LAW·COMMISSION
TE·AKA·MATUA·O·TE·TURE

Report of the

LAW COMMISSION
Te Aka Matua o te Ture

for the year ended 30 June 2000

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

August 2000
Wellington, New Zealand

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Contents

22 August 2000

Dear Minister

I have the honour to submit to you the report of the Law Commission for the year ended 30 June 2000.

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

Yours sincerely

The Hon Justice Baragwanath
President

The Hon Phil Goff
Minister of Justice
Parliament House
WELLINGTON

The Law Commission: Te Aka Matua o te Ture Directory

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 purpose is to help achieve law that is just, principled, and accessible, and that reflects the heritage and aspirations of the peoples of New Zealand.

In developing its proposals, the Commission recognises the Treaty of Waitangi as the founding document of New Zealand, and takes account of community and international experience.

The members of the Law Commission as at 30 June 2000, appointed under section 9 of the Law Commission Act 1985, are:

Hon Justice Baragwanath – President
Judge Margaret Lee
Donald Dugdale
Denese Henare ONZM (retired 30 June 2000)
Timothy Brewer ED
Paul Heath QC

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Information about the Law Commission and its work is available via the Internet from the Commission's website at:
http://www.lawcom.govt.nz.

Funding

The Law Commission is funded from money appropriated by Parliament through Vote:Justice.

Mäori Committee

The Mäori Committee to the Law Commission assists the Commission in identifying projects to advance te ao Mäori, and helps the Commission in implementing te ao Mäori in its work. The members are:

Rt Rev Bishop Manuhuia Bennett ONZ CMG (Chairman)
Hon Justice ETJ Durie
Judge MJA Brown CNZM
Professor Mason Durie
Te Atawhai Taiaroa
Whetumarama Weretä

Annual Report 2000

PRESIDENT'S REPORT

Hon Justice Baragwanath

IN A DEMOCRACY the dominant lawmaker must be the community's elected representatives in Parliament. While the interests of minorities, not least those of Mäori, require careful consideration, its policies will as a rule be guided by the government and their allies who enjoy the support of the majority of the House. The operation of MMP and the three-year electoral term require members to focus particularly on the maintenance of confidence during the life of a Parliament, on the big political issues that win and lose elections, and on the lawmaking that is relevant to each. That is a legitimate and inevitable element of our system of political accountability.

Yet to keep pace with a rapidly changing society, the other laws which order, facilitate, control, and prohibit citizens' conduct must themselves evolve. Examples are our laws as to:

- Property – *A New Property Law Act: NZLC R29* (1994) and *Shared Ownership of Land: NZLC R59* (1999);
- Wills – *Succession Law: A Succession (Wills) Act: NZLC R41* (1997);
- Insurance law – *Some Insurance Law Problems: NZLC R46* (1998);
- Securing a just sharing of responsibility in disputes – *Apportionment of Civil Liability: NZLC R47* (1998);
- Balancing the rights of plaintiffs and defendants as to the time within which proceedings must be brought – *Tidying the Limitation Act: NZLC R61* (2000);
- Housing the aged – *Retirement Villages: NZLC R57* (1999); and
- Evidence law – *Evidence NZLC R55* (1999).

With proper systems of appointment, consultation, operation and implementation, an independent Law Commission has the capacity to promote that evolution by advising how those other laws should be reformed.

Throughout its existence, the New Zealand Law Commission and successive Ministers of Justice have sought to achieve all of these elements. But to date, like Commissions elsewhere, the New Zealand Law Commission has had major problems in securing implementation of its advice. So the current generation of Commissioners have worked with Ministers and other crucial players – Chief Parliamentary Counsel, the Clerk, and others – to introduce systems that will achieve efficient law reform in areas lacking particular political interest and provide New Zealanders with state-of-the-art legislation. Each has recognised the need for improvement and has assisted the process of achieving it.

The evaluation of the Commission completed by Sir Geoffrey Palmer in April 2000 has been a watershed. It is summarised at pages 22–28 of this report. The Commissioners are confident that the implementation of its major recommendations will inject energy and efficiency into our system of law reform.

The Commission's recent reports and current work programme reflect the application of the three-fold test adopted throughout our processes: that the topic is one which if reformed will significantly improve the lives of New Zealanders; that it is within the capacity of the Commission; and that it has a real prospect of implementation (or is so very important as to warrant the expenditure of public time and resources in any event). To select from the great expanse of law (or legal vacuum) the projects and proposals that should take priority is a major task.

Our law now derives from many sources, of which international conventions provide an increasing proportion. To have an effective say in what happens internationally requires us to take part in their formulation, and we need to learn from what is happening elsewhere. So Commissioner Heath QC has played a leading part in the work of the United Nations Commission on International Trade Law concerning both Electronic Commerce and Cross-Border Insolvency; Commissioner Dugdale took part in a conference in London on the law's response to property issues between parties to same-sex relationships, which led to *Recognising Same-Sex Relationships: NZLC SP4* (1999) and our subsequent submissions to Parliament; Commissioner Lee attended the Australasian Law Reform Agencies conference in Perth and reported to the Government on developments in the practical application of computer technology in the law; David Goddard has represented the Commission at the Hague Conference on Private International Law; and all our researchers make regular use of the internet, Helen

Colebrook is able to follow events in Germany and Lucy McGrath those in France. Meika Foster is our Mäori linguist.

Our Treaty and Commercial teams see it as their responsibility, on behalf of the community, to keep ahead of play in their spheres, which are moving at high speed – as witness the recent Constitutional Conference and the developments in the law of defamation (*Defaming Politicians: NZLC PP33*) and the Internet (*Electronic Commerce Part Two: NZLC R58*). So too do our Criminal and Public Law teams, of which the trail-blazing research in *Juries in Criminal Trials: NZLC PP37*, completion of the complete revision of the law of *Evidence: NZLC R55*, responding to the troubling phenomenon of *Battered Defendants* (forthcoming) and the pending report on *Adoption* are examples. All are splendidly supported by our Executive Manager Bala Benjamin and his team of librarians, computer expert, administrative assistants and secretaries. Our Publications Officer, Anne Tucker, has dealt expertly and enthusiastically with the increasing volume of publications. It has been gratifying to the Commission to receive public support for the proposals that have resulted.

I record the Commission's thanks to all those, too many to list, who have helped us during the year. It is a privilege to receive and use others' ideas. They come from the many members of the public who have responded to our preliminary papers (available in printed form or downloadable from our website *www.lawcom.govt.nz*), often at considerable personal cost (as with the very moving contributions to *Adoption*); and the experts who have guided us through the arcanities of their specialist disciplines. These experts included present and former members of the Bench, the legal profession and legal academics who advised us on our projects on Evidence; A Response to *R v Moore*; Limitation; Retirement Villages; Shared Ownership of Land; Juries; and Misuse of Enduring Powers of Attorney*;* they and the medical and psychological specialists whom we consulted on Battered Defendants and Coroners; they and the social scientists who worked on Adoption*;* our computer experts, other legal experts and public servants with whom we worked on Electronic Commerce; members of Ministries, Departments and the Police who assisted on a variety of projects; all members of the Commission staff, and the sages of our Mäori Committee.

With the termination of her appointment on 30 June 2000, I pay an especial tribute to a former member of that Committee who for the past three years has been the leader of our Treaty team. Denese Henare was responsible for *Justice: The Experience of Mäori Women Te*

Tikanga o te Ture: Te Mätauranga o ngä Wähine Mäori e pa and ki tënei: NZLC R53 and *Coroners:* NZLC R62 and the forthcoming *Custom Law* paper, while bringing a new and dynamic perspective to the whole of the Commission's work. She was no doubt the reason for Sir Geoffrey Palmer's recommendation that the Commission should always have a Commissioner of Mäori descent. No reira, tënä koe e Denese mo ö mahi manaaki, mahi tautoko i ahau, arä mätou hoki.

THE COMMISSIONERS

Hon Justice Baragwanath

The Hon Justice Baragwanath began his term as President of the Law Commission on 2 October 1996 for a term of three years, which was extended to 31 March 2001.

Justice Baragwanath graduated from Auckland University in 1964; as a Rhodes Scholar at Balliol College, Oxford, he was awarded a BCL (first class) in 1966. He undertook research at the University of Virginia on a Fulbright Travel Award in 1981.

Between 1966 and 1977, Justice Baragwanath was a partner with Meredith Connell & Co. In 1977, he began practice as a barrister sole, in 1983 was appointed a Queen's Counsel, and in 1995 became a Judge of the High Court. He is a member of the Aviation Study Group based at Linacre College, Oxford.

As well as the overall duties of President, Justice Baragwanath is responsible for the areas of Public and Family Law at the Commission. The projects he had particular involvement with in this financial year were *Judicial Review* and *Acquittal Following Perversion of the Course of Justice: A Response to R v Moore* and the preliminary paper *Adoption: Options for Reform:* NZLC PP38.

He continues to sit regularly and is a member of the Legislative Advisory Committee. He delivered a number of addresses to various audiences in New Zealand, Australia and at the Commonwealth Law Conference in Kuala Lumpur. Notes of several are recorded on the Commission's website.

Judge Margaret Lee

Judge Margaret Lee's term as a Law Commissioner began in April 1996 and her term will continue until 31 March 2001.

Judge Lee was born in China and she had a varied working life before beginning her legal career. She has held positions in New Zealand and with international agencies overseas involving staff

training, education and research, which have given her a breadth of experience not always found among our judiciary.

Judge Lee was admitted to the bar in 1980, became a partner in Tripe Matthews & Feist (a Wellington law firm) in 1982 and became a District Court Judge in 1987. She has been warranted to conduct jury trials since 1992 and has had considerable jury trial experience.

On her arrival at the Commission, Judge Lee undertook particular responsibility for the completion of the evidence law reform project. The three-volume *Evidence* report, the culmination of 10 years work, was released in August 1999. The other project she has had particular involvement with in this financial year is the soon to be published discussion paper *Battered Defendants: Victims of Domestic Violence Who Offend*.

Judge Lee represented the Commission at the 19th Australasian Law Reform Agencies Conference with the theme *Globalisation and Law Reform: Cooperation through Technology*, held in Perth, Western Australia from 30 March to 1 April 2000.

DF Dugdale

DF Dugdale was appointed a Law Commissioner on 16 April 1997 for a term of five years.

He was formerly senior partner of Kensington Swan in Auckland. He is a former President of the Auckland District Law Society and has served on the Council of Legal Education and the Council of Law Reporting. He is the author of standard texts on hire purchase and credit contracts. As a member of the Contracts and Commercial Law Reform Committee during the more than 20 years of its existence, he was party to classic contract and insurance law reforms.

At the Commission, DF Dugdale has particular responsibility, along with Commissioner Heath, for the area of Commercial Law. The projects he saw through to completion this financial year were the reports *Retirement Villages: NZLC R57* and *Shared Ownership of Land: NZLC R59*, the preliminary papers *Limitation of Civil Actions: NZLC PP39* and *Misuse of Enduring Powers of Attorney: NZLC PP40*, and the study papers *Protecting Construction Contractors: An Advisory Report to the Minister of Commerce: NZLC SP3* and *Recognising Same-Sex Relationships: NZLC SP4*.

Mr Dugdale's article "Framing Statutes in an Age of Judicial Supremacism" is published at 9 Otago Law Review 603. During the year under review he has published numerous other papers and delivered various addresses on the topic of the Commission's activities.

Denese Henare ONZM

Denese Henare (Ngati Hine, Ngäpuhi) was appointed a part-time Law Commissioner on 16 April 1997. Her term of office came to an end on 30 June 2000.

She is an experienced commercial lawyer, with a diploma in Air and Space Law from London University. She has been a company solicitor with Air New Zealand, a partner in Collinge Watt and Henare, and then practised as a sole practitioner in Auckland. She has had extensive public sector experience, including as a member of the Royal Commission on Contraception, Sterilisation and Abortion, an Auckland City Councillor, a member of the Board of Mäori Affairs, a member of the Transitional Health Authority, director of the Northern Regional Health Authority, and in numerous other capacities.

She has advised and represented Mäori in many major cases and is a leading authority on Treaty jurisprudence and Mäori issues law. Before her appointment to the Law Commission she was a member of the Law Commission's Mäori Committee for one year.

At the Commission, Denese Henare has led the Te Ao Mäori team whose responsibility is to ensure that the Law Commission shall "take into account te ao Mäori (the Mäori dimension) and shall also give consideration to the multicultural character of New Zealand society" (Law Commission Act 1985, section 5(2)(a)). Their main activities this financial year have been the preliminary paper *Coroners: A Review: NZLC PP36* and the near completion of the final report *Coroners*. The team also worked on the Alternatives in Prosecution project and contributed to the chapter on customary adoption in *Adoption: Options for Reform: NZLC PP38*.

Commissioner Henare spoke at the APEC Women Leaders Conference on the participation of indigenous people in e-commerce.

Tim Brewer ED

Tim Brewer was appointed a part-time Law Commissioner on 30 September 1997 for a term of three years.

A fifth generation "Taranakian", he practices in New Plymouth as a partner in the criminal and civil litigation practice of Auld Brewer Mazengarb & McEwen. He was appointed Crown Solicitor at New Plymouth in 1988. He holds a first class honours degree in law from Victoria University of Wellington, has been a member of the New Zealand Law Society Criminal Law Committee, and is a member of

the Courts Martial Panel of Advocates. He has been a member of the faculty of the New Zealand Law Society Litigation Skills Programme for more than 10 years and was director of the programme in 1996. He serves in the New Zealand Army in the rank of brigadier (Territorial Force). He was awarded the Territorial Force Decoration (the ED) in 1994.

At the Commission, Tim Brewer works in the area of Criminal Law. This financial year has seen the completion of the preliminary paper *Juries in Criminal Trials: Part Two* NZLC PP37, and the report *Costs in Criminal Cases:* NZLC R60.

He regularly addresses community and interest groups on the functions and current work of the Law Commission.

Paul Heath

Paul Heath QC was appointed as a part-time Law Commissioner on 10 May 1999 for a term of three years.

He practises as a Queen's Counsel in Hamilton specialising in commercial litigation (especially insolvency-related issues), arbitration and mediation. Paul Heath is a former partner of Stace Hammond Grace & Partners in Hamilton and a past Convenor of the New Zealand Law Society's Commercial and Business Law Committee. He has also been a member of the Joint Insolvency Committee established by the New Zealand Law Society and the Institute of Chartered Accountants of New Zealand to consider insolvency law reform.

At the Commission, Paul Heath has responsibility, along with DF Dugdale, for the area of Commercial Law; in particular, the areas of insolvency law and electronic commerce. This year saw the publication of a major report on electronic commerce *Electronic Commerce Part Two: A Basic Legal Framework:* NZLC R58 as well as the study paper *Priority Debts in the Distribution of Insolvent Estates: An Advisory Report to the Ministry of Commerce:* NZLC SP2.

Paul Heath also represented New Zealand, as sole delegate and Head of Delegation respectively, at meetings of the United Trade Commission on International Trade Law's (UNCITRAL) Working Groups on Electronic Commerce and Insolvency. Those meetings were held in Vienna and New York. In relation to electronic commerce, Paul was chosen as the English language delegate for the Drafting Group that had the task of finalising the draft Uniform Rules on Electronic Signatures. On the Insolvency Working Group Paul was elected as Vice Chairman of the Group and, in fact,

chaired the last two days of the meeting in the absence of the chairman who had to return early to his home country.

During the year Paul Heath addressed the Australia and New Zealand Maritime Law Association's Conference in Canberra on "Policy Issues for Trade Law Reform" (27 September 1999) and the Commercial Law Association seminar "UNCITRAL and the Developing International Law of Electronic Commerce" in New York on "An International Approach to Computer Crime?" (24 February 2000).

THE YEAR UNDER REVIEW

Reports

The following reports were published this year: *Evidence, Retirement Villages, Electronic Commerce: Part Two, Shared Ownership of Land, and Costs in Criminal Cases.*

Evidence NZLC R55

The Law Commission published its report on evidence law reform in response to terms of reference given by the Rt Hon Sir Geoffrey Palmer (then Minister of Justice) "to make the law of evidence as clear, simple and accessible as is practicable, and to facilitate the fair, just and speedy judicial resolution of disputes".

The report was the culmination of 10 years work. It is in two volumes: volume one contains the report itself and volume two contains the Evidence Code and Commentary. A third volume, published as a miscellaneous paper, conveniently gathers together recent research on three aspects of human memory: eyewitness identification, children's memories, and "recovered" memories.

The Code states its purpose is "to help secure the just determination of proceedings" through four stated objectives. It adopts the general principle that all logically relevant evidence is admissible unless there is some policy reason to exclude it. It requires evidence to be excluded if it is irrelevant, if its probative value is outweighed by its unfairly prejudicial effect, or if it would needlessly prolong a proceeding.

The principles that underpin the Code will be familiar to members of the judiciary and the legal profession. In the main, the changes recommended in the Code extend current trends, clarify ambiguity, or eliminate inconsistency and irrationality.

