

From Sir Kenneth Keith, PRESIDENT OF THE LAW COMMISSION



AS I LEAVE THE LAW COMMISSION after its first 10 years, I look backwards, forwards and outwards. Outwards, because law must be seen in its widest context. The context has changed massively and unpredictably in that decade. Consider the changes in the New Zealand economy, society and structure of government, including a growing recognition of the central role of the Treaty of Waitangi; the huge advances in science and technology and the related globalisation of communications and markets and increased threats to human survival and the environment; and the unimagined political changes in the former Soviet Union and Eastern Europe, the Middle East and South Africa.

To meet its central advisory responsibilities for the promotion of the systematic review, reform and development of the law, the Law Commission depends on good people, processes and principles. The people are outside the Commission as well as within it, for we depend greatly on the help of others in the legal profession, the wider community, the public service and Parliament, from both within and beyond New Zealand. Good processes of external consultation, fact finding and the testing of ideas and proposals are critical, along with good internal research, writing and debate. And, so that we may grasp *te aka matua*—the main vine—we depend, as well, on good principle drawn from the heritage of the peoples of Aotearoa New Zealand and reflecting their aspirations. Proposed principles must be tested—many a beautiful theory is slain by an ugly fact—and, in reflecting and applying them, we must strive to reconcile continuity and change.

It has been a great privilege to deal with these big ideas in the concrete contexts of company law and courts, compensation and contracts, criminal law and constitutional matters I have every confidence that the Law Commission will continue to make an important contribution.

The Hon Justice Wallace comments on Sir Kenneth's departure from the Commission on p 4.

WHY A NEWSLETTER?

TE AKA KŌRERO: *The Law Commission Quarterly Newsletter* is a new venture for the Commission. Its aim is simple: to inform and interest people in what we are doing. We hope to foster links with the many groups on which the quality of our work depends and to whom the Commission is ultimately responsible. Recipients include members of Parliament, legal practitioners, community groups, government agencies, academic institutions, law reform agencies and participants in our projects. Its name reflects the concept of 'te aka', vine, in the Commission's

Māori name, as well as 'kōrero', communication.

In each issue, we plan to provide a broad outline of one major Commission project, brief updates on other current projects and items on new and completed projects. Miscellaneous items of general interest will be included, as will information on Commissioners and staff.

Te Aka Kōrero is to be published quarterly, in March, June, September and December. Any feedback or suggestions for later issues would be gratefully received.

ABOUT THE LAW COMMISSION

THE LAW COMMISSION is set up to review, reform and develop 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 Aotearoa New Zealand.

Members of the Commission are appointed by the Government; its operations are funded by the taxpayer. The Commission is, however, independent of the Government, enabling it to look at law reform issues free of political constraint.

There are five Commissioners and over 30 staff, including 17 legally qualified researchers. We produce discussion papers and reports on law reform projects, often including draft legislation. The Minister of Justice and Government then decide whether to implement our proposals.

Our Māori name, *Te Aka Matua o te Ture*, means "the main vine of the law". It reflects the legend of Tawhaki who was exhorted to climb to the heavens by clinging to the main vine with roots in the earth, not to the tendrils swaying in the air. The name is apt to the Law Commission, which is committed to law aimed at progress and yet grounded in principle and practical reality.

PRE-CONFERENCE SEMINAR

TO MARK ITS FIRST 10 YEARS and Sir Kenneth Keith's departure, the Commission is hosting a seminar on 9 April in Dunedin before the Law Conference. The topic is current issues facing law reform in New Zealand and elsewhere; Sir Kenneth and Dr Jocelyne Scutt, Melbourne barrister and former member of the Victorian Law Reform Commission, will lead the discussion.

WOMEN'S PROJECT ATTRACTS HUGE INTEREST

THE FOCUS OF THE PROJECT ON Women's Access to Justice: He Putanga mō ngā Wāhine ki te Tika is on finding ways to make legal services and legal procedures more user-friendly for women. The Law Commission will report to the Minister of Justice at the end of 1997, recommending law reforms and other changes to promote the just treatment of women by the legal system.

Joanne Morris is the Commissioner responsible for the project. Staff involved are Michelle Vaughan, Diana Pickard, Philippa McDonald, Elisabeth McDonald, Mākere Papuni-Ball and Trina Dyall.

Input from women users of the legal system is gained through nationwide

meetings, written and telephoned submissions (to our freepost address and freephone number) and one-to-one interviews. Information on the project and its process is supplied by a range of community-based initiatives and the project's quarterly newsletter, which has over 1400 on the mailing list.

