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LAW·COMMISSION
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Report 70

Acquittal Following Perversion of the Course of Justice

March 2001
Wellington, New Zealand

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.

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27 March 2001

Dear Ministers

I am pleased to submit to you Report 70 of the Law Commission, *Acquittal Following Perversion of the Course of Justice*.

We confirm as fundamental the rule of law that no person acquitted of a crime can be prosecuted again for the same offence. But after consultation and careful reflection we have concluded that, in a narrow class of case, public confidence in the rule of law justifies a limited exception to that rule. That is where the accused has secured an unmerited acquittal on a serious charge by perjury or other conduct that has perverted the course of justice. The Report contains the arguments for and against our view, gives the reasons for our conclusion, and details the circumstances in which and the terms on which we consider the limited exception should be available.

Yours sincerely

The Hon Justice Baragwanath
President

The Hon Phil Goff
Minister of Justice
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The Hon Margaret Wilson
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Preface

NEW ZEALAND LAW has always provided that a person acquitted of a crime can never be prosecuted again for the same offence. That is known as "the rule against double jeopardy" and is a basic safeguard of civil liberties in every legal system comparable with our own. There was a line of authority extending it, by prohibiting any assertion in any later trial that a person who has been acquitted (or convicted) at a previous trial was in fact guilty.[1] That has recently been reviewed by appellate courts in New Zealand and in England.

Both the rule and the extension were examined in the Law Commission's Preliminary Paper 42 *Acquittal Following Perversion of the Course of Justice: a Response to R v Moore* (2000). We expressed the view, as earlier did the House of Lords in *R v Z*,[2] that the extension was unjustifiable. That conclusion has since been adopted by the Court of Appeal of New Zealand in *R v Degnan*.[3] While there has been some overseas support for the extension,[4] the submissions received in response to the Preliminary Paper suggest no justification for us to advise that New Zealand should by statute depart from the judgment in *Degnan*.

Our focus is therefore on the rule against double jeopardy following prior acquittal. For the reasons contained in this Report we confirm the fundamental importance of that rule. We recommend a limited and principled exception to it in cases where an accused has secured apparently unmerited acquittal in the most serious classes of case by perjury or other conduct designed to defeat the course of justice.

Our timetable has overlapped with that of the Law Commission for England and Wales whose report *Double Jeopardy and Prosecution*

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1 *Sambasivam v Public Prosecutor, Federation of Malaya* [1950] AC 458; *R v Davis* [1982] 1 NZLR 584, 589.

2 [2000] 2 AC 483.

3 [2001] 1 NZLR 280.

4 Discussed by Colin Tapper in "Clouded Acquittal" (2000) 117 LQR 1 and including *Reg v Arp* [2000] 2 LRC 119 (Supreme Court of Canada).

Appeals[5] was published this month. It responded to two references: one concerning recommendations of the Macpherson Report on the Stephen Lawrence Inquiry[6] that prosecution be permitted after acquittal where fresh and viable evidence is presented; the other whether the prosecution should be able to appeal an adverse ruling which may result in premature termination of the trial. That Commission recommends:

(1) that the Court of Appeal should have the power to set aside an acquittal for murder,[7] and genocide consisting in the killing of any person, thus permitting a retrial, only where there is compelling new evidence of guilt and the court is satisfied that it is in the interests of justice to quash the acquittal; and that the reform be retroactive;

(2) that in certain serious types of case the Crown should have the right to appeal against a ruling by the judge which has the effect of terminating the proceedings.

The latter recommendation is to the same general effect as that of this Commission in NZLC R66 *Criminal Prosecutions*[8] which cross-referred to the English Commission's consultation paper.

In this Report we drew the line on the first issue at a different point from the English Commission. No case has been established in New Zealand for a "new evidence" exception to the rule against double jeopardy. Our first condition for a retrial is that the accused has committed an "administration of justice" offence. Nor is a case established for making the reform retrospective. The difficulties attending that course are seen in the judgments of the Court of Appeal in *R v Pora*.[9]

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5 Report 267, The Stationery Office, March 2001, Cm 5048.

6 *The Stephen Lawrence Inquiry – Report of an Inquiry by Sir William Macpherson of Cluny* (The Stationery Office, 1999, Cm 4262).

7 And the proposed crime of reckless killing, if introduced into law.

8 NZLC R66, Wellington, 2000, at para 198.

9 20 December 2000, CA 225/2000.

1
An exception to the rule against double jeopardy

1 HOW SHOULD THE LAW TREAT AN ACCUSED who has (or may have) secured acquittal of a serious crime by abusing the processes of justice? The Law Commission was asked by the former Minister of Justice to consider the case of Kevin Moore. In September 2000 we issued a discussion paper *Acquittal Following Perversion of the Course of Justice: A Response to R v Moore* which sets out the issues and options.[10] A number of helpful responses have contributed to the advice conveyed in this Report. (We have not examined the separate question, considered by the Law Commission for England and Wales in its 1999 Consultation Paper 156 *Double Jeopardy*,[11] whether the discovery of any significant new evidence might justify the reopening of an acquittal, even though it was not the result of misconduct by the accused. Despite the kind of hard case that can be visualised[12] we think it highly improbable that such a course could be justified in New Zealand.)

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10 NZLC PP 42 *Acquittal Following Perversion of the Course of Justice: A Response to R v Moore* (Wellington, 2000).

11 Law Commission for England and Wales, *Double Jeopardy* (Consultation Paper 156, The Stationery Office, London, 1999).