If enacted, the Evidence Code will replace the entire body of evidence law currently found in the Evidence Acts and in case law. Exceptions are where the Code's provisions overlap with specific provisions in other statutes, in which case the latter prevail, for example, the large number of provisions in existing statutes that facilitate the admission of hearsay evidence.

Judge Margaret Lee was the Commissioner and Karen Belt the researcher responsible for this report.

Retirement Villages NZLC R57

This report identified residents in retirement villages being at risk in the following ways:

- a project's financial failure as a result of initial under-capitalisation or subsequent mal-administration;
- residents agreeing to unfair terms, particularly perhaps in relation to levies and to exit costs; and
- cowboy operators who skimp on performing contractual promises.

The Law Commission believes that people who put their money into retirement villages need stronger legal safeguards. The report included draft legislation specific to the retirement village industry to extract that industry from Securities Act regulation, which was designed for a different purpose.

The Commission proposed a method of light-handed regulation. It believes this would provide the control necessary without incurring excessive compliance costs.

DF Dugdale was the Commissioner and Megan Leaf the researcher responsible for this report.

Electronic Commerce Part Two: A Basic Legal Framework NZLC R58

This report, a sequel to *Electronic Commerce Part One: A Guide for the Legal and Business Community*, recommended that New Zealand enact an Electronic Transactions Act to remove immediate barriers to carrying out electronic transactions. The proposed Act is broadly similar to Australian legislation and adopts many of the provisions of the UNCITRAL Model Law on Electronic Commerce.

The report recommended that the application of the proposed Act be restricted to transactions, conducted "in trade" which, while

including consumer transactions would not include, for example, the disposition of property under a will. The report also recommends that barriers to electronic commerce be removed; particularly barriers arising from statutory requirements that documents be "in writing", that the "writing" be "signed", that "original" documents be retained, that notices and other documents be served, requirements for physical presence or attendance, and the negotiability of electronically generated documents.

The Commission recommended a basic statutory framework as many of the issues identified in its report were truly international in nature and solutions would be distilled from continued work in various international fora.

The report called for further submissions on four issues:

- the privacy implications of caching information;
- who should be liable for unauthorised electronic banking transactions;
- whether legislation is required to allow the use of electronic transportation documents; and
- whether there is a need for legislative intervention to provide greater protection against the misuse of information.

Submissions closed on 30 June 2000. A further report will be released by the Commission to address the outstanding issues. The Commission is pleased that the Ministry of Economic Development is currently finalising a bill to introduce into Parliament to give effect to many of the recommendations made in *Electronic Commerce Part 2*.

Paul Heath QC is the Commissioner in charge of the Electronic Commerce project. Researchers responsible for this report were Lucy McGrath, Jason Clapham and Megan Leaf.

Shared Ownership of Land NZLC R59

In this report three forms of shared ownership, cross-leases, unit titles and jointly owned access lots, were critically examined.

The Law Commission's view (which is widely supported) is that no new cross-lease developments should be permitted. The Commission also argued that the problems that lie ahead with existing cross-leases need to be faced now and not left until they become acute. The solution the Commission proposed was a replacement of cross-leases by subdivisions or unit titles. Various proposals to limit the cost of this were advanced, but because there

will remain an inescapable balance of legal and surveying costs, the Commission proposed a moratorium of at least 10 years before the new provision bites.

The report contains proposals to tidy up the unit titles legislation, in particular by providing for dispensing with body corporates in simple developments and simplifying staged development provisions. There is a provision proposed for sharing the costs of maintenance in the case of jointly owned access lots.

DF Dugdale was the Commissioner and Megan Leaf the researcher responsible for this report.

Costs in Criminal Cases NZLC R60

A final report was published in May 2000. The report recommended a new scale of costs awards to be modelled on the new civil rules cost structure, and that the Act be amended to allow the Legal Services Board to recover its costs. The report concluded that, apart from a few minor drafting anomalies, the framework of the Act is essentially sound.

Tim Brewer was the Commissioner in charge of this report. Louise Symons was the researcher.

Preliminary papers

The following preliminary papers were published this year: *Coroners*, *Juries in Criminal Trials: Part Two*, *Adoption: Options for Reform*, and *Limitation of Civil Actions*. All of these papers will result in final reports after submissions and consultation have been taken into account.

Coroners NZLC PP36

This discussion paper looked at concerns relating to the Coroners Act 1988 and coronial practices generally. It also included proposals that give weight to cultural values, particularly Mäori cultural values, as well as recognising that determining the cause of death is the important function of the coronial system.

The Law Commission has received a large number of submissions and consulted with interested groups on issues discussed in the paper and especially proposals that the Law Commission makes for amending the Coroners Act 1988 and taken these into account in the final report *Coroners* due to be published in July 2000.

Denese Henare was the Commissioner in charge of this paper. Meika Foster and Jason Clapham were the researchers.

Juries in Criminal Trials: Part Two NZLC PP37

The Law Commission's discussion paper *Juries in Criminal Trials: Part Two* raised in detail a number of important issues relating to juries. The paper discussed:

- the information and assistance given to jurors;
- how evidence is presented to the jury;
- the process of jury deliberations;
- failure to agree and majority verdicts;
- the competency of jurors;
- the secrecy of jury deliberations;
- the impact of media coverage on juries; and
- the experience of being a juror.

A juries research project, undertaken by Warren Young of the Victoria University of Wellington Faculty of Law, provided much of the raw material used in the paper to illustrate the issues which are relevant to trial by jury in New Zealand today. A summary of the research findings comprised volume two of the paper.

Tim Brewer was the Commissioner in charge of this paper. Louise Symons was the researcher.

Adoption: Options for Reform NZLC PP38

The purpose of this paper was to review the legal framework for adoption in New Zealand as set out in the Adoption Act 1955 and the Adult Adoption Information Act 1985; as Adoption law and practice have had to cope with modern challenges that legislators in 1955 would have been hard-pressed to predict.

The Law Commission considered a range of issues, namely:

- whether the legal links between the natural parents and the child should continue in some form following an adoption order;
- how the law should respond to open adoption;
- whether changes should be made to the categories of persons who may adopt a child;
- cultural adoption practices;
- intercountry adoption;
- who should be eligible to be adopted;

- whether changes should be made to the timing of consent to the adoption of a child; and
- the adequacy of the current adoption information regime.

A great number of submissions and consultation meetings resulted and these will be taken into account in the final report to be published later this year.

Justice Baragwanath was the Commissioner in charge of this paper. Helen Colebrook and Megan Noyce were the researchers.

Limitation of Civil Actions NZLC PP39

In this discussion paper, the Commission proposed changes to the Limitations Act 1950.

The aim of these proposals is to provide a legal framework that would better find a balance between preventing endlessly lingering threats of legal action and ensuring justice to complainants who either do not know of or fail to comprehend the effect of the wrong done to them.

The changes proposed were:

- allowing an intending plaintiff an extension of time beyond the normal six year period if the plaintiff can prove that he or she could not have reasonably been aware of the cause of action during the six year period;
- that a long-stop of 10 years apply except where there is fraudulent concealment; and
- helping sexually abused plaintiffs by treating them as suffering from a disability that suspends the running of time if the abuse has affected their psychological ability to bring a claim to a head.

DF Dugdale was the Commissioner in charge of this paper. Louise Symons was the researcher.

Misuse of Enduring Powers of Attorney NZLC PP40

In this discussion paper, the Law Commission called for submissions on the issue of abuse of enduring powers of attorney. Enduring powers of attorney are most commonly used by old persons wanting to appoint family members to manage their affairs. There are no effective safeguards against attorneys abusing their powers and there is strong evidence that abuse occurs. The Law Commission wants to gauge how widespread the problem is. If abuses are sufficiently common to justify legislative interference, it will consider what safeguards would be appropriate.

DF Dugdale was the Commissioner in charge of this paper. Helen Colebrook was the researcher.

Study papers

The following study papers were released this year: *Priority Debts in the Distribution of Insolvent Estates, Protecting Construction Contractors,* and *Recognising Same-Sex Relationships*.

Priority Debts in the Distribution of Insolvent Estates NZLC SP2

This paper was written in response to a request by the Ministry of Commerce to provide advice on whether existing classes of preferred creditors should continue to enjoy advantages over unsecured creditors when bankruptcy or liquidation intervened. Preferred creditors are those people or institutions who are not secured creditors, but who are entitled to have their debts paid from the assets of a bankrupt person or a company in insolvent liquidation before other unsecured creditors.

Two further issues addressed were:

- problems caused by the sale, as a going concern, of an insolvent business to a new entity which has similar, or the same, ownership as the insolvent entity; and
- problems in relation to gift vouchers (for instance, as occurred during the course of the Levenes and Palmers Garden Centre receiverships).

The Commission made recommendations for the abolition of certain priorities, the creation of certain new priorities and identified a series of principles upon which the legislature should act when determining whether to grant priority to a particular debt. This report is currently under consideration by the Ministry of Economic Development (as the Ministry of Commerce is now known).

Paul Heath QC was the Commissioner in charge of this paper. Jason Clapham was the researcher.

Protecting Construction Contractors NZLC SP3

This study paper was produced after the Ministry of Commerce requested the Law Commission to consider the position of contractors in the construction industry. The Law Commission found that all sectors of the industry seem to agree that there are

superior contractors who wrongly withhold payments from their subcontractors, but found no agreement as to the extent of the problem. The traditional method of protecting construction contractors is by statutory provision for liens over the owner's land and charges over monies due to superior contractors. New Zealand does not currently have such legislation. The Law Commission concluded that the reform model most appropriate to New Zealand conditions was the New South Wales Building and Construction Industry Security of Payment Act 1999.

DF Dugdale was the Commissioner in charge of this paper. Jason Clapham was the researcher.

Recognising Same-Sex Relationships NZLC SP4

The Law Commission has published a study paper recommending provision in New Zealand law for registered partnerships between same-sex couples.

DF Dugdale was the Commissioner in charge of this paper. He was assisted by researcher Helen Colebrook.

Ongoing work

Adoption

As outlined above, in November 1999 the Law Commission released a discussion paper entitled *Adoption: Options for Reform*, inviting public submissions as to whether and how the framework of adoption might be modified to better address contemporary social needs. The paper considered a range of important issues relating to adoption and the care of children. There was a great deal of public interest in this paper and the Commission was heartened by the quality and quantity of submissions received.

The Commission's final report "Adoption and its Alternatives: A Different Approach and a New Framework" will be released in September 2000. The report will make recommendations on a wide range of matters and will propose the enactment of a Care of Children Act, which will deal in a comprehensive manner with adoption and the other ways in which children are cared for within New Zealand.

Justice Baragwanath is the Commissioner in charge of the Adoption project. He has been assisted by Helen Colebrook and Megan Noyce who have done the bulk of the research and writing.

Battered Defendants: Victims of Domestic Violence Who Offend

This project was prompted by public concern that the criminal law may apply in an inequitable or overly harsh manner to some defendants who commit criminal offences as a reaction to domestic violence. The aim of the project is to:

- examine how the existing New Zealand law applies to those who commit criminal acts in circumstances where they are victims of domestic violence, in particular, the defences of self-defence, provocation, duress and necessity;
- consider developments and proposals in other jurisdictions, in particular, the defences of self preservation, diminished responsibility and judicial discretion in sentencing for murder; and
- make proposals for reform, if appropriate.

A preliminary paper discussing these issues and seeking public submissions will be published in August. A report containing final recommendations will be published in March 2001. Judge Lee is the Commissioner in charge of the project. She is assisted by Karen Belt who has done the bulk of the research and writing.

Acquittal Following Perversion of the Course of Justice: A Response to R v Moore

The Commission was asked by the former Minister of Justice to consider and report on the case of Kevin Moore. In May 1992 Moore was tried with two fellow members of a New Plymouth gang for the murder of a member of a rival gang. A defence witness, a Mr M, gave alibi evidence in favour of Moore and his co-accused that may have led to their acquittal. In August 1999, Moore was convicted of conspiracy to pervert the course of justice in relation to that evidence.

It is likely that by reason of a second crime, conspiracy to pervert the course of justice for which he is eligible to apply for release on parole after two years and four months, Moore escaped conviction for murder which carries a minimum non-parole period of 10 years or more. But Moore cannot be retried for the murder because of the rule of law which prohibits retrial following acquittal or conviction.

The Commission is preparing a preliminary paper which addresses the following issues:

- How does New Zealand law deal with the case where an acquittal is alleged to have been secured following some perversion of the course of justice?
- Is that law satisfactory?
- If not, what are the options for reform?

Justice Baragwanath and Judge Lee are the Commissioners working on this project.

Judicial Review

The Law Commission's report on Judicial Review has been completed to the satisfaction both of the Commission and of its expert advisers, save for one important policy decision. But for that point it would have issued its advice as a final report. The issue is whether or not in constitutional principle coercive orders such as injunction and mandamus should be available not only against individual officers of the Crown but against the Crown itself. The view implicit in the present form of section 8(2) of the Judicature Amendment Act 1972 is that such orders should not be made. The opposing position is that the Crown, like all others in society, is subject to the rule of law and should be subject to the remedies available against others.

The same point arises in section 17 of the Crown Proceedings Act 1950 from which section 8(2) derives. The Law Commission in connection with the obligation imposed by the Interpretation Act 1999 section 28 expects that the Minister of Justice will call for a report from it as to modification of the Crown Proceedings Act. In that event, it will advance its "Judicial Review" proposals as part of such exercise.

Juries in Criminal Trials

The second part of the *Juries in Criminal Trials* preliminary paper was published in November 1999 with a companion volume containing a summary of the results of a major empirical study on jurors by Warren Young of Victoria University of Wellington. Its publication was timed to coincide with a series of educational seminars sponsored by the New Zealand Law Society and presented by Warren Young and Commissioner Tim Brewer. The paper and research have been met with great interest by judges and trial lawyers throughout New Zealand and have led to many efforts to improve the conduct of jury trials, particularly in the presentation of evidence to jurors. A final report will be published at the end of 2000.

Tim Brewer is the Commissioner in charge of the project. He is assisted by Louise Symons who has done the bulk of the research and writing.

Criminal Prosecution

The preliminary paper *Criminal Prosecution:* NZLC PP28 was published in March 1997 and the Commission has received extensive submissions and had ongoing discussions with interested parties about the wide range of issues raised in the paper, in particular with the Ministry of Justice and Department for Courts who are continuing to work in the areas of criminal disclosure and preliminary hearings. As a result of recommendations in the paper, the Police National Prosecutions Service was created on 1 July 1999, and the Commission has been consulted as that has developed. The final report will be published shortly. Tim Brewer is the Commissioner in charge of the project. He has been assisted by senior researcher Louise Symons.

Alternatives in Prosecution

The purpose of this paper was to evaluate the traditional objectives and processes of the criminal justice system and to examine the possibility of alternative processes, particularly in the area of restorative justice. The project has been suspended as further detailed work on restorative justice has been commenced by the Ministry of Justice, and the Commission will provide assistance to the Ministry as required. The Commissioners involved in this project have been Judge Margaret Lee, Denese Henare and Tim Brewer. They have been assisted by Sharon Opai and Louise Symons.

Simplification of Criminal Procedure Legislation

Difficulties continue to arise from the multiplicity of legislative provisions governing different aspects of criminal procedure to be found in a variety of statutes. The distinction between the various jurisdictions of the District Courts (purely indictable (middle band); purely indictable; indictable offences triable summarily; summary offences triable indictably; summary) continue to create unnecessary and illogical differentiation in:

- the maximum sentences available for the same offence;
- the court in which defendants are sentenced for the same offence;
- the court in which appeals against sentences are heard; and

- the availability or otherwise of statutory protection for particular witnesses (for example, sections 13A and 23E of the Evidence Act 1908).

Researcher Lucy McGrath, under the supervision of Judge Lee, has made a start on a project which aims to simplify the statutory provisions governing the laying of criminal charges and infringement offences and their progress through the court system, with a view to removing the current inconsistencies and introducing more efficient procedures.

International Trade Conventions

The Commission intends to publish a study paper in the next financial year which discusses several international conventions, the adoption of which may facilitate New Zealand's international trade. The areas covered by the conventions vary from international payments systems, to evidence and service abroad, to liability in the international carriage of goods. The study paper discusses the provisions of each convention and makes recommendations as to whether New Zealand should accede to them. The study paper forms part of the Commission's wider work in relation to international trade, which includes earlier reports on electronic commerce and cross-border insolvency. Paul Heath is the Commissioner in charge of the project. He is assisted by Lucy McGrath.

Mäori Custom Law

The planned custom law paper discusses the inter-relationship between the concepts of custom law, tikanga Mäori, and values. However, it does not attempt to exhaust all possible philosophical, technical and legal arguments surrounding the issues. Rather, it identifies in a factual way how custom law is currently recognised in our legal system. It also provides a brief outline of some of the concepts and values of tikanga Mäori and identifies the various categories within which tikanga Mäori can apply. Finally, it suggests areas in which the legal system can develop to better recognise tikanga Mäori. Denese Henare has been the Commissioner in charge of the project. She has been assisted by Meika Foster.

ADVISORY SERVICES TO OTHER STATE AGENCIES

Advisory work

For details please refer to page 46.

