



LAW·COMMISSION
TE·AKA·MATUA·O·TE·TURE

Report of the

LAW COMMISSION
Te Aka Matua o te Ture

for the year ended 30 June 1996

*Presented to the House of Representatives under
section 17 of the Law Commission Act 1985 and
section 44A of the Public Finance Act 1989*

1996
Wellington, New Zealand

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25 September 1996

Dear Minister

I have the honour to transmit to you the report of the Law Commission for the year ended 30 June 1996.

This report is prepared under section 17 of the Law Commission Act 1985 and section 44A of the Public Finance Act 1989.

Yours sincerely

Professor Richard Sutton
Deputy President

Hon Douglas Graham MP
Minister of Justice
Parliament House
WELLINGTON

Part A

REPORT ON THE YEAR ENDED 30 JUNE 1996

ABOUT THE LAW COMMISSION

THE LAW COMMISSION is an independent advisory body, established by statute and funded by the taxpayer. Its main function is to undertake the systematic review, reform and development of the law of New Zealand.

Purpose

The Law Commission's 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. In developing its proposals, the Commission recognises the Treaty of Waitangi as the founding document of New Zealand, and takes account of community and international experience.

The Māori name of the Commission, Te Aka Matua o Te Ture,¹ means "the main vine of the law". It reflects the legend of Tawhaki, who was exhorted to climb to the heavens by clinging to the main vine with roots in the earth, not to the tendrils swaying in the air. The name is apt for the Law Commission, which is committed to law aimed at progress yet grounded in principle and practical reality.

Objectives and quality standards

In its work as a law reform body, the Law Commission seeks to improve:

- the substantive content of the law of New Zealand;
- the law making process;
- the administration of the law;
- access to justice by the peoples of New Zealand; and
- methods of resolving disputes between one member of the public and another and between members of the public and the state.

¹ Adopted after consultation with Te Taura Whiri i te Reo Māori and the Law Commission's Māori Committee.

It does this by providing advice and recommendations which:

- are based on accurate research into, and analysis of, the relevant facts as well as the existing law and practice;
- set out and apply the relevant values and principles, including the costs and benefits of the Commission's proposals;
- simplify the expression and content of the law;
- are based on wide and open consultation with all affected interests, including the general public, or organisations representing sections of the public; and
- are independent and, in the case of its reports, public.

In making its recommendations, the Commission takes account of *te ao Māori* (the Māori dimension) and gives consideration to the multicultural character of New Zealand society.

Outputs

Under the output class: Policy Advice, the Commission does its work through:

- projects for the reform and development of particular aspects of the law;
 - follow-up to its reports, primarily with a view to ensuring their implementation;
 - advisory work, involving aspects of the law being reviewed by other public sector bodies (and proposals made as a result); and
 - contributing to the work of the Legislation Advisory Committee.
- For reports on each of these areas of activity, see pages 7 to 18.

OVERVIEW

In February 1996, the Law Commission completed its first 10 years of work. The tenth anniversary was marked in April by a well-attended seminar on the opening day of the New Zealand Law Conference in Dunedin. Speakers were the retiring President of the Commission, Hon Justice Sir Kenneth Keith, and Dr Jocelyne Scutt, who has had a long association with law reform work in Australia. Sir Kenneth's paper, which was in many senses a valedictory address following his departure to take up appointment as a Judge of the Court of Appeal, reflected on the Commission's first decade. It is reproduced in this Annual Report (see Appendix A).

Sir Kenneth's departure, and that of Hon Justice John Wallace, who had been a member of the Commission since 1989 and its Deputy President since 1991, were important events in the year under review. Appropriate tributes appear later in this report. The

appointments of Her Honour Judge Margaret Lee as a new Commissioner in April, and of Hon Justice David Baragwanath as the new President from October 1996, continue the tradition of appointing outstanding individuals as members of the Commission.

It was a year of intensive activity in all Commission projects. Two major reports in the public law area were very well received, and a stream of discussion papers will follow in the first months of the coming year. The Commission's consultation work in its succession and women's access to justice projects continued to break new ground and produced a remarkable amount of useful and interesting information.

The Commission's publication policy and processes were reviewed during the year. A major result was the decision to lend its publications a more distinctive identity and to create more flexible kinds of publications. The production of a quarterly newsletter, *Te Aka Kōrero*, was another significant, and widely welcomed, outcome. The aim of the newsletter (whose title is derived from the Māori name for the Commission) is to inform a wide range of people about the Commission's activities, as well as to foster links with its likely audiences and with those who contribute to its work.

It was also a year of new relationships, principally with the Ministry of Justice and the Department for Courts. The Commission is especially grateful to the Secretary for Justice, John Belgrave, for the support and encouragement he has shown to the Commission since he took up office.

New directions lie ahead for the Commission, and these are outlined in the strategic issues section of this report.

STRATEGIC ISSUES

In the 10 years since the Law Commission began its work, the environment within which it operates has changed substantially. Most recently, the Ministry of Justice has been established to provide policy and strategic advice across the justice sector. Significant policy functions have also been assumed by the new Department for Courts. Commercial law reform functions have been transferred to the Ministry of Commerce. These developments have affected both the Commission's role and its relationships within the justice sector.

In response, and in preparation for further change arising from the move to a proportional electoral system, there has been an extensive strategic review of the Commission's role and operations. The

review, undertaken by the Commission itself but involving wide consultation, was a major feature of the year.

Major influences

The review found strong support for the continued existence of an independent, specialised law reform body within the justice sector. For the future, five principal influences on the Commission's work were identified.

The first was the need for co-ordination of law reform activities across the justice sector. For the Law Commission, this means working closely with the Ministry of Justice and the Department for Courts, in particular, to find ways of sharing expertise and devising work programmes which are complementary and avoid unnecessary duplication of effort.

Second, governments face a broad and growing agenda of constitutional issues. The role of bodies such as the Law Commission in addressing these issues needs careful thought and development.

Third, the methods used in law reform work require constant improvement. The work must embrace a multidisciplinary perspective, and be backed up by effective consultation.

Fourth, there is the changing technological environment. We live in times when communication on a global scale is reducing the barriers between states and internationalising the conduct of business. The law itself is responding to this, and at the same time the face of legal research is changing with the growth of the Internet and the development of electronic legal databases.

Finally, the new political environment, arising in part from the introduction of proportional representation, will affect both the Commission's ability as an independent body to influence the political process and the availability of parliamentary time to implement its proposals. New ways must be found of securing outcomes for the Commission's work, whether in legislation or by other means.

The Law Commission's work

During the year under review, the Commission modified the way in which it identifies and takes on work. New criteria, developed in consultation with the Minister of Justice, state that the Commission will take on new areas of project work where:

- the reform and development of the law is best done by a public sector agency rather than by the courts, or by the development of international law and practice, or by private sector or academic endeavour;
- Ministers or the Commission decide that the Commission is best suited to do the work because of
 - its independence,
 - its commitment to look at law in its economic, social and cultural context, and to consult widely and openly with all affected interests,
 - its strengths as a research organisation and as a place of collective legal knowledge and skills, and
 - its recognition of the importance of integrating legal studies with other disciplines;
- the project is capable of achieving identifiable outcomes within a finite time, which will justify the resources devoted to it;
- the work will complement, and will not duplicate, law reform work being undertaken by other agencies.

New procedures for consulting with the Minister of Justice and the Ministry of Justice were also agreed during the year, for the purpose of shaping the Law Commission's annual work programmes. Such procedures are a welcome development. They were set in place by a Memorandum of Understanding entered into by the Commission and the Minister of Justice in June 1996.

In time, these procedural developments will influence the nature of the work which the Commission undertakes. Its ability to handle major, long-term, law reform projects is and will remain one of its strengths. That work can, however, become overburdening and reduce the Commission's ability to take on new work. The Commission has had considerable success in responding to urgent needs (as shown, for example, by its projects on *Community Safety: Mental Health and Criminal Justice Issues* (NZLC R30, 1994) and, in the year just ended, on Crown liability issues: see page 12). Its function of advising on aspects of the law being reviewed by other public sector agencies (see page 17) is also a significant part of its activities. But that work has sometimes been undertaken at the expense of other priorities.

Future work programmes are likely to allow more balance between short and long-term projects, improving the Commission's ability to respond, when required, to important issues of the day. Regular consultation about work programmes will be especially valuable in this context.

Three-year work plan

The main priority in the Commission's work over the coming three years will be to complete three large projects in accordance with the following timetable:

- women's access to justice, by 30 December 1997 (subject to the availability of information from the 1996 Census);
- the evidence reference, by 31 March 1998;
- the succession project, by 30 June 1998.

The completion of existing work on criminal procedure has equal priority with those projects, and the forthcoming review of the terms of the criminal procedure reference (see page 8) will also enable further planning to be done in that area.

The Commission's three-year plan also allows for resources to be devoted to:

- securing the acceptance and implementation of all its reports and recommendations; and
- an ongoing contribution to improving the quality of law making and policy making through advisory work, work for the Legislation Advisory Committee, and other activities.

Other strategic initiatives

Outside the actual work programme, the strategic review resulted in seven major initiatives to improve the Commission's ability to respond to its current and future working environment. Work began in the year under review to put them into effect. They are set out in Appendix B.

