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LAW COMMISSION

Presented to the House of Representatives pursuant to section 17 of the Law Commission Act 1985

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ANNUAL REPORT FOR YEAR ENDED 31 MARCH 1986

17 December 1986

Rt Hon. Geoffrey Palmer,
Minister of Justice,
Parliament Buildings,
Wellington.

Dear Minister,

I have the honour to transmit to you the annual report of the Law Commission for the year ended 31 March 1986, prepared pursuant to section 17 of the Law Commission Act 1985. The Law Commission Act 1985 came into force on the 1st day of February 1986, as did the Law Commission established thereunder. Thus this report relates only to the brief two months period from 1st February to 31st March 1986.

I General

The Act establishes the Commission as a central advisory body for the review, reform and development of the law of New Zealand. It provides for the Commission to have between three and six members. Five members have been appointed and will hold their offices on a full-time or near full-time basis:

The Rt Hon. Sir Owen Woodhouse (President)
Mr B. J. Cameron
Miss S. Elias
Mr J. E. Hodder
Prof. K. J. Keith

During the short period covered by this report the Commission could concern itself only in preliminary work towards the establishment of temporary premises and its programme. It may be noted that at the date of writing you had referred

to the Commission five references under section 7(2) of the Act. These relate to the structure and jurisdiction of the Courts, Maori fisheries, the interpretation and form of statutes, legislation affecting bodies incorporated under the Companies Act 1955, and finally the Limitation Act 1950. The full text of the references is appended to this report.

The establishment of the Law Commission has meant that the former part-time Law Reform Committees have been superseded. The Commission would like to record its appreciation of the tradition of valuable work it has inherited from those who gave time and experience to serve on the various committees and for only nominal remuneration. Much of that work now forms part of our statutory law. The Commission sincerely hopes that it will similarly be able to call upon members of the legal profession and others for assistance in carrying out its responsibilities.

All members of the Commission are well aware of the weight of responsibility which is placed on the Commission by the Act. They trust they may succeed in discharging that responsibility with proper detachment and all due care. In order to do so they will require the support, the wisdom and the assistance of many persons and organisations from the wider community.

As this Commission contemplates its first year of existence it has taken note of the 20th Annual Report presented to the United Kingdom Parliament by the Law Commission for England and Wales in which it was suggested:

"Perhaps the Law Commission's main achievement has been to establish and maintain among informed opinion the reputation and status of an independent constitutional law reform body. This it has done by thorough research, extensive consultation, the ability to harness specialised academic and professional opinion and, notwithstanding the occasional dissenting opinion, a capacity to agree on solutions which command the widest support."

That statement of achievement can also serve as a statement of the ambitions of the New Zealand Law Commission at this time.

II Financial

In accord with advice received by the Commission from the Audit Office we sought and received your approval in terms of clause 11(2) of the Schedule to the Law Commission Act for the first financial year of the Commission from its commencement on 1 February 1986 to end on 31 March 1987. Actual expenditure during the short period to 31 March 1986 was \$40,821.86 all of which was used to purchase books and periodicals for the Commission's library.

Yours sincerely,

A. O. Woodhouse
President

APPENDIX

TERMS OF REFERENCE

COURTS

Purpose of reference

1. To determine the most desirable structure of the judicial system of New Zealand in the event that the Judicial Committee of the Privy Council ceases to be the final appellate tribunal for New Zealand.
2. In any event, to ascertain what changes, if any, are necessary or desirable in the composition, jurisdiction and operation of the various courts in order to facilitate further the prompt and efficient despatch of their criminal, civil and other business.
3. Similarly, to ascertain what further changes, if any, are desirable to ensure the ready access of the people of New Zealand to the courts to determine their rights and resolve their grievances.

Reference

With these purposes in mind you are asked to review the structure of the judicial system of New Zealand, including the composition, jurisdiction and operation of the various courts, having regard among other matters to any changes in law and practice consequent upon the recommendations of the Royal Commission on the Courts, and to make recommendations accordingly.

MAORI FISHERIES

Purpose of reference

To ensure that the law gives such recognition to the interests of the Maori in their traditional fisheries as is proper, in the light of the obligations assumed by the Crown in Te Tiriti o Waitangi (the Treaty of Waitangi).