12 Assume part of the scenario proposed by Ian Dennis in "Rethinking Double Jeopardy" [2000] CLR 933, 945

Consider this: V is married to D who is violent and jealous. V has an affair with W. D finds out about the affair. Subsequently someone shoots at V and W, killing W and injuring V. There is eyewitness evidence identifying D as the gunman but at D's trial the eyewitness becomes confused and uncertain under cross-examination. D is acquitted of the murder of W and the attempted murder of V. The day after the acquittal D sends V an email message telling her that he was the gunman and that she had better come back and live with him.

The penalty for threatening to kill (Crimes Act 1961 s 306) is seven years imprisonment.

2 In May 1992 Mr Moore was tried with a fellow member 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 Mr Moore and his co-accused that may have led to their acquittal.[13] In August 1999 Mr Moore was convicted of conspiracy to pervert the course of justice in relation to that evidence. The sentencing judge imposed the maximum term of imprisonment. In his remarks he stated:

> A conspiracy to [per]vert the course of justice to avoid your rightful conviction for murder and a life sentence of imprisonment must be as serious as any that could be committed. It must call for a deterrent sentence. Even the maximum sentence of seven years imprisonment for the conspiracy cannot act as an appropriate deterrent for your crime as in all respects it is substantially less than the sentence you would otherwise have received. That maximum sentence is an encouragement to offenders like you to commit the type of conspiracy you committed. The law does not permit you to be retried for the murder you committed as you were acquitted of it because of your conspiracy. You escape the sentence of life imprisonment that should be the minimum you receive. Instead you receive a much lesser sentence … The maximum sentence of seven years imprisonment is itself a very lenient sentence in your case when by your conspiracy you have literally got away with murder and avoided life imprisonment. To impose any lesser sentence would further benefit you in respect of the crime of conspiracy committed by you.[14]

3 Mr Moore appealed his sentence. The Court of Appeal dismissed the appeal stating:

> This offending falls squarely within the band or bracket comprising the worst class of cases under this section and therefore qualifies for the maximum term.[15]

4 A likely result was that, by reason of a second crime, conspiracy to pervert the course of justice, for which he is eligible to apply for

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13 In *R v Moore* [1999] 3 NZLR 385 there are reported both a High Court ruling, at a second trial, rejecting an application for severance of proceedings against an alleged party to the same murder from Mr Moore's charge of conspiracy to pervert the course of justice, and also the Court of Appeal's judgment allowing Mr Moore's appeal from a subsequent conviction and granting him severance. His conspiracy conviction and second appeal – against sentence – followed.

14 *R v Moore* (17 September 1999) unreported, High Court, Palmerston North Registry, T31/99, 3–5, Doogue J.

15 *R v Moore* (23 November 1999), unreported, Court of Appeal, CA 399/99, 5.

release on parole after two years and four months,[16] Mr Moore escaped conviction for an earlier crime of murder, which carries a minimum non-parole period of ten years or more.[17]

Summary of the principle against double jeopardy as it appears in New Zealand

5 Mr Moore cannot be retried for the murder. New Zealand criminal law, following the common law, provides for the alternative verdicts of guilty and not guilty. If the verdict is not guilty, then save in two irrelevant classes of case,[18] there can never be a further prosecution for the same offence. That is because of a rule of law, called "the rule against double jeopardy". The rule is restated in section 26 of the New Zealand Bill of Rights Act 1990 which provides:

> DOUBLE JEOPARDY
>
> (2) No one who has been finally acquitted or convicted of, or pardoned for, an offence shall be tried or punished for it again.

6 Section 26(2) does no more than restate in an abridged form sections 357–359 of the Crimes Act 1961, which are reproduced in appendix A to this report and which prohibit retrial following acquittal or conviction. A retrial following acquittal is at present unknown in New Zealand save in two exceptional situations. The Crown may request the judge to state a case on an issue of law and a retrial may then be directed on appeal. In that case the accused well knows before the verdict is returned that an acquittal will be challenged.[19] A second, rare, instance may follow the setting aside on judicial review of an acquittal by a District Court.

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16 One-third of seven years: Criminal Justice Act 1985 s 89(3).

17 Criminal Justice Act 1985 ss 80(1)(a), 89(1), 89(2).

18 Para 6 below.

19 "Once the case is in the appellate hierarchy there is no logical reason why the matter should not be determined – assuming that the point involved is of sufficient importance to warrant the attention of the Court – by the very highest tribunal. There can be no surprise or unfairness; the accused simply takes the appellate structure as he finds it."

ML Friedland *Double Jeopardy* (Clarendon, Oxford, UK, 1969), 293 cited with approval by Mason CJ in *R v Benz* (1989) 168 CLR 110, 112.

7 By way of comparison, Article 20 of the Statute of the International Criminal Court (1998) is reproduced as appendix B to this Report.

8 New Zealand has acceded to the International Covenant on Civil and Political Rights (ICCPR) (1966). Article 14(7) provides:

> No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

9 In its 1999 consultation paper the Law Commission for England and Wales said of Article 14(7):[20]

> Article 14 applies both to the reopening of a conviction and to the reopening of an acquittal. Read literally, it therefore prohibits even the power of an appellate court to quash a criminal conviction and to order a retrial if new evidence or a procedural defect is discovered after the ordinary appeals process has been concluded. In its General Comment on Article 14(7), however, the United Nations Human Rights Committee, the treaty body charged with implementing the ICCPR, expressed the view that the reopening of criminal proceedings "justified by exceptional circumstances" did not infringe the principle of double jeopardy. The Committee drew a distinction between the "resumption" of criminal proceedings, which it considered to be permitted by Article 14(7), and "retrial" which was expressly forbidden.