A strategic business plan, to be published in the first part of the 1996/97 year, contains more information about the review, its findings, and the implementation of change. The plan and its implementation will be further reviewed towards the end of the coming year.

The Commission wishes to thank all those who participated in its strategic review, and to acknowledge the help and support of its consultant, Miles Shephard. The review was a very worthwhile and timely initiative, and the Commission now feels well placed to move into its second decade of work.

WORK OUTPUTS 1995/96

Projects

Projects for the reform and development of the law form the greatest part of the Commission's work. Many address topics which are complex and broad-ranging. They involve thorough research and revision of the law, often over an extended period and with wide and open consultation.

Projects may be taken up either at the request of the Minister of Justice, or on the Commission's own initiative.

At the end of a project, the Commission reports to the Minister of Justice with its recommendations on changes to the law or its administration. Draft legislation is included where necessary. The report is tabled in the House of Representatives, and then published.

One new project was taken on during the year (the development of guidelines on Māori custom law, on behalf of the Māori Committee), and priority was given to another (the legal status of the Crown) at the Minister's request. A list of current projects and their terms of reference appears at Appendix C. The work programme was reviewed in 1995, and it was decided as a result to drop three old projects: tenures and estates in land, "unfair" contracts, and foreign interest immunity.

Evidence Law reform

The completion of the evidence project remains a priority for the Commission. During the course of the year, a significant amount of progress was made in key areas. The Commission personnel working on the project also changed. Two new members of the research staff, Elisabeth McDonald and David Calder, were recruited specifically to complete work on the draft code and to manage the project. Judge Margaret Lee took over as convening Commissioner on the retirement of Justice Wallace.

Progress was made in reviewing submissions on the six preliminary papers already published, and completing work on the two still to come: one covering the law dealing with evidence of a witness's character and credibility, and the other the rules governing evidence given by children or other vulnerable witnesses. They will appear in the first half of the coming year.

Work also continued on many other aspects of the project which are not intended to become formal publications. Papers on these matters will instead be circulated among smaller audiences. They include the rules governing the course of the trial, the use of prior statements in questioning a witness, the use of evidence in tribunals and other administrative bodies, and identification evidence. Because the codification covers the whole of the law of evidence, there are also many other smaller topics which must be researched before the code can be finalised.

The Commission intends to have finalised policy on the code by May 1997, and to publish its final report, with draft code, in early 1998.

Review of Criminal Procedure

In the year under review it was the Commission's objective to complete work on two major papers under the criminal procedure reference:

- the prosecution of offences, and
- the privilege against self-incrimination.

This objective was substantially met and both papers will be published early in the 1996/97 year.

Last year, work commenced on a new project concerning juries in criminal proceedings. In part, the timing of the project was in response to mounting public debate about aspects of the jury system. In November 1995 an issues paper was sent to many individuals, groups and organisations. Many submissions were received, as a result of which the project is addressing the following issues of importance:

- when jury trial and judge alone trial should be available;
- the selection and composition of juries (including the size of the jury);
- assisting the deliberations of the jury;
- the length of jury deliberations and failure to agree;
- majority verdicts;
- media issues (including publicity before and during the trial and how it influences the deliberations of juries);
- jury secrecy and integrity of verdicts (including whether journalists can interview jurors after trials); and
- the cost of jury trials and backlog issues.

The Commission will publish a discussion paper by December 1996, to be followed later by a final report.

Work on diversion and alternatives to prosecution had a lower priority during the year, although some progress was made. It will have high priority in the coming year. The Commission also intends to publish its final report on the right of silence and confessions (which was one of the topics addressed in the 1992 discussion paper *Criminal Evidence: Police Questioning* (NZLC PP22)).

The terms of the criminal procedure reference date from 1989. With the agreement of the Minister of Justice, they are now under review. By January 1997, the Commission will have consulted with other government agencies in the criminal justice area, and completed a revision of the terms of reference. The review will take account of current priorities in criminal procedure as well as the interests of all agencies, including the Commission, which are working in the area.

Law of Succession

The Commission's work on the succession project ranged over the three main aspects of the project:

- the review of the law relating to testamentary claims under the Family Protection Act 1955, the Matrimonial Property Act 1963 and the Law Reform (Testamentary Promises) Act 1949;
- the law of succession as it affects Māori;
- a review and consideration of reforms to the law of wills and the law of intestacy.

During the year a preliminary paper on testamentary claims was written, which draws on the consultation and research papers completed in previous years. (The paper, which includes draft legislative proposals, was published in August 1996, together with a shorter companion document which has the aim of reaching a larger audience.)

It has become apparent that the issues relating to a dead person's general property are quite different from those which relate to property handed down from ancestors. This is particularly so for Māori. As signalled in the Commission's last annual report, the project consulted widely with Māori during the year at both national and regional levels. Two series of regional and urban hui were held, the first in December 1995 and the latter in May and June of 1996. A total of 14 venues were visited in order to ascertain the views of Māori on issues of succession which are of concern to them. A number of other consultation sessions were held with individuals, Māori organisations and groups.

The Commission was ably assisted in this exercise by its consultants on this aspect of the project, Professor Pat Hohepa, Dr David V Williams and Mrs Waerete Norman, and by the hui organiser, Ms Marina Sciascia. Proposals for reform in areas of concern will be discussed further in the coming year, and a preliminary paper will be issued which reflects the views expressed at the hui and puts forward proposals which are consistent with current trends in Māori thinking on this subject.

Treaty of Waitangi considerations apply especially strongly to this part of the reference, and the Commission is proceeding with care.

Research was also carried out on the law of wills. After some preliminary consultation is completed, a paper will be distributed in the coming year. The project will draw substantially on the Uniform Succession Laws Project in Australia, and Professor Richard Sutton (the Commissioner responsible for the project) attended two meetings of the Australian Project group during the year. The Commission recognises the value of having similar provisions in both countries, to deal with the formal validity of wills and technical matters relating to their interpretation and effect. It is working with Australian law reform commissions and other reform agencies to that end.

A paper on aspects of the New Zealand conflict of laws rules which affect matters of succession was prepared by Professor Tony Angelo as a consultant to the Commission. This work will also be developed into a paper for distribution during the coming year.

Work also commenced on intestacy with the aim of producing a discussion paper next year.

The Commission aims to have the succession project completed during the 1997/98 financial year. It envisages legislative proposals which might be enacted either separately or as part of a general statute dealing with the whole of the law of succession.

*Women's Access to Justice:
He Putanga mo nga Wahine ki te Tika*

The main focus of the project this year was on consultation with New Zealand women, the legal profession and government agencies. A vital component of the consultation programme was a nationwide series of meetings with Māori women, which was near completion on 30 June 1996. The Commission expresses its gratitude to Te Puni Kokiri/Ministry of Māori Development for its help in arranging those meetings.

To complement the face-to-face consultation, the Commission launched a call for public submissions on 1 October 1995 and established a freephone for telephoned submissions. By year's end over 390 submissions had been received, one third of them from lawyers.

From the wealth of information gathered during consultation, the project's major research areas have been identified as:

- the cost of legal services,
- access to legal information,
- access to legal advice and representation, and
- legal education of the profession.

Research had begun in all but the last of these areas by year's end, and consultation papers and issues papers on a number of topics within each area were nearing completion.

As noted in last year's report, Joanne Morris (the Commissioner responsible for the project) is also a member of the Judicial Working Group on Gender Equity. This year she joined its Seminar Planning Group, which is devising the programme for a May 1997 gender equity seminar for New Zealand judges. The Commission has been providing information relevant to both Groups' tasks.

International Obligations

The focus of the international obligations project is to promote awareness of, and compliance with, New Zealand's international obligations, and to advance internationalisation of law itself.

Activity in this area has centred on the completion and publication of a report entitled *A New Zealand Guide to International Law and its Sources* (NZLC R34). The report sets out the principles of international law from a New Zealand perspective, and assists with finding, interpreting and understanding international law. It provides both an outline of the law of treaties and practical information on the sources of international law.

The report will be a useful resource for lawyers, public servants, and the business community for many years to come.

The Commission is committed to continuing its work in the area of international obligations and intends to develop as a report a paper (which it circulated in draft form in June 1995) on the making, acceptance and implementation of treaties. The paper recommends greater transparency in New Zealand's international legal processes. Work on developing it will begin in the first half of the coming year.

Legislation

The Commission has both a standing reference from the Minister of Justice and a statutory duty to advise on ways of making the law of New Zealand as understandable and accessible as is practicable. Meeting this goal will result in significant long-term savings in costs for everyone concerned with making, administering or applying the law.

In last year's report, the Commission was critical of the quality of some legislation. Its report entitled *Legislation Manual: Structure and Style* (NZLC R35), published in May 1996, makes one contribution to addressing those concerns. The report comprises two parts of a proposed four-part set of guidelines for legislative drafters and their instructing officials, which have the aim of promoting more consistent and effective legislation in New Zealand. The part concerned with structure explains the function and arrangement of the principal components of an Act, such as sections and schedules. The part relating to style gives advice on matters such as the use of plain language, gender-neutral expression, and Māori, as well as details like headings and punctuation.

