

EDITORIAL



Professor Richard Sutton: Deputy
and Acting President.

BECOMING ACTING PRESIDENT of the Law Commission is an unexpected privilege. It is an opportunity, for a brief period, to lead a group of dedicated people through a strenuous time in the Commission's life. Over the next few months, we will approve some half dozen papers for publication, install new computer hardware and software, and move to a new project management system.

Most encouraging things have been happening in the last few months. The recommendations we made in several reports are now being picked up and made law. I am delighted that the new Arbitration Act has been passed this

session, and that it corresponded very closely with our own draft legislation in the 1991 Report.

The Ministry of Commerce has issued a paper based on our work on a proposed new Personal Property Securities Act. New law will replace the present antiquated legislation. Progress has been made within the Ministries of Health and Justice towards the preparation of legislative proposals which will help implement much of what we recommended in our Report on *Community Safety: Mental Health and Criminal Justice Issues*.

The Commission is always conscious that it is one actor on a wide stage. We look to the many people we consult to give their wise counsel about our proposals and (we hope) their support to our recommendations. We rely on those in Government, and in the Parliamentary process, to take care of our proposals so they eventually become law. It is most heartening to see the way our work is progressing, in the new MMP environment.

I hope that I can help things move along, without getting too distracted to deal with the projects for which I am still responsible. I can, however, assure Justice Baragwanath that when he arrives in October, he will see the former Acting President hanging the flags out at 89 The Terrace!

– half of the 27 000 New Zealanders who die each year leave significant property for distribution, and courts can overturn a will if it does not recognise the testamentary claims of family members and others.

KEY PROPOSALS

- Widows and widowers of a person who has died would have rights to share – usually equally – in the couple's property. This right to share is already available under the Matrimonial Property Act 1976 for spouses who divorce. Widows and widowers would also be able to claim support to permit them a reasonable and independent standard of living.
- The right to share in property and receive support when a partner dies would also be available for surviving de facto partners, including those of the same sex.
- People who have made valuable contributions to will-makers' property or well-being, like unpaid carers of the elderly or sick, would be able to claim fair compensation.
- The new laws would clarify the financial support claims that children are able to make from the estates of their parents, and would recognise the special needs of children in some circumstances: those under 25, those who are still being educated, and those with disabilities.

At present, mature, financially independent children can seek major changes to wills against parents' wishes, even if they have not been close to their parents for years. The paper criticises the existing law on adult children's claims, saying that it has contradictory purposes and creates uncertain results. We welcome suggestions on whether such claims should continue.

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CHALLENGES TO WILLS

NEW PUBLICATIONS

AS PART of the Commission's review of succession law, it released in August two publications on the subject of claims against dead people's wills, each designed for a different audience:

- *Succession Law: Testamentary Claims – A Discussion Paper* (1996, NZLC PP24) is a 250-page paper primarily

intended for legal practitioners and others interested in the details of the proposals and the background research. (\$34.95)

- *What Should Happen to Your Property When You Die? – A Consultation Paper* is a 30-page paper explaining what is proposed to the general public. (Free of charge.)

The proposals could affect many people

THE LAW COMMISSION'S WORK ON CRIMINAL PROCEDURE

THE PROJECT'S WORK

ON THE CRIMINAL PROCEDURE team are Les Atkins QC (Commissioner), Janet Lewin (project co-ordinator), and researchers Philippa McDonald, Susan Potter, Christine Hickey, Ian Murray and Diana Pickard. The team has a busy publication schedule for the second half of this year. One discussion paper on the privilege against self-incrimination is being released in September. Two more discussion papers are being finalised – one on the New Zealand prosecution system, to be published in October; and a second on juries (scheduled at this stage for publication by mid-December).

The team is also working on the Costs in Criminal Cases Act and is preparing a paper on diversion and other alternatives to prosecution.

We are currently reviewing the terms of reference for our work on criminal procedure. The existing reference was given by the Minister of Justice in 1989. Among other things, it asks the Commission:

- to ensure that the law relating to criminal investigations and procedures conforms to the obligations of New Zealand under the International Covenant on Civil and Political Rights and to the principles of the Treaty of Waitangi; and
- to devise a system of criminal procedures for New Zealand that will ensure a fair trial of people accused

of offences, protect the rights and freedoms of all people suspected or accused of offences, and provide effective and efficient procedures for investigating and prosecuting offences and hearing criminal cases.