10 In this context "resumption" contemplates a revisiting of a fundamentally defective proceeding; "retrial" the exposure of an accused to a retrial where there has been no fundamental defect.[21] Thus the retrial of a defective proceeding would not offend against Article 14(7) or section 26(2).

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[20] Above n 11, para 3.12.

[21] The concept of fundamental defect is seen in Article 4 of Protocol 7, 4.XI.1950 as amended by Protocol 11, 1.XI.1998 to the European Convention on Human Rights (1950), to which a number of signatories to the ICCPR (although not New Zealand) are parties. The Convention provides by Article 4:

> (1) No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
>
> (2) The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

11 Section 5 of the New Zealand Bill of Rights Act 1990 provides a standard against which proposals for reform affecting section 26(2) may be measured:

> Subject to section 4 of this Bill of Rights, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The main purposes and the importance of the rule against double jeopardy

Prevention of harassment

12 A fundamental purpose of the rule against double jeopardy, which terminates criminal litigation, is to prevent the harassment of an accused by repeated prosecution for the same matter. It has been said that:

> The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offence, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.[22]

13 Any participant in the process of a criminal trial is familiar with the sense of relief that accompanies a verdict – that there has been an end to a process which may have been gruelling for all involved and even hideous in very different ways for the victim, the accused, witnesses and their families. Any proposal to reopen that process must recognise both the cost to the particular parties of such course and the effect on parties to other cases of the possibility that, despite the verdict, closure is incomplete.

The avoidance of inconsistency and securing finality of verdict

14 A consequence of the rule against double jeopardy is protection of the administration of justice itself. By preventing harassment and inconsistent results it promotes confidence in court proceedings

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[22] *Green v United States* 355 US 184 (1957), 187–189, per Black J.

and the finality of verdicts. A clear corollary of the rule is that occasionally the guilty will escape punishment, but that is inevitable in any system of justice that must accommodate conflicting interests and finite resources. The need to secure a conclusion of disputes concerning status has long been recognised.[23] The status conferred by acquittal is one of particular importance.

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[23] The principle was classically stated by Lord Wilberforce in the *Ampthill Peerage* legitimacy case [1977] AC 547, 568–9 as one:

> … of great importance. There can hardly be anything of greater concern to a person than his status … : denial of it, or doubts as to it, may affect his reputation, his standing in the world, his admission into a vocation, or a profession, or into social organisations, his succession to property, … . It is vitally necessary that the law should provide a means for any doubts which may be raised to be resolved, and resolved at a time when witnesses and records are available. It is vitally necessary that any such doubts once disposed of should be resolved once for all and that they should not be capable of being reopened whenever, allegedly, some new material is brought to light which might have borne upon the question. How otherwise could a man's life be planned? … This principle of finality of determination in the matter of legitimacy is, of course, but one strand in a more general fabric. English law, and it is safe to say, all comparable legal systems place high in the category of essential principles that which requires that limits be placed upon the right of citizens to open or to reopen disputes. The principle … is the same principle as that which requires judgments in the courts to be binding, and that which prohibits litigation after the expiry of limitation periods. Any determination of disputable fact may, the law recognises, be imperfect: the law aims at providing the best and safest solution compatible with human fallibility and having reached that solution it closes the book. The law knows, and we all know, that sometimes fresh material may be found, which perhaps might lead to a different result, but, in the interest of peace, certainty and security it prevents further inquiry. It is said that in doing this, the law is preferring justice to truth. That may be so: these values cannot always coincide. The law does its best to reduce the gap. But there are cases where the certainty of justice prevails over the possibility of truth (I do not say that this is such a case), and these are cases where the law insists on finality. For a policy of closure to be compatible with justice, it must be attended with safeguards: so the law allows appeals: so the law, exceptionally, allows appeals out of time: so the law still more exceptionally allows judgments to be attacked on the ground of fraud: so limitation periods may, exceptionally, be extended. But these are exceptions to a general rule of high public importance, and as all the cases show, they are reserved for rare and limited cases, where the facts justifying them can be strictly proved.

Increase of prospect of wrongful conviction; promotion of efficient investigation

15 The Law Commission for England and Wales in its 1999 consultation paper added a further point:[24]

> Black J, … saw repeated trials as increasing the likelihood of wrongful conviction. For Friedland, this point "is at the core of the problem", "[I]n many cases an innocent person will not have the stamina or resources effectively to fight a second charge".[25] In England and Wales, lack of *financial* resources is not usually a serious problem for defendants in criminal cases because of the availability of legal aid. But the risk of wrongful conviction must be increased to some extent by any retrial. If it is accepted that juries do on occasion return perverse verdicts of guilty, the chance that a particular defendant will be perversely convicted must increase if he or she is tried more than once. Moreover, because there has already been one trial at which the defence has shown its hand, the prosecution may enjoy a tactical advantage at a second trial; and this will increase the likelihood of a conviction, whether the defendant is guilty or innocent.

Of course a similar argument can be made in relation to a retrial where the jury has failed to agree.[26]

16 Another point, the promotion of efficient investigation preceding prosecution of the original trial, has obvious force.[27] Opportunity for the Crown to revisit its case after acquittal would provide perverse disincentives to getting it right at the outset.

17 All of these considerations are of significance not only to whether there should be limits to an exception to the double jeopardy rule but also to whether there should be any exception at all.