The remaining parts of the manual will deal with the process of developing legislation and with recurring policy and drafting questions. Work on these has proceeded at a slower pace, one reason being the uncertainty about the impact of New Zealand's new electoral system. Resources will be allocated to this work in early 1997, and the Commission will thus be able to maintain the momentum gained by the issue of the first two parts.

During the year, the Commission also continued its activity in the field of plain legal language. In October 1995 Bill Sewell, a member of the research staff, visited several organisations and individuals in Australia engaged in promoting plain language drafting. In April 1996 he was a commentator for a session on plain language (sponsored by the Commission) at the New Zealand Law Conference in Dunedin. In the same month, Dr Robyn Penman, Executive Director of the Communication Research Institute of Australia, visited the Commission and led a stimulating seminar on access to the law from a communication perspective.

Crown

The 1989 reference on the Crown asks the Commission to examine aspects of the legal position of the Crown, including but not limited to

- the civil liability of the Crown, its officers and agents, and in

- particular the special rules limiting or excluding that liability,
 - the Crown Proceedings Act 1950, with a view to its reform and simplification,
 - the criminal liability of the Crown, its officers and agencies, and relevant procedures,
- and to make recommendations accordingly.

Aspects of the reference have been taken up in other projects (see, for example, *A New Interpretation Act* (NZLC R17, 1990), Chapter IV), and in the Commission's advisory work. Two particular aspects arose for urgent consideration in the year under review.

First, in September 1995 the Commission was asked by the Minister of Justice to give priority to work on civil liability of the Crown and to address the specific question of what, if any, legislative response should be made to the decisions in *Baigent's Case* [1994] 3 NZLR 667 and an associated case. In those decisions the Court of Appeal held that a person alleging a breach of rights stated in the New Zealand Bill of Rights Act 1990 might be entitled to monetary compensation for that breach. The Commission included in its examination of the matter the case of *Harvey v Derrick* [1995] 1 NZLR 314 in which it was held (again by the Court of Appeal) that, notwithstanding the general immunity of District Court Judges from suit, proceedings could be brought against a Judge by a person who had been wrongly imprisoned for non-payment of fines. Legislation was before Parliament which would have reversed the effect of that decision, and its consideration was deferred pending the Commission's examination of the issues.

The Commission consulted extensively about the impact of these decisions and prepared a draft report, as requested, by March 1996. With the Minister's agreement, that document was itself then circulated for comment. The matter remained under consideration at year's end, and is scheduled for completion by the end of August 1996.

The second aspect concerned the criminal liability of the Crown and its officers and agents. It arose from the *Report of the Commission of Inquiry into the Collapse of a Viewing Platform at Cave Creek near Punakaiki on the West Coast* (1995 AJHR H2), which recommended that the exemptions of the Crown from criminal liability under the Building Act 1991 and the Health and Safety in Employment Act 1992 should be removed. As part of the Government's response to the report, the Attorney-General asked the Commission to formulate (in consultation with interested government agencies) draft legislation designed to give effect to those recommendations.

The Commission advised the Attorney-General that a comprehensive approach to reform, as proposed in its 1990 Interpretation Act report, was preferable. This would involve reversing the general presumption against Crown liability (including criminal liability) under statute. The Commission's consultation confirmed the widespread support for this reform, subject to clarification of who should be named as the nominal defendant on behalf of the Crown. The matter is now under consideration by the Government.

The Commission intends to publish a report, in the coming year, which will address both the civil and criminal aspects of Crown liability.

Official Information Act 1982

Other priorities in the public law area, and changes to Commission membership in April 1996, meant that, in the year under review, no progress was made in completing the report on aspects of the Official Information Act. A lack of resources will prevent the project having priority until the second quarter of 1996/97.

Māori Custom Law

Work began during the year on the preparation of an outline of Māori law concepts for use by judges, lawyers and others. For more detail on this project, see page 19.

Apportionment of Civil Liability

The Commission has continued to monitor developments in this area, having advised the Minister of Justice last year about the options for reform. Some further discussion took place this year with the New Zealand Law Society and the New Zealand Society of Accountants about their preference for a system of proportionate liability. The Government is still awaiting progress in Australia before committing itself to a course of action. Shortly after the end of the reporting year, the Commission received *Draft Model Provisions to Implement the Recommendations of the Co-Inquiry into the Law of Joint and Several Liability* (1996) from the New South Wales Attorney-General's office. The Commission will consider these and offer comment on them to the authors of the draft.

Other projects

No work was possible this year on habeas corpus or remedies for wrongs to goods. Both projects were, however, retained on the Commission's programme when it was reviewed in 1995 (see Appendix B). They will be taken up as resources allow.

Implementation of reports

Progress was made on implementing three Law Commission reports during the year:

- *A Personal Property Securities Act for New Zealand* (NZLC R8, 1989): Preliminary proposals for reform were prepared by the Ministry of Commerce, drawing substantially on the Law Commission's recommendations. A decision on whether to introduce this legislation will be required in the coming year, as the existing provisions on company charges under the Companies (Registration of Charges) Act 1993 are due to expire on 30 June 1997.
- *Arbitration* (NZLC R20, 1991): the Arbitration Bill was introduced in September 1995, as a Member's Bill in the name of Peter Hilt MP but with the support of all parties represented in Parliament. It was virtually identical to the draft legislation proposed by the Law Commission in its report. The Bill was considered by the Government Administration Select Committee, to which the Law Commission (along with the relevant departments) was appointed an advisor. Enactment of the legislation, which incorporates the UNCITRAL Model Law on International Commercial Arbitration for both international and domestic arbitrations, has been long awaited by the business community, the legal profession, and arbitrators themselves. (The Bill was subsequently enacted on 21 August 1996, and comes into effect on 1 July 1997.)
- *Community Safety: Mental Health and Criminal Justice Issues* (NZLC R30, 1994): Proposals for legislation relevant to the needs of some people with intellectual disabilities were developed by the Ministry of Health, and relevant provisions in Part VII of the Criminal Justice Act were reviewed by the Ministry of Justice. The combined proposals, when enacted, will implement all but a few of the Law Commission's recommendations.

A number of other reports have been the subject of consideration:

- *Limitation Defences in Civil Proceedings* (NZLC R6, 1988): by the Ministry of Justice; problems with the existing law continue to give rise to unnecessary litigation;
- *Criminal Procedure: Part One – Disclosure and Committal* (NZLC R14, 1990): by the Ministry of Justice and Department for Courts;
- *A New Interpretation Act* (NZLC R17, 1990): by the Ministry of Justice; see also page 13 above; and
- *Police Questioning* (NZLC R31, 1994): the Commission's proposals were the subject of ongoing discussion between the Ministry of Justice and the Police.

No progress was made on implementing the following reports:

- *Contract Statutes Review* (NZLC R25, 1993);
- *The Format of Legislation* (NZLC R27, 1993), in respect of which the committee convened by Chief Parliamentary Counsel did not meet during the year (see Annual Report 1994 of the Commission, page 17; Annual Report 1995, page 11);
- *Aspects of Damages: The Award of Interest on Money Claims* (NZLC R28, 1994); and
- *A New Property Law Act* (NZLC R29, 1994).

The Commission continues to be concerned at the slow rate at which its proposals are being introduced into the House of Representatives as Bills. It acknowledges the support of the Minister of Justice for a greater rate of implementation, and recognises the pressures on parliamentary time which make this difficult to achieve. As noted in last year's report, implementation of most of the Commission's proposals would be consistent with the Government's current strategic result areas for the public sector, in particular by reducing the costs and legal uncertainties of commercial activities, and making the law more accessible, and hence contributing to fair and efficient conduct of business. All of the reports were the subject of careful consideration and broad consultation. Their implementation would have widespread support.

It remains to be seen how the rate of implementation will be affected by the change to proportional representation in Parliament. The Commission is convinced of the potential for a greater output of non-contentious law reform legislation in the new environment. That will, however, require the commitment of all parties represented in the House as well as of the Government itself. The Commission intends to raise these issues further in the coming year with the Minister of Justice and interested groups.

Advisory work

The statutory independence of the Law Commission ensures that it can be seen as an objective source of advice on a wide range of legislative and policy proposals. The range of issues on which advice is given reflects the diversity of expertise of Commissioners and researchers.

In its advisory work, the Commission draws on constitutional and public law principles as well as its knowledge of international law, the operation of state agencies, the business sector, and courts structure. The Commission contributes to the quality of government processes and, in particular, aims to improve legislation and law reform.

Promoting a high standard in legislation is achieved by examining the soundness of policy proposals, reviewing consistency with legal principle and relevant statutes, and checking for compliance with relevant instruments in international law. The Commission is concerned to ensure that new legislative initiatives reflect relevant recommendations made in Commission reports. It also comments on the organisation, formatting, and drafting of proposed legislation.

One important category of advice relates to constitutional matters. In the year under review, advice was given on proportional representation and issues relating to Privy Council appeals. The Commission also undertakes a number of advisory tasks on a regular or ongoing basis through its membership of various organisations and contributions to law journals.

Twenty-seven new requests for advice were received during the year. The largest category comprised requests for comments on proposed and existing legislation; for example, concerning accident compensation and commercial law. Comments were also requested on several proposals at the formative policy stage, such as the Department for Courts' proposal to appoint lay magistrates.