CORPORATE SERVICES

Library

It was a busy year for the Library. Apart from providing Law Commission staff members with access to an efficient information service, the Library undertook the following activities.

The Library purchased the version 4.0 upgrade to Inmagic DB/ Textworks and organised development work to be carried out to customise forms and reports in various in-house databases. This development work enabled the Library to streamline the processing of new materials, in particular, the periodicals and law reform publications. This development work was also timely as the Library finished adding all the periodicals holdings to the catalogue. Previously, the Library had used a manual system to record the receipting, claiming and payment information of the periodicals.

Library staff members continued to participate in a number of external committees and in a new internal committee that enabled them to learn from and network with other library and information professionals as well as contribute their knowledge and experience. The external committees included the Justice Sector Information Management Sub Working Group and the Special Libraries and Information Services SIG. The new internal Net Committee was established to focus on the maintenance and development of the Internet and Intranet. The Committee organised development work to be carried out on the website that culminated in the Commission's new look website.

Availability of extra resources enabled the Library to continue bringing the binding of the periodicals up to date and to remove the backlog of materials waiting to be catalogued: both were visible enhancements to the Library!

Information technology

Y2K

The transition to the new millennium went smoothly due to the substantial time spent on planning and testing in preparation for the event.

Upgrade to Microsoft Office 97

The Commission completed the upgrade to Microsoft Office 97. This makes our system more compatible when exchanging information with external parties.

Internet site upgrade

The Commission's Net Committee have spent some time reviewing the Commission's website. Enlisting the help of an external web designer, they completed a revamp that reflects the Commission's corporate identity and made the site more user-friendly. This year the Commission started keeping track of visitors to the website by installing facilities to provide monthly statistics of website usage. Work has begun towards updating the Law Commission Intranet.

Other

Most of the staff attended various training programmes to enhance their skills. The Commission is fortunate to have a group of dedicated and hard-working staff to support its law reform activities: we offer them our sincere thanks.

Finance

The Government grant has remained unchanged since 1996. Expenditure is closely monitored and controlled. On most expenditure items, the actuals were less than their corresponding budgets. The Library collections were revalued as at Balance date which resulted in writing-off the revaluation reserves of $17,160 and a further write down of $19,387 to operating.

The final result was an operating surplus of $75,186.

VISITORS

Visitors this year included: representatives of the Australian Senate and House of Representatives Joint Standing Committee; Professor Tateyama from Tokai University in Kanogawa, Japan; Professor Jacob Ziegel, Canada; and Dr Peter Nygh, Australia.

STAFF

During the year the following staff members left the Commission:

Jason Clapham
Pam Evans
Pippa Fraser
Leonie Gwiazdzinski
Megan Leaf
Megan Noyce
Alastair McClymont

Sharon Opai

Moira Thorn

During the year the following staff members joined the Commission:

Gloria Hakiwai

Michael Josling

Anthea Miller

Barbara Sutton

Andrew Wong She

STAFF PHOTO

From left to right, standing: Helen Bradshaw, Helen Colebrook, Karen Belt, Marilyn Cameron, Judith Porter, Colleen Gurney, Lucy McGrath, Louise Symons, Meika Foster, Anne Tucker, Michael Josling, Brenda Speak, Barbara McPhee, Anthea Miller, Bala Benjamin, Barbara Sutton, Gloria Hakiwai, Jacqueline Kitchen, Andrew Wong She; seated: Timothy Brewer ED, Denese Henare ONZM, Paul Heath QC, Justice Baragwanath, DF Dugdale, Judge Margaret Lee. Absent: Charlotte Grant.

REVIEW OF THE LAW COMMISSION BY THE RT HON SIR GEOFFREY PALMER

By letter dated 29 February 2000, the Rt Hon Sir Geoffrey Palmer was requested by the Associate Minister of Justice, the Hon Margaret Wilson, to evaluate the Law Commission. Sir Geoffrey's report was released on 28 April 2000. We include the following extract.

PART ONE: SUMMARY AND RECOMMENDATIONS

General

The statute establishing the Law Commission is ambitious. Its purpose is to promote the systematic review, reform and development of the law of New Zealand. That purpose has yet to be realised, although it remains a highly desirable goal.

The Law Commission is a useful public institution and should be retained. It has done much valuable work. It contains high quality jurists working for the public interest.

The contribution of the Law Commission in terms of legislation passed or administrative change has not been proportionate to the amount of public money spent on it. The main failure has been a relatively low strike rate of the Commission's proposals being enacted into law. The strike rate is less than 50 percent. Improvements need to be made so that the Commission can contribute more. The Report concentrates upon recommendations of a practical kind to improve the effectiveness of the Commission.

The purpose, functions and structure of the Law Commission should remain as they are now. Only one statutory change to the Commission's statute is recommended in the Report. The Government should be required, within six months of receiving a Law Commission Report, to table in the House of Representatives a statement of its policy towards the proposals contained in the Law Commission Report.

The Law Commission is a Crown entity. Consideration will need to be given to the structure of the Law Commission in the current Government project to develop generic legislation governing Crown entities. The existing structure of the Commission may not fit with the generic legislation being considered. This Report finds the existing structure sound for its purpose.

Change in Approach to Law Reform

A fundamental change of attitude to law reform in New Zealand is required. Law reform has been neglected in recent years. New Zealand will suffer if proper repairs and renovations to its statute laws are not performed. The law needs to be kept up to date to reflect developments in new technology and business practices. New Zealand is probably falling behind its trading partners in this respect.

The Attorney-General should be explicitly tasked with overall responsibility for the legal system and its operations. The Law Commission should be transferred to the Attorney-General away from the Ministry of Justice. The Attorney-General will then be the Minister for Law Reform. Necessary legal changes should then receive the required impetus.

There needs to be a renewed commitment to the values that underpin the law reform enterprise, and that is one of the prime reasons why it is recommended in this Report that a Minister should be given that specific responsibility.

There has been a loss of focus in the Government machine on law reform, and society has suffered as a result. There needs to be a Minister with responsibility for law reform and a Minister who can speak for law reform in the councils of the Government. In this

context the word "reform" should not be misunderstood. Care and maintenance of the statute book does not always involve policy changes. Keeping the law up to date is important for the commercial life of the country and for the better functioning of society.

The Law Commission should not be restricted to reform projects within the Justice Portfolio. In the past its work has been disproportionately weighted in that direction. The Attorney-General should call for proposals for Law Commission projects from all Ministers.

Relationship between the Law Commission and Executive Government

The principal failure of the Commission throughout its life has been an inability to develop effective working relationships with the Executive Government. The fault is not only the Commission's. There have been serious faults at various points in the relationship with the Department of Justice and the new Ministry of Justice. But the net effect of these poor relationships has been that the Commission has been less effective than it could have been. This factor has contributed to the low rate of enactment of its proposals. The Commission needs to work harder at developing its relationship with the Executive Government.

Law-making depends on teamwork. The Law Commission should work in partnership with Departments of State as it has done with the Ministry for Economic Development on e-Commerce and Insolvency.

Where the Law Commission is working on a reference, better co-ordination could be achieved if there was a single official within the lead agency who was designated to be the liaison point.

On some projects it may be better for the Law Commission to voluntarily surrender some of its independence and work in partnership with a policy Department to fashion proposals for legislative change.

The Law Commission should plan to provide support for its legislative proposals throughout the parliamentary process.

Implementation of Commission Reports

The strike rate of the Law Commission in getting significant law reform enacted on the Statute Book has not been high. It probably has not been high enough to justify the expenditure of public moneys on the Commission. An average of one significant statute a year is not really good enough for a body of this character.

Where the Law Commission completes a Report that is tabled in Parliament, the Government should treat the Report in the same way as it treats a Select Committee Report. A response should be tabled in the House within six months of receiving the Report. The response should set out the Government's policy in relation to the Report. The Law Commission Act should be amended to require this to happen. This will ensure that Law Commission Reports are not left languishing for years unaddressed.

For major projects, the Attorney-General should take Cabinet Papers to Cabinet setting out the policies of the Law Commission after the first phase of its consultations and work. If the first phase receives approval from Cabinet, drafting could proceed on instruction from the Law Commission. Other policy analytical processes that may be required within the Government can be carried out as the Commission completes its final Report, accompanied by a draft bill. This recommendation will prevent resources being used on projects that will not be legislatively advanced.

Use of Parliamentary Counsel Office

The Government should support the efforts of Parliamentary Counsel Office to provide a Parliamentary Counsel to draft Law Commission projects into Bills for introduction. This way the Government will have the assurance that law reform measures have been effectively thought through and are professionally drafted. This step should improve the take-up rate of Law Commission Reports.

With the greater involvement of Parliamentary Counsel Office in the drafting of the Commission's proposals, the Government would have confidence that its legislative requirements were being met, and they would not need to be second-guessed again within the Executive Government. If a practice of this sort were adopted as a matter of routine, it would be possible to secure a series of Law Commission Reports with draft Bills attached that would be ready for introduction.

Timeliness of Reports

No Law Commission Report should take more than five years to produce; few should take as long as that. One of the main criticisms made of the Commission has been the extraordinarily long period that it has taken to complete some of its references and its lack of timeliness in the production of its work.

It is important for the Law Commission to do sufficient preparatory work at the beginning so that realistic and attainable deadlines can be set for the work programme.

It is recommended that the Memorandum of Understanding between the Government and the Law Commission be revised so that it lays down a more specific system to deal with any revision of delivery dates. This is currently contained in Part 4 of the Memorandum of Understanding.

The Commission has about 30 items on its current work programme. Its focus would improve and the timelines problem would be assisted if the number of projects were halved. That is recommended.

Policy Advice from the Law Commission

The Law Commission needs to build up knowledge of the literature and expertise in the technique of policy advice. When it comes to recommending what the law ought to be rather than what it is, the

techniques of policy analysis are rather different from the techniques of legal analysis. The fact that the intellectual processes are different has quite a lot to do with why the Executive Government has had trouble digesting some of the Law Commission Reports.

Independence versus Working in Alignment with Government Process

The Law Commission is independent. Its independence ought not to be reduced. But it must also work closely with Government. There are tensions in this relationship. The closer the Commission gets to Government, the more imperilled its independence. The more the Commission exercises its independence, the less likely its proposals are to find favour with the Government of the day.

The constitutional dilemma between independence and effectiveness is a question of balance in the end. The Commission should not become part of the Executive arm of Government but it does need to show sensitivity to the legislative aims of the Government of the day and to help fashion proposals that the Government is interested in advancing.

Appointments

Appointments to the Commission need to be considered carefully. There should be a Commissioner with a good knowledge of the Government policy-generating processes, the legislative process and Government administration generally.

Difficulties are created when Commissioners leave with projects uncompleted. This means that new Commissioners inherit the projects; sometimes they have little sympathy with them or little background in them. Greater consideration needs to be given to ensuring Commissioners see their projects through to completion. This needs to be considered carefully at the time appointments are being made.

It is recommended that more care be given to appointments and matching them up with the Commission's work programme or likely work programme. Consideration should also be given to making some appointments project specific, particularly for practising lawyers who cannot leave their practices for a lengthy term. Where that occurs, the project must be completed before the Commissioner's time expires.

The Law Commission lacks expertise in policy analysis and economic analysis, both of which are important to the development of modern legislative reform. Such analysis is particularly important for projects with a social policy content. Steps should be taken to remedy these deficiencies. It is recommended that the Law Commission bring greater interdisciplinary expertise to its deliberations than it has done so far. One Commissioner should come from a discipline outside the law. Some of the Commission's researchers should come from other disciplines as well.

Overall, the make-up of the Law Commission should be balanced. Academic lawyers should be appointed to the Commission on a regular basis. There should usually be a Commissioner of Mäori descent.

When the President is a Judge, he or she should not sit in the Courts to any significant extent. The President of the Law Commission needs to be full-time. Where a Commissioner is a Judge that Judge's sitting time should be limited and be the subject of careful negotiation and agreement at the time of the appointment.

Advisory Role

The evaluator recommends that the Law Commission should devote resources to advisory work on legal and legislative problems within Government, simply because this contributes to the improved quality of the Statute Book. In particular it should play an active role in the Legislation Advisory Committee. Careful management techniques must be applied to ensure that this does not cause energy to be diverted from its major references so they are not produced on time. The priority to be given to such advisory work should be the subject of discussions with the Attorney-General. No more than 15 percent of the Commission's outputs should be devoted to such work.

Other Roles for the Law Commission

An Annual Report should be prepared by the Law Commission on the systematic review of the law, in which general observations could be made about defects in the development of New Zealand law.

The capacity of the Commission to undertake work involving large and fundamental change ought to be considered by Government. It is in a better position to carry out such work than Government Departments.

Commission Procedures

Internal debate within the Law Commission should not cause delays in the completion of a project. But if there is an appropriate collegiate approach to decision-making at the Law Commission, Commissioners who have not been primarily involved in projects should, nevertheless, be able to add value to them in the Commission's deliberations.

The Law Commission should review its internal procedures to ensure it can meet its deadlines.

Management

The management of the Law Commission is of vital importance. That is particularly the case because the Law Commission enjoys statutory independence, but for its success must still liaise closely with Government and outside organisations at several levels. The quality of administration is important, particularly effective networking with Government Departments, Universities, learned societies, and law reform agencies overseas.

For this reason, it is recommended that the Law Commission reconsider its decision to abolish the post of Director. Networking with Government Departments and outside organisations is a vital part of a Director's role.

How the researchers at the Commission are organised is a judgment for the Commission to make.

Mäori Dimension

The Commission has made a useful contribution to Mäori matters.

It is not recommended that a separate Mäori Law Commission be established. The Law Commission should undertake, on reference from the Government, projects that deal with aspects of the Treaty of Waitangi and the legal system. If the Government wishes to do that to a greater degree, it will need to consider re-orienting the Commission substantially.

The Law Commission offers a forum in which both partners to the Treaty can have issues concerning the Treaty in the law and the constitution analysed in a detached and scholarly way.

Resources of the Law Commission

The Law Commission does not need any increase in its resource base. Nor should the base be reduced. An annual appropriation of $3.34 million appears to be about right.

There is a need for the Commission to enter into discussions with the Ministry of Justice's purchase advisers over the level of reserves in the Commission's account.

FINANCIAL STATEMENTS
STATEMENT OF RESPONSIBILITY

We acknowledge responsibility for the preparation of these financial statements and for the judgments used herein.

We acknowledge responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of the Commission's financial reporting.

In our opinion these annual financial statements fairly reflect the financial position and operations of the Law Commission for the year ended 30 June 2000.

Hon Justice Baragwanath
President

B Benjamin
Executive Manager

FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2000

Reporting entity

The Law Commission is a Crown entity established by the Law Commission Act 1985.

The Financial Statements have been prepared pursuant to section 17 of the Law Commission Act.

Measurement base

The general accounting principles recognised as appropriate for the measurement and reporting of results and financial position on a historical basis, modified by the revaluation of Library collections, have been followed.

Accounting policies

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

1 *Goods and Services Tax (GST)*

The Financial Statements have been prepared exclusive of GST with the exception of receivables and payables, which are stated with GST included.

2 *Fixed assets*

All fixed assets are initially recorded at cost.

Library: all serial acquisitions and other expenditure which enhance the useful life of the collections beyond the financial year, are capitalised from 1 July 1997. Library collections are valued every three years. Upwards or downwards revaluation of Library collections is charged to Asset Revaluation Reserve account. When this results in a debit balance in the reserve account, the balance is expensed in the statement of financial performance.

3 *Depreciation*

Depreciation is provided on a straight line basis which will write off the cost (or revaluation) of the assets over their useful lives.

The useful lives and associated rates of depreciation for major classes of assets have been estimated as follows:

	Estimated useful life (years)	Rate of depreciation (%)
Computer equipment	5	20
Furniture and fittings	5	20
Office equipment	5	20
Computer software	5	20
Library collections	5	20

4 Investments

Investments are stated at the lower of cost and net realisable value.

5 Leases

Operating lease payments, where the risks and benefits of ownership are effectively retained by the lessor, are charged as expenses in the period in which they are incurred.

6 Statement of cash flows

Cash means cash balances on hand, held in bank accounts, demand deposits, and other highly liquid investments in which the Commission invests as part of its day-to-day cash management.

Operating activities include cash received from all income sources and the cash payments made for the supply of goods and services.

Investing activities are those activities relating to the acquisition and disposal of non current assets.

Financial activities comprise the change in equity of the Commission.

7 Financial instruments

The Law Commission is a party to financial instruments as part of its normal operations. Those financial instruments include bank accounts, investments, and debtors and creditors, all of which are recognised in the statement of financial position. Revenue and expenses in relation to financial instruments are recognised in the statement of financial performance.

8 Income tax

The Law Commission is exempt from income tax.

9 Receivables

Accounts receivable are stated at their estimated realisable value after providing for doubtful and uncollectable debts.

10 Employee entitlements

Provision is made in respect of the Commission's liability for annual leave. Annual leave has been calculated on an actual entitlement basis at current rates of pay.

11 Change in accounting policies

There have been no changes in accounting policies during the year.