18 The *Moore* case raises two questions. First, does the current, absolute, form of the rule against double jeopardy bring the law into disrepute? Secondly, if it does, in what way should it be modified?

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[24] Above n 11.

[25] See Friedland, *Double Jeopardy*, above n 19.

[26] In the year to October 2000, 13.1 per cent of High Court jury trials and 7.8 per cent of District Court jury trials (an overall average of 8.7 per cent) resulted in hung juries (unpublished figures provided by the Department for Courts). See NZLC R69 *Juries in Criminal Trials* (Wellington, 2001), para 417.

[27] See Dennis, above n 12, 941–2.

19 We have no doubt as to the former. This is not the simple case of the acquittal of someone whom there is reason to believe to be guilty. As already noted, that is the inevitable consequence wherever the Crown has failed to satisfy the jury that the accused's guilt has been proved beyond reasonable doubt. The reason for particular concern about this case is that Mr Moore appears to have secured his acquittal by a further crime and so exacerbated his affront of one of society's most fundamental laws – the prohibition against deliberate killing of another human – by infringing another. That is the rule, critical to the integrity of our judicial processes, that witnesses must give honest evidence and everyone must refrain from interfering with the procedures established for the honest administration of justice. The more difficult question is the latter – what balance should be struck in seeking to respond to such double criminality?

20 As was noted in the New Zealand Law Commission's Preliminary Paper 42 and in the submissions we received, each option for dealing with the problem encounters difficulty:

(1) Any dilution of the double jeopardy rule tends to impair the important values that it protects.

(2) Responding by increasing the maximum sentence for an "administration of justice" crime would leave to judicial evaluation on sentence not only the gravity of the administration of justice offence but also the very determination of guilt of the earlier offence. Fact finding on truly fundamental issues – such as whether the accused committed the murder of which a jury previously acquitted him – should be for a jury not a judge. So while the question of whether increasing the current seven year maximum term may warrant consideration for other reasons, the superficially attractive option of doing so to deal with the present problem is not a wholly satisfactory response.

(3) The creation of a new offence of procuring a miscarriage of justice requiring proof both of the administration of justice offence *and* of its having succeeded in misleading the jury in the earlier trial would lead to complexity and effectively require the second jury to second guess the first.

(4) For the reasons given in paragraph 4 of this Report, leaving the current law unaltered leaves the offender incompletely punished in relation to the earlier offence.

21 The Crimes Act 1961 provides for the following crimes which are directed at conduct that interferes with the purity of the criminal process and may be called "administration of justice" offences, namely:[28]

- perjury (section 108);
- attempting or conspiring to obstruct, prevent, pervert or defeat the course of justice (section 116 and section 117(d));
- fabricating evidence (section 113);
- bribery of judicial officer (section 101);
- corruption and bribery of a law enforcement officer (section 104);
- corrupting juries and witnesses (section 117).

22 We regard the principled options as:

(1) leaving the current law unaltered; or

(2) permitting a limited departure from the principle of double jeopardy.

Of the further options, both that of a new offence of procuring a miscarriage of justice and that of increasing the penalty for such crimes – effectively requiring the sentencing judge to adjudicate that the original jury verdict of acquittal was wrong – are indirect forms of (2). Neither in our view is acceptable because they do not face the issue directly. Either the full enormity of the accused's offending must be addressed by a head on challenge to the double jeopardy rule or the current law should remain unchanged.

23 The remaining question is which of options (1) and (2) is to be preferred.

24 The argument that the rule against double jeopardy should be given inflexible application is a substantial one, which has received a good deal of support from thoughtful respondents.

25 But there are countervailing factors. First, the virtue of a simple rule without exceptions is to be weighed against the cost of inadequate differentiation between different classes of case; reluctance to countenance any exception to an important principle needs to be considered in the light of the consequences of that course. An example in a closely related context is the history of the so-called rule in *Sambasivam v Public Prosecutor, Federation of*

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[28] The following provisions are reproduced in full in appendix C to this Report.

Malaya.[29] The House of Lords in *R v Z*,[30] this Commission in its Preliminary Paper 42 and the Court of Appeal of New Zealand in *R v Degnan*[31] all considered to be wrong the series of judgments[32] which applied the second sentence in the following statement of principle in *Sambasivam*:[33]

> The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication.

26 In each of the three analyses it was considered that the judgment in *Sambasivam* was in need of substantial qualification. The actual decision to set aside the conviction in that case has not been doubted, but has been justified on the basis that the conviction was manifestly inconsistent with the acquittal of an offence which arose from the same incident: *R v Z*.[34] But this did not require an unqualified rule that a verdict of acquittal "is binding and conclusive in all subsequent proceedings" between the same parties. In particular, the fact that an accused has been acquitted of an offence does not mean that evidence tending to establish guilt is not admissible as similar fact evidence supporting the inference that the accused was guilty of another offence which is later charged. The reception of such evidence allows the Crown implicitly to assert that the acquittal was erroneous. Nevertheless the evidence is admissible if it satisfies the principles governing similar fact evidence, subject to the discretion of the judge to exclude it on grounds of illegitimate prejudice or unfairness (which the mere fact of acquittal will not of itself establish). The alternative of automatically excluding such evidence has been seen to work greater injustice than a partial departure from the broad principle that an acquittal cannot be challenged.

27 Secondly, it is necessary in the present context to make a judgment about the relative consequences of retention and of partial

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[29] Above n 1. Further examples may be the decisions overruled and reversed in *Attorney-General's Reference No 3 of 1999*, House of Lords, 14 December 2000.