In addition to new requests for advice, the Commission continued work on 24 advisory tasks initiated in the previous year. Examples of new requests and of work continued from the previous year are listed in Appendix D.

Legislation Advisory Committee

The Law Commission and the Legislation Advisory Committee have overlapping responsibilities in promoting the quality of legislation. The terms of reference of the Legislation Advisory

Committee enable it to scrutinise each Bill introduced into Parliament. The Committee considers issues of public law principle raised by new Bills, the extent to which the Bill's policy is implemented by the Bill (as far as that policy is understood), as well as issues relating to official information and accessibility.

The Commission provides research, drafting and secretarial resources to the Committee for the preparation of submissions on Bills. Sir Kenneth Keith was a member of the Committee until his appointment to the Court of Appeal. The Commission also provides office space and facilities for the Chairperson of the Committee, Dr Mervyn Probyn (who retired in August 1996).

During the year under review, the Committee made submissions on 28 Bills: see Appendix E.

MÄORI COMMITTEE

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

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

The Committee meets regularly, and members have also made themselves available individually to help in particular areas of the Commission's work. The members of the Committee are Bishop Manuhuia Bennett, Judge Michael Brown, Chief Mäori Land Court Judge Edward Durie, Professor Mason Durie, Denese Henare, Archie Tairaroa, Whätu Weretä, and Hëpora Young.

Ki a koutou o te Komiti Mäori o Te Aka Matua o te Ture, arä, ngä mema pükenga, ngä kaupupuri o ngä toi Mäori, e äwhina nei i a mätou, tenei te tuku kupu whakamihi atu nei mö a koutou äwhinatanga maha. Tënë koutou.

Privy Council appeals

In 1995, as part of the Government's consultation about the proposed abolition of appeals to the Privy Council, the Cabinet asked the Mäori Committee to comment on a report prepared by

the Solicitor-General on the various options for abolition. Following a meeting between the Committee, the Solicitor-General and the Secretary for Justice, the Committee prepared a response in the form of a discussion paper. It urged further debate before legislation designed to abolish Privy Council appeals was introduced.

The Committee's view was that abolishing appeals to the Privy Council could not be considered in isolation from other constitutional issues raised by Māori. Those issues are, the paper said, primarily tied to the status of Māori under the Treaty of Waitangi and the status of the Treaty within the constitutional fabric of New Zealand.

The Commission itself, after considering the paper, advised the Government that, in the face of such a strong and reasoned Māori view, there were difficulties and even danger in the Government proceeding with abolition without further assessment of the Committee's contentions and related consultation with Māori.

Legislation bringing about the abolition was introduced to the House in June 1996, but there will be an opportunity for further public debate at the select committee stage.

Māori Custom Law

In 1994 the Chief Judge of the Māori Land Court, with the support of the Waitangi Tribunal, asked the Commission to help with carrying out a study of Māori custom law. The Chief Judge was concerned that statute law increasingly called for Māori concepts to be interpreted and applied, and that there was little reliable written material available and accessible to help the courts and others.

The Commission discussed the proposal with the Māori Committee. The Committee supported the idea and agreed to sponsor a project, with the Law Commission providing project management and some research assistance. Initially a project was planned to look at the jurisprudence of Māori custom law over a period of several years. Funding was not immediately available for a project of this size, but a similar project is now being undertaken at the University of Waikato with input from the Commission.

In the meantime the Māori Committee, assisted by the Commission, is concentrating on preparing and publishing a brief outline of concepts of Māori custom law for use by judges and others. The outline will be helpful where, for example, a court receives expert

evidence of Māori custom, or is called upon to apply custom law by statute or in the exercise of its general jurisdiction. Funding for the project is being provided by the New Zealand Law Foundation, with the Law Commission providing administrative and some research support.

The outline will draw on observations and knowledge acquired by the Chief Judge during many years on the bench of the Māori Land Court and as Chair of the Waitangi Tribunal. Four academic commentators are providing commentary from a political science, anthropological, historical and philosophical perspective respectively. Two Māori lawyers have been engaged to draft the outline itself.

The published material will be a starting-point for thinking and debate, not a definitive description of Māori custom law, and will contain a select bibliography of sources of further information.

Māori involvement in the Commission

A point of dialogue with the Māori Committee is the Law Commission's role in debates about the place of the Treaty of Waitangi. The Commission considers that the appointment of Māori to the Commission is a prerequisite to a greater contribution to those debates, as well as to its ability to take account of te ao Māori in its project work. With the Committee's support, the Commission hopes that progress can be made on the appointment of Māori to the Commission in the coming year.

OTHER ACTIVITIES

The Law Commission is able to extend its contribution to the development of law and policy through a wide range of other activities involving Commissioners and staff.

The Commission has had a central role in the Law and Economics Association of New Zealand since it was formed in 1994. It has hosted a number of LEANZ seminars, and in December 1995 it jointly sponsored, with the Association, a seminar presented by Professor Richard A Epstein entitled "The Use and Disclosure of Information". Professor Sutton served as the Association's President in 1995/96, and Penny Webb-Smart, a Commission researcher, was a member of the Association's Committee. Commission staff also provided administrative support to the Association.

The New Zealand Law Conference is a significant triennial event in the legal world. In 1996 the Conference was held in Dunedin, and the Commission made a substantial contribution by sponsoring

a session on plain legal language (see page 12 above) and providing a number of speakers, commentators, and session chairpersons.

The important contribution of Sir Kenneth Keith to the development of international law is well known. He continued during the year as a member and Vice-President of the International Humanitarian Fact Finding Commission which was established under the First Additional Protocol to the Geneva Conventions for the Protection of War Victims. In September 1995 he was a member of the New Zealand team which presented the case against French nuclear testing at the World Court.

Also on the international scene, the New Zealand Law Commission has played a major role in successive biennial conferences of Australasian law reform agencies. The 1995 Conference, hosted by the Queensland Law Reform Commission in Brisbane, was attended by two Commissioners (both of whom presented papers) and the Director.

As a result of contacts established in Brisbane, the Commission made arrangements for Ms Florence Fenton, the Director of the Fiji Law Reform Commission, to visit New Zealand in May 1996. She was able to observe the work of the Commission and contribute significantly to a number of its activities.

The Commission has valued its links with a number of committees and other bodies involved in legal development in New Zealand. They include the Courts Consultative Committee (of which Justice Wallace is a member), the Criminal Practice Committee (on which the Commission is now represented by Les Atkins OC), the Copyright Consultative Committee (of which Professor Sutton is a member), and the Judicial Working Group on Gender Equity (of which Joanne Morris is a member). In response to generous invitations by the Secretary for Justice, several Commissioners joined policy focus groups established by the Ministry to assist in the development of its work programmes.

During the year, Joanne Morris continued as a member of the Waitangi Tribunal and Justice Wallace as President of the Electoral Commission. A senior researcher, Philippa McDonald, is also a member of the Complaints Review Tribunal.

MEMBERSHIP AND STAFF OF THE COMMISSION

The appointment of Sir Kenneth Keith as a Judge of the Court of Appeal from April 1996 brought to an end a decade of service as a member and (since 1991) the President of the Commission.

Sir Kenneth has made a massive contribution over many years as an academic, a law reformer, an adviser on a wide range of constitutional and public law issues, and as an internationally recognised jurist. In his time at the Law Commission, he was able to contribute to all its work, as well as lead a number of major law reform projects.

His enthusiasm for law reform, and his great encouragement of those working with him, were important factors in the development of the Commission, and his presence will be sorely missed.

In June 1996, the Deputy President, Justice Wallace, also found it necessary to resign from the Law Commission, to concentrate on his concurrent role as President of the Electoral Commission.

When he was appointed to the Law Commission in 1989, Justice Wallace brought with him, along with many other talents, considerable experience in law reform. In all his work, and especially in the daunting project of reviewing and codifying the entire law of evidence, he set new standards in quality and meticulous research. His wise counsel within the Commission, and his tireless advocacy of the Commission's conclusions when they came to be presented to Government, were of enormous value.

The loss, in such a short time, of these influential legal figures cannot but have a deep impact on the Commission's work. The Commission records with gratitude the extent and distinction of their service.

Two new appointments to the Commission have been widely welcomed. The first was that of Judge Margaret Lee, who was appointed a member for a three-year term beginning in April 1996. Having sat as a District Court Judge since 1987, she brings her experience not only to the Commission's evidence reference (which it will be her task to complete) but also to the work of the Commission generally.

In June 1996, the Minister of Justice announced the appointment of Hon Justice David Baragwanath as the Commission's new President to succeed Sir Kenneth Keith. Justice Baragwanath has been a Judge of the High Court since 1995, and before that was one of New Zealand's leading barristers, with a wide range of experience in civil litigation and, more recently, Treaty of Waitangi matters. His immense knowledge and experience will greatly benefit the Commission, and his three-year term, which begins in October 1996, is eagerly awaited.

Five members of the research staff, Paul McKnight, James Mullineux, Vanessa Inskip, Penny Webb-Smart and Diane Stephenson, left the Commission during the year. The Commission acknowledges the substantial contribution made by each of them to its work. Other departures during the year included Jocelyn Ferguson, who was assistant librarian for a number of years, and Fiona MacDonald, a member of the secretarial staff. Their contribution is also acknowledged.