STATEMENT OF FINANCIAL PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2000

	2000 Actual $	1999 Actual $	2000 Budget $
REVENUE			
Government grant (note 7)	2,988,980	2,999,445	2,975,111
Interest	90,826	89,854	30,000
Sale of publications	33,136	27,992	25,000
Contribution from State agencies for Electronic Commerce project	6,500	55,000	0
Surplus on sale of fixed assets	1,144	549	0
Total Revenue	3,120,586	3,172,840	3,030,111
EXPENDITURE			
Personnel costs	1,830,629	1,849,057	2,029,674
Project costs	290,355	355,179	506,347
Library costs	42,564	32,330	48,000
Administration costs (note 1)	589,869	545,626	588,820
Depreciation	272,596	232,033	268,581
Debit balance in Asset Revaluation Reserve account written-off	19,387	0	0
Total Expenditure	3,045,400	3,014,225	3,441,422
Net Surplus (Deficit)	75,186	158,615	(411,311)

The accompanying accounting policies and notes form part of these Financial Statements.

STATEMENT OF MOVEMENTS IN EQUITY FOR THE YEAR ENDED 30 JUNE 2000

	2000 Actual $	1999 Actual $	2000 Budget $
Equity at the beginning of the year	1,785,831	1,627,216	1,785,831
Surplus and revaluations			
Net surplus (deficit) for the year	75,186	158,615	(411,311)
Revaluation of Library collections (note 3)	(17,160)	0	0
Total recognised revenues and expenses for the year	58,026	158,615	(411,311)
Equity at the end of the year	1,843,857	1,785,831	1,374,520

The accompanying accounting policies and notes form part of these Financial Statements.

STATEMENT OF FINANCIAL POSITION AS AT 30 JUNE 2000

	2000 Actual $	1999 Actual $	2000 Budget $
EQUITY			
Accumulated Funds	1,843,857	1,768,671	1,357,360
Asset Revaluation Reserve	0	17,160	17,160
Total Crown Equity	1,843,857	1,785,831	1,374,520
Represented by:			
CURRENT ASSETS			
Cash and bank balances	7,490	451	9,645
Bank – call deposit – BNZ	112,000	103,000	70,000
Short-term investments – BNZ	875,000	860,000	300,000
Short-term investments – National Bank	600,000	350,000	500,000
Receivables and prepayments (note 2)	34,746	67,445	53,000
Total Current Assets	1,629,236	1,380,896	932,645
NON CURRENT ASSETS			
Fixed assets (note 3)	526,530	638,406	601,875
Total Non Current Assets	526,530	638,406	601,875
Total Assets	2,155,766	2,019,302	1,534,520
CURRENT LIABILITIES			
Payables and accruals (note 4)	311,909	233,471	160,000
Total Current Liabilities	311,909	233,471	160,000
TOTAL LIABILITIES	311,909	233,471	160,000
NET ASSETS	1,843,857	1,785,831	1,374,520

Hon Justice Baragwanath
President

B Benjamin
Executive Manager

The accompanying accounting policies and notes form part of these Financial Statements.

STATEMENT OF CASH FLOWS FOR THE YEAR ENDED 30 JUNE 2000

	2000 Actual $	1999 Actual $	2000 Budget $
CASH FLOW FROM OPERATING ACTIVITIES			
Cash was provided from:			
Government grant	2,864,170	2,780,443	2,751,096
Interest	96,983	82,608	38,757
Customers	59,607	34,982	30,687
Contribution from State Agencies for Electronic Commerce project	6,500	40,000	0
	3,027,260	2,938,033	2,820,540
Cash was applied to:			
Payments to suppliers and employees	(2,550,098)	(2,544,377)	(3,022,297)
	(2,550,098)	(2,544,377)	(3,022,297)
Net cash inflow (outflow) from operating activities	477,162	393,656	(201,757)
CASH FLOW FROM INVESTING ACTIVITIES			
Cash was provided from:			
Sale of fixed assets	1,144	549	0
	1,144	549	0
Cash was applied to:			
Purchase of fixed assets	(197,267)	(200,675)	(232,050)
	(197,267)	(200,675)	(232,050)
Net cash inflow (outflow) from investing activities	(196,123)	(200,126)	(232,050)
NET INCREASE (DECREASE) IN CASH HELD	281,039	193,530	(433,807)
Plus opening cash balance:			
BNZ current account	451	921	451
BNZ call account	103,000	119,000	103,000
BNZ short-term deposits	860,000	1,000,000	860,000
National Bank – short-term deposits	350,000	0	350,000
	1,313,451	1,119,921	1,313,451

Statement of cash flows for the year ended 30 June 2000 cont'd

	2000 Actual $	1999 Actual $	2000 Budget $
CLOSING CASH BALANCE	1,594,490	1,313,451	879,644
Made up of:			
BNZ – current account	7,490	451	4,644
BNZ – call account	112,000	103,000	75,000
BNZ – short-term deposits	875,000	860,000	300,000
National Bank – short-term deposits	600,000	350,000	500,000
	1,594,490	1,313,451	879,644

The accompanying accounting policies and notes form part of these Financial Statements.

STATEMENT OF CASH FLOWS FOR THE YEAR ENDED 30 JUNE 2000

RECONCILIATION OF NET SURPLUS TO NET CASH INFLOW FROM OPERATING ACTIVITIES

	2000 Actual $	1999 Actual $	2000 Budget $
Reported Surplus (Deficit)	75,186	158,615	(411,311)
Add (less) items not involving cash flows:			
Depreciation	272,596	232,033	268,581
Debit balance in Asset Revaluation Reserve account written-off	19,387	0	0
Add (less) movements in working capital:			
Decrease in receivable and prepayments	32,699	(15,256)	14,444
Increase in payables and accruals	78,438	18,813	(73,471)
Add (less) proceeds of fixed assets sale shown under investing activities	(1,144)	(549)	0
Net cash inflow (outflow) from operating activities	477,162	393,656	(201,757)

The accompanying accounting policies and notes form part of these Financial Statements.

NOTES TO FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2000

1 Administration costs include:

	30 June 2000 ($)	30 June 1999 ($)
Audit fee	9,000	9,000
Increase (decrease) in provision for doubtful debts	72	(2,479)
Rental expenses on operating leases	9,162	8,853
Rent and rates on office accommodation	407,796	400,744

2 Receivables and prepayments

	30 June 2000 ($)	30 June 1999 ($)
Sundry debtors	7,945	13,810
GST receivable	9,882	17,407
Trade debtors	2,592	19,444
Less: Provision for doubtful debts	(276)	(204)
Prepayments	14,603	16,988
Total	34,746	67,445

3 Fixed assets

	Cost/ valuation ($)	Accumulated depreciation ($)	Net book value 30 June 2000 ($)	Net book value 30 June 1999 ($)
Computer equipment	632,408	551,711	80,697	134,697
Furniture and fittings	1,055,914	1,034,339	21,575	41,913
Office equipment	124,532	91,830	32,702	6,922
Computer software	327,561	209,207	118,354	165,907
Library collections	567,236	294,034	273,202	288,967
Total	2,707,651	2,181,121	526,530	638,406

Library collections are at depreciated replacement value as determined by independent valuer Steph Lambert of Lambert's Library Services. The valuation was as at 30 June 2000.

The valuation was less than the book value by $36,547 which was charged to the Asset Revaluation Reserve account. As a result the balance in the Asset Revaluation Reserve account (opening balance $17,160) became a debit balance of $19,387 which was expensed in the statement of financial performance.

4 Payables and accruals

	30 June 2000 ($)	30 June 1999 ($)
Suppliers of goods and services	46,647	70,222
Employee entitlements	104,643	58,774
Accrued expenses	26,267	49,975
Other creditors	134,352	54,500
Total	311,909	233,471

5 Commitments

Capital expenditure

There are no commitments for capital expenditure at balance date (30 June 1999, $Nil).

Lease commitments

Commitments for non-cancellable leases on rental office accommodation (till 30 June 2007), Commissioner's rental accommodation (till 15 May 2001) and office equipment (till 22 October 2001):

	30 June 2000 ($)	30 June 1999 ($)
Less than one year	402,256	402,256
Between 1–2 years	372,232	378,336
Between 2–3 years	369,180	372,010
Between 3–4 years	369,180	369,180
Between 4–5 years	369,180	369,180
Over 5 years	738,360	1,107,540

6 Contingent liabilities

There are no material contingent liabilities as at balance date (30 June 1999, $Nil).

7 Related party information

The Law Commission is a Crown owned entity. The Commission received from the Ministry of Justice $2,988,980 (includes amounts deducted and invoiced for Judicial salaries) as grant for the Financial year (year ended 30 June 1999, $2,999,445).

The Ministry of Justice invoiced the Commission for $127,206 for Judicial salaries which forms part of the Other Creditors in Note 4 (30 June 1999, $Nil).

8 Financial instruments

Fair value

The fair value of financial instruments is equivalent to the carrying amount disclosed in the Statement of Financial Position.

Credit risk

Credit risk is the risk that an outside party will not be able to meet its obligations to the Commission.

Financial assets which potentially subject the Commission to concentration of credit risk consist principally of cash, short-term deposits and receivables.

The cash and short-term deposits are placed with Bank of New Zealand and National Bank, both high quality banks.

Concentration of credit risk with respect to receivables is limited by its small value and relatively large number of customers involved.

The Commission does not have exposure to interest rate or currency risks.

9 Remuneration of the Chief Executive

In terms of the Law Commission Act 1985, the President of the Commission is the Chief Executive. The current President is a High Court Judge and is paid by the Department for Courts as a High Court Judge. The Commission reimbursed $98,548 on account of this. The amount does not represent the actual remuneration received by the President. In determining the amount, consideration has been given to the fact that the President sits in the High Court and the Court of Appeal for a period of the year.

10 Remuneration of Commissioners and Staff

Remuneration range	No
Between $100,000 and $110,000	2
Between $120,000 and $130,000	1
Between $200,000 and $210,000	1

One Commissioner who is a District Court Judge is paid by the Department for Courts as a District Court Judge. The Commission reimbursed $153,470 on account of this. The amount does not represent the actual remuneration received by the Judge. In determining the amount, consideration has been given to the fact that the Judge carries out some judicial functions during the year.

STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2000

Output class: policy advice

Budgeted expenditure: $3,441,422

Actual expenditure: $3,045,400

Quality

All outputs and other work completed by the end of the year met the quality standards set out on pages 48–50, to the extent applicable.

Quantity and timeliness

The work produced by the Commission is set out in the annual work programme submitted to the Minister of Justice under section 7(1) of the Law Commission Act 1985. The work programme is subject to revision from time to time.

The statement of service performance reports the outputs produced during the financial year as compared with those established in the annual work programme agreed in a Memorandum of Understanding (MOU) with the Minister of Justice.

Public Law

	Planned	Actual
Judicial Review – Preliminary Paper	August 1999	A preliminary paper is expected in October 2000
– Report	March 2000	Final report expected in March 2001
Acquittal Following Perversion of the Course of Justice: A response to *R v Moore* – Preliminary Paper	Not in MOU	Preliminary paper expected in December 2000
Adoption – Preliminary Paper	November 1999	PP38 released in November 1999
– Report	March 2000	Report expected in September 2000

Misuse of Enduring Powers of Attorney: Examination of Abuses that Have Occurred in Practice – Preliminary Paper	Not in MOU	PP40 released in May 2000

Commercial Law

	Planned	Actual
Retirement Villages – Report	December 1999	R57 released in September 1999
Contributory Scheme for Land/ Shared Ownership – Report	December 1999	R59 released in November 1999
Electronic Commerce: Part 2 – Report	November 1999	R58 released in November 1999
Community Developments – Preliminary Paper – Report	February 2000 September 2000	Delayed as no interest shown by relevant parties
Adopting International Conventions – Study Paper	March 2000	Study paper expected in December 2000
Protecting Construction Contractors: An Advisory Report to the Ministry of Commerce – Study Paper	Not in MOU	SP3 released in November 1999

Criminal Law

	Planned	Actual
Juries in Criminal Trials: Part 2 – Preliminary Paper	September 1999	PP37 released in November 1999
– Report	May 2000	Report expected in December 2000
Criminal Prosecution – Report	November 1999	Report expected in October/November 2000

Alternatives in Prosecution		
– Preliminary Paper	November 1999	Work stopped as
– Report	June 2000	Ministry of Justice briefing paper disclosed duplication
Costs in Criminal cases – Report	November 1999	R60 released in May 2000
Battered Defendants		
– Preliminary Paper	December 1999	Preliminary Paper expected in August 2000
– Report	June 2000	Report expected in March/April 2001

Common Law

	Planned	Actual
Defamation – Report	November 1999	Report expected in September 2000
Abuse of Process Including Maintenance and Champerty		Suspended as no
– Preliminary Paper	June 2000	interest shown by
– Report	February 2001	relevant parties
Auditors' Negligence		
– Preliminary Paper	September 1999	Work stopped as the
– Report	February 2000	latest court decision makes this project no longer relevant
Evidence Code – Report	August 1999	R55 released in August 1999
Aspects of Memory		
– Miscellaneous Paper	August 1999	MP13 released in August 1999
Limitation of Actions		
– Preliminary Paper	October 1999	PP39 released in February 2000
– Report	June 2000	R61 released in July 2000

Recognising Same-Sex Relationships – Study Paper	Not in MOU	SP4 released December 1999
Tax and Privilege – Report	Not in MOU	Report expected in December 2000

The Treaty of Waitangi

	Planned	Actual
Coroners – Preliminary Paper	July 1999	PP36 released in August 1999
– Report	December 1999	Report expected in July/August 2000
Mäori Custom Law – Study Paper	October 1999	Study Paper expected in December 2000

Advisory Work

Various items of advice provided throughout the year under review are listed below.

The work was completed in accordance with the timetables and deadlines set in each case.

Advice provided on:	Advice provided to:
Criminal Disclosure Regime	Ministry of Justice and Department for Courts
Human Rights – Transsexuals	Home Office – United Kingdom
Taxation of Mäori Authorities	Inland Revenue Department
Insolvency	Ministry of Economic Development
Compulsory DNA Blood Testing and Foetal Tissue Sampling	Ministry of Justice

Submissions were made on the following Bills:
Business Law Reform Bill
Crimes Amendment (No 6) Bill
Degrees of Murder Bill
Habeas Corpus Bill
Matrimonial Property Amendment Bill
Crimes (Home Invasion) Amendment Bill
De Facto Relationships (Property) Bill

Follow-up work on Law Commission reports:
Evidence NZLC R55
Succession Law: A Succession (Wills) Act NZLC R41
A Personal Property Securities Act for New Zealand NZLC R8
Limitation Defences in Civil Proceedings NZLC R6

Cost

The costs listed below for each area of project activity consist of both direct and indirect costs. Direct costs include Commissioner and staff time (recorded in the Practice Management System) and all other costs that can be directly identified with individual projects. Indirect costs are those that cannot be identified directly with a project, which are allocated so that the total cost of the Commission is reflected in its outputs.

Project	Budget $	Actual $
Public Law	588,583	575,156
Commercial Law	769,512	709,601
Criminal Law	1,093,761	1,017,135
Common Law	326,515	215,227
The Treaty of Waitangi	587,549	464,609
Advisory Work	75,502	63,672
Total	3,441,422	3,045,400

Performance Standards

Background

Functions of the Commission

The Law Commission Act 1985 stipulates four key activities for the Law Commission. These are:

- to systematically review the law of New Zealand (section 5(1)(a));
- recommend reform and development of the law of New Zealand (section 5(1)(b));
- advise on the review of the law of New Zealand conducted by a department or other organisation or on resulting proposals (section 5(1)(c)); and
- advise the Minister of Justice on ways in which the law of New Zealand can be made as understandable and accessible as is practicable (section 5(1)(d)).

Work programme

The Commission's yearly programme of the above activities are selected by:

- references from the Minister of Justice in terms of section 7 of the Law Commission Act;
- projects selected by the Commission on its own initiative (but in practice usually in consultation with the Minister of Justice (section 5 of the Law Commission Act)); and
- projects selected at the request of other State agencies (section 5 of the Law Commission Act).

Outputs

The Commission's key outputs usually appear in published form. There are four types of publications:

- Preliminary papers (PP). For each project the Commission usually publishes a discussion paper on which interested parties are invited to make submissions.
- Reports (R). In most cases a report will follow a preliminary paper. Reports are produced after taking into account the submissions made by the interested parties. Reports will contain recommendations for law changes and/or new laws. In many

cases they will include draft legislation. Reports are tabled in Parliament by the Minister of Justice.

- Miscellaneous papers (MP). A miscellaneous paper does not recommend law changes but contains the findings of the research done on specific subjects that are considered important.
- Study papers (SP). To date, this series has mostly been employed to publicise the results of research carried out at the request of other state agencies.

Performance standards

The performance of the Commission will be measured against the following four standards: quality, quantity, timeliness and cost.