[30] Above n 2.

[31] Above n 3.

[32] Including and following *R v Davis*, above n 1.

[33] Above n 1, 479.

[34] Above n 2, 503–504, per Lord Hutton.

departure from the current absolute rule against double jeopardy. The reasons for the rule have been stated at paragraphs 12–17. Those reasons are powerful. Nevertheless it is the Commission's view that in the case of the double offender a limited exception to the rule is justified. Such an offender is in a very different position from an accused who, although guilty, has secured an acquittal without resorting to an administration of justice crime – which may entail threatening or bribing witnesses, or even interfering with the jury. In our view such conduct, if established, warrants a departure from the safeguard of the double jeopardy rule despite the disadvantage entailed. We therefore propose the second of what we regard as the principled options in paragraph 22.

28 We have given careful thought to the onus of proof. An accused may have been party to such conduct, but the Crown may not have clear evidence of this. Should the onus of proof on this issue be reversed?

29 We do not recommend such a reversal of the onus of proof. It would involve a significant widening of the proposed exception to the double jeopardy rule. It could give rise to oppression. There will be numerous cases where it is at least possible that an acquittal was the result of an administration of justice crime, but the bare possibility of this should not justify retrying the accused whenever the possibility is not disproved. Such a rule would gravely undermine the finality of the verdict.

30 We have also considered whether commission of an administration of justice crime at the first trial *by a third party* without the involvement of the accused should be sufficient to justify an application for retrial. There is a substantial argument in favour of that course – that the public interest in purity of the trial process is such that an acquittal secured because of, or perhaps simply following, breach of such interest should be susceptible of review at a further trial.

31 We do not however consider that in New Zealand such course is warranted. While interference with the administration of justice is always a matter of concern and sometimes of great gravity, in the case of an accused who has not been party to it such conduct is simply a fortuity for which that accused cannot be blamed.

32 The Law Commission for England and Wales[35] further proposed that convictions for perjury by the accused at the first trial, in distinction from another administration of justice crime, such as

[35] Above n 24, paras 6.19–6.20.

being party to perjury by another, should be an insufficient basis for application for retrial. We do not agree with this. It was argued that a trial is itself designed to expose perjury, in particular through cross-examination, and that perjury is thus different from other external attacks on the trial process. But this does not meet the point that the perjury is itself corrosive of the trial process. It also overlooks the *Humphreys* safeguard discussed in paragraphs 34 and 35 below.[36] If the accused is convicted of having perjured himself at the first trial, by evidence corroborated as required by the Crimes Act 1961 section 112, we see no public interest reason to insulate him from any retrial he would have undergone for persuading another to do likewise.

33 It is however to be emphasised that the current law does not permit a trial for perjury which consists of denial of an offence of which the accused witness is later convicted unless there is:

> additional evidence which the Crown could not have had available using reasonable diligence at the time of the first trial.[37]

34 The reason is to avoid the risk of allowing the Crown, under the guise of a perjury trial, to put the accused in jeopardy a second time on the same evidence. We consider it desirable out of caution explicitly, in a stand alone provision dealing with when an acquitted accused can be prosecuted for perjury, to require compliance with that salutary rule of the common law as a condition of an application to retry on the grounds of a perjury conviction. It would require that the evidence resulting in the conviction include substantial[38] evidence which was additional to that called at the first trial and which the prosecution could not then have had available by using reasonable diligence.

35 Because of the importance of the double jeopardy rule and the consequences of any exception to it we would not countenance such exception except in the gravest cases. In chapter 2 we consider where the line should be drawn. Leave of the High Court would be required following conviction upon the crime of perjury or conspiracy to defeat the course of justice. The grounds for the application are considered in chapter 3.

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[36] *DPP v Humphreys* [1977] 1 AC 1.

[37] Above n 36, 40–41, per Lord Hailsham.

[38] See para 45 below.

36 We consider that the carefully restricted limitation we propose upon the Bill of Rights prohibition against double jeopardy conforms with the standard of section 5 of the New Zealand Bill of Rights Act 1990.[39]

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[39] See para 11 above.

2
Where should the line be drawn?

37 THE IMPORTANCE of the double jeopardy rule and the heavy costs, personal and economic, of any departure from it, require in our view, that the exception we propose:

- be confined to acquittals in the most serious classes and kinds of case;
- require conviction of an administration of justice crime;[40]
- be dependent upon the judgment of the High Court that certain conditions, discussed in chapter 3, have been met.[41]

38 We would reserve the exceptional course of permitting reopening for the most serious classes of case where public confidence in the

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[40] Appendix C.

[41] In proposing an exception to the double jeopardy rule on grounds of, inter alia, new evidence, the Law Commission for England and Wales recommended a test of whether the sentence upon retrial would be likely to exceed three years. Dennis, above n 12, rejects that approach as impracticable, unfair, and too uncertain and states:

> There are several alternatives. One would be to extend the exception to all offences punishable with imprisonment, irrespective of the actual penalty which is likely on a retrial. This would go much too far, taking in many of the cases where the Law Commission believes that public opinion would tolerate the occasional wrongful acquittal. A narrower rule would restrict the exception to indictable offences only. This would certainly include the most serious offences, but also a number of others for which it is not clear that an exception is needed. An editorial in the Review suggested that a better proposal would be to restrict the exception to a list of offences punishable with the most severe penalty, namely life imprisonment. The list would thus include such offences as murder, rape, arson, robbery and wounding with intent to do grievous bodily harm. These are the offences from which victims may justifiably demand the greatest degree of protection, and which figure most often in discussion about the merits of a new exception. People should not "get away with murder" is a cliché, but it also provides a valuable criterion of seriousness in this context. The Home Affairs Committee has adopted the life sentence criterion as part of its recommendations in support of a new exception.