Reference

With this purpose in mind you are asked to consider and report on -

1. The recognition of Maori fisheries (including lake and river fisheries) in the law, and whether any, and if so what, changes ought to be made to the law in that regard.
2. What protection Maori fisheries should have in respect of acts or omissions by the Crown, public bodies and other corporations, and individuals.
3. What measures and procedures are necessary or desirable to ensure that legislative proposals in any way affecting Maori fisheries take adequate account of Maori interests.
4. What criteria should be applied in resolving conflicts between Maori interests in respect of fisheries and other public interests.

LEGISLATION AND ITS INTERPRETATION

Purpose of reference

1. To propose ways of making legislation as understandable and accessible as practicable and of ensuring that it is kept under review in a systematic way.

2. To ascertain what changes, if any, are necessary or desirable in the law relating to the interpretation of legislation.

Reference

With these purposes in mind, the Commission is asked to examine and review -

1. the language and structure of legislation;
2. arrangements for the systematic monitoring and review of legislation;
3. the law relating to the interpretation of legislation;
4. the provisions of the Acts Interpretation Act 1924 and related legislation;

and to recommend changes, as appropriate, to the relevant law and practice.

COMPANY LAW

The Law Commission is asked to examine and review the law relating to bodies incorporated under the Companies Act 1955, and to report on the form and content of a new Companies Act.

The continuing work of the Securities Commission in the fields of takeovers, insider trading, and company accounts will form part of this overall inquiry. Also related to this reference is the review being conducted by the Department of Justice of the law and practice of company liquidations and individual insolvency.

LIMITATION ACT 1950

Pursuant to s.7 of the Law Commission Act 1985 I ask the Law Commission to examine the Limitation Act 1950 and to make recommendations on what, if any, changes are needed in the Act.

LETTER OF TRANSMITTAL TO THE MINISTER OF JUSTICE

21 July 1987

Rt Hon. Geoffrey Palmer
Minister of Justice
Parliament Buildings
WELLINGTON

Dear Minister

I have the honour to transmit to you the annual report of the Law Commission for the year ending 31 March 1987.

This report is prepared pursuant to section 17 of the Law Commission Act 1985.

Yours sincerely

A. O. Woodhouse
President

ANNUAL REPORT FOR YEAR ENDED 31 MARCH 1987

INTRODUCTION

In its first full year of existence the Law Commission has been attempting to move from the establishment to the operational phase. For most of the year it has been much preoccupied with the problem of finding even tolerable accommodation with consequential effects upon an ability to build up staff and make satisfactory progress with its references. However in February 1987 the Commission moved into premises in Fletcher Challenge House under an arrangement for occupation in two stages. This has permitted the recruitment of more professional and supporting staff.

The principal functions of the Law Commission are set out in s.5 of the Law Commission Act 1985. The Commission is to keep the law of New Zealand under review in a systematic way and make recommendations for its reform and development. It is also to advise on reviews of aspects of the law conducted by other government agencies and on ways in which the law can be made as understandable and accessible as is practicable.

The Commission's membership is listed in the Appendix. As at 31 March 1987 the Commission's staff comprised a Director, a principal research officer, three legal research officers and seven supporting staff. The Commission expects soon to appoint a law drafting officer and further research officers.

The Commission presented its first report to the Minister of Justice on 10 March 1987. This report examined the provisions of the Imperial Laws Application Bill which had been introduced in Parliament late in 1986. The Minister referred the report to the Justice and Law Reform Select Committee, and at the Committee's invitation a supplementary report has since been prepared on property law aspects of the Bill. The two documents will be published in a consolidated version as Report No. 1: Imperial Legislation in Force in New Zealand. The Commission's recommendations are mentioned in the next section of this report under the heading *Legislation*.

PROGRAMME

The Commission has twelve projects on its present work programme. Six concern aspects of the law of New Zealand referred to the Commission by the Minister of Justice under s.7(2) of the Law Commission Act 1985 for examination and review. The terms of each reference are indicated under the relevant headings below. The remaining projects concern aspects of the law which the Commission has itself decided to review, under s.7(1) of the Act. In accordance with that provision the programme as it then stood was submitted to the Minister of Justice on 7 November 1986.