We welcome comments or submissions from newsletter readers on priority areas and issues for the reference – if possible by the end of November.



The Criminal Procedure team, left to right, Philippa McDonald, Moira Thorn, Christine Hickey, Les Atkins QC, Janet Lewin, Diana Pickard, Susan Potter and Ian Murray.

SELF-INCRIMINATION

PEOPLE CANNOT be compelled by the State to provide information which may expose them to criminal prosecution. That is the essence of the privilege against self-incrimination. The privilege is the subject-matter of the Commission's discussion paper, being published in late September.

The paper considers the privilege both in its common law form and as it has been affected by legislation. The paper concludes that the privilege should be retained, but seeks submissions on a range of issues.

It discusses:

- when the privilege should be claimable;
- who should be able to claim the privilege; and
- when statutes with information-gathering powers should remove or restrict the privilege in particular contexts.

In relation to the specific area of serious fraud investigations, the paper asks whether the Serious Fraud Office's powers should be any different from those of other investigative and prosecuting agencies.

The paper should be of particular interest to law enforcement and prosecution agencies with information-gathering powers. The Commission will

also be interested to hear from solicitors who have represented people in circumstances where the privilege has become an issue – either in respect of liability to criminal prosecution or for the imposition of a civil penalty (for example in disciplinary proceedings).

The paper will ask for submissions to be made by 29 November. Enquiries should be directed to Janet Lewin, freephone 0800 883 453.



R. S. 22/96

LAW REFORM SECTION: NEW ZEALAND
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Te ake korero : the Law Commission quarterly
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'... the difference between a lawyer and a dead skunk? I don't have to answer that, actually. There's a ride about self-incrimination.'

THE MĀORI COMMITTEE

THE MĀORI COMMITTEE of the Law Commission was established to assist the Commission in the development of a bicultural approach to the law of New Zealand. The Committee acts as a conduit for the Commission's relationship with the Māori community, but does not purport to speak for Māori. Under its terms of reference, the Committee

- advises on consultation with Māori,
- assists the Commission to identify projects for the reform and development in areas of law of interest or concern to Māori, and
- advises on the priority to be given to projects, and recommends processes for their development.

Committee members are Bishop Manuhia Bennett, Judge Michael

Brown, Chief Māori Land Court Judge Edward Durie, Professor Mason Durie, Denese Hēnare, Archie Taiaroa, Whētu Weretā, and Hēpora Young.

One issue being considered by the Māori Committee is the Law Commission's role in debates about the place of the Treaty of Waitangi. The Commission considers the appointment of Māori Commissioners a prerequisite to a greater contribution to those debates.

Last year the Committee was asked by the Government to comment on the proposed abolition of Privy Council appeals. In response, the Committee prepared a discussion paper urging further debate before legislation abolishing such appeals was introduced. The Committee's view was that abolition could not be considered in isolation

from other constitutional issues raised by Māori, especially those tied to the status of Māori under the Treaty of Waitangi and the status of the Treaty in New Zealand's constitution.

The Committee is also sponsoring a project to prepare an outline of concepts of Māori custom law, for use by judges and others (see *Te Aka Kōrero*, Issue No 1, page 2). The project is being undertaken with funding from the New Zealand Law Foundation, and is being administered by the Law Commission on behalf of the Māori Committee.

More recently, the Māori Committee has been advising the Law Commission about the Māori response to the Commission's consultation on succession law issues. A discussion paper on this subject will be published by the Commission next year.

