those of its expert advisers, include draft amendments of the Sale of Goods Act which will enable the cancellation of a contract for the sale of goods to be governed by the Contractual Remedies Act.

The second substantive matter involves the amendment of each of the contract statutes,

- to recognise explicitly the well-established principle that domestic statutes apply only to contracts, or matters affecting contracts, governed by New Zealand law;
- to remove textual impediments to the application of the statutes by overseas courts when dealing with contractual matters governed by New Zealand law.

Apart from monitoring recent developments in relevant New Zealand and Australian law, it was not possible during the year to do any further work on ``unfair'' contracts, a matter on which conflicting submissions were received following the publication of the Commission's discussion paper on that subject (NZLC PP11).

Property Law Act

During the year the Commission completed a draft of a new Property Law Act to replace the 1952 Act. The draft is based on the proposals put forward in the Commission's discussion paper (NZLC PP16) and the submissions received in response. As noted in its last report, the Commission's object is to update the existing law and express the new rules, so far as possible, in plain language. The new Act involves an element of codification of the common law, particularly in relation to mortgages and leases.

Consultation with interested parties has taken place at all stages. In May 1993, the completed draft Act and commentary were distributed for comment from within the outside the Commission. The next step is to put both documents into final form, taking account of the helpful comments received.

The doctrine of tenure

The Commission began work on a report on reform of the doctrine of tenure and estates in land, as foreshadowed in the Commission's discussion paper NZLC PP20. In general, the responses supported the Commission's proposal for the abolition of the feudal doctrine that the Crown retains the underlying title to all New Zealand land alienated to private owners. Inherited from England, the doctrine has never had any practical consequences in this country. The Commission suggested that the law should state that people ``own'' their land, not that they are ``proprietors of an estate in fees simple''. The concept of ownership of land will, of course, continue to carry with it the duty reflected in the Resource Management Act 1991, and other law, to look after the land for the benefit of future generations. The right of the State to take land for a public purpose on payment of just compensation will not be affected.

The Commission needs to make sure that Maori share its perception that the abolition of the doctrine of tenure and estates in land will not adversely affect Maori land or the relationship between Maori and the Crown, or even be thought to do so. The Commission wishes to avoid any risk of a misunderstanding about the effect of its proposals. It has therefore sought advice on how consultation with Maori on this technical but sensitive matter can best take place.

Interest on damages

By the year's end the Commission had almost completed a report recommending draft legislation which gives effect to the proposals put forward in its discussion paper Aspects of Damages: Interest on Debts and Damages (NZLC PP17). The Commission had proposed that a successful plaintiff unlawfully kept out of money should be automatically entitled to compound interest calculated on the

basis of an actual commercial rate applying over the period. Although the proposal itself was generally supported in the submissions received on the discussion paper, a great deal of further work was necessary:

- to reconsider which of the various published indicative interest rates should be used as the basis of the scheme;
- to work out the mechanics of compiling and keeping up to date a table of fluctuating interest rates which enables the easy and accurate calculation of interest in each case; and
- to establish where administrative responsibility would lie for all aspects of this task.

Further consultation was undertaken on all of these points.

Official Information Act

During the first part of the year the Commission made substantial progress on its project on aspects of the Official Information Act 1982, a matter referred to it by the Minister of Justice. Details of the reference were set out in the Commission's report for the period 1 April 1991 to 30 June 1992. Informal consultation was undertaken with Ministers and officials, and with the Ombudsmen who have responsibility under the Act for recommending that information be released. In January 1993, the Commission convened a seminar at which some of those with practical experience of the matter were able to discuss the criteria for determining whether it might be necessary to withhold information to ``maintain the effective conduct of public affairs through the free and frank expression of opinions'' by or between, or to, Ministers of the Crown or other persons or bodies in the course of their duty (s9(2)(g)). The question was further discussed by Sir Kenneth Keith in a paper presented to a conference on Efficient and Effective Policy Advice, held in June 1993.

The helpful responses generated in these various ways led the Commission to conclude that, when informal consultation with an affected interests had been completed, it could proceed straight to a report without first publishing a discussion paper and inviting submissions. (The report itself will, of course, be available for use by the Government as a basis for consultation with all interested parties.) In the last quarter of the year other priorities temporarily halted work on the project, but it will be taken up again as early as possible in 1993/94.

Associated advisory work included the provision of comments on draft State Services Commission guidelines on the release of information near the time of a general election and, at the request of the Overseas Investment Commission, on a draft Overseas Investment Bill.

Legislation

The Commission's main contribution towards helping to make New Zealand law more understandable and accessible was through the participation of Sir Kenneth Keith in the Working Party on the Reorganisation of the Income Tax Act 1976. The Working Party prepared and submitted to the Minister of Finance and the Minister of Revenue a report concerning

- the relationship between the Minister of Revenue and the Commissioner of Inland Revenue, and
- the statutory independence of the Commissioner.

In the same period the Working Party made considerable progress towards the preparation of a second report which will recommend a resequencing of the provisions of the Act, as well as the removal of obsolete and spent provisions

and redundant language. The resequenced Act will provide a base for a part by part review of the legislation and, over time, a new Act.

The Working Party's report will draw on the work done by the Commission towards improving the appearance of printed Acts. The Commission reached near finality on its report on the format of legislation and took some further steps towards the production of a drafting manual recommending New Zealand standards for the preparation and drafting of enactments.

At the request of the Civil Aviation Authority, the Commission also provided comments on draft Civil Aviation rules.

A successful seminar on plain drafting was held in February 1993. Mr Garth Thornton QC and Professor Margaret McLaren spoke to an invited audience about the techniques being used in other countries to improve the comprehensibility of legislation.

Private international law

The Commission directed its efforts during the year to encouraging support for various international initiatives to unify or harmonise the law of different countries, particularly in the trade field and in contexts involving New Zealand's major trading partners. It did not have the resources to make progress on its proposed publications in this area.

In September 1992 the Commission convened a seminar attended by approximately 45 participants interested or involved in international trade, or trade law, including practitioners, academics from a number of disciplines, and government officials. Papers were given by speakers from within the outside the Commission on issues which arose at the UNCITRAL Trade Law Congress held in New York in May; on the status and the implications for New Zealand law and trade of the GATT talks and the Rio de Janeiro environmental conference; on international arbitration; and on the linkages between trade law and what has traditionally been thought of as ``public'' international law.

IN November 1992 the Commission was represented at a meeting convened by the Australian committee of the Pacific Economic Cooperation Council (PECC) to discuss ways of assisting members countries to adopt uniform laws facilitating trade, such as the UNCITRAL Model Law on Arbitration (see NZLC R20). Since then it has assisted a New Zealand PECC committee to survey practitioners, academics and business groups and to set up a working party to provide input into the PECC project.