In meeting its responsibilities the Commission has given priority to the topics - five of them of a far-ranging kind - referred to it by the Minister of Justice. This has been necessary by reason of the demands they impose on present resources. The rest of the programme concentrates on topics which the Commission has decided can be handled satisfactorily beside the major references. Some have a relatively narrow compass. Recent overseas legislation or reports following inquiries afford useful guidance for others. And the Commission has been

influenced in the choice by suggestions from lawyers and others who have helped to identify areas of practical need for reform or development.

The Courts

On 29 April 1986 the Minister of Justice asked the Law Commission to review the structure of the judicial system of New Zealand, including the composition, jurisdiction and operation of the various courts. The purpose of the review is threefold: to determine the most desirable structure of the judicial system should the Judicial Committee of the Privy Council cease to be the final appellate tribunal for New Zealand; in any event, to advise on changes in the composition, jurisdiction and operation of the various courts which would be desirable to facilitate the prompt and efficient despatch of their business; and finally to recommend means of facilitating ready access to the courts by the people of New Zealand.

To assist it in formulating the methods to be followed in conducting its inquiry the Commission invited interested persons, professional groups and other bodies as well as members of the public to contribute written comments or ideas or to register their interest. A number of those who responded made helpful suggestions about issues which the Commission should address, and many more asked to be kept informed about the progress of the inquiry.

The Commission has been undertaking preliminary research into the courts in New Zealand and in some selected countries overseas. It is also examining aspects of the tribunal system and dispute settlement in general. A discussion paper is being prepared and will be widely circulated.

Maori Fisheries

The purpose of the reference of 12 May 1986 is to ensure that the law gives such recognition to the interests of the Maori in their traditional fisheries as is proper, in the light of the obligations assumed by the Crown in Te Tiriti o Waitangi (the Treaty of Waitangi). The Law Commission is conscious of the importance of this subject, and the fundamental issues it touches on. It clearly calls for the widest consultation. An early priority is to obtain a specific picture of Maori concerns at all levels. At the same time it will be necessary to consult with local as well as national non-Maori interests.

Meanwhile the Commission is preparing as a background paper a survey of the law and history of Maori fisheries since the Treaty of Waitangi. Perspectives on this topic are themselves being affected by recent findings of the Waitangi Tribunal and decisions of the Courts. A member of the Commission is looking into laws and practices concerning indigenous fisheries on the Pacific coast of North America in order to determine the relevance of the situation there for New Zealand.

Legislation and its interpretation

On 29 May 1986 the Minister of Justice requested the Law Commission to propose ways of making legislation as understandable and accessible as practicable and whether any useful changes can be made in the law relating to the interpretation of legislation. This reference calls for a number of separate initiatives on the Commission's part, as well as the ongoing effort needed to discharge its general statutory duty to have regard to the desirability of simplifying the expression and content of the law. As a first step in evaluating the Acts Interpretation Act 1924 and related legislation, the Commission plans to issue a preliminary paper and questionnaire by the middle of the year. This will be followed by a seminar related to s.5 of the 1924 Act which lays down general rules of construction applying to all New Zealand Acts of Parliament.

In relation to the language and structure of legislation we prepared a draft Imperial Legislation Bill which is included in the report mentioned in the next paragraph. The Commission will be considering further examples of present drafting practice from both the technical and the policy viewpoints. The first requires a consideration of the ways in which legislative content can be stated more clearly and concisely without casting doubt on the meaning. The second raises a more difficult question concerning the texture of legislation: how much should be explicitly contained within a statute so as to cover every foreseeable eventuality, and how much should be left for detailed interpretation against a wider statement of legislative intention?

As a related issue the Commission has reported to the Minister of Justice on the Imperial Laws Application Bill introduced in Parliament on 21 October 1986. The Commission recommended that legislation defining the extent of New Zealand's continuing inheritance from the English legal system should be concerned only with the law made by or under statute: it should not refer to prerogative legislation or to the common law. A Bill for this purpose should deal only with those Imperial enactments whose status has not already been clarified by Parliament. It should also have declaratory effect. The Bill itself could, we suggested, be drafted more simply and shortly. We therefore proposed an alternative draft. Finally, the Commission recommended retaining one or two Imperial enactments which had been thought unnecessary. It considered, however, that among those proposed to be kept in force there were a larger number which should not be regarded as part of the law of New Zealand.

