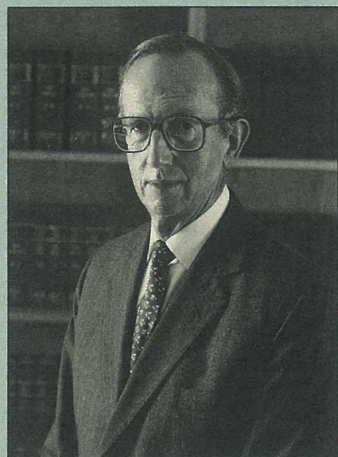


Justice Wallace retires from Law Commission



THE HON JUSTICE JOHN WALLACE has recently retired from the Law Commission. Justice Wallace was appointed to the Commission in December 1989 and was responsible for the evidence project (which has been passed on to Judge Margaret Lee, appointed to the Commission in March). Since February 1991, Justice Wallace has also been Deputy President of the Commission.

Speaking on the occasion of his retirement, Justice Wallace described all aspects of the Commission's work as exceptionally interesting and stimulating. He paid a particular tribute to the staff of the Commission for their helpfulness and the quality and thoroughness of their work.

Justice Wallace said that the most significant change in the Commission's work during his time was the growth of the Commission's 'advisory' role—advising or commenting upon legislative or law reform proposals which emanate from the Government or other sources. This work, sometimes carried out in conjunction with the Legislation Advisory Committee, was additional to the work done by the Commission on specific law reform references; and now involved a significant time commitment, contributing to the Commission's responsibility for keeping the law of New Zealand under systematic review.

While at the Commission, Justice Wallace sat in the High Court on occasion; was a member of the Courts Services Review Committee which recommended the establishment of a separate Department for Courts; and was a member of the Courts Consultative Committee. In February 1994 Justice Wallace was appointed President of the Electoral Commission, and he will continue in that office.

NEW PRESIDENT APPOINTED

THE NEW PRESIDENT of the Law Commission is the Hon Justice David Baragwanath. His appointment was announced by the Minister of Justice on 11 June and will take effect on 2 October 1996 for a term of three years. The Judge's appointment is widely welcomed. Details about his background and experience will feature in a later issue of *Te Aka Korero*.

NEW LEGISLATION ADVISORY COMMITTEE REPORT

THE REPORT of the Legislation Advisory Committee 1 January 1994 to 31 December 1995: Recurring Issues (Report No9) was published this month. The Committee comments on a selection of legislative proposals which illustrate a number of departures from well-established, sound legal principle. The Law Commission provides research support for the Legislation Advisory Committee.

THE LATEST COMMISSION PUBLICATIONS

MAY WAS A PARTICULARLY productive month for the Law Commission, with two reports tabled and published:

- *A New Zealand Guide to International Law and its Sources* (NZLC R34); and
- *Legislation Manual: Structure and Style* (NZLC R35).

Their appearance was marked by a successful launch on 4 June at which the main speaker was the Hon Justice Sir Kenneth Keith, former President of the Commission.

Both reports are designed to facilitate access to the law, and may be described as works of reference rather than documents which make specific recommendations about changes to the law.

The *Guide* aims both to increase awareness of international law and, by explaining its structure and supplying information on its sources, to help users find, interpret and understand international law.

The *Manual* aims to improve the quality of legislation, and make it easier to understand, by providing a com-

prehensive set of guidelines for those involved in the drafting of legislation.

A feature of these reports is a new cover design—based on the same vine motif which is incorporated in the masthead of this newsletter—and a clearer layout, designed to assist readers with their research.

Both publications will meet a considerable need in the public sector, among practitioners and in the universities. They can be obtained directly from the Commission for \$24.95.

CODIFYING THE LAW OF EVIDENCE

THE LAW OF EVIDENCE is central to the trial process. It governs *what* may be admitted as evidence and *how*, and *by whom*, it must be given. The law of evidence contains rules on such matters as hearsay—whether witnesses may give evidence about events described to them by others—and whether a police witness may tell the court about a defendant's previous convictions.