A list of the current members and staff of the Commission appears at Appendix F. A number of temporary staff, including vacation workers and staff assisting in the organisation of project consultation, were also engaged during the year. The Commission expresses its gratitude to all its staff for their hard work and for helping to make the Commission a stimulating and supportive work place.



Part B FINANCE

The Law Commission is funded from money appropriated by Parliament.

This year the Commission again budgeted to operate at a deficit, funding the shortfall in income from its reserves. The Commission's deficit budgeting strategy is designed to enable it to achieve its planned long-term operating level. In the coming year, the Commission will apply its reserves in a capital replacement programme and to meet part of its operating deficit. An increase in the annual appropriation may be necessary to enable the Commission to sustain its strategic operating goals.

In the 1995/96 year the Commission budgeted for operating expenditure of \$3 748 070 of which \$2 975 100 was to be provided by way of appropriation and \$772 970 from other income and reserves.

The Commission's actual operating expenditure was \$3 576 090 of which \$2 975 111 was by way of appropriation and \$600 979 from other income and reserves.

The financial statements for the year ended 30 June 1996 follow.

LAW COMMISSION

FINANCIAL STATEMENTS
STATEMENT OF RESPONSIBILITY

We acknowledge responsibility for the preparation of these financial statements and for the judgments used herein.

We acknowledge responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of the Commission's financial reporting.

In our opinion these annual financial statements fairly reflect the financial position and operations of the Law Commission for the year ended 30 June 1996.

R J Sutton
Deputy President

R E Buchanan
Director

LAW COMMISSION

STATEMENT OF FINANCIAL PERFORMANCE
FOR THE YEAR ENDED 30 JUNE 1996

1996 Budget \$		Note	1996 Actual \$	1995 Actual \$
	INCOME			
2 975 100	Government grant		2 975 111	3 019 556
150 000	Interest received		227 444	218 852
12 300	Sale of publications		19 393	17 437
-	Miscellaneous		1 000	1 433
<u>3 137 400</u>	Total income		<u>3 222 948</u>	<u>3 257 278</u>
	EXPENDITURE			
2 026 730	Personnel	6	1 949 075	1 944 024
252 100	Research and consultation		261 176	130 133
154 800	Publications		95 181	51 748
217 400	Travel		197 053	110 587
169 020	Library		180 257	154 934
509 100	Rent and rates		501 034	498 597
7 800	Audit fees		7 500	7 000
88 920	Depreciation		50 648	146 410
226,100	Services and supplies		231 455	237 617
11,100	Lease costs		11 110	11 110
85 000	Professional services		91 601	57 054
<u>3 748 070</u>	Total expenditure		<u>3 576 090</u>	<u>3 349 214</u>
<u>(610 670)</u>	Deficit for year	3	<u>(353 142)</u>	<u>(91 936)</u>

The accompanying accounting policies and notes form part of these financial statements

LAW COMMISSION

STATEMENT OF MOVEMENTS IN EQUITY
FOR THE YEAR ENDED 30 JUNE 1996

1996 Budget \$		1996 Actual \$	1995 Actual \$
<u>2 482 069</u>	Crown Equity at start of financial year	<u>2 482 069</u>	<u>2 574 005</u>
<u>(610 670)</u>	Operating deficit for the year	<u>(353 142)</u>	<u>(91 936)</u>
<u>(610 670)</u>	Total recognised revenues and expenses for the year	<u>(353 142)</u>	<u>(91 936)</u>
<u>1 871 399</u>	Crown Equity at end of financial year	<u>2 128 927</u>	<u>2 482 069</u>

The accompanying accounting policies and notes form part of these financial statements

LAW COMMISSION

STATEMENT OF FINANCIAL POSITION
AS AT 30 JUNE 1996

1996 Budget \$		Note	1996 Actual \$	1995 Actual \$
	CURRENT ASSETS			
9 931	Bank of New Zealand		6 963	8 134
125 000	Call deposits		115 000	125 000
1 270 000	Short-term deposits	1	1 900 000	2 200 000
2 500	Accounts receivable		19 601	1 583
25 000	Prepayments		26 253	30 621
35 000	Interest receivable		34 187	41 342
15 000	Goods and services tax		14 296	10 899
<u>1 482 431</u>			<u>2 116 300</u>	<u>2 417 579</u>
648 968	FIXED ASSETS	2	314 789	257 888
<u>2 131 399</u>	TOTAL ASSETS		<u>2 431 089</u>	<u>2 675 467</u>
	CURRENT LIABILITIES			
<u>260 000</u>	Accounts payable and accruals		<u>302 162</u>	<u>193 398</u>
<u>260 000</u>	TOTAL LIABILITIES		<u>302 162</u>	<u>193 398</u>
<u>1 871 399</u>	CROWN EQUITY		<u>2 128 927</u>	<u>2 482 069</u>
<u>2 131 399</u>	TOTAL FUNDS EMPLOYED		<u>2 431 089</u>	<u>2 675 467</u>

R J Sutton
Deputy President

R E Buchanan
Director

The accompanying accounting policies and notes form part of these financial statements

LAW COMMISSION

STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED 30 JUNE 1996

1996 Budget \$	Note	1996 Actual \$	1995 Actual \$
CASH FLOWS FROM OPERATING ACTIVITIES			
Cash was provided from:			
2 975 100		2 975 111	3 019 556
11 383		11 063	20 269
156 342		234 600	219 644
<u>3 142 825</u>		<u>3 220 774</u>	<u>3 259 469</u>
Cash was disbursed to:			
3 591 028		3 424 396	3 282 931
<u>(448 203)</u>	3	<u>(203 622)</u>	<u>(23 462)</u>
CASH FLOWS FROM INVESTING ACTIVITIES			
Cash was provided from:			
930 000	7	300 000	75 000
-		-	1 433
<u>930 000</u>		<u>300 000</u>	<u>76 433</u>
Cash was applied to:			
480 000		107 549	23 417
<u>480 000</u>		<u>107 549</u>	<u>23 417</u>
<u>450 000</u>		<u>192 451</u>	<u>53 016</u>
1 797		(11 171)	29 554
<u>133 134</u>		<u>133 134</u>	<u>103 580</u>
<u>134 931</u>		<u>121 963</u>	<u>133 134</u>
Closing cash balance carried forward			
Represented by:			
9 931		6 963	8 134
<u>125 000</u>		<u>115 000</u>	<u>125 000</u>
<u>134 931</u>		<u>121 963</u>	<u>133 134</u>

The accompanying accounting policies and notes form part of these financial statements

LAW COMMISSION

STATEMENT OF ACCOUNTING POLICIES

1 Reporting Entity

The financial statements presented here for the reporting entity, the Law Commission, are prepared pursuant to section 17 of the Law Commission Act 1985 and section 41(1) of the Public Finance Act 1989.

2 Measurement System

The accounting principles recognised as appropriate for the measurement and reporting of results and financial position on an historical cost basis have been applied.

3 Accounting Policies

- Investments are valued at cost.
- Accounts receivable are stated at their estimated realisable value.
- The foundation library is valued at cost and is not depreciated. Purchases are charged to the foundation library where these purchases represent sets of publications and the initial purchase is of previously issued volumes. Current volumes are charged to library acquisitions.
- Other fixed assets are stated at cost less accumulated depreciation. Depreciation has been calculated using the straight line method at a rate of 20%.
- GST is accounted for by the net method.
- There are no financial instruments that expose the Commission to foreign exchange risk or off balance sheet risks.
- All financial instruments including bank accounts, short term investments, accounts receivable and accounts payable are disclosed at their fair value. The fair value of short term investments is the lower of cost or market value. Revenue and expenses in relation to the financial instruments are recognised in the Statement of Financial Performance.
- The Law Commission is exempt from income tax, per section 13 of the Law Commission Act 1985. Accordingly, no charge for income tax has been provided.

4 Changes in Accounting Policies

There have been no changes in accounting policies. All policies have been applied on bases consistent with those used in previous years. Comparative figures have been restated where necessary to conform to the current year presentation.

LAW COMMISSION

NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 1996

1 Short term investments

Maturity	1996	1995
	\$	\$
One month	950 000	950 000
Two months	650 000	500 000
Three months	300 000	750 000
	<u>1 900 000</u>	<u>2 200 000</u>

Interest rates for deposits maturing in one month range from 8.50% to 10.05%. Interest rates for deposits maturing in two and three months range from 9.75% to 9.90%. The fair value of financial instruments is equivalent to the carrying amount disclosed in the Statement of Financial Position.