Companies

On 5 September 1986 the Minister of Justice asked the Law Commission to examine and review the law relating to bodies incorporated under the Companies Act 1955, and to report on the form and content of a new Companies Act. The reference states that the continuing work of the Securities Commission in the fields of takeovers, insider trading and company accounts is to form part of the overall inquiry. The review being conducted by the Department of Justice of the law and practice of company liquidations and individual insolvency is related to the inquiry. The Commission is in close touch with both these organisations.

To assist it in carrying out this project the Commission has set up an advisory committee. A discussion paper is being prepared and should soon be published, with others to follow. These initiatives will provide a basis for widespread consultations with the commercial community and other interested parties on the policy issues arising from this reference.

The Limitation Act 1950

By letter dated 1 October 1986 the Minister asked the Law Commission to examine the Limitation Act 1950 and to make recommendations on what, if any, changes are needed in the Act. He explained that problems had arisen concerning the question of a period of limitation within which actions in negligence for latent damage should be brought, particularly where the damage arose from defects in the construction of buildings. A further question was the time from which any such period of limitation should run. As the Minister preferred not to deal with these questions in isolation from other aspects of the Limitation Act which might require review he asked the Law Commission to complete a report on the Act by 31 December 1987. The Commission's work is well advanced with a discussion paper scheduled for publication in the second half of the year.

Accident Compensation

On 10 March 1987 the Minister of Justice asked the Law Commission to examine and review parts of the Accident Compensation Act 1982. The Minister stated that

the general principles upon which the Act had been formulated - community responsibility, comprehensive entitlement, complete rehabilitation, real compensation and administrative efficiency - are broadly acceptable and deserve to be supported. He directed that the basis upon which provision had been made from time to time for the annual amounts needed for benefits, administration and contingency or other reserves, together with the principles and methods applied in their allocation or distribution, should form part of the overall inquiry.

In view of concern recently apparent about higher rates for levies to be paid under the scheme the Law Commission decided that it should give priority to a consideration of its financial aspects and take immediate steps by public advertisement to call for submissions or comment on these and other issues. At an early date it will publish a discussion paper which will provide an opportunity for further public input before the completion of the final report.

The following topics are those which the Commission has taken up on its own initiative.

Arbitration

The Commission included the topic of commercial arbitration in its work programme because it understands an updating of the law would be welcomed by lawyers and the business community. Attention will be focussed in the first place on the Arbitration Act 1908 and its amendments; but the international treaty instruments concerning arbitration to which New Zealand is a party will be taken into account, as will the recent UNCITRAL Model Law on International Commercial Arbitration.

Property rights of surviving spouses; property relations of de facto spouses

The Commission sees these topics as the first stage of an examination of succession generally. Study of the property rights of surviving spouses could also prompt a review of the Matrimonial Property Act 1976. The two matrimonial property regimes ought to be consistent and harmonious. There is also a need to examine the whole of the law applicable to cohabitation outside marriage. The Commission expects to co-operate closely on this project with the Department of Justice which has already done a good deal of work on it.

Conversion of goods, initially with reference to the removal of parked cars

This is a topic which has attracted a certain amount of public interest. In view, however, of the Commission's heavy commitments in relation to other projects, it will not devote significant resources to it until 1988.

Aspects of the law of damages

The Commission has in mind the need to study various aspects of the law relating to damages, including the implications of inflation in making awards of damages, exemplary damages, and common law limits on damages for breach of contracts of employment. Research has commenced with the intention of publishing one or more preliminary papers in 1988.

Sovereign immunity

In including this topic in its programme the Commission was aware that other jurisdictions, notably the United Kingdom and Australia, have recently passed legislation reforming the law in this area. The Australian statute, following a report of the Australian Law Reform Commission, may provide a particularly useful precedent. The Commission which will work closely with the Ministry of Foreign Affairs has not given a high priority to this topic.

Contribution in civil cases

This project concerns the rights of two or more civil wrongdoers to claim contribution as between themselves for loss or damage they may severally be liable to make good. The matter was considered but not completed by the Contracts and Commercial Law Reform Committee. To avail itself of that and other expertise, the Commission has set up an advisory committee.

Evidence

The Commission has established a small committee to keep the law of evidence under review. This will continue the work of the Evidence Law Reform Committee whose chairman, Mr Ian McKay, has kindly agreed to be co-chairman of the new committee.