As in previous years, the Commission took part in the 1992 International Trade Law Conference convened by the Australian Attorney-General's Department. It was also represented at the first annual meeting of the Australian and New Zealand Society of International Law held in Canberra in May 1993.

The Commission provided comments to the Solicitor-General on a draft report prepared by the Australian Standing Committee of Attorneys-General (SCAG) on limitation periods and the conflict of laws, and to the Ministry of External Relations and Trade on an UNCITRAL draft model law on procurement.

Crown

As forecast, the Commission again concentrated on the advisory work associated with this project, much of it arising from the restructuring of the State sector over the last decade. Matters on which advice or comments were given or discussions held included the State Services Commission's review of Principles, Practices and Conventions for the Public Service; a review of the legislation relating to the Auditor Office; Treasury proposals on Ministerial purchase

advisers; and the Health and Disability Services Bill at the request of the Department of Health. The Commission's Finance and Administration Manager served as a member of a Department of Justice working group on payments on behalf of the Crown.

In addition, the Commission thoroughly reviewed the law of public interest immunity in the context of its work on Privilege, one of the main issues in the Evidence project dealt with during the year.

Succession

The new project was added to the Commission's programme with the object to enabling better effect to be given to the intentions of testators and taking account of the diversity of New Zealand families. It is envisaged that the Wills Act 1837 (Imp), the Law Reform (Testamentary Promises) Act 1949, the Family Protection Act 1955 and the Administration Act 1969 will be consolidated, with revisions, into a single draft Act written in plain language. Research in a number of discrete areas was begun.

Remedies for wrongs to goods

The purpose of the second of the Commission's new projects is to review and reform the fragmentary common law remedies for the loss of or damage to goods. The object is to revise and codify the law in a draft Act, possibly drawing on proposals put forward by the Law Reform Commission of British Columbia. Preliminary research was commenced.

Guarantees

The Commission's third new project has the purpose of revising the common law of guarantees and codifying it in a draft Act which strikes a fairer balance between the rights of lenders and those who guarantee the debts of third parties. Background research was undertaken.

The Commission's projects on the Apportionment of civil liability, on Habeas Corpus, on Foreign State Immunity and on the maintenance of a Digest of law reform all had to be given a low priority, with the result that work on them could not be carried forward during the year.

ADVISORY WORK

In addition to the advisory work relating to projects of the Commission's programme, and described above, the Commission again responded to requests for advice on a number of other matters, many of which raised constitutional issues or were concerned with the obligation to give effect to treaties to which New Zealand is a party. The work included:

* comments to the Minister of Transport or the Ministry of various drafts of the Transport Law Reform Bill and the Bill which became the Ship Registration Act 1992, and on the independent review of the setting of vehicle standards;

- advice to various interested parties on the Sealord settlement legislation, Te Ture Whenua Maori/Maori Land Bill and draft Ngai Tahu legislation;
- participation in a Department of Statistics workshop on the Treaty of Waitangi;
- comments to the Education Review Office on a draft professional code of conduct;

- advice to the Department of Justice, the Department of Internal Affairs and the Chief Ombudsman on aspects of the Building Act 1992;
- advice to the Communications and Road Safety Select Committee, and a briefing to the Government and Opposition caucuses, on breath screening legislation;
- advice to the Department of Justice on judicial independence and courts administration;
- advice to the Department of Health and the Social Services Select Committee on the Health Commissioner Bill;
- advice to a Parliamentary group on Superannuation; and
- participation in a group convened by Judges of the High Court on a new system for indexing judgments so as to provide ready access to the principles of law they establish.

LEGISLATION ADVISORY COMMITTEE

The Commission again played a full part in the work of the Legislation Advisory Committee: through Sir Kenneth Keith, who is a member of the Committee in his capacity as a Law Commissioner; the provision of office accommodation and support services for the Chairman, Dr Mervyn Probine; and the work done by the Commission's research staff.

During the year the Legislation Advisory Committee made 22 submissions to select committees on the following Bills before Parliament:

Biosecurity Bill
 Broadcasting Amendment Bill (No 2)
 Citizenship Amendment Bill
 Criminal Justice Law Reform Bill
 Education Amendment Bill (No 5)
 Education Reform Bill (No 2) (two submissions)
 Electoral Reform Bill
 Earthquake Commission Bill
 Films, Videos and Publications Classification Bill
 (submission and follow-up letter)
 Finance Bill (No 6) (SOP amending Fisheries Act)
 Forests Amendment Bill (two submissions)
 health and Disability Services Bill
 Human Rights Bill
 Law Reform (Miscellaneous Provisions) Bill
 Public Finance Amendment Bill (No 3)
 Resource Management Amendment Bill
 Social Welfare Reform Bill (No 3)
 Student Loans Scheme Bill
 Transport Law Reform Bill
 Wildlife Amendment Bill.

It also provided comments to Ministers or Departments on:

Conservation Amendment Bill (No 2)
 Draft Health and Safety in Employment Regulations
 Privacy Bill
 Proposed amendments to the Valuers Act 1948.

FOLLOW-UP

The Commission's main follow-up work related to the Companies Bill and the Companies (Ancillary Provisions) Bill, based on its reports NZLC R9 and NZLC R16. It made comments on these Bills to the Department of Justice and provided advice

to the Justice and Law Reform Select Committee at the Committee's request. Commissioners and staff members also attended several conferences and seminars held to explain the effect of the forthcoming new legislation to members of the legal and accounting professions and the business community.

The Commission also assisted the Ministry of Agriculture and Fisheries and the Ministry of External Relations and Trade to incorporate in the Biosecurity Bill the principles it had recommended to govern the grant of emergency powers (Final Report on Emergencies NZLC R22). With the same objective, it provided comments to the Ministry of the Environment and the Ministry of External Relations and Trade on proposals in relation to hazardous substances, and to the Ministry of Agriculture and Fisheries on natural agricultural disasters.

Various opportunities occurred during the year, particularly in the context of the Commission's work on Private International Law (see above), to promote wider understanding of its recommended draft Arbitration Act, based on the UNCITRAL Model Law (Arbitration NZLC R20).

As well, the Commission held a number of discussions with the Minister of Justice and his Department about the likely opportunities for the introduction of legislation to give effect to other Commission reports. (See Appendix B.)

PRINCIPLES FOR LAW REFORM

The work of the Law Commission continually presents the question: what are the principles which are to influence and sustain the reform?

This is not the occasion for an extensive discussion but several points might usefully be made about the role of principles. Two of them are cautionary.

The first caution is to emphasise the importance of the facts. Many a theory or alleged principle does not survive rubbing against the hard face of experience.

The second caution stresses good process. Open consultative methods of reviewing areas of the law and establishing proposals for its development and reform are likely to lead to law which is of better quality, is better understood and is more widely accepted. The argument is neatly reflected in the statement of purpose in s4(a) of the Official Information Act 1982: the more effective participation of the people of New Zealand in the making and administration of laws and policies which results from the wider availability of official information ought to enhance respect for the law and promote the good government of New Zealand. From the outset the Commission has stressed and received the real advantages of effective consultation.