2 Fixed assets

	1996		Book value
	Cost	Accumulated depreciation	
	\$	\$	\$
Computer equipment	420 108	380 374	39 734
Foundation library	185 643	–	185 643
Furniture and fittings	1 011 632	936 730	74 902
Office equipment	78 445	69 524	8 921
Computer software	6 986	1 397	5 589
	<u>1 702 814</u>	<u>1 388 025</u>	<u>314 789</u>

	1995		Book value
	Cost	Accumulated depreciation	
	\$	\$	\$
Computer equipment	393 918	348 506	45 412
Foundation library	185 643	–	185 643
Furniture and fittings	939 591	922 630	16 961
Office equipment	76 114	66 242	9 872
	<u>1 595 266</u>	<u>1 337 378</u>	<u>257 888</u>

3 Reconciliation of statement of financial performance to statement of cash flows

	1996	1995
	\$	\$
Deficit for year	(353 142)	(91 936)
Profit sale of assets	–	(1 433)
Depreciation	50 648	146 410
	<u>(302 494)</u>	<u>53 041</u>
Movements in working capital		
(Increase)/decrease in accounts receivable	(18 018)	2 824
Decrease/(increase) in prepayments	4 368	(11 775)
Decrease/(increase) in interest receivable	7 155	792
(Increase)/decrease in GST	(3 397)	5 539
Increase/(decrease) in accounts payable	108 764	(73 883)
	<u>98 872</u>	<u>(76 503)</u>
Net cash flow used in operating activities	<u>(203 622)</u>	<u>(23 462)</u>

4 Commitments

LEASE COMMITMENTS

Non-cancellable operating leases for rental of accommodation and office equipment.

	1996	1995
	\$	\$
Less than one year	546 555	533 054
Between one and two years	538 222	533 054
Between two and three years	–	524 271
	<u>1 084 777</u>	<u>1 590 379</u>

CAPITAL COMMITMENTS

There were no capital commitments at balance date (1995 \$nil).

5 Contingent Liabilities

There were no material contingent liabilities as at balance date (1995 \$nil).

6 Remuneration of Members of the Commission

	1996	1995
	\$	\$
Total remuneration paid to members of the Commission	<u>558 782</u>	<u>647 141</u>

7 Disclosure of Cash Flows

The cash flows relating to the Commission's investing activities have been netted off in the Statement of Cash Flows because the amounts involved are held in short-term deposits which are rolled over frequently during the year.

8 Financial Instruments

CREDIT RISK

Financial instruments which potentially expose the Commission to credit risk consist of bank balances, short term deposits and accounts receivable.

CONCENTRATION OF CREDIT RISK

There are no significant concentrations of credit risk with respect to accounts receivable. Investments are held in a New Zealand registered bank with an A credit rating.

9 Related Party Transactions

The Law Commission is a wholly owned entity of the Crown. Revenue derived from the Crown is the Commission's major source of revenue as set out in the Statement of Financial Performance.

LAW COMMISSION

STATEMENT OF SERVICE PERFORMANCE FOR
THE YEAR ENDED 30 JUNE 1996

Output class: Policy Advice

Budgeted Expenditure: \$3,748,070 (excluding GST)

Actual Expenditure: \$3,576,090 (excluding GST)

Statement of
Objectives for
1995/96

Performance
Measures

Outputs Produced

The Law Commission's
objectives are:

Projects

To carry through their various stages towards final report the projects for the reform and development of particular areas of law which have been included in the Commission's programme.

Projects

Quantity

The number of projects included in the Commission's programme is to be as determined by the Commission, taking account of section 7 of the Law Commission Act 1985.

The number of publications to be produced, or amount of other work to be done, within each project, is to be as set out in project plans approved by the Commission.

Projects

Quantity

The projects on the Commission's programme during the period were (a) those included in the programme as at 1 July 1995 (listed in the Commission's report for the year ended 30 June 1995); (b) a project on Māori Custom Law, being undertaken on behalf of the Māori Committee to the Law Commission, added to the programme in 1996.

The publications produced or other work done in the period 1 July 1995 to 30 June 1996 were as set out in project plans approved by the Commission. During the period the Commission approved modifications to some plans to take account of changed priorities or developments within the project itself.

See narrative account, pages 7 to 15, for a description of all work done.

Statement of Objectives for 1995/96

Performance Measures

Outputs Produced

Quality

The Commission's project work is to be of the standard set by the Commission, as assured by its internal processes and external review.¹

Quality

All the Commission's project work was performed to the standard set by the Commission, as assured by its internal processes and external review.¹

Time

The time for the production of project work is to be as set out in approved project plans.

Time

The time taken for the production of project work was as set out in approved project plans, with such modifications as the Commission approved to take account of changed priorities or developments within the project itself.

Cost

The cost of project work is to be within the approved project budget.

Cost

The Commission set individual project budgets for all work to be done in the period 1 July 1995 to 30 June 1996 (or beyond if the budgeted phase of the project was to extend beyond the end of the financial year). Time and other expenditure was recorded against the project budget, and the Commission received monthly reports of actual time and cost against the project budget. The Commission's expenditure on its projects as a whole was \$3,166,510.²

Statement of Objectives for 1995/96

Performance Measures

Outputs Produced

Follow-up

To follow up all final reports by

- taking part in discussions with interested individuals and groups, privately and in public forums, on the meaning and effect of the Commission's recommendations,
- discussing with relevant Ministers and their Departments the nature and the timing of the steps necessary to implement the Commission's recommendations, and
- participating in appropriate ways in the preparation of legislation implementing the Commission's recommendations and in the parliamentary processes leading to its enactment.

Quantity

Follow-up is to

- be discussed at the regular policy meetings between the Law Commission and the Ministry of Justice;
- be discussed with the Minister of Justice, other Ministers or departments and parliamentary select committees as requested, or on the Commission's initiative where appropriate;
- involve participation in, or the convening of, seminars and conferences as appropriate and as opportunity offers.²

Quantity

Follow-up included

- regular discussions and correspondence with the Minister of Justice, the Leader of the House, and the Ministry of Justice about the inclusion in the Government's legislative programme of draft Acts recommended by the Law Commission;
- advice to the Government Administration Select Committee in connection with the Commission's recommendations on *Arbitration* (NZLC R20, 1991), as taken up in the Arbitration Bill 1995;
- advice to the Ministry of Commerce in connection with the Commission's recommendations in *A Personal Property Securities Act for New Zealand* (NZLC R8, 1989);

Statement of
Objectives for
1995/96

Performance
Measures

Outputs Produced

- advice to the Attorney-General in connection with the Commission's recommendations on *A New Interpretation Act* (NZLC R17S, 1990);
- discussions and correspondence with the Department for Courts and the Ministry of Justice in connection with the Commission's recommendations on *Criminal Procedure: Part One: Disclosure and Committal* (NZLC R14, 1990);
- advice to the Ministry of Health in connection with the Commission's recommendations on *Community Safety: Mental Health and Criminal Justice Issues* (NZLC R30, 1994);
- discussions and correspondence with the Ministry of Justice about the implementation of other Law Commission reports.

See narrative account, pages 15 to 16, for a further description of work done.

Statement of
Objectives for
1995/96

Performance
Measures

Quality

To the Commission's standards, as assured by its internal processes and external review.¹

Time

As agreed, or otherwise at a time enabling the follow-up work to be effective, taking account of the Government's legislative programme, the parliamentary timetable and other relevant factors.

Cost

Within the budget for **follow-up**.

Outputs Produced

Quality

All follow-up work was performed to the Commission's standards, as assured by its internal processes and external review.¹

Time

All follow-up work was undertaken as agreed, or otherwise at a time enabling it to be effective, taking account of the Government's legislative programme, the parliamentary timetable and other relevant factors.

Cost

The Commission did not set a separate budget for **follow-up** for the 1995/96 financial year, but Commissioner and research officer time spent on discrete aspects of **follow-up** was charged to that output. The Commission's expenditure on **follow-up** as a whole was \$37,942.^{2,3}

Statement of Objectives for 1995/96

Advisory work

To provide advice, in accordance with s 5(l)(c) of the Law Commission Act 1985, on proposals by other agencies for the review or reform of the law.

Performance Measures

Quantity

Advice is to be provided on proposals

- referred to the Law Commission by the Minister of Justice, other Ministers or select committees, and, to the extent that resources permit, by other government agencies, and
- on the Commission's initiative where the proposals bear on the Commission's project work or Commission involvement is an important step in achieving the Commission's purpose and objectives.⁴

Quality

To the Commission's standards as assured by its internal processes and external review.¹

Time

As agreed with the recipient, or otherwise at a time enabling the advice to be taken into account and acted upon within the timeframe of the recipient.

Outputs Produced

Quantity

The Commission received 27 new requests for advice from Cabinet Ministers, departments and select committees and other sources in the year to 30 June 1996. Work continued on 24 items carried over from the previous year.

See narrative account, page 17, and Appendix D, for a summary of work done.

Quality

All advice was provided to the Commission's standards as assured by its internal processes and external review.¹

Time

All advice was provided as agreed with the recipient, or otherwise at a time enabling the advice to be taken into account and acted upon within the timeframe of the recipient.

Statement of Objectives for 1995/96

Performance Measures

Outputs Produced

Cost
Within the budget for advisory work.

Cost
The Commission set a budget of \$375,000 for advisory work for the 1995/96 financial year. All Commissioner and research officer time spent on advisory work was charged to that output. The Commission's expenditure on advisory work was \$217,204.²

Legislation Advisory Committee

The output is the contribution to the work of the **Legislation Advisory Committee** to be provided by Sir Kenneth Keith in his capacity as a member of the Committee, the assistance of the Commission's research and secretarial staff and the office accommodation made available for the Chairman of the Committee, Dr Mervyn Probine.