Other topics for review

Although the Commission's programme is already a full one, it has taken note of a number of other topics which ought to be reviewed as opportunity offers. It will always welcome suggestions about aspects of the law which seem to be ripe for reform or development.

CO-OPERATION WITH OTHER ORGANISATIONS

Section 8 of the Law Commission Act provides that the Commission may consult with any Government department or organisation concerning any review of any aspect of the law administered by that department or organisation. It may receive from that department or organisation such information relating to that review as is appropriate.

The inclusion of this formal authority to give and receive information is a clear pointer to Parliament's expectation that the Law Commission will work in close co-operation with other Government agencies. Its mandate requires it to keep the law as a whole under review in a systematic way. But the Commission can by itself perform only a very small part of what has to be done to keep the law, and particularly the statute law, up to date. Its own work will often be greatly helped by knowledge of the concerns and initiatives of others. And it may in turn be able to help other agencies by passing on the results of its researches, and information and perspectives it has acquired. The law operates in a wide cultural, social and economic environment, and an understanding of all these aspects is essential if there is to be good law.

The Commission has taken steps to establish a close working relationship with Judges, Government departments and other agencies, the universities, professional societies and other interested groups. A member of the Commission has been designated as a member of the Legislation Advisory Committee which reports to the Minister of Justice on the public law aspects of Bills introduced into Parliament and on legislative proposals and other matters (including at the moment administrative tribunals and the legislative process) referred to it by the Minister. The work of the Law Commission has benefited from these and other opportunities to exchange views with those sharing the same interest in the role of law in present-day society.

TE AO MAORI

Section 5(2)(a) of the Law Commission Act directs the Law Commission, in making its recommendations, to take into account te ao Maori (the Maori dimension) and also to give consideration to the multicultural character of New Zealand society. This important and challenging instruction touches on the basic

question of what sort of society we are to be. The Commission appreciates the need to learn as well as it can of the aspirations and frustrations of the Maori people. It realises too that in evaluating the law as a whole, as well as in dealing with particular topics, issues must be addressed, questions asked and answers sought, in Maori as well as in European terms.

CONFERENCES

The Law Commission acted as host for the eleventh annual conference of the Australasian Law Reform Agencies. This was held in the Legislative Council Chamber, Parliament Buildings, Wellington, from 13 to 15 August 1986. The meeting was attended by delegates from the Australian Law Reform Commission, the Fiji Law Reform Commission, the law reform agencies of Australian States, and several other bodies with closely related interests. The topics discussed included public participation in law reform, the need to gain and keep the confidence of other government agencies and of parliament, project planning, the harmonisation of the law applying in New Zealand and in the various Australian jurisdictions, and the reform of the courts.

Sir Owen Woodhouse, as President, attended the Commonwealth Law Conference in Jamaica in September 1986 and with Miss Sian Elias also represented the Law Commission at a meeting of Commonwealth law reform agencies held there at the same time. In August, Mr B. J. Cameron represented the Commission at the First South Pacific Law Conference in Apia, Western Samoa. This was a needed opportunity for New Zealand as a South Pacific country to take account of legal problems and insights in the islands of the region with which we have close links.

FINANCE

The Commission is funded from money appropriated by Parliament. The accounts of the Commission for the year ended 31 March 1987 are annexed.

The sum of \$372,025 shown as accounts payable in the Commission's balance sheet as at 31 March 1987 is made up largely of the sum owing in respect of furniture and partitions which the Commission had contracted to purchase from outgoing tenants but had not then taken over. Another substantial liability is the purchase price of word-processing software. Payment has been held back pending the remedying of system faults.

The excess of current assets over current liabilities amounting to \$566,298 represents mainly proposed capital expenditure on repartitioning floor space which the Commission had not occupied at the end of the financial year. Other items for which provision had been made but not used by that date are ergonomic work stations for all those using computer terminals and also library furniture and fittings. The amount provided for the establishment of the library itself is also underspent as a result of the delay in obtaining permanent premises.

REPORT OF THE AUDIT OFFICE

The Audit Office, having been appointed in terms of Section 15 Law Commission Act 1985 has audited the financial statements of the Law Commission.