On the positive side, our constitutional and legal inheritance is rich in principle tested through the centuries. The very first report of the Law Commission (NZLC R1) was concerned with the authoritative listing of the Imperial enactments which were still part of the law of New Zealand. Prominent among them were major constitutional guarantees of due process of law, beginning with Magna Carta in the thirteenth century. A second early project required the Commission to address another critical part of our constitutional inheritance: the preparation of the background paper on The Treaty of Waitangi and Maori Fisheries - Mataitai: Nga Tikanga Maori me te Tiriti o Waitangi (NZLC PP9) involved an examination of the principles of the Treaty.

International norms are an increasingly important source of principle and indeed of binding obligation. In a large and increasing range of situations New Zealand law must give effect, or at least have regard, to treaty obligations or other international standards and rules which sometimes bind and in other cases recommend. The New Zealand Bill of Rights Act 1990 brings the constitutional and

international influences together. As the title to that Act indicates, Parliament in enacting it had two complementary purposes:

- to affirm, protect, and promote human rights and fundamental freedoms in New Zealand; and
- to affirm New Zealand's commitment to the International Covenant on Civil and Political Rights.

As well, comparative material from other countries will often inform the pursuit of relevant principle. The technology of ``the global village'' - a major instance of new facts forcing both new law and new arrangements of public power in the world - facilitates awareness and use of the experience and wisdom of others. An interesting particular instance of the Law Commission's growing international links was the discussion held at the Commission in November 1992 with the Australian Federal and State Solicitors-General, on Bill of Rights and on the rights of suspects and Police questioning powers.

An historical, international and comparative approach to the pursuit of relevant principle tested against the facts, especially the facts in a rapidly changing world, will often highlight the need to balance or choose between principles, as illustrated in the earlier discussion of Police powers. The answer may also have an element of pragmatism. The process of seeking the principles will, as well, often help uncover the underlying values of the society on which much of our law must in the end be based, if it is to be widely accepted and durable. That process should, in addition, remove unnecessary complexity from the law and make the law more accessible.

PERSONAL RESPONSIBILITIES OF COMMISSIONERS

During the year under review, the members of the Law Commission again discharged a number of personal responsibilities assumed at the request, or with the approval, of the Government.

The President, Sir Kenneth Keith, undertook a number of speaking engagements on matters related to the Commission's work, including the presentation of papers at the Commonwealth Law Conference held in Cyprus in May 1993, and the meeting of Commonwealth Law Reform Agencies held at the same time. Both he and the Hon Justice Wallace presided at sessions of the 1993 New Zealand Law Conference held in Wellington in March 1993.

In his capacity as a member and Vice-President of the International Humanitarian Fact-Finding Commission established under the First Protocol to the Geneva Conventions for the Protection of War Victims, Sir Kenneth attended two meetings of the Commission, the first in Berne in July 1992 to complete the rules, and, secondly, the annual meeting in Geneva in May 1993. Later that month and in the first part of June 1993, on the nomination of the Commonwealth Secretary-General, Sir Kenneth served as a member of a Presidential Commission of Inquiry set up to inquire into a bomb explosion at Araly Point in Sri Lanka.

The Hon Justice Wallace continued to serve as a member of the Courts Consultative Committee with particular responsibilities in relation to court administration and case flow management. The Hon Justice Blanchard was a member of the Electoral Referendum Panel. Professor Sutton assisted in conducting an inquiry into the conduct of an examination in Public Law at the University of Waikato at the request of that university.

THE LAW COMMISSION'S MEMBERS AND STAFF

Commissioners

As foreshadowed in the Commission's report for the period 1 April 1991 to 30 June 1992, Professor Richard J Sutton, of the Faculty of Law at Otago University, took up his appointment as a member of the Law Commission on 1 July 1992, on a part-time basis for the remainder of that year, but since then as a full-time member.

On 18 September 1992 the Minister of Justice announced the appointment as a Law Commissioner of Mr Leslie H Atkins QC. Mr Atkins brings to the Commission's Criminal Procedure and Evidence projects in particular a wealth of relevant knowledge and practical experience. His appointment is a part-time one.

Staff

During the year one member of the Commission's research staff, Grant Marjoribanks, left the Commission to undertake postgraduate studies at the University of Virginia, since successfully completed. Two members of the Secretarial staff, Nicola Beddie and Carol Stevenson, also resigned, and Jackie Hogg completed the period of her temporary appointment as Assistant Librarian while the Commission's permanent Librarian was on maternity leave. We express our appreciation for the contribution that each of them made to the Commission's work.

The Commission was fortunate in being able to augment both its research and its secretarial staff during the year. On her return from overseas, Loretta Desourdy rejoined the Commission as a Senior Legal Research Officer.

Louise Delany, Hamish Dempster, Dean van Mierlo and Michelle Vaughan were appointed as Legal Research Officers. Christine Kleingeld, Fiona MacDonald and Leanne Kelly joined the secretarial staff, the first on a part-time basis.

A list of Commissioners and staff members as at 30 June 1993 is set out in Appendix A.

PART 2

Objectives for the Year Ending 30 June 1994

THE LAW COMMISSION'S OVERALL OBJECTIVES

At the beginning of the 1993/94 financial year the Law Commission reaffirmed its commitment to the following overall objectives:

- to carry through their various stages towards final report the projects for the reform and development of particular areas of law which have been included in the Commission's programme;
- to ensure, so far as possible, that the projects to be included in the programme are selected by reference to the following factors:
 - the existence of an identified and, if possible, a widely perceived need for the reform and development of the area of law in question,
 - the desirability of the Commission's programme as a whole covering a reasonably wide range,
 - the existence among Commissioners of expertise in the area,
 - a perception that the reform could not more appropriately be undertaken by another agency;
- to follow up all final reports by:
 - taking part in discussions with interested individuals and groups, privately and in public forums, on the meaning and effect of the Commission's recommendations,
 - discussing with relevant Ministers and their Departments the nature and the timing of the steps necessary to implement the Commission's recommendations,
 - participating in appropriate ways in the preparation of legislation implementing the Commission's recommendations and in the Parliamentary processes leading to its enactment;
- to undertake such advisory work in relation to the review of other government agencies of any aspect of the law of New Zealand as may be referred to the Law Commission by Ministers of select committees, and, to the extent that resources permit, by other government agencies and to initiate such advisory work where that is an important step in achieving the Commission's aim;
- to complete all work to a high standard, within the Law Commission's budget, and in accordance with a timetable that takes account of the priorities of the Minister of Justice and the Government, especially in relation to the legislative programme, so that, overall, the quantity and quality of the Commission's outputs meet the expectations of the Minister and the Government as well as those of interested groups, and represents good value for money.