Quantity
As agreed with the Committee, subject to the availability of the Commission's resources.

Quantity
The work done was as agreed with the Committee.
See narrative account, pages 17 to 18, and Appendix E, for a description of all work done.

Quality
To the Commission's standards as assured by its internal processes and external review.¹

Quality
All work was performed to the Commission's standards as assured by its internal processes and external review.¹

Statement of Objectives for 1995/96

Performance Measures

Outputs Produced

Time

As agreed with the Committee.

Time

All work was done within a timeframe agreed with the Committee.

Cost

To be within the Commission's budget for its contribution to the work of the **Legislation Advisory Committee**.

Cost

The Commission set a budget of \$168,000 for its contribution to the work of the **Legislation Advisory Committee** for the 1995/96 financial year. All Commissioner and research officer time spent on that contribution was charged to that output. The Commission's expenditure on the output as a whole was \$154,434.^{2,5}

Notes to the Statement of Service Performance

1 In the case of the Commission's project work, external review involves both the use of expert consultants – to contribute to the writing, or to consider and comment on successive drafts – and also wide consultation with interested agencies and groups. In the early stages of a project, external review is directed at the project outline, the issues to be addressed, and (in some cases) the project terms of reference themselves. In the advanced stages of a project, external consultants contribute to the writing of, or consider and comment on drafts of, publications. Drafts are also frequently circulated to interested agencies and groups before publication. In most cases, a discussion paper is published and widely circulated, and submissions on it are invited and considered before the preparation of a final report which itself contains a description of the consultation process followed in the particular case.

Reports are published, tabled in Parliament and copies are distributed to interested or affected individuals and groups. They are submitted to appropriate legal journals for review, and a great deal of informal feedback is received from Ministers and parliamentary select committees, legal and other professional societies, judges, members of the legal profession, and law reform agencies, interested bodies and individuals in other countries.

In the case of **follow-up, advisory work** and assistance to the **Legislation Advisory Committee**, external review consists of the informal feedback received in the course of any consultations with officials or others (including the Legislation Committee of the New Zealand Law Society and the Legislation Advisory Committee itself) outside the Law Commission in the course of preparing the submission, advice or other document, or received from the recipient, together with evidence of the extent to which the submission, advice or other document is accepted and acted upon.

- 2 The Commission received monthly reports on the quantity and timeliness of all work done and on actual costs, as compared with budgeted costs, for each phase of its projects, for advisory work, and for assistance to the Legislation Advisory Committee.
- 3 For budgetary purposes, the Commission's **follow-up** work is treated as if it were a single consolidated project. The Director received regular reports on the actual costs charged to particular items within the follow-up output.
- 4 For administrative and budgetary purposes, the Commission's **advisory work** is treated as though it were a single, consolidated project. A budget is allocated in advance and resources organised so as to make one member of the research staff primarily available for advisory work. It is not always possible, however, to foresee the specific occasions on which the Commission will be asked (or will consider it appropriate) to provide advice and, consequently, what other research resources will have to be allocated to advisory work. Therefore the specification of quantity relates to the number of requests received and other items undertaken which bear on project work or enhance the achievement of the Commission's purpose and objectives.
- 5 For budgetary purposes, the Commission's contribution to the work of the **Legislation Advisory Committee** is treated as if it were a single consolidated project.



REPORT OF THE AUDIT OFFICE

TO THE READERS OF THE FINANCIAL STATEMENTS
OF THE LAW COMMISSION FOR THE
YEAR ENDED 30 JUNE 1996

We have audited the financial statements on pages 26 to 43. The financial statements provide information about the past financial and service performance of the Law Commission and its financial position as at 30 June 1996. This information is stated in accordance with the accounting policies set out on page 31.

Responsibilities of the members of the Law Commission

The Public Finance Act 1989 requires the members of the Law Commission (the members) to prepare financial statements in accordance with generally accepted accounting practice which fairly reflect the financial position of the Law Commission as at 30 June 1996, the results of its operations and cash flows and the service performance achievements for the year ended 30 June 1996.

Auditor's responsibilities

Section 43(1) of the Public Finance Act 1989 requires the Audit Office to audit the financial statements presented by the members. It is the responsibility of the Audit Office to express an independent opinion on the financial statements and report its opinion to you.

The Controller and Auditor-General has appointed H C Lim, of Audit New Zealand, to undertake the audit.

Basis of opinion

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

- the significant estimates and judgments made by members in the preparation of the financial statements *and*
- whether the accounting policies are appropriate to the Law

Commission's circumstances, consistently applied and adequately disclosed.

We conducted our audit in accordance with generally accepted auditing standards in New Zealand. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming our opinion, we also evaluated the overall adequacy of the presentation of information in the financial statements and the Law Commission's compliance with significant legislative requirements.

Other than in our capacity as auditor acting on behalf of the Controller and Auditor-General, we have no relationship with or interests in the Law Commission.

Unqualified opinion

We have obtained all the information and explanations we have required.

In our opinion, the financial statements of the Law Commission on pages 26 to 43:

- comply with generally accepted accounting practice *and*
- fairly reflect:
 - the financial position as at 30 June 1996 *and*
 - the results of its operations and cash flows for the year ended on that date *and*
 - the service performance achievements in relation to the performance targets and other measures adopted for the year ended on that date.

Our audit was completed on 24 September 1996 and our unqualified opinion is expressed as at that date.

H C Lim
Audit New Zealand
On behalf of the Controller and Auditor-General

Wellington, New Zealand

APPENDIX A

The Systematic Review, Reform and Development of the Law: People, Process, Principle – and Prospect

Hon Justice Sir Kenneth Keith

Sir Kenneth Keith was a member of the Law Commission from 1986 to 1996 and President from 1991 to 1996, until his appointment as a Judge of the Court of Appeal. This paper expands slightly on a paper given at a seminar organised by the Law Commission and held in Dunedin on 9 April 1996 at the beginning of the New Zealand Law Conference.

I WELCOME THIS OPPORTUNITY to reflect on the first 10 years of the Law Commission. What does the experience of the last 10 years mean for the future role of the Law Commission and, more generally, for the review, reform and development of the law?

That very large question cannot be answered simply by looking inwards at the work of the Law Commission itself. This is a time of great change both within and outside New Zealand. In that rapidly changing – some would say revolutionary – context, one also needs to examine the roles of the other, various bodies involved in the development of the law.

My own original expectation when the Law Commission was being established, and when I was asked to be one of its original members, was that we would be doing more of the same; that is to say, more of the same that was being done by the part-time Law Reform Committees. We would of course be better supported. The law reform task would be our main commitment rather than something done on a part-time basis at the end of the day and at weekends. As well, larger topics could be taken on, examples being the early references given to the Commission on company law and court structures.

The systematic review of the law

Those expectations of more of the same, even if bigger and better, were supported by experience in law reform agencies elsewhere in the Commonwealth. But also, there was by then experience – even if not as apparent – of a systematic role for bodies concerned with the review, reform and development of the law. They could adopt an overall approach to broader issues. That wider role is indeed emphasised by the Law Commission's statute. The very name "Law Commission" helps make the point. Sir Owen Woodhouse, the first President, was clear from the outset that we were not to be simply a "law reform" body. The Commission had a wider constitutional role. This central advisory body for the review, reform, and development of the law of New Zealand was to undertake that responsibility in a systematic way. Two specific provisions of the Act make that clear. The purpose of the Law Commission Act 1985, under s 3, is to promote the *systematic* review, reform and development of the law of New Zealand. The first of the principal functions of the Commission stated in s 5(1) is to take and keep under review in a *systematic* way the law of New Zealand.

That systematic element appears, as well, in the powers that the Commission has to initiate review and to advise others. It can also be seen in the use of the word *development*. That is a relatively unusual word in law reform statutes. It is interesting that it is also to be found in article 13(1)(a) of the Charter of the United Nations in the description of the role, exercised principally by the International Law Commission, of undertaking studies for the development and codification of international law.

The wider role also appears in the duty of the Commission to take into account *te ao Māori* (the Māori dimension) and to give consideration to the multi-cultural character of New Zealand society. The broader responsibility appears in addition in the double emphasis in the statute on the accessibility of the law. One function of the Commission is to advise the Minister of Justice on ways in which the law of New Zealand can be made "as understandable and accessible as is practicable" (s 5(1)(d)); and then there is an overlapping duty to "have regard to the desirability of simplifying the expression and content of the law, as far as that is practicable" (s 5(2)(b)).

Those duties in respect of accessible law are not simply concerned with plain language, although that in itself is a very important matter. They are also concerned with better policy-making – since good, accessible law can be prepared only if good process has

properly identified the problems, relevant information has been gathered, and the policy has been properly worked out. As the Commission's Annual Report 1995 indicates, there have been too many instances of failures in some or all of those respects in recent years. Too many of those with relevant responsibilities still do not know – or, if they do, they neglect – the Legislation Advisory Committee's report, *Legislative Change: Guidelines on Process and Content* (rev ed, Wellington, 1991), which provides important advice on developing new laws. Even more broadly, as the current Commission project on Women's Access to Justice: He Putanga mo Nga Wahine ki te Tika indicates, access to the law can be assessed in terms of the availability of legal advice, and of legal information, and of the monocultural and male-dominated nature of the legal system.