Many of the rules of evidence have operated for a long time. For the most part, they are found in our unwritten common law rather than statutes. The Law Commission has suggested that the law of evidence 'hinders rather than aids the search for truth through the creation of artificial and unnecessary constraints on the evidence which may be admitted'. The aim of the Commission's reforms of the law of evidence is to produce a statutory code of evidence which will replace these 'constraints'

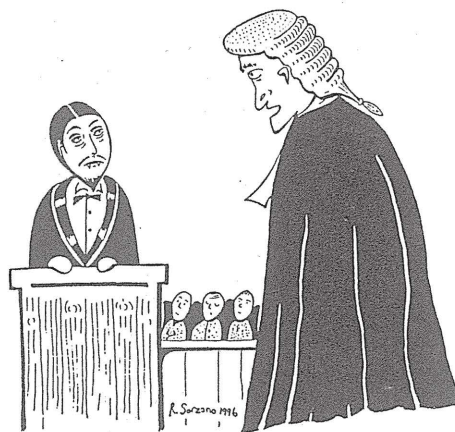
with a clear and principled statement of the law.

Several evidence discussion papers have already been published. These cover proposed reforms to the law of hearsay; the law on the admissibility of documentary evidence; judicial notice; and opinion evidence. Work on the analysis and refining of our policy recommendations, in the light of submissions, is well advanced.

The Commission will publish two further discussion papers this year: one examining character and credibility; and the other reviewing the ways in which children and other vulnerable witnesses give evidence. These papers will be available to all interested parties. The Commission also intends to produce, and

circulate among a smaller audience, papers dealing with the rules governing the questioning of witnesses in court, identification evidence, and the use of evidence in tribunals and other administrative bodies.

We hope to have finished policy on the code by May 1997, and to publish the final report in early 1998.



'No medical qualifications? Then on what basis do you claim to be an expert in haematology, Count Kinski?'

CONSULTATION WITH MĀORI WOMEN

THE WOMEN'S ACCESS to Justice: He Putanga mō ngā Wāhine ki te Tika project's consultation with Māori women is now nearing completion, with meetings having been held in most regions. The purpose of the consultation process is to gather information about the experiences of Māori women with the legal system.

Mākere Papuni-Ball (legal researcher), along with Te Rōpū Uho (the group of Māori women appointed to assist the Commission in planning the consultation process) and panel members (Hēpora Young, Ria Earp, Charmaine Ross, Philippa McDonald, Melanie Baker, Tereasa Olsen, Pania Tyson, Gay Andrews, Marguerita Harris, Sharlene Gardiner and Rahui Katene), have now attended meetings from as far North as Kaitaia to as far South as Dunedin. Many Māori women have attended the meetings and a huge amount of information has been provided to the Commission.

In late July or early August the project team will publish a newsletter about the Māori women's consultation process.

KO TE WHAKAWHITIWHITI WHAKAARO KI NGĀ WĀHINE MĀORI

Kua tata te mutu ngā mahi whakawhitiwhiti whakaaro i te kaupapa, 'He Putanga mō ngā Wāhine ki te Tika', i ngā hui i tū ki te nuinga o ngā rohe. Ko te tikanga o te hātepe o aua whakawhitinga whakaaro he whakaemi i ngā whakamōhiotanga e pā ana ki te wheako o ngā wāhine Māori ki te pūnaha ā-ture.

I tae a Mākere Papuni-Ball (Te kairangahau Ā-Ture o Te Aka Matua o te Ture) me Te Rōpū Uho (te rōpū wāhine Māori i whakātūria hei āwhina i Te Aka Matua o te Ture ki te whakakaupapa i ngā mahi whakawhitiwhiti whakaaro) me ngā mema o te rōpū whiriwhiri (arā, a Hēpora Young, a Ria Earp, a Charmaine Ross, a Philippa McDonald, a Melanie Baker, a Tereasa Olsen, a Pania Tyson, a Gay Andrews, a Marguerita Harris, a Sharlene Gardiner, me Rahui Katene), ki ngā hui i tū, mai i Kaitaia i te Tokerau ki

Ōtepoti i te Tonga. I muia ngā hui e tini o ngā wāhine Māori, ā, he tino rahi rawa atu ngā whakamōhiotanga i tukuna ki Te Aka Matua o te Ture.

Hei te tata paunga o Hūrae, hei te tīmatanga rānei o Ākuhata ka whakaputaina e te rōpū whakahaere i te kaupapa, tētahi reta ki te iwi whānui e pā ana ki te hātepe o ngā whakawhitinga whakaaro o Te Rōpū Uho Wāhine Māori.