The following table sets out the projects on the Commission's programme on 1 July 1993, showing the priority accorded them by the Commission and their status as at the date.

**PROJECTS ON THE LAW COMMISSION'S PROGRAMME
ON 1 JULY 1993**

PROJECT	SUB-PROJECT	PRIORITY	STATUS
Evidence	Documentary evidence	1	Discussion paper to be completed
<i>Purpose</i> To replace the present complex and uncertain common law and statutory rules	Privelege	1	Discussion paper to be completed
	Conduct, character and credibility	1	Discussion paper to be completed
	Competence of witnesses; vulnerable witnesses	1	Research paper completed Discussion paper to be written
	Identification evidence	1	Research paper to be completed
	Miscellaneous research tasks	1	Research to be completed
	Report	1	Report with draft Evidence Code to be written
	Criminal Procedure	Police questioning and confessions	1
<i>Purpose</i> To review the whole criminal procedure, to ensure that it provides for fair trials and the effective and efficient investigation and prosecution of offences, taking account of New Zealand's obligations under the International Covenant on Civil and Political Rights, and New Zealand Bill of Rights and Treaty of Waitangi		1	Report on the right of silence and confessions to be written
	Privilege against self-incrimination	1	Research paper to be completed. Discussion paper to be written
	Prosecution of Offences	2	Research being completed and policy proposals being formulated
	Diversion	2	Research to be undertaken and policy proposals being formulated
	Jury trials	3	Preliminary research completed
	Classification of offences	2	Research to be completed
	Principles for the reform of criminal procedure	2	Research to be completed
Advisory work	1	As required	
Contracts	Unfair contracts	3	
<i>Purpose</i> To review aspects of the law of contract and ensure that it meets the needs of the commercial community and consumers			

PROJECT	SUB-PROJECT	PRIORITY	STATUS
Property	Property Law Act	1	Report and draft Act being completed
<i>Purpose</i> To review and modernise the Property Law Act 1952 and other aspects of the law of property	Tenures	2	Research being completed and draft report written. Further consultation, particularly with Maori, to take place before publication
Damages		1	Report on interest on money claims being completed
<i>Purpose</i> To review aspects of the law of damages and propose reform			
Official Information Act		1	Report to be completed
<i>Purpose</i> To review the operation in practice of aspects of the Act			
Legislation	Format of statutes	1	Report being published
<i>Purpose</i> To make the law of New Zealand as understandable and accessible as practicable	Legislation manual	2	The publication of a report on Parts 1-3 and ongoing work on Part 4 to be discussed with the Legislation Advisory Committee.
Private International Law	Choice of law	2	Draft report to be prepared and circulated for comment
<i>Purpose</i> To promote the adoption of uniform or harmonised law and by that means to facilitate New Zealand's international trade and other transactions.	Watching brief	2	The Commission will support the attendance of Professor Roger Pitchforth at the PECC meeting in Singapore in September
	Jurisdiction and enforcement	3	
Crown	Advisory Work	2	As required
<i>Purpose</i> To review the legal status of the Crown, generally, and in the context of the Crown Proceedings Act 1950	New Crown Proceedings Act	3	

PROJECT	SUB-PROJECT	PRIORITY	STATUS
<p>Succession <i>Purpose</i> To replace the Wills Act 1837, the Administration Act 1969, the Family Protection Act 1955 and the Law Reform (Testamentary Promises) Act 1949 with a new Succession Act which will simplify the law, enable better effect to be given to the intentions of the testators and take account of the diversity of New Zealand families</p>		1	Preliminary research being undertaken with the help of outside experts and in consultation with interested parties
<p>Remedies <i>Purpose</i> To review the fragmentary common law remedies and replace them with a modern statute</p>		2	Preliminary research being undertaken.
<p>Guarantees <i>Purpose</i> To review the law of guarantees with a view to replacing it with a comprehensive statutory regime.</p>			Project to be defined and planned, and preliminary research to be undertaken
<p>Apportionment of Civil Liability <i>Purpose</i> To review the law relating to liability where the acts or omissions of two or more persons cause loss or damage</p>		2	Report to be written
<p>Habeas Corpus <i>Purpose</i> To review and replace the Imperial Acts dealing with the remedy of Habeas Corpus.</p>		2	Research paper to be completed at a first step towards a discussion paper or report.
<p>Foreign State Immunity <i>Purpose</i> To review the law of foreign state immunity taking account of the development of international law in this area, particularly in relation to the commercial activities of government.</p>		3	

PROJECT	SUB-PROJECT	PRIORITY	STATUS
Digest <i>Purpose</i> To record in a database proposals for law reform and law reform work currently being undertaken by other agencies		2	To be a reactivated as soon as resources permit.
Legislation Advisory Committee <i>Purpose</i> To contribute to the work of the Legislation Advisory Committee in scrutinising Bills and other legislative proposals from a public law and official information viewpoint.		1	As required
Other Advisory Work <i>Purpose</i> To advise on the review of aspects of the Law of New Zealand conducted by other New Zealand agencies or on proposals made as a result of the review		1	As required

PART 3

Finance

The Law Commission is funded from money appropriated by Parliament. The financial statements of the Commission for the year ended 30 June 1993 are attached.

At the beginning of the financial year the Commission had a working capital (current assets less current liabilities) of \$2 057 019. This amount had accumulated since the Commission's establishment, primarily as a result of its depreciation and investment policies.

The Commission budgeted for a operating deficit of \$648 135 for the year under review. As the Commission's operating statement for the year ended 30 June 1993 shows, its income in fact exceeded its expenditure by \$47 850. The small excess arose mainly because, on the expenditure side,

- the number of Commissioners averaged 3.2 over the whole year instead of the 4.8 for which the Commission had budget;
- there was an unexpectedly large proportion of advisory work;
- as a result of both these factors, the budget for the Commission's projects was underspent.

On the income side, the Commission's interest income was \$73 822 over budget. The Commission is proposing to the Government a strategy to bring its grant and other income into closer alignment with its normal operating level of about \$3 900 000.

This would involve running down its reserves over the next four years to approximately \$600 000, representing 2 months' expenditure. This would be achieved by maintaining the present reduced grant level at \$3 300 000 (inclusive of GST) through 1993/94, 1994/95 and 1995/96. The grants for 1996/97 and 1997/98 would be increased as necessary towards the proposed \$3 900 000 (inclusive of GST) base, maintaining reserves at no more than \$600 00 level.

REPORT OF THE AUDIT OFFICE

**TO THE READERS OF THE STATEMENTS OF ACCOUNT OF THE LAW COMMISSION FOR THE YEAR
ENDED 30 JUNE 1993**

Authority and Scope of Audit

The statements of account, appearing on pages 30 to 41 were prepared pursuant to section 41 of the Public Finance Act 1989 and are the responsibility of the Law Commission. Section 43 of the Public Finance Act 1989 requires the Audit Office to express an audit opinion on these statements.