We agree with Dennis's views.

law would be most gravely shaken if a perverted acquittal were not able to be reviewed.

39 The most obvious example is murder; other clear cases are treason, sabotage, sexual violation, wounding with intent, and offences involving Class A drugs. The protean crime of manslaughter extends from virtual murder to virtual accident; it illustrates the need for discrimination. But as illustrated by examples cited by the 1993 Committee on the Penalty for Homicide,[42] murder itself can occur across a broad spectrum: from the ruthless shotgun robber who kills in cold blood to the battered wife who eventually kills a brutal husband.

40 We are of the view that only acquittals of crimes carrying 14 years imprisonment or more should be eligible for an application for leave to reopen. We append as appendix D a list of the crimes that would currently qualify. We exclude section 109(2) (perjury) of the Crimes Act 1961 as entailing risk of confusion: it is itself an "administration of justice" offence and we think it undesirable to have one administration of justice verdict susceptible to be reopened because of another such offence. The requirement of corroboration of evidence in a perjury case marks it out in a special category.

41 But since even the most serious classes of crime vary widely in their heinousness, further conditions are necessary. These are dealt with in chapter 3.

42 Despite its support by one respondent to our Preliminary Paper we do not in general agree with the proposal of the Law Commission for England and Wales that the requirement of actual conviction for an administration of justice crime can be done away with and that it would be sufficient to satisfy the High Court that such conduct has occurred.[43]

43 To avoid oppression we consider that there should be no jurisdiction to entertain a second application for retrial in respect of any acquittal. If the retrial is tainted by a *further* administration of justice offence by the accused, there should not be *jurisdiction* to entertain a further application for retrial. Whether it would be contrary to the interests of justice to proceed could be another matter.

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[42] Cited by Lord Bingham CJ in his 1998 Newsam Memorial Lecture "The Mandatory Life Sentence for Murder", 13 March 1998, (www.open.gov.uk/lcd/judicial/ judgesfr.htm, last accessed 18 March 2001).

[43] See n 11, paras 47–8.

3
Grounds of application

44 WE HAVE PROPOSED as conditions to an application to reopen:

- the accused must have been convicted of an administration of justice crime;
- the crime of which the accused was originally acquitted must carry a penalty of 14 years imprisonment or more.

45 We further propose:

- that the High Court alone have jurisdiction to consider an application;
- that it must be satisfied that:
  - the accused has been convicted of an administration of justice crime;
  - it is more likely than not[44] that, but for the administration of justice crime, the acquitted person would not have been acquitted;
  - the prosecution has acted with reasonable despatch since discovering evidence of the administration of justice offence;
  - the acquitted person has been given a reasonable opportunity to make written or oral submissions to the Court;
  - no appeal or other application to set aside the administration of justice conviction remains undisposed of;
  - it would not, because of lapse of time or for any other reason, be contrary to the interests of justice to take proceedings against the acquitted person for the crime of which he or she was acquitted.[45]

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[44] See para 46 below.

[45] These proposals draw on the form of the United Kingdom Tainted Acquittal legislation enacted by the Criminal Procedure and Investigations Act 1996, described in the *Double Jeopardy* consultation paper of the Law Commission for England and Wales (see n 11 above, at paras 2.15–2.19) as follows:

> The Criminal Procedure and Investigations Act 1996 provided for the first time a procedure by which a person could be retried for an offence of which he or she had already been acquitted, if the acquittal was "tainted". This procedure is available where:
>
> (a) a person has been acquitted of an offence, and

46 The term "substantial" is used in other criminal and related statutory contexts.[46] We consider that it provides the judge with adequate guidance as to the common law requirement of the extent of new evidence required to justify a perjury trial.

47 The term "likely" is one that requires comment. It can in some contexts connote "more likely than not"; in others it may signify a real or significant risk.[47] We are of the view that in the present context the former sense is appropriate and should be made explicit.

(b) a person has been convicted of an administration of justice offence involving interference with an intimidation of a juror or a witness (or potential witness) in any proceedings which led to the acquittal.

If these conditions are met, and it appears to the court before which the person was convicted that there is a real possibility that, but for the interference or intimidation, the acquitted person would not have been acquitted, and that it would not be contrary to the interests of justice to take proceedings against the acquitted person for the offence of which he or she was acquitted and the court certifies that this is so, an application may be made to the High Court for an order quashing the acquittal.

The High Court may then make an order under section 54(3) of the Act quashing the acquittal, but only if:

(1) it appears to the High Court likely that, but for the interference or intimidation, the acquitted person would not have been acquitted;

(2) it does not appear to the court that, because of lapse of time or for any other reason, it would be contrary to the interests of justice to take proceedings against the acquitted person for the offence of which he or she was acquitted;

(3) it appears to the court that the acquitted person has been given a reasonable opportunity to make written representations to the court; and

(4) it appears to the court that the conviction for the administration of justice offence will stand.

Where the High Court quashes the acquittal under section 54(3), new proceedings may be taken against the acquitted person for the offence of which he or she was acquitted.