LAW REFORM SECTION: NEW ZEALAND
New Zealand. Law Commission = Aotearoa. Te
Te aka korero : the Law Commission quarterly
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THE LIABILITY OF THE CROWN

THE POSITION OF THE CROWN when it acts unlawfully is different from that of individuals or even companies. The Crown has traditionally enjoyed an immunity from both criminal and civil liability; and sometimes it is difficult to know whom to sue. In addition, the Crown does not always have control over those who are acting on its behalf.

The view is increasingly expressed that the Crown should not have immunity without good reason. This is consistent with the Law Commission's recommendation, in NZLCR17, *A New Interpretation Act* (1990), to

What happens when the Crown commits an offence or acts negligently? This major question is occupying the Commission at the moment. In response to requests from the Attorney-General and the Minister of Justice, we are looking into the liability of the Crown in the light of two recent developments: first, the recommendations arising out of the Cave Creek inquiry; and, secondly, *Baigent's case*, in which damages were awarded against the Crown for breaching the Bill of Rights. The connected issue of judicial immunity from civil suit is also being considered.

reverse the current immunity of the Crown. This would mean that, unless a statute specifies otherwise, the Crown would be both criminally and civilly liable. It would be able to claim immunity only in clearly defined situations.

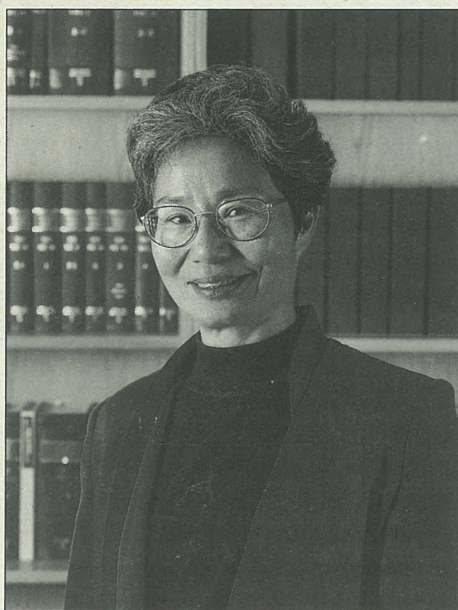
These are complex issues, however, and the Commission is working—in consultation with other public sector bodies—to come up with recommendations which, on the one hand, protect individuals and give them a remedy against the Crown and, on the other, do not hamper the Crown in conducting its lawful business.

NEW COMMISSIONER: JUDGE LEE

OUR NEWEST COMMISSIONER is Judge Margaret Lee, a District Court Judge who brings considerable experience to her main project—the codification of evidence law.

Judge Lee was born in China, and had a varied working life even before beginning her legal career. Positions held both in New Zealand and with international agencies overseas, involving staff training, education and research, have given her a breadth of experience not always found among our judiciary.

Judge Lee qualified as a lawyer in 1980, became a partner in the Wellington firm of Tripe Matthews and Feist in 1982, and was sworn in as a District Court Judge in 1987. She has been warranted to conduct jury trials



since 1992. Judge Lee looks forward to using her practical knowledge in law reform.

IMPLEMENTATION OF THE ARBITRATION REPORT

THE RECOMMENDATIONS in the Commission's 1991 report *Arbitration* have moved a step closer to implementation, with the referral of the Arbitration Bill to the Government Administration Select Committee. The Bill is substantially the same as that proposed by the report, which provides a legislative framework for both domestic and international arbitration. The principle behind the Bill is the freedom of parties to determine their own method of dispute resolution and to reduce the ability of the courts to intervene in arbitration awards.

The Select Committee began hearing submissions in late May and the Commission is assisting the Ministry of Justice in advising the Committee on the Bill. It is hoped that substantial progress will have been made towards enactment of the Bill by the time the House rises for the election in October.