We conducted our audit in accordance with generally accepted auditing standards, with the objective of obtaining reasonable assurance that the statements of account are free from significant errors or omissions. In our audit we reviewed the evidence to support the amount and disclosures in all statements. We also assessed the accounting practices used.

Unqualified Opinion on Statements of Account

In our opinion the statements of account of the Law Commission fairly reflect:

- the achievement in respect of the performance targets and other measures adopted for the year ended 30 June 1993;
- the financial results and cash flows for the year ended 30 June 1993; and
- the financial position as at 30 June 1993.

H C Lim
Audit New Zealand
On behalf of the Controller and Auditor-General

16 September 1993
Wellington
New Zealand

**Statement of Objectives
for 1992/93**

The Law Commission's objectives are:

Projects:

To carry through their various stages towards final report the projects for the reform and development of particular areas of law which have been included in the Commission's programme.

Performance Measures

Projects:

Quantity

The number of projects included in the Commission's programme is to be as determined by the Commission, taking account of s 7 of the Law Commission Act 1985.

The number of publications to be produced, or amount of other work to be done, within each project is to be as set out in project plans approved by the Commission

Legal and policy advice to other agencies on matters related to projects is to be provided as required, in response to requests, or, where appropriate, on the Commission's initiative.

Quality

the Commission's project work is to be the standard set by the Commission, as assured by its internal processes and external review.¹

Time

The time for the production of project work is to be as set out in approved project plans, or, in the case of legal or policy advice, within a timeframe agreed with, or enabling its effective use by, the recipient.

Outputs Produced

Projects:

Quantity

The projects on the Commission's programme during the period were (a) those included in the programme as at 1 July 1992 (listed in the Commission's report for the period 1 April 1991 to 30 June 1992); (b) projects on the law of succession, on remedies for wrongs to goods and on the law of guarantees, added to the programme in March 1993 on the Commission's initiative with the agreement of the Minister of Justice.

The publications produced or other work done was as set out in approved project plans as subsequently varied to take account of changing Commission priorities in relation to its projects, developments within some of the projects themselves, and the higher than expected volume of project-related legal and policy advice and other advisory work required within the period.

Legal and policy advice was provided as required.

See narrative account, pages 2 to 12, for description of all work done.

Quality

All the Commission's project work was performed to the standard set by the Commission, as assured by its internal processes and external review.¹

Time

The time taken for the production of project work was as set out in approved project plans, as subsequently varied to take account of changing Commission priorities in relation to its projects, developments within some of the projects themselves, and the higher than expected volume of project-related legal and policy advice was provided within timeframes agreed with or enabling its effective use by, the recipient

**Statement of Objectives
for 1992/93**

Performance Measures

Outputs Produced

Cost
The cost of project work is to be within the approved project budget.

Cost
The Commission's internal systems did not permit it to set individual project budgets for the 1992/93 financial year, but Commissioner and research officer time spent on project work was charged to the relevant project. The Commission's expenditure on its outputs as a whole was \$639 451 under budget.²

Follow-up

To follow up all final reports by:

Quantity
Follow-up is to

Quantity
Follow-up took the form of

- taking part in discussions with interested individuals and groups, privately and in public forums, on the meaning and effect of the Commission's recommendations;
- discussing with relevant Ministers and their Departments the nature and the timing of the steps necessary to implement the Commission's recommendations.
- participating in appropriate ways in the preparation of legislation implementing the Commission's recommendations and in the Parliamentary processes leading to its enactment.

- be discussed at the regular policy meetings between the Law Commission and the Department of Justice;
- be discussed with the Minister of Justice, other Ministers of Departments and Parliamentary select committees as requested, or on the Commission's initiative if appropriate;
- involve participation in, or the convening of, seminars and conferences as appropriate and as opportunity offers.

- discussions between the Law Commission and
 - the Department of Justice
 - the Department of the Prime Minister and Cabinet
 - the Ministry of Agriculture and Fisheries;
- discussions with the Minister of Justice;
- appearances before or submissions to the Justice and Law Reform Committee on the Companies Bill and the Companies (Ancillary Provisions) Bill and informal discussions with members of the Committee;
- the convening of a seminar on international trade law;
- participation in conferences and seminars on the proposed new company law and related issues.

See narrative account, page 14, for description of work done.

Quality
To the Commission's standards, as assured by its internal processes and external review.¹

Quality
All follow-up work was performed to the Commission's standards, as assured by its internal processes and external review.¹

**Statement of Objectives
for 1992/93**

Performance Measures

Outputs Produced

Time

As agreed, or otherwise at a time enabling the follow-up work to be effective, taking account of the Government's legislative programme, the Parliamentary timetable and other relevant factors

Cost

Within the project budget, or, if there is no project budget, within the budget for Advisory Work.

Time

All follow-up work was undertaken as agreed, or otherwise at a time enabling it to be effective, taking account of the Government's legislative programme, the Parliamentary timetable and other relevant factors.

Cost

The Commission's internal systems did not permit it to set individual project budgets or a budget for Advisory Work for the 1992/93 financial year. The Commission's expenditure on its outputs as a whole was \$639 451 under budget.²

Advisory Work

To provide advice, in accordance with s 5(1)(c) of the Law Commission Act 1985, on proposals by other agencies for the review or reform of the law.

Quantity

Advice is to be provided on proposals

- referred to the Law Commission by the Minister of Justice, other Ministers or select committees, and, to the extent that resources permit, by other government agencies; and
- on the Commission's initiative where the proposals bear on the Commission's project work or Commission involvement is an important step in achieving the Commission's aim.³

Quality

To the Commission's standards, as assured by its internal processes and external review.¹

Time

As agreed with the recipient, or otherwise at a time enabling the advice to be taken into account and acted upon within the timeframe of the recipient.

Cost

Within the budget for Advisory Work.

Quantity

A higher than expected volume of advice was sought on proposals referred to the Law Commission by the Minister of Justice, other Ministers, select committees, and other government agencies. Therefore it was not, in general, possible for the Commission to advise on the law reform proposals of other agencies on its own initiative.

See narrative account, pages 2 to 13, for description of all work done.

Quality

All advice was provided to the Commission's standards, as assured by its internal processes and external review.¹

Time

All advice was provided as agreed with the recipient, or otherwise at a time enabling the advice to be taken into account and acted upon within the timeframe of the recipient.