Quality

Quality is achieved by ensuring the following:

- *Purpose*. The purpose will be clearly identified and focused on remedying the mischief to which it is addressed.
- *Logic*. All argument will be logical and supported by facts, and explain any assumptions made.
- *Accurate research*. The paper will be supported by research that is thorough, accurate and takes account of all relevant material.
- *Practicality*. The paper will consider questions of practicality, especially issues of implementation, cost, technical feasibility, timing, and consistency with other Commission policies.
- *Consultation*. Advice and recommendations will be the result of appropriate consultation with interested parties, and all reasonable objections will be identified. All submissions will be carefully considered before the final report.
- *Peer review*. In many cases, selected external experts will review the papers.
- *Internal review*. Each publication will be subjected to rigorous and critical review by all the Commissioners.
- *Presentation*. The paper will be written in as clear a manner as accepted legal phrasing allows.

Quantity

The projects listed in the work programme will be completed.

Timeliness

Timeliness will be achieved by meeting the reporting date set in the work programme. However, unless the Commission is expressly called upon to meet a particular time frame, reporting dates are arrived at for the internal purposes of the Commission in relation to such matters as workflow control. Predicted dates can in practice be exceeded for a number of reasons, which include such factors as setting aside a particular project to meet a more urgent subsequent deadline and unforeseeable developments in the topic under discussion.

Cost

Each project will be completed within the budgeted cost.

REPORT OF THE AUDIT OFFICE

TO THE READERS OF THE FINANCIAL STATEMENTS OF THE LAW COMMISSION
FOR THE YEAR ENDED 30 JUNE 2000

We have audited the financial statements on pages 30 to 50. The financial statements provide information about the past financial and service performance of the Law Commission and its financial position as at 30 June 2000. This information is stated in accordance with the accounting policies set out on pages 30 to 32.

Responsibilities of the Members of the Law Commission

The Public Finance Act 1989 requires the Law Commission to prepare financial statements in accordance with generally accepted accounting practice which fairly reflect the financial position of the Commission as at 30 June 2000, the results of its operations and cash flows and the service performance achievements for the year ended 30 June 2000.

Auditor's responsibilities

Section 43(1) of the Public Finance Act 1989 requires the Audit Office to audit the financial statements presented by the Law Commission. It is the responsibility of the Audit Office to express an independent opinion on the financial statements and report its opinion to you.

The Controller and Auditor-General has appointed H C Lim, of Audit New Zealand, to undertake the audit.

Basis of opinion

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

- the significant estimates and judgements made by the Members of the Law Commission in the preparation of the financial statements; *and*

- whether the accounting policies are appropriate to the Law Commission's circumstances, consistently applied and adequately disclosed.

We conducted our audit in accordance with generally accepted auditing standards, including the Auditing Standards issued by the Institute of Chartered Accountants of New Zealand. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming our opinion, we also evaluated the overall adequacy of the presentation of information in the financial statements.

Other than in our capacity as auditor acting on behalf of the Controller and Auditor-General, we have no relationship with or interests in the Law Commission.

Unqualified opinion

We have obtained all the information and explanations we have required.

In our opinion the financial statements of the Law Commission on pages 30 to 50:

- comply with generally accepted accounting practice; *and*
- fairly reflect:
  - the financial position as at 30 June 2000;
  - the results of its operations and cash flows for the year ended on that date; *and*
  - the service performance achievements in relation to the performance targets and other measures adopted for the year ended on that date.

Our audit was completed on 22 August 2000 and our unqualified opinion is expressed as at that date.

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

APPENDIX A
Millennial thoughts on Mäori Development

The Millennium Lecture presented to
Toi Te Kupu, Toi Te Mana, Toi Te Whenua
Mäori Development in a Global Society Conference
4–6 July 2000, Massey University, Palmerston North

Denese L Henare
Law Commission

INTRODUCTION

I ACKNOWLEDGE THE LEADERSHIP of Professor Mason Durie, Te Putahi a Toi and Massey University for your wisdom and foresight in establishing the Mäori development conference programme since the early nineties. You have not only brought us all together, Mäori and non-Mäori, our brothers and sisters from the Pacific and beyond, young and old, from all disciplines and backgrounds of knowledge, but you have also provided us with the opportunity to grow and learn from each other. I have viewed these conferences not only as opportunities to add to my own knowledge but importantly to challenge my viewpoints and to shape my ideas.

Näku te rourou, näu te rourou,
Ka kï te kete

With my basket and your basket,
The kit will be full

KNOWLEDGE – THE KEY TO DEVELOPMENT

At a time of coup d'etat in the Pacific – Fiji and the Solomons – we should continue to take strength that knowledge, not violence, yields the highest quality power. Alvin Toffler wrote:[1]

> Violence which is chiefly used to punish, is the least versatile source of power. Wealth, which can be used both to reward and punish, and

[1] Alvin Toffler *Powershift* (New York: Bantam Books, 1990).

> which can be converted into many other resources, is a far more flexible tool of power. Knowledge, however, is the most versatile and basic, since it can help one avert challenges which might require the use of violence or wealth, and can often be used to persuade others to perform in desired ways out of perceived self-interest. Knowledge yields the highest quality power.

The history of Mäori interaction with the Crown is characterised by the desire of Mäori to achieve revolution by peaceful and lawful means. A definition of revolution in the Collins English Dictionary which I adopt is:

> any great change of policy or in ideas, methods …

The failure to acknowledge Mäori status as tangata whenua, once the Treaty of Waitangi was signed is perhaps at the root of subsequent conflict and misunderstandings.[2] Our tüpuna have always exercised great patience, goodwill and imagination to seek any great change of policy or in ideas knowing that knowledge yields the highest quality power.

THE DESIRED OUTCOMES FOR MÄORI DEVELOPMENT

The Hui Whakapümau and Te Oru Rangahau conferences in 1994 and 1998 articulated the desired outcomes for Mäori development:[3]

- Mäori ownership of law and policies.
- Recognition of the diversity of Te Ao Mäori.
- Tino rangatiratanga – two major themes emerged:
  - Mäori control of things Mäori; and
  - Pursuing negotiated relationships.
- Equity and social well-being.
- Mäori custom and identity.
- Resource development and economic growth.

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[2] A view expressed by Hon Justice Edward Taihakurei Durie, Building the Constitution Conference, "The Treaty in the Constitution", April 2000, unpublished paper.

[3] Te Oru Rangahau Mäori Research and Development Conference 7–9 July 1998 Proceedings, (ed) Te Pümanawa Hauora, Te Putahi a Toi, Massey University, Palmerston North.

- Universality – Mäori development is not constrained within local frameworks and experiences.

All of these themes are expanded and developed in the proceedings of these conferences. I touch on one of these themes in this paper – issues concerning law and Mäori policy in the past two decades from my own experience, and consider the present and share some millennial thoughts.

PURPOSE OF DEVELOPMENT

The link between Mäori development and the desired outcomes for Mäori development posed the question at both conferences "What is the purpose of Mäori development?" – a question which was raised a decade earlier at the Hui Taumata in 1984. Perhaps the clearest answer to this question was provided by the Tühoe elder and scholar the late John Rangihau who said:[4]

> This is an important time in our development. I use the word "development" because it has been a founding principle upon which we have based successful programmes in the recent past. Having thrown off the dependency syndrome of welfare, we have progressed remarkably in some areas, but I would posit that, should we analyse those areas in which we have made great strides, we would quickly realise that those were the areas where culture was used as a key resource.
>
> There is a danger that we need to confront, and this lies in our drift away from that principle. The great discovery of the 1980's could well be that we have rediscovered old structures that really work. Suddenly, the concept of whänau has turned urban communities right around. With the presence of over 300 köhanga in New Zealand, we are witnessing the rise of a social phenomenon that will fulfil a myriad range of needs solely because we have tapped into the ageless power of a cultural form …
>
> The great tragedy of the past is that we were left bereft of things that really worked. It would be a great pity now that we have happened on the solution that we destroy the edifices because we have not been diligent in resourcing the foundation or in some cases even diluting the foundation or even exploiting it …
>
> We should be continually vigilant that the goals of the Mäori ethos of the operation are never displaced. Continual oversight of the Mäori kaupapa should be a priority … We should never betray the soul of the Mäori, and that is exactly the position with all programmes that take their root in the Mäori spirit. Should those delicate perceptions ever be

[4] Mäori Economic Development Summit Conference Proceedings, Office of the Minister of Mäori Affairs, Wellington, 1984.

> lost we would return to the position of giving lip service to Mäori ideals whilst conveniently being sidetracked into Päkehä byways.

John Rangihau summed up the messages from the speakers at the Hui Taumata by concluding:

> I cannot help but think that while we talk of the important resource as represented by our youth, the economic resource of our lands that should be developed with our youth in mind we cannot gain hold over these resources without cementing all those resources to the cultural resource that springs from the soul of the people. There is no way that we can separate economic development from the important precept of people development, and if people cannot rationalise in terms of their soul it leads me to ask the question, "Development for what?"

Thus, this conference Toi Te Kupu, Toi Te Mana, Toi Te Whenua invites us to continue to strengthen the foundations for our development and to hold on to those things that do not betray our soul, our identity, our culture and our spirit and indeed to actively pursue the goals of the Mäori ethos. How we plan to do this in a globalised economy is a critical challenge for the future.

Focus for development

He aha te mea nui o te Ao?
Mäku e kï atu
He tangata, he tangata, he tangata

This whakatauki affirms the values of continuity and growth and reminds us that people are at the heart of any strategy for development. Having considered the question "Development for What?" we must also keep in mind those who are our focus for development. Our children, our grandchildren.

It is important to remember that Mäori, like Päkehä, are not a homogeneous group. Mäori make up an estimated 15 percent of the total population and are expected to represent nearly 20 percent of the population by the year 2031. Currently, the median age for Mäori is around 22 years and 55 percent of the population are under 25 years. Mäori belong to diverse communities and identify themselves in a variety of ways. Some Mäori identify with a particular iwi, hapü and whänau irrespective of where they reside, others wish to identify with their tribal connections but do not know their ancestry or whakapapa, while others prefer to identify as Mäori.

It is useful to provide some specifics. Pania's[5] story is of a young woman secure in her cultural identity educated at a Mäori Girls' Boarding School, fluent in Mäori and English and proud to acknowledge both her Mäori and Päkehä heritage. She writes:

> I am frequently angered and saddened that many adult New Zealanders' perception of young people – and in particular of young Mäori people – is so very negative. If I were to believe what I read and hear via the media, I would see myself as a glue-sniffing, shoplifting, pot-smoking, tattooed street kid whose parents were ripping off the Department of Social Welfare or, alternatively, calling upon Mäoridom and the Government to ratify the Treaty of Waitangi. My future would also be mapped out for me. No school qualifications, no prospects, no motivation, no interests (outside of gangs) and no money. In fact, a drag on society.
>
> Despite popular belief, I do not fit this description. And more to the point, I am not the exception.
>
> Our children will not suffer from glue ear and will not die of cancer. There may not be a job for all of us tomorrow, but there will be work to do. I am not going to work all my life for things. I am going to work all my life for people.
>
> Our responsibility as young Mäori women is to be positive in a climate which keeps on telling us that we are losers.

Pania was sixteen at the time of writing.

The five year old köhanga reo graduates forced change in the education system in the early nineties with the establishment of kura kaupapa Mäori. The stories of these children are stories of children who not only walk in two worlds but want to live in two worlds enjoying the richness of both.

He Huarahi Tamariki – A Chance for Children is New Zealand's only school for teenage parents. The stories of all of these students are that they had dropped out of school before they could finish their basic formal education. Their stories, of course, not only involve themselves as young mothers or young fathers but their children as well. Just two months ago the school opened the first childcare centre dedicated to meeting the needs of these teenage parents.

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[5] Pania Dewes "He Aha te Mea Nui o te Ao" in *Te Ao Märama 2 Regaining Aotearoa*, Witi Ihimaera (ed) 1993.

There are many ways in which students undertake their study as either full-time, outreach or part-time students who have to juggle their learning and cope with the domestic circumstances of their lives which may include dealing with violence, sickness and pregnancy or other serious matters.

He Huarahi Tamariki is an example of a community based strategy providing an option for young teenage mums and dads and their children to achieve and realise their potential in life.[6]

Although both the childcare centre and the school have received some support from the Ministry of Education it enjoys the status of a non-school. After nearly six years the school's recent newsletter advises that there is still no formal policy for the education of teenage mothers and there is little likelihood of a policy being developed in the short-term. I am therefore unsure how the Closing the Gaps strategy is going to assist these young people in the absence of a formal policy for the education of young teenage mothers.

What sort of arrangements are needed, not only to protect the interests of teenage mums and dads and those of their children, but which will also develop their aspirations? They have the right not to be set adrift on the raft of despair. Their basic needs are of food, shelter, health services and education. As well, they are entitled to the right of having their values respected, to be treated with dignity, to feel confident as Mäori, and to feel secure in their identity as Mäori. But security for Mäori means not only a sense of being Mäori but also access to the institutions of culture and resources. As Te Hoe Nuku Roa study showed, a secure Mäori identity is likely to be positively correlated with good health, better educational outcomes, and a greater likelihood of employment.[7] Importantly, they must not be patronised or treated as frozen in a condition of disadvantage. As many similar young people have shown, each has the capacity to become confident, to excel, to contribute to and to lead our society.

I believe Mäori development in the new millennium continues to be the key issue for Mäori social, cultural, political and economic wellbeing. Strategies for the future must continue to provide both a vision of hope and aspiration for all of our young people.

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6 He Huarahi Tamariki (A Chance for Children) *Information Sheet June 2000*; and *He Huarahi Tamariki (A Chance for Children): Collection of True Stories Written Straight From the Heart*, He Huarahi Tamariki, Cannons Creek, Porirua.

7 Te Hoe Nuku Roa "Interconnectedness" a paper prepared for the Ministry of Mäori Development (Department of Mäori Studies, Massey University, Palmerston North, 1995).

THE TREATY: A BASIS FOR MÄORI DEVELOPMENT

The Treaty provided the best launch of a new country, of people here and people to come and it continues to provide the basis for Mäori development. Although the principle of development is not expressly stated in the Treaty there was a natural expectation that consequent on the Treaty both Mäori and Päkehä would grow and develop. The Treaty is an embryo of principles, values and ideas to be worked out, developed and adjusted over time. It is not a straight-jacket which limits us to 1840 conditions. Further, as Justice Durie notes, the Treaty has been modified in practice (Crown pre-emption; full, exclusive and undisturbed possession of fisheries), or set-off against other standards of universal acceptance (right to keep land v State's right to take for essential public works).[8]

It is now reasonably well accepted that the Treaty is the founding document in New Zealand. But of course it is more than that. It is fundamental to our constitutional system by reason of its status as a compact between the Crown and Mäori. The promise of the Treaty can be simply put:[9]

- Mäori cultural values are to be respected and given effect; and
- Mäori are to participate in the new society and feel as much at home in New Zealand and its institutions as other New Zealanders.

The Treaty and the Constitution, viewed as a set of basic principles that direct how we are governed, are indivisible.[10]

How has the Treaty been invoked against the conscience of the Crown in recent times? This question may be considered by reference to the flurry of domestic constitutional activity; and to the interaction of international experience and domestic law; and in relation to Mäori policy.

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8 Hon Justice Edward Taihakurei Durie, Building the Constitution Conference, "The Treaty in the Constitution", April 2000, unpublished paper.

9 New Zealand Law Commission *Justice: The Experiences of Mäori Women Te Tikanga o te Ture Te Mätauranga o ngä Wähine Mäori e pä ana ki tënei*: NZLC R53 (Wellington, 1999).

10 Hon Justice David Baragwanath "The Treaty of Waitangi and the Constitution" New Zealand Law Society Seminar, Treaty of Waitangi Issues: the Last Decade and the Next Century, April 1997.

CONSTITUTIONAL REFORM IN THE '80S AND '90S

There was a great deal of constitutional law-making, including:

- the Treaty of Waitangi Amendment Act 1985 expanded the jurisdiction of the Waitangi Tribunal to hear grievances dating back to 1840;
- the restructuring of the public service and the establishment of State Owned Enterprises;
- the Constitution Act 1986 repealed section 71 of the Constitution Act 1852 – this provision had permitted the maintenance of Mäori custom as between Mäori in designated areas (the Act is not what is commonly called a written constitution);
- the Bill of Rights Act 1990;
- the Electoral Act 1993 introduced the MMP voting system;
- the Human Rights Act 1993; and
- the Cabinet Strategy Committee called for a report from the Solicitor-General in 1995 to consider whether the rights of appeal to the Privy Council should be abolished.

Many of these measures engaged Mäori and the Crown in dispute, debate, or negotiation with Ministers or litigation in the courts and the Waitangi Tribunal.

POLICIES OF CORPORATISATION AND PRIVATISATION

The energies of Mäori were particularly focussed on the protection of Treaty rights and claims in the face of policies of corporatisation, privatisation and economic deregulation. The cases began with the first Mäori Council case, the Lands case of 1987;[11] and continuing, after circumvention of that decision was ruled out;[12] through the Coal case of 1989;[13] the first Fisheries case of 1989–90;[14] second

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[11] *New Zealand Mäori Council v Attorney-General* [1987] 1 NZLR 641.