A central aspect of the project is its recognition of the Treaty of Waitangi as the founding document of New Zealand: the entire project is run in a bicultural manner. Critically important is Te Rōpū Uho, a core group of eight Māori women from within and outside the Commission. It is led by Hēpora Young, and Commission staff Philippa McDonald and Mākere Papuni-Ball are members.

Call for public submissions

The Commission is currently calling for public submissions. Please write to

Women's Access to Justice: He Putanga mō ngā Wāhine ki te Tika project, Freepost 56452, Law Commission: Te Aka Matua o te Ture, PO Box 2590, Wellington.

Alternatively, call freephone 0800 88 3453 on any of the following dates: 15 April 1996, 13 May 1996 or 10 June 1996.

Further information

To receive the Women's Access to Justice newsletter or further information about the project, please contact Michelle Vaughan on freephone 0800 88 3453 on any weekday.

NEW PROJECT: MĀORI CUSTOM LAW

WITH THE HELP OF a generous grant from the New Zealand Law Foundation, the Māori Committee of the Commission is preparing guidelines for Judges and others who interpret and apply the principles of Māori custom law. The project idea comes from a paper by Chief Judge Eddie Durie. Increasingly, statutes refer to Māori concepts and principles; for instance, the Resource Management Act 1991 uses such terms as kaitiakitanga, mana whenua and tikanga Māori.

The guidelines will describe some basic custom law principles with examples of how they work in practice, and will also provide sources of further information. The guide will definitely not be the final word, but a starting point for further thinking and research.

Four leading academics are developing material—Mānuka Hēnare, Dame Joan Metge, Dr Michael Belgrave and Professor Richard Mulgan. Lawyers Whai Dewes and Joe Williams will then prepare final guidelines. Drafts of work in progress will be circulated to an advisory group of kaumātua and Māori and non-Māori academics and lawyers. Final publication is expected in the second half of 1996. The project is administered within the Commission by Professor Sutton and Philippa McDonald.

The Law Commission recognises the Treaty of Waitangi as the founding document of New Zealand, and places particular importance on the need to understand the expectations of Māori people concerning the legal system. In addressing Māori issues, the Commission is assisted by a Māori Committee, chaired by Bishop Manuhua Bennett. Other members of the Committee are Chief Judge Eddie Durie, Dr Mason Durie, Whetū Weretā, Judge Michael Brown, Hēpora Young, Denese Henare and Archie Taiaroa.

NGĀ TURE TIKANGA Ā-IWI MĀORI

E āwhinatia ana e tētehi taku he rangatira a te Tūāpapa o te Ture o Aotearoa te mahi a te Komiti Māori o te Aka Matua, ki te whakataka i ētehi aratohu mā ngā Kaiwhakawā me ērā nā rātou te mahi ki te whakamārama me te whakahau i ngā mātauranga o ngā ture tikanga ā-iwi Māori. I puta ake te whakaaro mō te kaupapa nei i tētehi pepa nā te Kaiwhakawā Matua nā Eddie Durie i tuhi. Kua kaha ake te whakahuahua haere a ngā ture i ngā ariā me ngā mātauranga Māori; hei tauira noa,

kei te Ture Tumu Whakahaere Rawa o 1991, e whakamahia ana ngā kupu pēnei i te kaitiakitanga, mana whenua, me te tikanga Māori.

Ko tā ngā aratohu hé whakamārama i ētehi mātauranga o ngā ture tikanga ā-iwi Māori, me ngā tauira hei whakaatu i te āhua o te mahi a aua mātauranga inā whakamahia ana, ā, he whakarato ko hea ngā wāhi hei tikitanga atu i ētehi atu whakamōhiotanga. Ehara te aratohu nei i te kupu whakamutunga, he tīmatanga noa iho nō te mahi ki te whakaaro i ētehi atu whakaaro me te rangahau hoki.