Cost

The Commission's internal systems did not permit it to set a budget for Advisory Work for the 1992/93 financial year but Commissioner and research officer time spent on advisory work was charged to that output. The Commission's expenditure on its outputs as a whole was \$639 451 under budget.²

**Statement of Objectives
for 1992/93
Legislation Advisory
Committee**

The output is the contribution to the work of the Legislation Advisory Committee to be provided by Sir Kenneth Keith in his capacity as a member of the Committee, the assistance of the Commission's research and secretarial staff, and the office accommodation made available for the Chairman of the Committee, DR Mervyn Probine.

Performance Measures

Quantity
As agreed with the Committee, subject to the availability of Commission's resources.

Quality
To the Commission's standards, as assured by its internal processes and external review.¹

Time
As agreed with the Committee.

Cost
To be within the Commission's budget for its contribution on the work of the Legislation Advisory Committee.

Outputs Produced

Quantity
The work done was as agreed with the Committee.

See narrative account, page 13, for description of work done.

Quality
All work performed to the Commission's standards, as assured by its internal processes and external review.¹

Time
All work was done within a timeframe agreed with the Committee.

Cost
The Commission's internal systems did not permit it to set a budget for its contribution to the work of the Legislation Advisory Committee for the 1992/93 financial year but Commissioner and research officer time spent on that contribution was charged to that output. The Commission's expenditure on its outputs as a whole was \$639 451 under budget.²

Notes to the Statement of Service Performance

1 In the case of the Commission's project work, external review involves both the use of expert consultants - to contribute to the writing, or to act as members of an advisory group which considers and comments on successive drafts - and also wide consultation with interested agencies and groups before publication. In most cases, a discussion paper is published, is widely circulated, and submissions on it are invited and considered before the preparation of a final report which itself contains a description of the consultation process followed in the particular case.

Reports are published, tabled in Parliament and copies are distributed to interested or affected individuals and groups, including major law firms. They are submitted to appropriate legal journals for review, and a great deal of informal feedback is received from Ministers and Parliamentary select committees, legal and other professional societies, judges, members of the legal profession, and law reform agencies, interested bodies and individuals in other countries.

In the case of advisory work, external review consists to the informal feedback received in the course of any consultations with officials or others outside the Law Commission in the course of preparing the advice, or received from the recipient, together with evidence of the extent to which the advice is accepted and acted upon.

2 The Commission is in the course of improving its project management system so as to be able to set budgets for, and provide regular reports on the quantity, timeliness and cost of, all work done in each phase of its projects.

3 For administrative purposes, the Commission's advisory work, other than that arising out of projects, is itself treated as though it were a single, consolidated project. Resources will be allocated in advance so as to be available for advisory work. It is not possible, however, to foresee the specific occasions on which the Commission will be asked, or will consider it appropriate, to provide advice. Therefore the specification of quantity is that in the Commission's strategic plan, which relates its advisory role to the achievement of its aim.

LAW COMMISSION

STATEMENT OF FINANCIAL POSITION AS AT 30 JUNE 1993

	Note	1993 \$	1992 \$
CURRENT ASSETS			
Bank of New Zealand		50 698	2 167
Call deposits		60 000	100 000
Short-term deposits	2	2 335 000	2 050 000
Accounts receivable		22 758	878
Prepayments		17 294	33 643
Interest Receivable		25 247	29 016
Goods and Services Tax		8 245	38 439
		<u>2 519 242</u>	<u>2 254 143</u>
FIXED ASSETS			
	3	<u>499 156</u>	<u>692 849</u>
TOTAL ASSETS		<u>3 018 398</u>	<u>2 946 992</u>
CURRENT LIABILITIES			
Accounts payable		<u>220 680</u>	<u>197 214</u>
TOTAL LIABILITIES		<u>220 680</u>	<u>197 214</u>
ACCUMULATED FUNDS	4	<u>2 797 718</u>	<u>2 749 868</u>
TOTAL FUNDS EMPLOYED		<u>\$3 018 398</u>	<u>\$2 946 992</u>

The accompanying notes form part of the financial statements.

Signed on behalf of the Law Commission:

Alison Quentin-Baxter
Director

John Lett
Manager

LAW COMMISSION

OPERATING STATEMENT

FOR THE YEAR ENDED 30 JUNE 1993

	Note	1993 \$	1992 \$
		12 Months	15 months
INCOME			
Government	2	817 778	3 096 000
Interest received		187 822	299 628
Sales of publications		9 156	18 949
Sundry income		-	356
Total income	3	014 756	3 414 933
EXPENDITURE			
Personnel			
Salaries and wages	1	461 221	1 527 928
Superannuation		25 063	23 071
ACC levy		13 558	3 292
Fringe benefit tax		1 607	57 041
Commission activities			
Publications		62 592	129 949
Research and consultation		114 454	198 484
Travel		105 355	117 907
Library			
Library acquisitions		157 194	172 101
Searches - database		2 324	3 600
Computer software		20 655	79 572
Administration			
Audit fees		7 000	7 800
Bank interest and charges		1 656	1 886
Cleaning		16 534	18 398
Communications		30 429	46 541
Depreciation		201 953	403 570
Electricity		13 141	22 699
Insurance		6 326	7 673
Loss on disposal of assets		9 910	23 821
Other operating		48 130	70 673
Professional services		102 706	106 835
Rent and rates		485 047	585 371
Repairs and maintenance		47 106	97 895
Stationery		42 945	18 991
	2	966 906	3 725 098
Extraordinary item		-	196 795
Total expenditure	2	966 906	3 921 893
Excess income over expenditure			
Transfer of accumulated funds ^{4/5}		\$47 850	\$(506 960)

The accompanying notes form part of the financial statements.

LAW COMMISSION

**STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED 30 JUNE 1993**

	Note	1993 \$ 12 months	1992 \$ 15 months
CASH FLOWS FROM OPERATING ACTIVITIES			
Cash was provided from:			
GRANT		2 817 778	3 096 000
Receipts from customers		42 205	19 780
Interest		191 591	398 663
		3 051 574	3 514 443
Cash was disbursed to:			
Payment to suppliers and employees		2 577 968	3 524 549
Taxes paid (GST)		161 905	135 993
		2 739 873	3 660 542
Net cash flow from operating activities	5	311 701	(146 099)
CASH FLOWS FROM INVESTING ACTIVITIES			
Cash was provided from:			
Investments		16 705 000	26 774 000
Proceeds from sale or fixed assets		89	1 556
		16 705 089	26 775 556
Cash was applied to:			
Investments		16 990 000	26 461 000
Purchase of fixed assets		18 259	115 276
		17 008 259	26 576 276
Net cash used in investing activities		(303 170)	199 280
CASH FLOW FROM FINANCING ACTIVITIES			
Nil		-	-
Net income (decrease) in cash held		8 531	53 181
Add opening cash brought forward 1/7/92		102 167	48 986
End cash carried forward 30/6/93		\$100 698	\$102 167

The accompanying notes from part of these financial statements.