TE KOMITI MĀORI

I WHAKATŪRIA TE KOMITI MĀORI o Te Ture Komihana hei āhuatanga āwhina i a ia ki te whakatinana i tētahi ara kākano rua ki roto i te ture o Aotearoa. He āhuatanga whakapiri atu i te Komihana ki te iwi Māori te mahi a te Komiti nei engari, ehara rawa atu i te māngai mō te iwi Māori. I raro i ōna ake tino whakaritenga mahi, ko te Komiti nei

- te rōpū hoatu tohutohu ki te Komihana mō āna kōrerotanga ki te iwi Māori,
- te rōpū āwhina i te Komihana ki te tāutohu i ngā mahi kaupapa mō te whakahoutanga me te whanaketanga i ngā takiwā o te ture e whai painga ana, e whai wāhi ana ki te iwi Māori, ā,
- te rōpū tohutohu ko ēhea ngā mahi kaupapa kia mahia i te tuatahi, ā, te rōpū taunaki ko ēhea takinga hei whakapakari mā rātau i a rātau te Komihana.

Ko ēnei ngā tāngata o te Komiti. Ko Pihopa Manuhia Bennett, ko Kaiwhakawā Michael Brown, ko Te Kaiwhakawā Tumuaki o Te Ture Kōri Māori a Edward Durie, ko Ahorangi Mason Durie, ko Denese Hēnare, ko Archie Taiaroa, ko Whētu Weretā, ko

Hēpora Young.

Ko tētahi take kei te whakaritea i te wā nei e te Komiti Māori, ko te mahi mā te Komihana Ture i roto i ngā tautohetohe e pā ana ki te nohonga o Te Tiriti o Waitangi. Ki tā te Komihana whakarite, ko te whakaingoa Amokapua Māori kē te mea tuatahi, ā, mā tērā e tino whai wāhi kē atu ai aua tautohetohe rā.

I tērā tau i pātaitia ngā whakaaro o te Komiti e te Kāwanatanga mō te whakakore i te Kaunihera a te Karauna. Nā tērā pātai, ka noho te Komiti ki te āta takatū he whakaaro hei whiriwhiritanga e aki ana kia tautohetia anō te take i mua i te whakauru i te hanganga ture e whakakore ana i aua momo tonu. Ki tā te Komiti tirohanga, kāore rawa atu e taea te whakarite te wāhi ki te whakakorenga mā te whakatū mokemoke mai, wehe mai i te taha o ētahi atu take ture kua whakaarahia e te iwi Māori, otirā, aua ture e pā tonu ana ki te tūranga o te iwi Māori i raro i Te Tiriti o Waitangi me tō te Tiriti tūranga i roto i te ture o Aotearoa.

E whakatairangatia ana hoki e te Komiti he mahi kaupapa ki te takatū i tētahi hua e pā ana ki ngā aroro o te ture tikanga Māori kia riro ai mā te hunga kaiwhakawā me ētahi atu e

whakamahi (tirohia te Whakaputanga 1, whārangi 2 o *Te Aka Kōrero*). Kei te whakahaerea te mahi kaupapa i raro i tētahi tahua e heke iho mai ana i a New Zealand Law Foundation, ā, ko te Komihana Ture te kaiwhakahaere mō te Komiti Māori.

Ko tētahi o ngā mahi o nā noa nei a te Komiti Māori, he hoatu tohutohu ki te Komihana Ture mō te whakautu a te iwi Māori ki tā te Komihana kōrerotanga ki ngā take e pā ana ki te ture tauatanga. A te tau e tū mai nei e whakaputaina ai e te Komihana he whakaaro hei whiriwhiritanga e pā ana ki tēnei kaupapa.

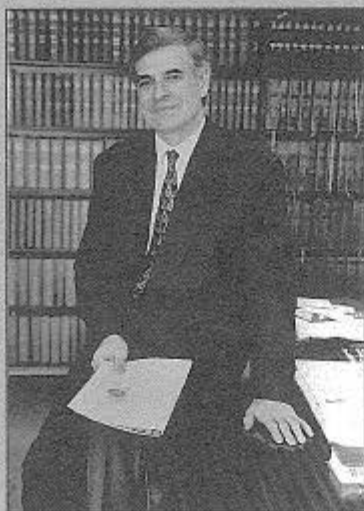
Challenges to wills continued from page 1

Māori ancestral property and taonga would not be affected by the new law. After extensive consultation with Māori, the Law Commission is considering proposals for Māori succession laws separately.

The Commission hopes to receive submissions by mid-November from a wide range of people. For further information please contact: Professor Richard Sutton (Commissioner) or Ross Carter (Researcher).