The requirement of despatch is a specific appreciation of the principles stated in s 25(b) of the New Zealand Bill of Rights Act 1990, that:

Everyone who is charged with an offence has, in relation to the determination of the charge, the following minimum rights:

(a) The right to a fair and public hearing by an independent and impartial court:

(b) The right to be tried without undue delay:

[46] For example Crimes Act 1961 s 187A (aa); Misuse of Drugs Act 1975 s 10(1); Extradition Act 1965 s 6.

[47] *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385.

48 The reform will leave intact the rule against double jeopardy following prior acquittal save:

(1) in the most serious classes of case;

(2) where the acquittal is proved to have been secured by the accused's criminal interference with the administration of justice.

APPENDIX A

Crimes Act 1961: sections 357–359

357 Special pleas

(1) The following special pleas, and no others, may be pleaded according to the provisions hereinafter contained—that is to say, a plea of previous acquittal, a plea of previous conviction, and a plea of pardon.

(2) All other grounds of defence may be relied on under the plea of not guilty.

(3) The pleas of previous acquittal, or previous conviction, and pardon may be pleaded together, and if pleaded shall be disposed of by the Judge, without a jury, before the accused is called on to plead further; and, if every such plea is disposed of against the accused, he shall be allowed to plead not guilty.

(4) In any plea of previous acquittal or previous conviction it shall be sufficient for the accused to state that he has been lawfully acquitted or convicted, as the case may be, of the offence charged in the count or counts to which that plea is pleaded.

358 Pleas of previous acquittal and conviction

(1) On the trial of an issue on a plea of previous acquittal or conviction to any count, if it appears that the matter on which the accused was formerly charged is the same in whole or in part as that on which it is proposed to give him in charge, and that he might on the former trial, if all proper amendments had been made that might then have been made, have been convicted of all the offences of which he may be convicted on any count to which that plea is pleaded, the Court shall give judgment that he be discharged from that count.

(2) If it appears that the accused might on the former trial have been convicted of any offence of which he might be convicted on the count to which that plea is pleaded, but that he may be convicted on that count of some offence of which he could not have been convicted on the former trial, the Court shall direct that he shall not be convicted on that count of any offence of which he might

have been convicted on the former trial, but that he shall plead over as to any other offence charged.

359 Second accusation

(1) Where an indictment charges substantially the same offence as that with which the accused was formerly charged, but adds a statement of intention or circumstances of aggravation tending if proved to increase the punishment, the previous acquittal or conviction shall be a bar to the indictment.

(2) A previous conviction or acquittal on an indictment for murder or manslaughter or infanticide shall be a bar to a second indictment for the same homicide charging it as any one of those crimes.

(3) If on the trial of an issue on a plea of previous acquittal or conviction to an indictment for murder or manslaughter or infanticide it appears that the former trial was for an offence against the person alleged to have been now killed, and that the death of that person is now alleged to have been caused by the offence previously charged, but that the death happened after the trial on which the accused was acquitted or convicted, as the case may be, then, if it appears that on the former trial the accused might if convicted have been sentenced to imprisonment for 3 years or upwards, the Court shall direct that the accused be discharged from the indictment before it. If it does not so appear the Court shall direct that he plead over.

APPENDIX B

Statute of the International Criminal Court

Article 20

Ne bis in idem

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.
2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.
3. No person who has been tried by another court for conduct also proscribed under article 6, 7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:
   (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or
   (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognised by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

APPENDIX C

Crimes Act 1961: Crimes affecting the administration of justice

101 Bribery of judicial officer, etc.

(1) Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer in respect of any act or omission by him in his judicial capacity.

(2) Every one is liable to imprisonment for a term not exceeding 5 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer or any Registrar or Deputy Registrar of any Court in respect of any act or omission by him in his official capacity, not being an act or omission to which subsection (1) of this section applies.

104 Corruption and bribery of law enforcement officer

(1) Every law enforcement officer is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.

(2) Every one is liable to imprisonment for a term not exceeding 3 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any law enforcement officer in respect of any act or omission by him in his official capacity.

108 Perjury defined

(1) Perjury is an assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial proceeding as part of his evidence on oath, whether the evidence is given in open Court or by affidavit or otherwise, that assertion being known to the witness to be false and being intended by him to mislead the tribunal holding the proceeding.

(2) In this section the term "oath" includes an affirmation, and also includes a declaration made under section 13 of the Oaths and Declarations Act 1957.

(3) Every person is a witness within the meaning of this section who actually gives evidence, whether he is competent to be a witness or not, and whether his evidence is admissible or not.

(4) Every proceeding is judicial within the meaning of this section if it is held before any of the following tribunals, namely:
  (a) Any Court of justice:
  (b) The House of Representatives or any Committee of that House:
  (c) Any arbitrator or umpire, or any person or body of persons authorised by law to make an inquiry and take evidence therein upon oath:
  (d) Any legal tribunal by which any legal right or liability can be established:
  (e) Any person acting as a Court or tribunal having power to hold a judicial proceeding:
  [(f) Any court-martial held under the Armed Forces Discipline Act 1971.]

(5) Every such proceeding is judicial within the meaning of this section whether the tribunal was duly constituted or appointed or not, and whether the proceeding was duly instituted or not, and whether the proceeding was invalid or not.

109 Punishment of perjury

(1) Except as provided in subsection (2) of this section, every one is liable to imprisonment for a term not exceeding 7 years who commits perjury.

(2) If perjury is committed in order to procure the conviction of a person for any offence for which the maximum punishment is not less than 3 years' imprisonment, the punishment may be imprisonment for a term not exceeding 14 years.