[12] *New Zealand Mäori Council v Attorney-General* [1989] 2 NZLR 142.

[13] *Tainui Mäori Trust Board v Attorney-General* [1989] 2 NZLR 513.

[14] *Te Rünanga o Muriwhenua v Attorney-General* [1990] 2 NZLR 641.

Fisheries case of 1990;[15] the first Mäori language case of 1990;[16] the first and second Radio Frequencies cases of 1990;[17] the Broadcasting Assets case of 1991–1992;[18] the Fisheries Settlement case of 1992;[19] the first Fisheries Negotiations case of 1993;[20] the Hydro Electric Dams case of 1993;[21] the Mäori Electoral Option case of 1994;[22] the commercial whale watching case of 1995;[23] the second Fisheries Negotiation case of 1996;[24] the ECNZ split case;[25] and the fisheries cases still continuing.

The cases were dramatic because of the high policy content involved and the major political initiatives which were challenged. Although the conditions which gave rise to the litigation were exceptional, the objectives (maintaining Crown capacity and expectations as to process) were modest.

The intervention by the courts in most of these cases was based on section 9 of the State Owned Enterprises Act 1986, which directly imported the Treaty principles and required Crown compliance with them. Therefore, at the same time as the Crown increased the jurisdiction of the Waitangi Tribunal, the Crown failed to develop mechanisms to protect the efficacy of the Waitangi Tribunal process. The Crown also failed to preserve its capacity to perform its Treaty guarantee. Government policy was seen as cutting off options for future resolution of Treaty grievances politically and through the Waitangi Tribunal process. Although section 9 was an important icebreaker, the results might well have been reached by application of conventional legal principles for the exercise of the Court's

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15 *Te Rünanga o Muriwhenua v Attorney-General* (CA 28 June 1990; unreported).

16 *Attorney-General v New Zealand Mäori Council* (CA 17 August 1990; unreported).

17 *Attorney-General v New Zealand Mäori Council* [1991] 2 NZLR 129; [1991] 2 NZLR 147.

18 *New Zealand Mäori Council v Attorney-General* [1992] 2 NZLR 576.

19 *Te Rünanga o Wharekauri Rekohu v Attorney-General* [1993] 2 NZLR 301.

20 *Area One Consortium Limited v Treaty of Waitangi Fisheries Commission* (CA 29 September 1993; unreported).

21 *Te Rünanga o Te Ika Whenua v Attorney General* [1994] 2 NZLR 20.

22 *Taiaroa v Minister of Justice* [1995] 1 NZLR 411.

23 *Ngäi Tahu Mäori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553.

24 *Treaty Tribes Coalition v Urban Mäori Authorities* [1997] 1 NZLR 513.

25 *Tainui Mäori Trust Board v A-G* [1989] 2 NZLR 513.

supervisory jurisdiction. But the icebreaker certainly helped because many decisions of the courts since the beginning of the twentieth century and many years of neglect had meant that the Treaty and its principles were largely unfamiliar to New Zealand lawyers.

The challenge to implementation of the fisheries quota management system had the statutory peg of section 88(2) of the Fisheries Act 1983 (the legislative history of this provision showed a Treaty derivation).

It should also be remembered at this time that the same political initiatives which forced Mäori to the courts also contributed to significant upheaval of Mäori communities. The implementation of the fisheries quota management system (which effectively privatised fisheries) had devastating effects on northern communities.[26] Mäori unemployment began to skyrocket with all the attendant consequences for Mäori families referred to in the very many Closing the Gaps reports.[27]

ELECTORAL ACT 1993 – MÄORI OPTION

Mäori again went to the Waitangi Tribunal and the courts to achieve effective Mäori participation in the electoral process.[28] Although there was no Treaty reference in the Electoral Act, the Court accepted Treaty relevance as a guide to Crown action.

The 1994 Mäori Option showed that many factors, apart from the limited time for conducting it (two months), affected the information campaign. It was critical that many Mäori did not know:

- the consequences of the decision whether or not to enrol;
- how to enrol;
- how the electoral process works; and
- about the Mäori Option at all.

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[26] Waitangi Tribunal *Muriwhenua Fishing Report* 1988, Wai 22.

[27] Te Puni Kökiri "Progress Towards Closing Social and Economic Gaps between Mäori and Non-Mäori" a Report to the Minister of Mäori Affairs, Te Puni Kökiri 1998; see also Ministry of Mäori Development Post Election Brief, November 1999.

[28] *Taiaroa v Minister of Justice* [1995] 1 NZLR 411 (CA).

The Crown's consultation with Mäori and the information campaign to Mäori had not met Treaty standard. What was at stake were the electoral and human rights of Mäori. The Mäori Option had greater consequences for the MMP system since the level of Mäori representation within the Mäori electorates is determined by the numbers of enrolled voters. It affected both the number and future of the Mäori seats. The Court held that the Option process affects the honour of the Crown and Mäori confidence in the electoral process. The next Mäori Option is to be conducted sometime in 2001. Since the option follows the census, the timeframes will always be tight. As a result of the Court's decision, effective information strategies are now required.

TREATY REFERENCE IN LEGISLATION

The use of the Treaty became most evident in decisions affecting use of natural resources. The Resource Management Act 1991 contains significant Treaty references (as a result of the 1987 Lands case and the negotiations which followed). The former Town and Country Planning Act 1977 had earlier provided that the relationship of Mäori and their culture and traditions with their ancestral land was a matter of national importance. That provision was not freed from restrictive interpretation until 1987[29] and a Treaty standard was never fully accepted.

WAITANGI TRIBUNAL

I have referred to some examples of court intervention in policy initiatives. However, the Waitangi Tribunal has had significant impact in measuring Crown conduct, policy and practice against the standard of Treaty principle and has acted as a major educative force if not on government, then most certainly on the community and the courts.

The Tribunal reacted immediately to the corporatisation policies of the State Owned Enterprises Bill in December 1996 which led to Government insertion of Section 9 of the legislation. The Tribunal's Muriwhenua and Ngäi Tahu Fisheries reports led to the courts restraining further use of the quota management system.

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[29] *Royal Forest and Bird Society Inc v WA Habgood Ltd* (1987) 12 NZTPA 76*; EDS v Mangonui County Council* [1989] 3 NZLR 257 (CA).

Te Reo Mäori report led to the Mäori Language Act 1987 which recognised that language is a taonga:

> Whereas in the Treaty of Waitangi the Crown confirmed and guaranteed to the Mäori people among other things, all their Taonga: and whereas the Mäori language is one such Taonga.

The Act confers on any member of a court or tribunal, any party or witness or any other person, the right to speak Mäori in any proceedings. The Act also established Te Taura Whiri i Te Reo Mäori.

The Broadcasting Act 1989 established Te Reo Whakapuaki Irirangi – more commonly known as Te Mängai Päho – "…to promote Mäori language and culture … ." The establishment of Te Mängai Päho and the provision of funding to it for Mäori language broadcasting was the result of the challenge to government policy to sell broadcasting assets.

The Waitangi Tribunal reports were invaluable in the litigation process and in achieving redress for Treaty claims.

The Tribunal reports have developed, expanded and continue to apply Treaty principle to policy development. All of the Treaty jurisprudence has contributed to the development of Treaty law as a separate area of law in modern New Zealand. The primary source of this law is, of course, the Treaty itself, including guarantees of protection of Mäori customary law, equality, and tribal autonomy, and as a source of cultural as well as property rights.

The comprehensiveness of Tribunal reports and the fact that courts explain their reasons in decisions have informed the community. Treaty judicial exposition (both the Tribunal and the courts) has helped to facilitate wider community understanding and put us all on a path to achieve reconciliation.

INTERNATIONAL LAW DEVELOPMENTS

International law concerning the position of indigenous peoples is in a state of evolution.[30] Increasingly, the response of domestic legal institutions and laws is shaped by international covenants and institutions. This is an aspect of the shrinking world which has already had profound implications for all aspects of New Zealand. It is in the area of human rights and indigenous rights that the standards of the international community have had greatest impact.

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[30] See *The Rights of Peoples* ed Professor James Crawford (Clarendon Press, 1988).

The draft Declaration on Indigenous Peoples 1993 has had an impact on the global momentum to support indigenous rights as it has for the particular substantive rights asserted in it. Although New Zealand is still considering its position on the draft Declaration the steady trend in all civilised states is to promote greater recognition of indigenous values.[31]

The International Covenant on Civil and Political Rights and the conventions adopted by the International Labour Organisation record measures to remove assimilationist policies and to protect cultural rights. These developments are portent of things to come. They perhaps point to the future direction of our developing constitution as well as our international obligations.

SUMMARY

There are now a number of tendencies – at common law, in terms of presumptions, the increasing number of statutes that promote Treaty principle, and in international discourse – which suggest that Mäori values are to be taken seriously. I believe substantial progress has been achieved. Largely this has been built on the direct or indirect inclusion in legislation of requirements to comply with Treaty principles. Principles which fell to the courts and to the Tribunal to work out and to adapt to present day circumstances. In the process, the New Zealand courts have been assisted particularly by the development by the Supreme Court of Canada of the concept of the Crown's fiduciary duty to indigenous peoples.[32]

The presumption that the Treaty of Waitangi is to receive effect in New Zealand domestic law continues to strengthen.

In a recent speech, the Chief Justice Dame Sian Elias stated:[33]

> The challenges that litigation about rights bring to the courts are substantial. To date, the application of the Bill of Rights Act and the Human Rights Act have been confined largely to criminal law. More difficult issues still are likely to arise in the area of protection of cultural rights. They require assessment of the commitment the

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[31] The Yukich Aboriginal Rights and the Constitution and International Law (1996) 30: 2UBC Law Review 234.0.

[32] *R* v *Sparrow* [1990] 1 SCR 1075; 70 DLR (4th) 489 – which held that section 38(1) Canada Act affirming existing aboriginal and treaty rights does not make the rights absolute. But limiting legislation must accord with Parliament's fiduciary duties.

[33] Ethel Benjamin Commemorative address 18 May 2000, LawTalk Issue 542, June 2000, New Zealand Law Society.

> community is prepared to make to ensure the protection of cultural diversity. They entail judgements about community values and the allocation of resources which many see as unsuitable for judicial determination. …
>
> Effective protection of cultural rights and effective protection of the rights to equality ultimately rest on community commitment, not the statement of rights, nor the courts. But where a case is properly brought before the courts, judges cannot avoid making decisions simply because the matter is difficult or politically contentious.

But the lesson is that legal rights – those which the courts will enforce, provides only a partial picture. Law is part of the operation of a society in which it functions and must be seen in that light.

MÄORI POLICY

It is the area of Mäori policy where there has been uneven application of the Treaty. A comprehensive account of the reasons why has been set out in the writings of Professor Mason Durie.[34] They include:

- the effect of the Government's declared five principles for action on the Treaty in 1989 whereby the Government sought to reclaim political control;
- a determination not to incorporate Treaty reference in legislation in the nineties – there is no reference to the Treaty in any social policy legislation enacted after 1989; and
- the points of difference between Mäori policy (that is, government's policy for Mäori) and Treaty policy. Mäori policy views Mäori as the target of the policy mainly for reasons of social equity. Treaty policy has a broader context, having the outcomes for Mäori development referred to earlier in this paper (and as identified by the Massey conferences).

In the 1990s, Mäori policy has had a dual focus: mainstreaming and Treaty settlements.

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[34] Professor Mason Durie *Te Mana, Te Käwanatanga: The Politics of Mäori Self-Determination* Oxford University Press. The assessments in this section are also drawn from: A Fleras and P Spoonly Recalling Aotearoa, Indigenous Politics and Ethnic Relations in New Zealand, Oxford University Press, Auckland, 1999.

MAINSTREAMING

Mainstreaming has focussed on developing sectoral policies (health, welfare, education, employment etc) and then adding a Mäori view. Mäori are seeking an integrated approach to policy development which has Mäori development as the central focus, with sectoral perspectives being added as necessary. Effective outcomes for Mäori require policy development which takes into account Mäori values and processes by which those policies can be implemented.

A contradictory framework in which Mäori policy evolved was due to the National Government's approach. On the one hand, by its commitment to principles of liberalism:

- endorsing individual rights, protection of private property, uniform citizenship rights and personal choice;
- endorsing a needs based approach rather than preferential treatment; and
- finding it hard to support Mäori rights and any initiative that smacks of tribalism or separate development.

On the other hand, it regards the Treaty as a founding document and recognises that the Crown has to honour Treaty obligations. While National opposed Labour's devolution policy, it in fact approved contracting of services, particularly for social and health delivery by Mäori groups and authorities.

After the 1990 election, the new National government endorsed a decision of the previous Labour government that:

(i) all legislation referred to Cabinet at the policy approval stage should draw attention to implications for the recognition of the principles of the Treaty of Waitangi;

(ii) departments should consult with appropriate Mäori people in all significant matters affecting applications of the Treaty; and

(iii) the financial and resource implications could be considerable and should be addressed in future reports.[35]

In fact the National Party's philosophy of accepting an open market economy, less government intervention and decentralisation provided opportunities for Mäori organisations to develop in a more deregulated environment. While many sectors in the community

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[35] Legislation Advisory Committee, "Legislative Change: Guidelines on Process and Content" (1991).

railed, for example, against the health reforms, Mäori saw some opportunities and were quick to grasp them.

In Taitokerau, a functional structure which was devised by some of the northern communities and adopted in health became known as the MAPO (Mäori Co-Purchasing Organisation Strategy). The three MAPO were governed by their own boards which sat with the board of North Health to make decisions affecting the provision of health services to Mäori in the region. I believe a new way of thinking had developed with co-purchasing based on principles of partnership and co-operation. The model enabled the highest degree of both governance and operational co-operation. It formed the basis of a "for Mäori by Mäori" approach.

Unfortunately, this particular strategy for governance was dealt a severe blow by the Coalition government's policy in 1996 to abolish Regional Health Authorities and to return control to the centre (to the Health Funding Authority). The establishment of the various commissions, including the Mäori Health Commission, was able to influence health sector activity for the improvement of Mäori health based on a Mäori health development approach. Its vision for Mäori health development was to promote:

- greater, more effective Mäori participation in the health sector – particularly in decisions about entitlement, allocation, prioritisation and control of health resources;
- an emphasis on Mäori communities and their complete development;
- the recognition of Mäori rights to control and influence positive and effective responses to Mäori health;
- the Treaty of Waitangi (all Articles) as the basis for Crown and Mäori relationships in health; and
- health as integrally tied to, and a product of, the sum of all Mäori experiences (contemporary and historical).[36]

The Government has recently abolished all the commissions. Policy development and control of Mäori health development has now returned to the Ministry of Health. But Mäori provider structures still remain. Issues for Mäori health still remain and Mäori providers will continue to consolidate those structures and seek further opportunities. I note that the special appropriations for Mäori health provider development which began in 1996 are still being provided by the recent budget.

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[36] The Mäori Health Commission "Tïhei Mauri Ora" June 1999.

In the early nineties, the Ministry of Mäori Development, Te Puni Kökiri, was established with the aim of facilitating Mäori development and holding other agencies accountable for services to Mäori and consequent resourcing. A proposal in 1990 to require particular Ministerial accountability for outcomes for Mäori development was not accepted.[37]

It is to be noted that the Prime Minister in this government has assumed responsibility for requiring accountability by public service chief executives for the Closing the Gaps strategy by chairing the Closing the Gaps Committee.

I agree with the following assessments by many commentators of Mäori policy:

- That mostly it was contradictory, moving between points of mainstreaming and devolution and between points of government intervention and encouraging self-sufficiency.
- That it was essentially needs driven, always seeing "Mäori" as the problem and only sometimes as providing solutions.

In many respects, many of the policies affecting Mäori could only ever provide a safety net for Mäori who were inevitably forced there as a result of the economic reforms of the eighties and nineties which could not provide jobs for unskilled workers. Technology was also replacing an untrained Mäori workforce in many of the industries which were compelled to diversify to remain viable and competitive in the new market economy.

Income equality in New Zealand in the eighties and nineties, combined with the speed of technological change continues as a powerful force to keep the gaps open. No less than 72 separate initiatives are listed in Budget 2000 as contributing to "closing the gaps". Whether this is too many or too few is a matter of speculation. I believe that it will be of the utmost importance for tertiary institutions to work with Mäori communities to ensure that Mäori community strategies and systems are effective to deal with the initiatives and, of course, that the initiatives are relevant to Mäori communities. The lessons of past failure to remove disparities has been due to a failure to consider Mäori cultural factors alongside social and economic ones.

The Treaty principles of partnership, options and participation provide where practicable for co-operative policy development and

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[37] "Ka Awatea" Report of the Ministerial Planning Group, Office of the Minister of Mäori Affairs, 1990.

decision making by both Treaty partners and for Mäori participation in processes both of policy design and delivery.[38]

TREATY SETTLEMENTS

Treaty negotiations and settlements were a consequence of major political reforms, litigation and Waitangi Tribunal decisions. The courts could not provide solutions. They could protect process and Crown capacity as I have referred to earlier. Economic reforms, pressures on Mäori and non-Mäori political leadership to deliver to their constituencies, the exercise of political decision making and legal leverage led the Crown to negotiate with Mäori. The mounting pressure from the general public to achieve certainty, finality and the end of Treaty grievances also led to the development of a Treaty settlements policy.