THE COMMISSION'S NEW PRESIDENT: DAVID BARAGWANATH

JUSTICE DAVID BARAGWANATH comes to the Commission at the beginning of October with an impressive academic and professional background. After graduating from Auckland University in 1964 and going on to further studies at Oxford, Justice Baragwanath was a partner with Meredith Speight Connell & Co between 1966 and 1977. In 1977 he began practice as a barrister sole, was made Queens Counsel in 1983 and became a Judge of the High Court last year. Justice Baragwanath has also lectured at the University of Auckland and written on jurisprudential and administrative law topics.



Justice Baragwanath.

both civil and criminal cases. For example, he was counsel for Te Runanga o Muriwhenua, the New Zealand Māori Council, the Human Rights Commission, and for the Serious Fraud Office in the Equiticorp prosecution.

We are very pleased to have attracted a person of such experience. Justice Baragwanath's understanding of constitutional matters and Māori issues will enable him to lead the Commission in its public law and constitutional role. His practical experience as a litigator and a judge will also ensure effective oversight of the Commission's many projects

due for completion over the next three years, and stimulate new ones.

LAC CHAIRPERSON RETIRES

LAST MONTH Dr Mervyn Probine retired as chairperson of the Legislation Advisory Committee, a position he had held since 1991. The role of the Committee is to monitor the quality of Bills introduced into Parliament and to make submissions to Select Committee, particularly where public law issues, official information matters, or issues concerning the accessibility of law are raised.

As a former chairman of the State Services Commission, Dr Probine brought a unique perspective and wealth of experience to his role as Chairperson of the LAC. His intellectual and personal qualities will be much missed by all who worked with him, especially those at the Commission who have been part of its association with the LAC. Dr Probine will, however, continue to contribute to public affairs by, for example, chairing the Insurance and Savings Ombudsman Commission. Dr Probine's replacement has not yet been announced.

PUBLIC LAW INSTITUTE

THE NEW ZEALAND INSTITUTE for Advanced Legal Studies, the New Zealand Institute of Public Law and the New Zealand Institute for Dispute Research & Resolution are combining to present a programme of events on "Treaty Issues, Looking Forward".

This includes a Seminar Series - "In Search of the Pathway Forward" - to be held on alternate Mondays from 7 October to 2 December, and a Conference - "The Treaty of Waitangi - Māori Political Representation: Future Challenges" on February 13-14 1997, which will feature commentators on Indigenous Peoples' Political Representation in Australia, Canada, Europe, USA and New Zealand.

For further information please contact Virginia Breen -
phone: 64-4-495 3290 (Ext 6327)
fax: 64-4-495 5184.



WOMEN'S ACCESS TO LEGAL INFORMATION

THE WOMEN'S ACCESS TO JUSTICE PROJECT: He Putanga mō ngā Wahine ki te Tika is currently investigating women's access to legal information. In submissions and consultations women have told the Commission about their lack of access to legal information. The Commission has therefore written a consultation paper which looks at what legal information is available, where and to whom it is available, and what can be done to improve the situation. The paper has been circulated to community groups for comment.

A second consultation paper, to be circulated shortly, focuses on who is responsible for providing legal information to the public. To receive a copy of either paper or for further information, please contact Brigit Laidler on freephone 0800 883 453.

STAFF NEWS

LOUISE DELANY, a senior researcher, left the Commission in August to take up a position with the Rules Team at the Land Transport Safety Authority. Louise worked on the Commission's Report *Community Safety: Mental Health and Criminal Justice Issues* and was involved with the evidence project and in public law matters. She has also helped co-ordinate production of *Te Aka Kōrero*.

Lawyer Russell Karu is on secondment from Tunnicliffe, Walters, Williams from August until December 1996, working on Māori succession issues.

NEW ARBITRATION LAW NEXT JULY

THE ARBITRATION ACT 1996, enacted on 21 August, implements the Law Commission's 1991 proposals for arbitration law reform. The Act takes effect from 1 July 1997, and will apply the provisions of the UNCITRAL model arbitration law to all arbitrations in New Zealand.