LAW COMMISSION

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 1993

1 STATEMENT OF ACCOUNTING POLICIES

General accounting policies

The measurement based adopted is historical cost. Reliance is placed on the fact that the Commission is a going concern. Accrual accounting is used to match expenses and revenues.

Particular accounting policies

The following particular accounting policies which materially affect the measurement of earnings and the financial position have been applied:

- Accounts receivable are stated at their estimated net realisable value.
- Investments are valued at cost.
- The foundation library is valued at cost and is not depreciated. Purchases are charged to the foundation library where these purchases represent sets of publications and the initial purchase is of previously issued volumes. Current volumes are charged to library acquisitions.
- Other fixed assets are stated at cost less accumulated depreciation. Depreciation has been calculated using the straight line method. The rates used are
 - Computer equipment 20% straight line
 - Furniture and fittings 20% straight line
 - Office equipment 20% straight line.
- Computer software is charged against income in the year that it is installed.
- Items of income and expenditure are stated exclusive of Goods and Services Tax.
- Operating lease payments, where lessors effective retain substantially all the risks and benefits of ownership of the leased items, are included in the determination of the current year's excess income over expenditure in equal instalments over the lease term.
- Research and development expenditure is charged against income in the period in which it is incurred.

Changes in accounting policies

There have been no changes in the above accounting policies which have been applied on bases consistent with those used in previous years.

2 SHORT TERM INVESTMENTS

Maturity	1993	1992
	\$	\$
1 month	1 535 000	750 000
2 months	-	300 000
3 months	800 000	-
4 months	-	500 000
5 months	-	500 000
	\$2 335 000	\$2 050 000

Interest rates range from 6.702% to 7.27% for deposits maturing within one month and from 6.33% to 6.40% for deposits maturing in three months.

3 FIXED ASSETS

	1993		
	Cost	Accumulated depreciation	Book value
	\$	\$	\$
Computer equipment	375 159	187 849	187 310
Foundation library	185 643	-	185 643
Furniture and fittings	920 226	811 528	108 698
Office equipment	68 758	51 253	17 505
	\$1 549 786	\$1 050 630	\$499 156

	1992		
	Cost	Accumulated depreciation	Book value
	\$	\$	\$
Computer equipment	378 200	106 172	272 028
Foundation library	185 643	-	185 643
Furniture and fittings	914 465	698 724	215 741
Office equipment	63 218	43 781	19 437
	\$1 541 526	\$848 677	\$692 849

4 ACCUMULATED FUNDS

Balance at 1/7/92	7 749 868	3 256 828
Excess income over expenditure	47 850	(506 960)
Balance at 30/65/93	\$2 797 718	\$2 749 868

5 RECONCILIATION OF OPERATING STATEMENT TO STATEMENT OF CASH FLOWS

	1993	1992
	\$	\$
Excess income over expenditure	47 850	(506 960)
Non cash items		
Depreciation	201 953	403 570
Loss on disposal of assets	9 910	23 821
Add/subtract movements in other working capital items		
Increase in accounts receivable	(21 880)	831
Decrease in prepayments	16 349	(33 643)
Decrease in interest receivable	3 769	98 111
Decrease in GST	30 194	10 363
Increase in accounts payable	23 556	(338 987)
	51 988	196 795
	\$311 701	\$(146 099)

6 COMMITMENTS

	1993	1992
	\$	\$
Non-cancellable operating lease		
The Commission has a lease for the rental of the premises at Levels 10 and 11, 89 The Terrace, Wellington. The lease is from 16/2/87 until 30/6/98.		
One to two years	987 950	988 343
Two to five years	1 481 925	1 496 134
Beyond five years	-	502 511
Total expenditure committed	\$2 469 875	\$2 986 988

7 CONTINGENCIES

There were no material contingent liabilities as at balance date.

APPENDIX A

Members of the Law Commission:

Sir Kenneth Keith KBE - President
The Hon Justice Wallace - Deputy President
The Hon Justice Blanchard - Commissioner
Professor R J Sutton - Commissioner

Permanent staff of the Law Commission as at 30 June 1993:

<i>Director</i>	Alison Quentin-Baxter
<i>Senior Legal Research Officers</i>	Loretta Desourdy Paul McKnight Carolyn Risk Phil Shattky (assigned to internal project on information systems) Penelope Stevenson Nicola White
<i>Legal Research Officers</i>	Louise Delany Hamish Dempster Kevin Kelly Bell Sewell Dean van Mierlo Michelle Vaughan Sachin Zodgekar
<i>Finance Manager</i>	John Lett
<i>Librarian</i>	Katrina Young-Drew (part-time)
<i>Assistant Librarian</i>	Jocelyn Ferguson (part-time)
<i>Library Assistant</i>	Jacqueline Kitchen (part-time)
<i>Secretaries</i>	Lynette Bridgeman Leanne Kelly Christine Kleingeld (part-time) Fiona MacDonald
<i>Receptionist</i>	Glenys Bunkall
<i>Administration Officer</i>	Serena Barrett
<i>Office Assistant</i>	Melissa Harrison

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APPENDIX B Areas of law reviewed by the Law Commission

Area of Law	Publication	Type		Date	Outcome
LEGISLATION (Reference)	Imperial Legislation in Force in New Zealand	Report	NZLC R1	March 1987	Largely implemented by the Imperial Laws Application Act 1988 and associated legislation
	Legislation and its Interpretation: The Acts Interpretation Act 1924 and Related Legislation	Discussion paper	NZLC PP1	June 1987	Followed by report NZLC R17
	Legislation and its Interpretation	Discussion and Seminar papers	NZLC PP8	December 1988	Followed by report NZLC R17
	Legislation and its Interpretation: Statutory Publications Bill	Report	NZLC R11	September 1989	Implemented in part by the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publications Act 1989
	A New Interpretation Act: To Avoid ``Prolixity and Tautology''	Report	NZLC R17	December 1990	Under consideration by the Minister of Justice
ACCIDENT COMPENSATION SCHEME (Reference)	The Accident Compensation Scheme	Discussion paper	NZLC PP2	September 1987	Followed by reports NZLC R3 and NZLC R4
	The Accident Compensation Scheme: Interim Report on Aspects of Funding	Report	NZLC R3	November 1987	Considered in preparing the Accident Rehabilitation and Compensation Insurance Act 1992 and some recommendations reflected in its provisions
	Personal Injury: Prevention and Recovery (Report on the Accident Compensation Scheme)	Report	NZLC R4	May 1988	
LIMITATION PERIODS (Reference)	The Limitation Act 1950	Discussion paper	NZLC PP3	September 1987	Followed by report NZLC R6
	Limitation Defences in Civil Proceedings	Report	NZLC R6	October 1988	Under consideration by the Minister of Justice and reflected in part the Building Act 1991