The audit was conducted in accordance with generally accepted auditing standards and practices.

In the opinion of the Audit Office, the financial statements appearing on pages 17 to 18 fairly reflect the financial position as at 31 March 1987 and the financial results of operations for the fourteen month period ended on that date.

B. J. SMITH
 For Controller and Auditor-General
 14 July 1987

LAW COMMISSION

BALANCE SHEET AS AT 31 MARCH 1987

	Note	
Current Assets -		
Bank of New Zealand		2,849
Interest receivable		228
Short term deposits	3	908,784
Goods and Services Tax		<u>26,462</u>
		<u>938,328</u>
Fixed Assets -	2	<u>710,840</u>
Total Assets		<u>\$1,649,163</u>
Current Liability		
Accounts Payable		372,025
Accumulated Funds -		<u>1,277,138</u>
Total funds employed		<u>\$1,649,163</u>

STATEMENT OF INCOME AND EXPENDITURE

FOR THE 14 MONTH PERIOD ENDED 31 MARCH 1987

Income		
Justice Department - Set-up grant	42,798	
Government grant	2,127,000	
Interest received	159,626	
Total income	<u>2,329,424</u>	
Expenditure		
Personnel -		
Salaries and wages	575,406	
Commission activities -		
Advertising	9,796	
Research and consultation	8,282	
Travel	70,987	
Library -		
Library acquisitions	11,577	
Searches - Database	2,174	
Administration -		
Audit fees	5,500	
Bank interest and charges	521	
Cleaning	1,827	

Communications	14,720
Computer software	17,425
Depreciation	72,575
Electricity	1,926
Goods and Services Tax	85,561
Other operating	20,775
Professional services	41,854
Rent and rates	81,617
Repairs and maintenance	10,306
Stationery	19,457
Total expenditure	<u>1,052,286</u>
Excess income over expenditure	<u>\$1,277,138</u>
Transferred accumulated funds	

LAW COMMISSION

NOTES TO THE FINANCIAL STATEMENTS

FOR THE 14 MONTH PERIOD ENDED 31 MARCH 1987

1. STATEMENT OF ACCOUNTING POLICIES

GENERAL ACCOUNTING PRINCIPLES

The measurement base adopted is that of historical cost. Reliance is placed on the fact that the Commission is a going concern. Accrual accounting has been used to match expenses and revenues.

PARTICULAR ACCOUNTING POLICIES

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

The fixed assets have been stated at cost less aggregate depreciation.

The rates and bases used are as follows:

Furniture and fittings	20% DV
Office equipment	20% DV
Computer equipment	20% DV

Goods and Services Tax has been accounted for under the Gross Method.

COMPARATIVE FIGURES

As these are the first set of financial statements for the Commission there are no comparative figures given.

CHANGES IN ACCOUNTING PERIOD

Approval was obtained for the Commission to vary the date on which the financial year ended for this first set of financial statements. The first financial year of the Commission has therefore been treated as that commencing 1 February 1986 and concluding on 31 March 1987.

2. FIXED ASSETS

	Cost	Aggregate Depreciation	Book Value
Furniture and fittings	249,919	25,203	224,716
Office equipment	49,316	8,113	41,203
Computer equipment	360,274	39,259	321,015
Library	123,906	..	123,906
	<u>\$783,415</u>	<u>\$72,575</u>	<u>\$710,840</u>

3. SHORT TERM INVESTMENTS

	Interest rate	Maturity date	14 Mths to 31/3/87
BNZ Finance	22.0%	8/4/87	7,597
BNZ Term Investments	27.0%	29/4/87	651,187
BNZ Finance	23.75%	17/7/87	250,000
			<u>\$908,784</u>

APPENDIX

MEMBERS OF THE COMMISSION

The Rt. Hon. Sir Owen Woodhouse, K.B.E., D.S.C., LL.B. (NZU), Hon.LL.D. (VUW,
Hon.LL.D. (York Un. Toronto): President
Mr B. J. Cameron, C.M.G., B.A., LL.M. (NZU)
Miss Sian Elias, J.S.M. (Stanford), LL.B.(Hons) (Auck)
Mr J. E. Hodder, B.A., LL.B.(Hons) (VUW), LL.M. (Lond)
Professor K. J. Keith, LL.M. (VUW), LL.M. (Harv)