The rationale for Government involvement in the area required to be understood. The National Party's manifesto in 1990 indicated that it was prepared to redress grievances:

> National recognises that race relations cannot be harmonised without resolution of outstanding Treaty grievances on the basis of fairness and honesty. Genuine Mäori grievances exist as a result of past government activity. There will be a well defined and clearly understood process to settle outstanding Mäori grievances.

The Labour Government in 1989 had already established a number of structures and processes for negotiation. The concerns expressed by Mäori at the time were that:

- the negotiation process had been established without any consultation with Mäori;
- there was little or no funding for claimant research and legal advice;
- many Mäori believed that the system for negotiations should allow appointment of independent mediators, facilitators or referees; and
- the independence of the Waitangi Tribunal in terms of resources, staffing and quality of research was in issue.

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[38] New Zealand Law Commission *Justice: The Experiences of Mäori Women Te Tikanga o te Ture Te Mätauranga o ngä Wähine Mäori e pä ana ki tënei:* NZLC R53 (Wellington, 1999).

In the event, the Government determined both the process and the terms of settlement. For example, private property could not be a part of any settlement and the Government would only sign up to full and final settlements. The claims making process fostered an adversarial mentality – both between Crown and Mäori and amongst Mäori.

In the past 15 years, more than 700 claims have been filed with the Tribunal.

The claims are a part of a very big picture. They are partly a response to current feelings of cultural, economic and political powerlessness. Although they must look to the past to support the arguments for restoration of just recognition and settlement of historic wrongs, they are not backward looking. Usually these historic wrongs are argued to have grievously injured the cultural and economic wellbeing of the tribe. It is a question of tribal mana that grievances be acknowledged and addressed.

But these claims and the negotiations process are often a watershed in the life of a tribe. They test its ability to maintain unity in the face of inevitable pressure to fragment. They provide an opportunity to recite and therefore hand on the important traditions of the iwi, a restoring of relationship with tupuna and resources and an understanding of their treatment at the hands of the Crown.

Mäori also seek to use the processes as a means to participate in broader economic activity. The aim is to secure an economic base to benefit the tribe collectively and to ensure its survival.

The push for Mäori language education and broadcasting, the development of tribal wananga and tribal economic initiatives are all separate responses to the same issues. The claims process is unique only because it uses historic grievance and Treaty rights to seek to achieve cultural, economic and political empowerment.

What has marked much of the debate following settlements is an approach by the Crown to deconstruct the Treaty. Many commentators, including some politicians, see that a successful end to settlements spells the end of the Treaty and that everyone can be as one enjoying Article III rights. This view is also finding support in the social policy area that once the gaps have been closed the Treaty can be discounted.

The Deed of Settlement with Tainui records the reservation of Treaty rights, particularly rangatiratanga, simply because the Deed does not provide for separate governance arrangements. We should

not therefore view these settlements as reordering any constitutional arrangements, save in one respect, the need to focus on relationships.

With the establishment of kïngitanga, many Mäori hoped that under the auspices of a paramount chief the decline in the force of mana might be halted. Statements such as "let us have a king, for with a king there will be peace among us" and "the Mäori King and the British Queen with love, aroha, binding them together, and with God over them both"[39] to unite the people, not to set itself against the English Crown but to establish relationship. This idea is reflected in one of the provisions in the apology by the Crown to Waikato in the Deed of Settlement of the Raupatu lands claim on 22 May 1995:

> Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, insofar as that is now possible, … and to begin the process of healing and to enter a new age of co-operation with the Kïngitanga and Waikato.

Treaty claims are an aspect of the relationships. To build relationships with the Crown and among Mäori communities howsoever organised. The essential Mäori concept is one of putting the relationship on a proper footing. That is the lesson to be learned from the experiences of the past that building relationships is about establishing processes with an emphasis on developing models of relationships based on the Treaty rather than the policies for deconstruction of the Treaty.

OVERVIEW

An overview of Crown action in respect to the Treaty claims process, settlements and Mäori policy shows that the systemic problems of dominance by the Crown has continued. But it is not all a tale of doom and gloom. If anything, we are becoming clearer about the outcomes we require and as to what would reflect a truly substantive partnership and of our bicultural vision of the Treaty. We are developing models for relationships at least at local levels. In order to move the process forward, however, we need goodwill and commitment. Mäori tradition favours the view that the key to resolving difference lies in the recognition of the mana, or status, of others and the development of ongoing relationships founded on mutual respect from which understanding then grows.[40]

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[39] *He Rourou Iti* selected speeches of Te Arikinui Dame Te Atairangikaahu, edited by Mïria Simpson, 1992.

[40] Waitangi Tribunal, Muriwhenua Land Report, 1997, Wai 45.

These issues have assumed huge importance in New Zealand in the last two decades. However, in North America indigenous peoples issues have experienced a resurgence for a great deal longer. So we learn from their experience as well as ours:[41]

- Government and indigenous groups tend to talk past each other with indigenous peoples seeing the point of the process as being to develop culturally secure options for their development and governments seeing the resolution of grievances as an end in itself (addressing both their legal and moral obligations for all time). …
- There is need to shift the focus in claims settlements from full and final, one-off settlements to settlements designed to renew or restructure the relationship between governments and indigenous peoples. Ultimately, good agreements will be enduring agreements. Enduring agreements should mean enduring relationships.

LOOKING TO THE FUTURE

Treaty Claims Process

The Law Commission and the Chief Judge of the Mäori Land Court, Joseph Williams, are currently considering how two very difficult issues arising from the Treaty Claims process might be considered.[42]

The issues relate to representation, mandate and the need to develop principles for distribution and management of Treaty settlements. The thesis is that there is no recognisable body of law specifically governing these issues. The focus of the Mäori Land Court has been the destruction of Mäori resource and asset management systems and of the Mäori tribal base. If the court had given effect to Mäori custom and allowed the administration of the Mäori asset base in accordance with those customs then there would have developed a detailed body of Mäori custom to govern who represents whom, the role of the leaders vis-à-vis the led, relations between iwi and iwi, between iwi and hapü, and between whänau. But no such system developed because the historical objectives of the Mäori Land Court was the destruction of it.

The issue relating to representation of hapü and iwi is vexed. Section 30 of Te Ture Whenua Mäori Act 1993 provides a process whereby

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41 Joe Williams "Quality Relations: The Key to Mäori Survival" in Ken Coates and Paul McHugh *Living Relationships Kökiri Ngätahi: The Treaty of Waitangi in the New Millennium* (Wellington, Victoria University Press, 1998).

42 The ideas in this section are drawn from our joint discussions with the view of scoping a project for future consideration by the Commission.

the appropriate representatives of hapü and iwi can be tested before a specially constituted Mäori Land Court panel but this process is slow, expensive and largely unutilised. The section 30 process has not been able to produce a clear set of guidelines against which representivity can be tested, since it is clear that many Mäori claimants are unhappy about what they perceive is a court dominated process. This system is not only slowing down the Treaty settlements process but the welter of cross claims has affected the ability of hapü and iwi to even prepare for their claims let alone settle them. On the other hand, the imposition of representative structures on Mäori by the Crown is an approach which cannot succeed. The political and cultural dynamics within Te Ao Mäori are too diverse. Simply what works for Tainui will certainly not work for Ngäpuhi. Their traditions are too different as are their needs. A strategy which will enable Mäori dispute resolution which is facilitated but not dominated by the Court, giving Mäori access to mediation mechanisms is needed if Treaty claims are to be negotiated and ultimately settled. The question is what rules or values will govern the representivity or mandate of institutions seeking to settle claims and secure assets? What are the rules or values, what are the tikanga that might apply to who represents whom when claims are sought to be settled and assets are sought to be acquired in the new millennium?

A new system of dealing with disputes among Mäori is required.

Principles should be developed to govern the distribution and management of Treaty assets. This issue has arisen in a number of contexts within settlement. The fisheries settlement being the most notable. At issue here is the need to reconcile the urbanisation of Mäori (itself a product of Crown policy) with a need to protect and enhance traditional tribal structures and culture through Treaty settlements. The debate has raged from boardrooms to marae and to the courts. The magnitude of the assets at stake and the fact that urban life is a reality for so many Mäori means this issue will inevitably be more heated than most. However there is opinion to suggest that when consensus is reached on this matter, it will be a more profound consensus than most. What rules, values will govern the administration of the assets and general leadership accountability? The second question is what are the rules about the responsibility between those who act as trustees in respect of the tribal asset and those who are the beneficiaries? Does normal trust law do the job? It is considered that there is a need to develop a new theme of law which takes proper account of the cultural context within which these issues are occurring.

What is being contemplated is the development of an indigenous form of public law which Mäori will seek to develop through their

own institutions. The purpose of this law will be to provide the underpinning values to guide or control the exercise of power within the modern equivalence of traditional socio-political kin groups. As such this law might perhaps contain at least three elements, and probably more. They are:

- Trust law and fiduciary principles reflecting the fact that the assets are administered on behalf of kin beneficiaries.
- Public law principles reflecting the fact that these institutions are exercising public and quasi-governmental powers which must be lawfully exercised.

  Some examples of the exercise of public law power are:

  – Membership – Who is a member of the tribe and therefore has access to the benefits of settlements and social service delivery funding and the like?

  – Policy and planning processes;

  – The administration of papakainga, of fishing reserves (mahinga mätaitai) in the Fisheries Act and so on. There is power in the Resource Management Act which can be delegated to groups within the community. Tribal governance may be set up for that purpose and if they were to exercise those powers, they would be exercising public law powers.
- Tikanga Mäori – Mäori custom law reflecting the very best base values of the community for which it is developed.

As a consequence of considering all these elements of law, it may be that an indigenous form of public law can be developed which draws on the best of English legal traditions and Mäori values. Ultimately the purpose of this law will be to provide a set of values or principles to guide the exercise of powers both by and within Mäori socio-political kin groups.

Questions which arise, the answers to which are not simple, require careful thought and work.

Some constitutional issues

If we look at the horizon we can see that constitutional change is inevitable:

- The issues of the abolition of rights of appeal to the Privy Council and the consequences for the current court structure have been signalled by the Attorney-General. Is the objection by the National Congress, New Zealand Mäori Council and the

Mäori Women's Welfare League to abolition of rights of appeal in 1995, to be sustained in the new millennium?

- The ACT Party's election campaign based on a slogan of "One Country" and challenges to perceived administrative shortcomings of devolved social services, particularly by Mäori, will accelerate the momentum for political change.
- The current Select Committee review of the MMP electoral system. The Committee is to consider whether there should be changes to: (i) the method of division of New Zealand into general electorates; (ii) Mäori representation; and (iii) whether there should be a further referendum on changes to MMP itself and, if so, the nature and timing of any changes. The Committee is to report back to the House by 1 June 2002.
- Mäori representation in the local government electoral system. There is currently a proposal to promote separate Mäori constituencies in the Bay of Plenty region. (Mäori Constituencies Empowering Bill), described by the Parliamentary Commissioner for the Environment as "a positive, forward looking initiative in practical democracy".[43]

If we look beyond the horizon we can still see constitutional change is inevitable.

The constitutional conference in April 2000 reflected a broad range of opinion as to how power should be exercised in New Zealand. Some speakers rejected the equal franchise in favour of conferring greater power on Mäori. Others rejected the Treaty itself as a relic of the past. There was agreement by the Mäori participants at the conference that since there has been no systematic debate by Mäori about these issues then a process developed by Mäori for Mäori debate and the achievement of a consensus is required.

A number of questions arise for debate both by Mäori and non-Mäori.

While there is much talk of the constitution that is to be further or better constituted there has been less analysis of what it is. Is it a complex of law, institutions and conventions designed to allow the values of and potential of all New Zealanders to be realised? Or is it a statement of brute power in our society, so that any change is in a zero sum game, with one group gaining and another losing the capacity to

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[43] Ministry for the Environment, "Profile" *The Authority* No 6, Dec 1998 – Jan 1999, pp 12–13.

force its will on others? The first formulation is able to give all New Zealanders a common goal; the latter is calculated to divide us.

A key question raised by Mäori is: what constitutes an appropriate constitutional arrangement affording autonomy to Mäori, and how is difference to be constitutionally recognised?

At the conference I proposed an immediate strengthening of constitutional protection of the Treaty by a proposal to set out both texts of the Treaty in the preamble to the Constitution Act 1986. It seems a very modest proposal when the Prime Minister has already signalled that New Zealand's constitutional arrangements are not to change at this point. I consider that this proposal differs from the proposal to enshrine the Treaty in the provisions of the Bill of Rights Act, which was opposed by my elders because it would demean or trim down the Treaty, but I think it can provide a form of immediate protection so that the Treaty could not be overlooked by Parliament, but neither could it be tied down nor limited.

The starting points for a constitutional framework raised by Mäori were:

- To decide the essential question of how to give effect to the Treaty in any new type of constitution. This was considered not to be a simple matter of recognition, but how new sets of arrangements might affirm the constitutional position of Mäori, so that constitutional frameworks can enable both Mäori and the Crown to exercise governance.
- To recognise that we should take time to work through together matters of constitutional change. We should be careful to lock in the gains that we have made but to develop relationships that respect Mäori autonomy, provide for mutual regard and the shared contributions that we can all make to this country.
- To establish processes for debate and consensus by Mäori within Mäori communities. Although a number of viewpoints exist as to constitutional structure, there is no single Mäori position which has achieved consensus.

It will be necessary in dealing with any legal issues including questions of constitutional law, to be very precise and very clear as to what is proposed. A great deal of work is to be done.

Conclusion

Mäori development will continue to be the key strategy in the new millennium. If at the beginning of the last century Mäori were

seeking cultural survival, at the beginning of this century Mäori are seeking cultural security. As Professor Mason Durie has noted, we did survive and our numbers have increased, but it has been at the expense of a secure identity and cultural distinctiveness.[44]

All of us need to work vigilantly and together to build a vision that includes all of us, and not just some of us, and that cherishes values more than rights. The values of love, generosity, openness and reciprocity are a good start. I believe the Treaty continues to be a beacon to guide society to find its way.

I am reminded of the saying of my tupuna, Sir James Henare:[45]

Ka takoto tapu te Tiriti
Taenoa kia rongo te iwi i töna hä
Tüturu ka hopu te ringa i te rau o mauri

The tapu of the Treaty lies waiting
Waiting for the people to fully comprehend,
And grasp, the significance of its essence.

Ultimately, love will have its way.

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[44] See note 32, above.

[45] Sir James Henare, from a letter sent to the hui, Ngä Körero Mo Waitangi, held at Türangawaewae in 1984 (Te Rünanga o Waitangi 1985).