Area of Law	Publication	Type		Date	Outcome
COURTS (Reference)	The Structure of the Courts	Discussion paper	NZLC PP4	December 1987	Followed by report NZLC R7
	The Structure of the Courts	Report	NZLC R7	March 1989	Substantial effect given; to the Commission's recommendations in the various enactments passed to reform the jurisdiction of the courts in 1991 and 1992
COMPANY LAW (Reference)	Company Law	Discussion Paper	NZLC PP5	December 1987	Followed by reports NZLC R9 and NZLC R16 Companies Bill
	Company Law: Reform and Restatement	Report	NZLC R9	June 1989	(introduced 1990) and Companies (Ancillary Provisions) Bill (introduced 1991)
	Company Law Reform: Transition and Revision	Report	NZLC R16	September 1990	largely based on the draft Acts included in the Commission's reports. Companies Bill reported back by the Justice and Law Reform Select Committee on 15 December 1992. Companies (Ancillary Provisions) Bill still under consideration by the Committee.
LAW OF PROPERTY	Reform of Personal Property Security Law	Discussion paper	NZLC PP6	May 1988	Followed by report NZLC R8
	A Personal Property Securities Act for New Zealand	Report	NZLC R8	April 1989	Under consideration by the Minister of Justice
	The Property Law Act 1952	Discussion paper	NZLC PP16	July 1991	To be followed by a report
	Tenure and Estates in Land	Discussion paper	NZLC PP20	June 1992	To be followed by a report
ARBITRATION	Arbitration	Discussion paper	NZLC PP7	November 1988	Followed by report NZLC R20
	Arbitration	Report	NZLC R20	October 1991	Under consideration by the Minister of Justice
MAORI FISHERIES (Reference)	The Treaty of Waitangi and Maori Fisheries - Mataitai Nga Tikanga Maori me te Tiriti o Waitangi	Background paper	NZLC PP9	March 1989	For use as a resource. Reference withdrawn by the Minister of Justice at the Law Commission's request

Area of Law	Publication	Type		Date	Outcome
LAW OF EVIDENCE	Hearsay Evidence	Options paper	NZLC PP10	June 1989	Followed by discussion papers NZLC PP13, NZLC PP14 and NZLC PP15
	Evidence Law: Principles for Reform	Discussion paper	NZLC PP13	April 1991	To be followed by a report
	Evidence Law: Codification	Discussion paper	NZLC PP14	April 1991	
	Evidence Law: Hearsay	Discussion paper	NZLC PP15	April 1991	
	Evidence Law: Expert Evidence and Opinion Evidence	Discussion paper	NZLC PP18	December 1991	
LAW OF CONTRACT	``Unfair'' Contracts	Discussion paper	NZLC PP11	September 1990	To be followed by a report
	Contracts Statutes Review	Report	NZLC R25	May 1993	Under consideration by the Minister of Justice
EMERGENCIES	First Report on Emergencies: Use of the Armed Forces	Report	NZLC R12	February 1990	Implemented in the Defence Act 1990
	Final Report on Emergencies	Report	NZLC R22	December 1991	Under consideration by Government. Effect given to the recommended principles for the grant of emergency powers in the Biosecurity Bill
CRIMINAL PROCEDURE (Reference)	The Prosecution of Offences	Issues paper	NZLC PP12	November 1990	Under further consideration by the Law Commission. Likely to be followed by a discussion paper
	Criminal Procedure: Part One: Disclosure and Committal	Report	NZLC R14	June 1990	Under consideration by the Minister of Justice
	Criminal Evidence: Police Questioning	Discussion paper	NZLC PP21	September 1993	To be followed by a report on police questioning and improperly obtained evidence and by a separate report on the right of silence and confessions
INTELLECTUAL PROPERTY	Intellectual Property: The Context for Reform	Report	NZLC R13	March 1990	For use as a resource. No law changes recommended

Area of Law	Publication	Type		Date	Outcome
DAMAGES	Aspects of Damages: Employment Contracts and the Rule in Addis v Gramophone Co	Report	NZLC R 18	March 1991	Implemented almost in entirety by the Employment Contracts Act 1991
	Aspects of Damages: The Rules in Bain v Fothergill and Joyner v Weeks	Report	NZLC R 19	May 1991	Under consideration by the Minister of Justice
	Aspects of Damages: Interest on Debts and Damages	Discussion paper	NZLC PP 17	November 1991	To be followed by a report
APPORTIONMENT OF CIVIL LIABILITY	Apportionment of Civil Liability	Discussion paper	NZLC PP19	March 1992	To be followed by a report
PRIVATE INTERNATIONAL LAW	The United Nations Convention on Contracts for the International Sale of Goods: New Zealand's Proposed Acceptance	Report	NZLC R23	June 1992	Backgrounds, and expresses support for, the Government's announced intention of introducing implementing legislation and acceding to the Convention once the legislation has been enacted.

* For a list of the Law Commission's publications in numerical order, see inside front cover (Reports) and inside back cover (Preliminary Papers).

Other Law Commission publications:

Preliminary Paper series

NZLC PP1 Legislation and its Interpretation: The Acts Interpretation Act 1924 and Related Legislation (discussion paper and questionnaire) (1987)

NZLC PP2 The Accident Compensation Scheme (discussion paper) (1987)

NZLC PP3 The Limitation Act 1950 (discussion paper) (1987)

NZLC PP4 The Structure of the Courts (discussion paper) (1987)

NZLC PP5 Company Law (discussion paper) (1987)

NZLC PP6 Reform of Personal Property Security Law (report by J H Farrar and M A O'Regan) (1988)

NZLC PP7 Arbitration (discussion paper) (1988)

NZLC PP8 Legislation and its Interpretation (discussion and seminar papers) (1988)

NZLC PP9 The Treaty of Waitangi and Maori Fisheries - Mataitai: Nga Tikanga Maori me te Tiriti o Waitangi (background paper) (1989)

NZLC PP10 Hearsay Evidence (options paper) (1989)

NZLC PP11 ``Unfair'' Contracts (discussion paper) (1990)

NZLC PP12 The Prosecution of Offences (issues paper) (1990)

NZLC PP13 Evidence Law: Principles for Reform (discussion paper) (1991)

NZLC PP14 Evidence Law: Codification (discussion paper) (1991)

NZLC PP15 Evidence Law: Hearsay (discussion paper) (1991)

NZLC PP16 The Property Law Act 1952 (discussion paper) (1991)

NZLC PP17 Aspects of Damages: Interest on Debts and Damages (discussion paper) (1991)

NZLC PP18 Evidence Law: Expert Evidence and Opinion Evidence (discussion paper) (1991)

NZLC PP19 Apportionment of Civil Liability (discussion paper) (1992)

NZLC PP20 Tenure and Estates in Land (discussion paper) (1992)

NZLC PP21 Criminal Evidence: Police Questioning (discussion paper) (1993)

Report series

See inside front cover

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