COMMUNITY SAFETY: TWO YEARS ON

THE COMMISSION'S REPORT on *Community Safety: Mental Health and Criminal Justice Issues* (NZLC R30) was published in August 1994. Recommendations included a proposal for new legislation for people with intellectual disabilities whose behaviour poses a danger to others, as well as those needing compulsory care for their own

safety. The issues reviewed in the report remain, and the Commission is pleased that the Ministry of Health released a position paper in May outlining proposed legislation '... to facilitate the compulsory assessment, care and support of persons with intellectual disability'. This follows a Ministry discussion paper published in late 1995,

for which the Law Commission prepared a detailed response. Much of what is proposed in the Ministry's latest paper accords with *Community Safety's* recommendations.

WORK PROGRAMME FEATURES MANY PUBLICATIONS

A HEAVY SCHEDULE of publications is the main feature of the Commission's work programme for the coming financial year. To make life easier for everyone, the publications will appear at regular intervals throughout the year. Publication dates between now and December are as follows:

- **Succession Law: Testamentary Claims**, 14 August
- **The Privilege Against Self-incrimination**, 13 September
- **Criminal Prosecution**, 11 October
- **The Evidence of Children and Other Vulnerable Witnesses**, 22 November
- **Evidence Law: Character and Credibility**, 22 November
- **Juries**, 13 December.

In most cases, the publications constitute significant milestones in

complex, long-term projects. All those published as 'preliminary papers' will be open for submissions by the public, with further work to follow in the refining and completing of proposals for reform.

The Commission's work on the *law of evidence*, *succession law*, and *women's access to justice* will continue throughout the coming year, and will be completed in 1997 and 1998 (see 'Codifying the law of evidence', p 2). Our work on *criminal procedure* will also continue, but will be reviewed over coming months to ensure it is in line with other priorities in the justice system.

The recent departure of Sir Kenneth Keith and Justice Wallace, and the delay of some months before Justice Baragwanath is able to take up his appointment as the Commission's new President, have meant further delays in completion of some important work in the *public law* area. Work in areas such

as the legal status of the Crown, the Official Information Act, and standard provisions in legislation has now been ranked in order. The immediate priority has been for the Commission to complete work on the criminal liability of the Crown. Work on the implications of *Baigent's case* and judicial immunity will follow (see 'The liability of the Crown', p 3) and should be completed by the end of August. At this time the Commission will be able to turn its mind to the completion of the long-delayed reference on aspects of the Official Information Act.

As we went to press the finishing touches were made to the work programme, after consultation with the Minister of Justice, the Ministry of Justice and the Department for Courts.

PUBLIC LAW INSTITUTE

THE NEW ZEALAND INSTITUTE of Public Law is planning a national conference of teachers and practitioners in public law, to be held in Wellington on 29 to 30 August 1996. In the last week of June, Professor Margaret Bedggood, a visiting fellow at the Institute, will give a lecture entitled 'Constitutionalising Rights'. She will also lead a symposium on the relationship between tort and public law in July. Anyone interested in attending these events or the conference itself should contact the Institute's administrator, Virginia Breen, on (04) 471 5355 ext 6327.

SEMINAR PROGRAMME

IN APRIL AND MAY seminars at the Commission were presented by:

- Dr Robyn Penman, Executive Director of the Communication Research Institute of Australia, who spoke about 'Access to the law from a communication perspective' focusing mainly on courtroom interaction
- Ailsa Salt, Assistant Clerk of the House of Representatives, who presented a very concise and useful overview of the new Standing Orders
- Florence Fenton, Acting Director of the Fiji Law Reform Commission who recently spent time in New

Zealand, who gave a personal view of law reform 'Fiji-style'

- Nigel Christie, researcher at the Law Commission, who presented a background to his research into the issue of same-sex marriage and the recent High Court case in Auckland
- Les Atkins QC, Commissioner at the Law Commission, who discussed 'The influence of the media on the conduct of criminal trials'.

Future seminars will focus on consultation with Māori, matters of evidence, and forensic psychology.

STAFF NEWS

PROFESSOR RICHARD SUTTON is undertaking presidential duties at the Commission until Justice Baragwanath takes up his appointment.

The Commission has recently farewellled two legal researchers. Penny

Webb-Smart, principally involved in the juries project, has left for travel in South America and work experience in England. Diane Stephenson, who worked extensively with Sir Kenneth Keith on the Commission's advisory functions and Crown project, has also

decided to broaden her experience and work for an extended time in England.

We look forward to the arrival of a new researcher in July. Brigit Laidler will be working on the Women's Access to Justice project.