APPENDIX B
Members and staff of the Law Commission as at 30 June 2000

MEMBERS OF THE LAW COMMISSION

Hon Justice Baragwanath – President
Judge Margaret Lee
Donald Dugdale
Denese Henare ONZM
Tim Brewer ED
Paul Heath QC

STAFF OF THE LAW COMMISSION

Executive Manager	Bala Benjamin
Senior Legal Researcher	Louise Symons
Legal Researchers	Karen Belt
	Helen Colebrook
	Meika Foster
	Lucy McGrath
	Michael Josling
Library Manager	Judith Porter
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Serials Librarian	Jacqueline Kitchen
Library Student Assistant	Charlotte Grant
Publications and Information Officer	Anne Tucker
Secretaries	Helen Bradshaw
	Anthea Miller
	Barbara Sutton
	Gloria Hakiwai
Receptionist/Assistant Publications Officer	Colleen Gurney
Systems Administrator	Brenda Speak
Administration and Library Assistant	Marilyn Cameron
Finance and Administration Assistant	Andrew Wong She

APPENDIX C
Law Commission Publications as at 30 June 2000

REPORT SERIES

No	Name	Released	Outcome
NZLC R1	Imperial Legislation in Force in New Zealand	March 1987	Largely implemented by the Imperial Laws Application Act 1988 and associated legislation
NZLC R2	Annual Report	1987	
NZLC R3	The Accident Compensation Scheme: Interim Report on Aspects of Funding	November 1987	Considered in preparing the Accident Rehabilitation and Compensation Insurance Act 1992 and some recommendations reflected in its provisions
NZLC R4	Personal Injury: Prevention and Recovery (Report on the Accident Compensation Scheme)	May 1988	Considered also in connection with reviews of the Accident Rehabilitation and Compensation Insurance Act 1992 and implementing regulations undertaken in 1994
NZLC R5	Annual Report	1988	
NZLC R6	Limitation Defences in Civil Proceedings	October 1988	Re-examined in discussion paper NZLC PP39 *Limitation of Civil Actions*

No	Name	Released	Outcome
NZLC R7	The Structure of the Courts	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
NZLC R8	A Personal Property Securities Act for New Zealand	April 1989	Implemented by the Personal Property Securities Act 1999
NZLC R9	Company Law: Reform and Restatement	June 1989	Companies Act 1993, Receiverships Act 1993 and amendments to the Property Law Act 1952 and the Companies Act 1955 entered into force on 1 July 1994
NZLC R10	Annual Report	1989	
NZLC R11	Legislation and its Interpretation: Statutory Publications Bill	September 1989	Implemented in part by the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publications Act 1989
NZLC R12	First Report on Emergencies: Use of the Armed Forces	February 1990	Implemented in the Defence Act 1990
NZLC R13	Intellectual Property: The Context for Reform	March 1990	For use as a resource. No law changes recommended
NZLC R14	Criminal Procedure: Part One: Disclosure and Committal	June 1990	Recommendation that s 24A of the Official Information Act (not yet effective) be repealed was implemented in 1993 Other recommendations not implemented but under consideration for a proposed "Criminal Procedure Bill" (policy decisions yet to be made)

No	Name	Released	Outcome
NZLC R15	Annual Report	1990	
NZLC R16	Company Law Reform: Transition and Revision	September 1990	Implemented in the Companies Act 1993
NZLC R17	A New Interpretation Act: To Avoid "Prolixity and Tautology"	December 1990	Recommendations form the basis of the Interpretation Act 1999
NZLC R18	Aspects of Damages: Employment Contracts and the Rule in *Addis v Gramophone Co*	March 1991	Implemented almost in entirety by the Employment Contracts Act 1991
NZLC R19	Aspects of Damages: The Rules in *Bain v Fothergill* and *Joyner v Weeks*	May 1991	Abolition of the rule in *Bain v Fothergill* implemented by the Property Law Amendment Act 1994 Problems with the rule in *Joyner v Weeks* partially addressed in *Mäori Trustee v Rogross Farms Ltd* [1994] 3 NZLR 410 (CA)
NZLC R20	Arbitration	October 1991	Implemented by the Arbitration Act 1996
NZLC R21	Annual Report	1991	
NZLC R22	Final Report on Emergencies	December 1991	None contemplated by the report but materially influenced the the Biosecurity Act 1993
NZLC R23	The United Nations Convention on Contracts for the International Sale of Goods: New Zealand's Proposed Acceptance	June 1992	Implemented by the Sale of Goods (United Nations Convention) Act 1994

No	Name	Released	Outcome
NZLC R24	Annual Report	1992	
NZLC R25	Contract Statutes Review	May 1993	No action
NZLC R26	Annual Report	1993	
NZLC R27	The Format of Legislation	December 1993	Adopted by Chief Parliamentary Counsel
NZLC R28	Aspects of Damages: The Award of Interest on Money Claims	May 1994	No action
NZLC R29	A New Property Law Act	June 1994	No action
NZLC R30	Community Safety: Mental Health and Criminal Justice Issues	August 1994	The Criminal Justice Amendment Bill (No 7) and the Intellectual Disability (Compulsory Care) Bill are currently before the Select Committee
NZLC R31	Police Questioning	October 1994	Under consideration by the Minister of Justice
NZLC R32	Annual Report	1994	
NZLC R33	Annual Report	1995	
NZLC R34	A New Zealand Guide to International Law and its Sources	May 1996	For use as a resource – no law changes recommended
NZLC R35	Legislation Manual: Structure and Style	May 1996	For use as a resource Proposals on structure and style substantially adopted by the Parliamentary Counsel Office and are in widespread use
NZLC R36	Annual Report	1996	

No	Name	Released	Outcome
NZLC R37	Crown Liability and Judicial Immunity: A Response to *Baigent's* case and *Harvey v Derrick*	May 1997	Recommendations as to *Baigent's* case accepted Recommendation for extended judicial immunity the subject of Constitution Bill before Parliament. Implemented in part by s 26 Interpretation Act 1999
NZLC R38	Succession Law: Homicidal Heirs	July 1997	No action
NZLC R39	Succession Law: A Succession (Adjustment) Act	August 1997	No action
NZLC R40	Review of the Official Information Act 1982	October 1997	No action
NZLC R41	Succession Law: A Succession (Wills) Act	October 1997	Recommendation expected from Ministers of Justice to Cabinet that it be enacted
NZLC R42	Evidence Law: Witness Anonymity	October 1997	Largely implemented by the Evidence (Witness Anonymity) Act 1997
NZLC R43	Annual Report	1997	
NZLC R44	Habeas Corpus: Procedure	November 1997	Private member's bill introduced 1999
NZLC R45	The Treaty Making Process: Reform and the Role of Parliament	December 1997	Partially implemented by proposed changes to Standing Orders For use as a resource
NZLC R46	Some Insurance Law Problems	May 1998	Recommendation expected from Ministers of Justice to Cabinet that it be enacted
NZLC R47	Apportionment of Civil Liability	May 1998	No action

No	Name	Released	Outcome
NZLC R48	Annual Report	September 1998	
NZLC R49	Compensating the Wrongly Convicted (1998)	September 1998	Implemented
NZLC R50	Electronic Commerce Part One: A Guide for the Legal and Business Community	October 1998	Followed by Part Two No recommendations for law changes made
NZLC R51	Dishonestly Procuring Valuable Benefits	December 1998	The result recommended achieved in a different way by the Crimes Amendment Bill (No 6) 1999
NZLC R52	Cross-Border Insolvency: Should New Zealand Adopt the UNCITRAL Model Law on Cross-Border Insolvency?	February 1999	Awaits consideration by the Ministry of Economic Development as part of insolvency law review
NZLC R53	Justice: The Experiences of Mäori Women Te Tikanga o te Ture: Te Mätauranga o ngä Wähine Mäori e pa ana ki tënei	April 1999	Under consideration: much already accepted by the Crown
NZLC R54	Computer Misuse	May 1999	Select Committee will be urged to substitute the Commission's proposals for the relevant clauses in the Crimes Amendment Bill (No 6) 1999 now before the House
NZLC R55	Evidence	August 1999	No action
NZLC R56	Annual Report	September 1999	
NZLC R57	Retirement Villages	September 1999	No action

No	Name	Released	Outcome
NZLC R58	Electronic Commerce Part Two: A Basic Legal Framework	November 1999	Recommended an Electronic Transactions Act. Electronic Transaction Bill, largely in line with Commission recommendations, is currently being formulated by the Ministry of Economic Development
NZLC R59	Shared Ownership of Land	November 1999	No action
NZLC R60	Costs in Criminal Cases	May 2000	No action yet (only minor changes recommended)

PRELIMINARY PAPER SERIES

No	Name	Released	Outcome
NZLC PP1	Legislation and its Interpretation: The Acts Interpretation Act 1924 and Related Legislation	June 1987	Followed by report NZLC R17
NZLC PP2	The Accident Compensation Scheme	September 1987	Followed by reports NZLC R3 and NZLC R4
NZLC PP3	The Limitation Act 1950	September 1987	Followed by report NZLC R6
NZLC PP4	The Structure of the Courts	December 1987	Followed by report NZLC R7
NZLC PP5	Company Law	December 1987	Followed by reports NZLC R9 and NZLC R16
NZLC PP6	Reform of Personal Property Security Law (report by Prof JH Farrar and MA O'Regan)	1988	Followed by report NZLC R8

No	Name	Released	Outcome
NZLC PP7	Arbitration	November 1988	Followed by report NZLC R20
NZLC PP8	Legislation and its Interpretation	December 1988	Followed by report NZLC R17
NZLC PP9	The Treaty of Waitangi and Mäori Fisheries – Mataitai Nga Tikanga Mäori me te Tiriti o Waitangi	March 1989	For use as a resource Reference withdrawn by the Minister of Justice at the Law Commission's request
NZLC PP10	Hearsay Evidence	June 1989	Followed by report NZLC R55
NZLC PP11	"Unfair" Contracts	September 1990	No further consideration is intended
NZLC PP12	The Prosecution of Offences	November 1990	Followed by discussion paper NZLC PP28
NZLC PP13	Evidence Law: Principles for Reform	April 1991	Followed by report NZLC R55
NZLC PP14	Evidence Law: Codification	April 1991	Followed by report NZLC R55
NZLC PP15	Evidence Law: Hearsay	April 1991	Followed by report NZLC R55
NZLC PP16	The Property Law Act 1952	July 1991	Followed by report NZLC R29
NZLC PP17	Aspects of Damages: Interest on Debts and Damages	November 1991	Followed by report NZLC R28
NZLC PP18	Evidence Law: Expert Evidence and Opinion Evidence	December 1991	Followed by report NZLC R55
NZLC PP19	Apportionment of Civil Liability	March 1992	Followed by report NZLC R47
NZLC PP20	Tenure and Estates in Land	June 1992	No further consideration is intended

No	Name	Released	Outcome
NZLC PP21	Criminal Evidence: Police Questioning	September 1993	Followed by report NZLC R31
NZLC PP22	Evidence Law: Documentary Evidence and Judicial Notice	May 1994	Followed by report NZLC R55
NZLC PP23	Evidence Law: Privilege	May 1994	Followed by report NZLC R55
NZLC PP24	Succession Law: Testamentary Claims	August 1996	Followed by reports NZLC R38, NZLC R39, and NZLC R41
NZLC PP25	The Privilege Against Self-Incrimination	September 1996	Followed by report NZLC R55
NZLC PP26	The Evidence of Children and Other Vulnerable Witnesses	October 1996	Followed by report NZLC R55
NZLC PP27	Evidence Law: Character and Credibility	February 1997	Followed by report NZLC R55
NZLC PP28	Criminal Prosecution	March 1997	To be followed by a report
NZLC PP29	Evidence Law: Witness Anonymity	September 1997	Followed by report NZLC R42
NZLC PP30	Repeal of the Contracts Enforcement Act 1956	December 1997	Deferred. To be addressed further after Electronic Commerce Part 3
NZLC PP31	Compensation for Wrongful Conviction or Prosecution	April 1998	Followed by report NZLC R49
NZLC PP32	Juries in Criminal Trials: Part One	July 1998	Followed by Juries in Criminal Trials: Part Two NZLC PP37

No	Name	Released	Outcome
NZLC PP33	Defaming Politicians: A Response to *Lange v Atkinson*	September 1998	To be followed by a report
NZLC PP34	Retirement Villages	October 1998	Followed by report NZLC R57
NZLC PP35	Shared Ownership of Land	January 1999	Followed by report NZLC R59
NZLC PP36	Coroners: A Review	August 1999	To be followed by a report (NZLC R62)
NZLC PP37	Juries in Criminal Trials: Part Two	November 1999	To be followed by a report
NZLC PP38	Adoption: Options for Reform	October 1999	To be followed by a report
NZLC PP39	Limitation of Civil Actions	February 2000	To be followed by a report (NZLC R61)
NZLC PP40	Misuse of Enduring Powers of Attorney	May 2000	Whether or not to be followed by a report is dependent on submissions received

STUDY PAPER SERIES

No	Name	Released	Outcome
NZLC SP1	Women's Access to Legal Services	June 1999	Under consideration by the Government
NZLC SP2	Priority Debts in the Distribution of Insolvent Estates: An Advisory Report to the Ministry of Commerce	October 1999	Under consideration by the Ministry of Economic Development as part of insolvency law review

No	Name	Released	Outcome
NZLC SP3	Protecting Construction Contractors	November 1999	Under consideration by the Ministry of Economic Development as part of insolvency law review
NZLC SP4	Recognising Same-Sex Relationships	December 1999	Submission to the Ministry of Justice – no further Law Commission action required

MISCELLANEOUS PAPER SERIES

No	Name	Released
NZLC MP1	What Should Happen to your Property when you Die?	August 1996
NZLC MP2	Succession Law Wills Reforms	October 1996
NZLC MP3	Information about Lawyers' Fees	October 1996
NZLC MP4	Women's Access to Legal Information	March 1997
NZLC MP5	The Law of Parliamentary Privilege	December 1996
NZLC MP6	The Taking into Account of Te Ao Maori in Relation to Reform of the Law of Succession	July 1996
NZLC MP7	Strategic Business Plan 1996/97	December 1996
NZLC MP8	Women's Access to Civil Legal Aid	March 1997

No	Name	Released
NZLC MP9	Women's Access to Legal Advice and Representation	April 1997
NZLC MP10	Lawyers' Costs in Family Law Disputes	June 1997
NZLC MP11	The Education and Training of Law Students and Lawyers	September 1997
NZLC MP12	Costs in Criminal Cases	November 1997
NZLC MP13	Aspects of Memory	August 1999

OTHER LAW COMMISSION PUBLICATIONS

Report series

NZLC R1	Imperial Legislation in Force in New Zealand (1987)
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 l April 1991 to 30 June 1992 (1992)
NZLC R25	Contract Statutes Review (1993)
NZLC R26	Report for the year ended 30 June 1993 (1993)
NZLC R27	The Format of Legislation (1993)
NZLC R28	Aspects of Damages: The Award of Interest on Money Claims (1994)
NZLC R29	A New Property Law Act (1994)
NZLC R30	Community Safety: Mental Health and Criminal Justice Issues (1994)
NZLC R31	Police Questioning (1994)
NZLC R32	Annual Report 1994 (1994)
NZLC R33	Annual Report 1995 (1995)
NZLC R34	A New Zealand Guide to International Law and its Sources (1996)
NZLC R35	Legislation Manual: Structure and Style (1996)
NZLC R36	Annual Report 1996 (1996)
NZLC R37	Crown Liability and Judicial Immunity: A response to *Baigent's* case and *Harvey v Derrick* (1997)
NZLC R38	Succession Law: Homicidal Heirs (1997)

NZLC R39	Succession Law: A Succession (Adjustment) Act (1997)
NZLC R40	Review of the Official Information Act 1982 (1997)
NZLC R41	Succession Law: A Succession (Wills) Act (1997)
NZLC R42	Evidence Law: Witness Anonymity (1997)
NZLC R43	Annual Report 1997 (1997)
NZLC R44	Habeas Corpus: Procedure (1997)
NZLC R45	The Treaty Making Process: Reform and the Role of Parliament (1997)
NZLC R46	Some Insurance Law Problems (1998)
NZLC R47	Apportionment of Civil Liability (1998)
NZLC R48	Annual Report 1998 (1998)
NZLC R49	Compensating the Wrongly Convicted (1998)
NZLC R50	Electronic Commerce Part One: A Guide for the Legal and Business Community (1998)
NZLC R51	Dishonestly Procuring Valuable Benefits (1998)
NZLC R52	Cross-Border Insolvency: Should New Zealand adopt the UNCITRAL Model Law on Cross-Border Insolvency? (1999)
NZLC R53	Justice: The Experiences of Mäori Women Te Tikanga o te Ture: Te Mätauranga o ngä Wähine Mäori e pa ana ki tënei (1999)
NZLC R54	Computer Misuse (1999)
NZLC R55	Evidence (1999)
NZLC R56	Annual Report 1999 (1999)
NZLC R57	Retirement Villages (1999)
NZLC R58	Electronic Commerce Part Two: A Basic Legal Framework (1999)
NZLC R59	Shared Ownership of Land (1999)
NZLC R60	Costs in Criminal Cases (2000)
NZLC R61	Tidying the Limitation Act (2000)
NZLC R62	Coroners (2000)

Study Paper series

NZLC SP1	Women's Access to Legal Services (1999)
NZLC SP2	Priority Debts in the Distribution of Insolvent Estates: An Advisory Report to the Ministry of Commerce
NZLC SP3	Protecting Construction Contractors (1999)
NZLC SP4	Recognising Same-Sex Relationships (1999)

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 Prof JH Farrar and MA 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 Mäori Fisheries – Mataitai: Nga Tikanga Mäori 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 Debt and Damages (discussion paper) (1991)
NZLC PP18	Evidence Law: Expert Evidence and Opinion Evidence (discussion paper) (1991)
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NZLC PP24	Succession Law: Testamentary Claims (discussion paper) (1996)
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NZLC PP26	The Evidence of Children and Other Vulnerable Witnesses (discussion paper) (1996)
NZLC PP27	Evidence Law: Character and Credibility (discussion paper) (1997)
NZLC PP28	Criminal Prosecution (discussion paper) (1997)
NZLC PP29	Witness Anonymity (discussion paper) (1997)
NZLC PP30	Repeal of the Contracts Enforcement Act 1956 (discussion paper) (1997)
NZLC PP31	Compensation for Wrongful Conviction or Prosecution (discussion paper) (1998)
NZLC PP32	Juries in Criminal Trials: Part One (discussion paper) (1998)
NZLC PP33	Defaming Politicians: A Response to *Lange v Atkinson* (discussion paper) (1998)
NZLC PP34	Retirement Villages (discussion paper) (1998)
NZLC PP35	Shared Ownership of Land (discussion paper) (1999)
NZLC PP36	Coroners: A Review (discussion paper) (1999)
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NZLC PP38	Adoption: Options for Reform (discussion paper) (1999)
NZLC PP39	Limitation of Civil Actions (discussion paper) (2000)
NZLC PP40	Misuse of Enduring Powers of Attorney (discussion paper) (2000)
NZLC PP41	Battered Defendants: Victims of Domestic Violence Who Offend (discussion paper) (2000)