112 Evidence of perjury, false oath, or false statement

No one shall be convicted of perjury, or of any offence against section 110 or section 111 of this Act, on the evidence of one witness only, unless the evidence of that witness is corroborated in some material particular by evidence implicating the accused.

113 Fabricating evidence

Every one is liable to imprisonment for a term not exceeding 7 years who, with intent to mislead any tribunal holding any judicial proceeding to which section 108 applies, fabricates evidence by any means other than perjury.

116 Conspiring to defeat justice

Every one is liable to imprisonment for a term not exceeding 7 years who conspires to obstruct, prevent, pervert, or defeat the course of justice.

117 Corrupting juries and witnesses

Every one is liable to imprisonment for a term not exceeding 7 years who—

(a) Dissuades or attempts to dissuade any person, by threats, bribes, or other corrupt means, from giving evidence in any cause or matter, civil or criminal; or

(b) Influences or attempts to influence, by threats or bribes or other corrupt means, any juryman in his conduct as such, whether the juryman has been sworn as a juryman or not; or

(c) Accepts any bribe or other corrupt consideration to abstain from giving evidence, or on account of his conduct as a juryman; or

(d) Wilfully attempts in any other way to obstruct, prevent, pervert, or defeat the course of justice.

APPENDIX D

Crimes punishable by 14 years imprisonment or more

Crimes Act 1961

Section 68 Party to murder outside New Zealand

Section 69 Party to any other crime outside New Zealand

Section 74 Punishment for treason or attempted treason

Section 92 Piracy

Section 94 Punishment of piratical acts

Section 95 Attempts to commit piracy

Section 98 Dealing in slaves

Section 100 Judicial corruption

Section 102 Corruption and bribery of Minister of the Crown

Section 115 Conspiring to bring false accusation

Section 128B Sexual violation

Section129A Inducing sexual connection by coercion

Section 132 Sexual intercourse with a girl under 12

Section 142(3)(a) Anal intercourse

Section 172 Punishment of murder

Section 173 Attempt to murder

Section 179 Aiding and abetting suicide

Section 182 Killing unborn child

Section 183 Procuring abortion by any means

Section 188 Wounding with intent

Section191 Aggravated wounding or injury

Section 198 Discharging firearm or doing dangerous act with intent

Section 198A Using any firearm against any law enforcement officer

Section 199 Acid throwing

Section 200 Poisoning with intent

Section 201 Infecting with disease

Section 203 Endangering transport

Section 208 Abduction of woman or girl

Section 209 Kidnapping

Section 235 Aggravated robbery

Section 236 Compelling execution of documents by force

Section 238 Extortion by certain threats

Section 240A Aggravated burglary

Section 294 Arson

Section 298 Wilful damage

Section 301 Wrecking

Misuse of Drugs Act 1975

Sections 6(2)(b), 6(2A)(a) Dealing with controlled drugs

Section 10(2)(a) Aiding offences against corresponding law of another country

---

Bibliography

ARTICLES

I Dennis "Rethinking Double Jeopardy" [2000] CLR 933

C Tapper "Clouded Acquittal" (2000) 117 LQR 1

Lord Bingham CG Newsam Memorial Lecture 1981 www.open.gov.uk/lcd/judical/ judgesfr.htm

CASES AND PRACTICE NOTES

Ampthill Peerage legitimacy case [1977] AC 547

Attorney-General's Reference No 3 of 1999, House of Lords, 14 December 2000

Commissioner of Police v Ombudsman [1988] 1 NZLR 385

DDP v Humphreys [1977] 1 AC 1

Green v United States 355 US 184 (1957)

R v Benz (1989) 168 CLR 110, 112

R v Davis [1982] 1 NZLR 584

R v Degnan [2001] NZLR 280

R v Moore (17 September 1999 unreported, High Court, Palmerston North Registry, T31/99)

R v Moore (CA 399/99, 23 November 1999)

R v Moore [1999] 3 NZLR 385

R v Pora (20 September 2000, CA 225/2000)

R v Z [2000] 2 AC 483

Reg v Arp [2000] 2 LRC 119 (Supreme Court of Canada)

Sambasivan v Public Prosecutor, Federation of Malaya [1950] AC 458

REPORTS

New Zealand Law Commission *Acquittal Following Perversion of the Course of Justice: A Response to R v Moore* (NZLC PP42, Wellington, 2000)

New Zealand Law Commission *Criminal Prosecutions* (NZLC R66, Wellington, 2000)

New Zealand Law Commission *Juries in Criminal Trials* (NZLC R69, Wellington, 2001)

Law Commission for England and Wales *Double Jeopardy* (Consultation Paper 156, The Stationery Office, London, 1999)

Law Commission for England and Wales *Double Jeopardy and Prosecution Appeals* (Report 267, The Stationery Office, London, March 2001, Cm 5048)

The Stephen Lawrence Inquiry – Report of an Inquiry by Sir William Macpherson of Cluny (The Stationery Office, London, 1999, Cm 4262)

STATUTES, CONVENTIONS AND COVENANTS

Crimes Act 1961

Criminal Justice Act 1985

European Convention on Human Rights, Rome, 1950

Extradition Act 1965

International Covenant on Civil and Political Rights

Misuse of Drugs Act 1975

New Zealand Bill of Rights Act 1990

Statute of the International Criminal Court, Rome, 1998

TEXTS

ML Friedland *Double Jeopardy* (Clarendon, Oxford, UK, 1969)

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