Tokowhā ngā taha mātauranga kei te whakahiato i ētehi rauemi tuhi—ko Mānuka Hēnare rātou ko Kahurangi Joan Metge, ko Tākuta Michael Belgrave me Ahorangi Richard Mulgan. Kātahi ka riro mā ngā rōia nei mā Whai Dewes rāua ko Joe Williams e taka ngā aratohu whakamutunga. Ka hurihuria haeretia ngā hukihuki e ahuwhakamuatia ana ki tētehi rōpū kaumātua kaitohutohu, ki ngā taha mātauranga Māori me tauiri, kore taha mātauranga Māori me tauiri, me ētehi rōia. Hei te haurua o 1996 ka whakapukapukatia te kaupapa nei. Ko

McI
te A

LAW REFORM SECTION: NEW ZEALAND
New Zealand. Law Commission = Aotearoa. Te
Te aka korero : the Law Commission quarterly
March 1996- no 1 March 1996

970204

copy 2

INTRODUCING THE LAW COMMISSIONERS

THE LAW COMMISSIONERS have varied backgrounds and active links with bodies outside the Commission.

Sir Kenneth Keith has been an academic, international lawyer and Judge, and has published widely. He has been a member of the Commission since it began and its President for five years.

The Hon Justice John Wallace, a member of the Commission since 1990, has had a distinguished career as a practitioner, a member of two Royal Commissions, and a Judge. Appointed Judge of the High Court in 1982, Justice Wallace has also been chairperson of the Human Rights Commission and is now President of the Electoral Commission as well as Deputy President of the Law Commission.

For most of his career, Professor Richard Sutton has been an academic lawyer. He became Dean of the Otago Faculty of Law in 1980, has published and participated in law reform projects principally in property law, equity and

restitution, and has been a member of the Commission since 1992.

Les Atkins QC combines a lively practice as a barrister, the greater part of which is in criminal defence work, with his role as a Commissioner since 1993.

Before her appointment to the Commission in 1994, Joanne Morris was an academic. She chaired the Ministerial Committee of Inquiry into Pornography in 1988 and has been a member of the Waitangi Tribunal since 1989.

From left: Robert Buchanan (Director), Sir Kenneth Keith (President), the Hon Justice John Wallace (Deputy President), Joanne Morris, Professor Richard Sutton and Les Atkins QC (absent is Margaret Lee, not appointed at the time the photo was taken).



Judge Margaret Lee begins work on 2 April 1996 as the most recently appointed Law Commissioner. Following a varied career, Judge Lee was admitted to the bar in 1980, became a partner in Tripe Matthews and Feist (a Wellington law firm) in 1982 and District Court Judge in 1987. She has considerable jury trial experience and will assume particular responsibility for the Commission's evidence project.

WHERE THERE'S A WILL THERE'S A WAY . . .

BUT WHOSE WAY WILL IT GO? The Commission is reviewing the law of succession, that is, the law governing who inherits property when a person dies. Professor Richard Sutton is the Commissioner in charge of the project. The project team also includes Loretta Desourdy (project officer), Ross Carter and Nigel Christie.

The project's purpose is to replace the Wills Act 1837 (UK), the Administration Act 1969, the Family Protection Act 1955 and the Law Reform (Testamentary Promises) Act 1949 with a new Succession Act. The Act will simplify the law, enable better effect to be given to the intentions of will-makers, and take account of the diversity of New Zealand families.

Some of the older legislation does not reflect the position of society today. For example, the current law makes distinctions based on traditional views of family structure, ignoring the diversity of modern-day families.

In mid-1996 the Commission will publish a discussion paper floating significant proposals on testa-

mentary claims—claims that ask the court to change the way a will distributes a dead person's property and that can upset a distribution on an intestacy. Experts have already expressed sharply divided views on some of the proposals—watch out for a widespread and lively debate!

The project is also reviewing the law as it applies to Māori families; to this end, last year the project team commenced a process of consultation with Māori. The process to date has involved meeting with national Māori organisations and holding regional hui, and will be extended to other groups,

including urban Māori. The relationship between tikanga and enacted law has emerged as a central issue at hui. Before consultation began, the Commission asked Professor Pat Hōhepa and Dr David Williams to prepare a working paper on the Māori dimension in reform of the law of succession. The working paper is available free of charge from the Commission.

Work is also underway on wills and intestacy.



"I get the car, Josh gets the TV and video, and Clare is having the house."

PUBLIC LAW INSTITUTE

THE NEW ZEALAND INSTITUTE OF Public Law, recently established by the Law Faculty of Victoria University of Wellington, aims to provide a central point for those (within and outside the university) interested in public law issues. In August it will hold a symposium on the public law regulation of banking, insurance and financial services; as well as a conference on the teaching of public law and administrative law. For further information on Institute activities, please contact Paul Walker (Director) or Melissa Poole on (04) 495 3290.

SIR KENNETH LEAVES FOR COURT OF APPEAL

AT A FUNCTION HELD at Premier House on 25 March 1996 to mark Sir Kenneth Keith's departure from the Law Commission, speakers referred to Sir Kenneth's intellectual gifts, passion for the law and energetic commitment to his work. The Deputy President of the Commission, the Hon Justice John Wallace, spoke in particular of Sir Kenneth's "massive contribution" to law reform. Justice Wallace recalled that, in addition to leading a number of major law reform projects, Sir Kenneth had been involved in all the Commission's work including the review of company law, contract law, the court system, the Limitation Act, the Property Law Act, arbitration, and the drafting and interpretation of legislation; Māori issues; and all current major projects in relation to evidence law, criminal procedure, succession on death, and women's access to justice. Sir Kenneth's earlier law reform efforts noted by Justice Wallace include involvement with the Danks Committee, which led to the Official Information Act, and work relating to the Constitution Act and the Bill of Rights. Justice Wallace told Sir Kenneth that he had to date "... made a tremendous contribution as an academic, a law reformer, an adviser on a wide range of constitutional and public law issues and as an internationally recognised jurist". Sir Kenneth now had "the opportunity in the Court of Appeal to confront, perhaps even more directly, the many issues which face our society".

STAFF NEWS

RECENT APPOINTMENTS to the Law Commission's research staff demonstrate the increasing significance of the University of Waikato's new Law School to the legal community:

- Christine Hickey is a Canterbury graduate who taught at Waikato for three years. She is on the criminal procedure project team, contributing in particular to the prosecution and diversion projects.
- Mākere Papuni-Ball, a Waikato graduate, has Ngāti Porou and Te Whakatōhea affiliations. She is on

the Women's Access to Justice team and will be assisting with consultation with Māori women.

- Nigel Christie, another Waikato graduate, has specialised in family law and human rights, and will be working on aspects of the succession project.

The importance of library support to the

JURIES PROJECT MAKING GOOD PROGRESS

ISSUES RELATING TO JURIES were much publicised in late 1995. These were inspired by instances of summonsed jurors failing to appear for jury service, and of hung juries in high profile cases such as *R v Barlow*, where only the third trial by jury of two charges of murder produced a verdict.

Before this public attention, the Law Commission had begun a review of trial by jury as part of its reference to examine criminal procedure, releasing an *Issues Paper* in October 1995. The paper considered such matters as when jury trial should be available, the selection and composition of juries, ways to assist the jury's decision-making, the length of deliberations, hung juries, majority verdicts, and jury secrecy. The team for the project is

Les Atkins QC, Penny Webb-Smart and Susan Potter.

In a most pleasing response to the *Issues Paper*, about 40 submissions were made covering a broad range of issues. As a result, and after other external discussions, we have widened the scope of the project to include greater consideration of when jury trial should be available, and of issues about the media and juries. We will publish a further paper, containing proposals for reform, by the end of 1996.



R. Sorzano '96

"Thank you for calling Jury Service. To find the defendant **guilty**, press 1 now. For **not guilty**, press 2. And for a complete **re-trial**, press the hash key."

UPCOMING PUBLICATIONS

THE COMMISSION HAS a busy publication schedule this year. Look out between now and mid-year for

- *A New Zealand Guide to International Law and its Sources*, to increase awareness of New Zealand's international publications and to help users find, interpret and understand international law,
- *Legislation Manual: Structure and Style*, giving guidelines for drafting primary and subordinate legislation,
- *Succession Law: Testamentary Claims*, discussing claims that can be made against a person's estate,
- *The Evidence of Children and Vulnerable Witnesses*, a discussion paper which sets out options for reforming the law of competence and aspects of trial procedure,
- *Evidence Law: Character and Credibility*, a discussion paper proposing new rules for admitting evidence in the difficult area of the character and credibility of defendants and witnesses,
- *The Criminal Prosecution*, a discussion paper looking at issues and options regarding who should make prosecution decisions,
- *The Privilege Against Self-incrimination*, a discussion paper exploring options for reforming, and standardising, the expression of the common law privilege, reflected in a range of statutory provisions, that a witness cannot be compelled to provide information which might expose him or her to criminal or civil action.

Commission's research is recognised with its new position of reference librarian. We are pleased to welcome Judith Porter to this position. The Commission has also welcomed back a former researcher, recently returned from study in China. Susan Potter is now a senior legal researcher and will be working on the juries project.