The first piece of published work by the Commission is an interesting instance of the broader systematic role of the Commission. That is the report on *Imperial Legislation in Force in New Zealand* (NZLC R1, 1987). The opening paragraphs recall the obligation of the Commission to keep the law of New Zealand under review in a systematic way and to make it as accessible as is practicable. They recall as well the heritage of English law as part of the law of New Zealand. The report ranges across legislation affecting many different fields – constitutional law, habeas corpus, the boundaries of New Zealand, Privy Council appeals, property, and a miscellany of others including the law of privacy, slavery, fire prevention, set-off and guarantees. It makes the law accessible by actually gathering and printing the old statutes which the Commission thought should remain in force – the first time that had been done in an official way for over 100 years.

The nature of the task meant that an overall approach was essential, as was close attention to detail. That detail highlighted the need for further work to be done on particular topics, which provided the impetus for our subsequent projects on Property Law and Habeas Corpus. With our first report, as with all our subsequent work, the Law Commission was greatly helped by contributions supplied willingly, and in that case urgently, by members of the practising profession, academics and public servants. (Two of those who assisted later became members of the Commission!)

The next publication of the Commission, incorporating its first and second Annual Reports (1986/1987), contained a quotation from the 20th Annual Report of the Law Commission of England and Wales (HMSO, London, 1986) which emphasised the general constitutional role:

But 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. (Para 1.13)

That bigger picture approach is of great value to the Commission, whether it is considering particular matters on its own agenda or giving advice to others. There is some reflection of some of the more general matters in the annual reports of the Commission. Over the years, for instance, brief comments are to be found on the costs to the economy that can be caused by bad law (and, correspondingly, the savings flowing from good law); on the poor quality of some legislation; on the choice between standards and rules in the preparation of legislation; on the importance of the facts and of good consultation; on the role of principle in developing policy; and on the growing internationalisation of much law-making.

I now take two examples of the value of the systematic approach which the Commission has developed. The first concerns a large group of interlocking matters; the second is more focused.

The organisation of public power

The larger example concerns the organisation of public power, a matter on which the Commission has undertaken a great deal of advisory work, and which has also been addressed in some of our major projects. This work relates to changes occurring both within and outside New Zealand. So far as domestic issues are concerned, members of the Commission have, for example, given advice to Ministers, and occasionally to senior officials, on the reorganisation of the departmental structure for justice, the inland revenue, tertiary education (in the Learning for Life process), agriculture, fisheries, transport, and the police; on the State Sector, State Owned Enterprises, Crown Entities and Public Finance legislation; on proposals relating to the Audit Office; on the choice of decision-making methods and institutions; on matters concerning the Treaty of Waitangi; on coercive powers; on the operation of the Bill of Rights; on the law relating to takeovers; on treaty-making, acceptance and implementation; and on the legal position of the Crown. That is by no means an exhaustive list of work concerning the organisation of public power.

Throughout that work questions arise about appropriate governmental structures, the conferral of power independently of ministers, the countervailing powers and controls of ministers, systems of responsibility and accountability, provision for appeal and review and audit, overall design issues concerned with the major features of governmental power, and aspects of the more general contexts (notably the international ones) in which these issues are to be considered.

I do not know that the Law Commission is uniquely well-placed to address those major issues. Obviously, there are many others who have substantial knowledge of them and a base on which to make proposals for review and reform. Those others include, for example, politicians, senior public servants (including those in the Ministry of Justice as well as in departments such as Treasury), academics, commentators, judges, legal practitioners, interest groups. I might add a word or two about the role of the academics, calling in aid the Chancellor's lecture given by the President of the Czech Republic, Vaclav Havel, at Victoria University of Wellington last March. The lecture is entitled "Karl Popper's *The Open Society and its Enemies* in the Contemporary Global World", and in it the President indicates some ways in which intellectuals – and therefore academics – can make their contribution:

It would be nonsense to believe that all intellectuals have succumbed to utopianism or holistic engineering. A great number of intellectuals both past and present have done precisely what I think should be done: they have perceived the broader context, seen things in more global terms, recognized the mysterious nature of globality and humbly deferred to it. Their increased sense of responsibility for this world has not made such intellectuals identify with an ideology; it has made them identify with humanity, its dignity and its prospects. These intellectuals build people-to-people solidarity. They foster tolerance, struggle against evil and violence, promote human rights and argue for their indivisibility. In a word, they represent what has been called "the conscience of society". They are not indifferent when people in an unknown country on the other side of the planet are annihilated, or when children starve there, nor are they unconcerned about global warming and whether future generations will be able to lead an enduring life. They care about the fate of virgin forests in faraway places, about whether or not humankind will soon destroy all its non-renewable resources or whether a global dictatorship of advertisement, consumerism and blood-and-thunder stories on TV will ultimately lead the human race to a state of complete idiocy. ((1995) 5 *Stout Centre Review* 6)

I have wondered at times whether our academic colleagues might not be more involved than they sometimes are in considering the larger social, economic, environmental and political issues.

Whether the Commission's role is unique or not, it certainly does have a better opportunity than many organisations to contribute to identifying, debating and helping resolve those larger issues; and it does bring a particular expertise to bear, as well as certain well-developed and consistent ways of seeing the world and seeing power. A related expertise is an understanding of the importance of words, particularly when they start to take legal form or to affect legal outcomes.

A current and recent example is the misuse or at least over-use of the word *devolution* in relation to the position of Māori within our constitutional system – or indeed in relation to other bodies. Is it really the case, for example, that Ngāi Tāhu (or Kāi Tāhu) or the University of Otago should be seen essentially as communities or organisations created by the State, which then devolves authority upon them? Is it not sometimes much more appropriate to think of them as communities which organise themselves completely or largely independently of the authorities in Wellington? It may be that they will occasionally need some resources and power to be granted to them by the state institutions. But they do not on that account have to be seen as creatures of central government and Parliament, and as something to be funded entirely by those institutions. The communities and their constitutions will sometimes have existed longer than the central institutions. The university example also reminds us that many of the communities exist regardless of territorial boundaries – especially in these days of the communication revolution. This is not simply a matter of new technology: there have been some useful reminders in recent years of the political and theological doctrine of *subsidiarity*, of having authority at the appropriate level and in the appropriate organisational form.

That doctrine helps to remind us that when we are thinking of public power we can draw on a wide range of models. We need not be trapped by a top-down view of power, with all power coming from central government or Parliament. In drawing on those models, we should recognise the massive changes that have occurred in the world around us. Among those changes are the redistribution of a great deal of authority. A particularly striking example is the fact that nation states – of the kind that have been in existence for the last three or four centuries – have lost a great deal of authority to the international community, to private organisations within and outside their territory, and to local government organisations.

Remedies for breaches of the Bill of Rights

I now turn to a more particular example and a more orthodox kind of law reform. It relates to the thought I had back in 1986 that one of the topics which the Law Commission might well review is the law relating to Crown liability. Such work is now being done by the Commission in connection with the issues arising from *Baigent's Case* [1994] 3 NZLR 667, in which the Court of Appeal held that a person subject to a breach of the New Zealand Bill of Rights Act 1990 might be entitled to a monetary remedy.

The work illustrates both the Commission's systematic approach and its experience. In the first place, we were able to draw on extensive advisory and reference work, particularly concerning legislation which purported to protect the exercise of public power – a central feature of the *Baigent* litigation. For instance, in 1990 we had initiated some work on such legislation when we noticed that three interrelated Bills then in Parliament, the Occupational Health and Safety Bill, the Building Bill, and the Resource Management Bill, all dealt differently with the question of the liability of those who might act in breach of the duties imposed by those proposed measures. Some work was also done at that stage on other similar protection provisions to be found throughout the statute book. That has been massively updated, resulting in a 50-page document setting out some hundreds of statutory provisions. As well, the Commission has assisted recently with the preparation of submissions for the Legislation Advisory Committee on legislation concerning chemical weapons and submarine cables. In both the protection issue has arisen. The more comprehensive work provides a firm basis for recommending that the protections should be deleted. This illustrates a most valuable interaction of the general and the particular.

Somewhat earlier, the Commission had prepared a *Final Report on National Emergencies* (NZLC R22, 1991). One proposition which was adopted in that report was that an injured person should be able to seek damages when injured by unlawful action. That was however without prejudice to the question whether individuals, particularly volunteers, might themselves be protected from liability: it is possible for a protection position to have that limited effect while preserving the cause of action against the Crown or other public bodies. That report also raises the important question whether some lawful exercises of power which would cause substantial loss to individuals should carry with them a duty of compensation. Some emergency powers do so provide. The duty in that case is one arising not from fault but from community responsibility.

We were able to supplement the research into New Zealand law by drawing on foreign research. In part we knew of this from our library holdings and contacts with other law reform bodies, particularly the work of the Ontario Law Reform Commission and the related excellent work of Professor Peter Hogg. We also commissioned a most valuable academic paper on the experience elsewhere. That experience indicated that some of the predictions being made of the effect of *Baigent's Case* were grossly overstated.

That indication, or perhaps tentative conclusion, was also supported by the facts, so far as they exist, in New Zealand. We examined the material to hand of the, as yet, very limited practical impact of *Baigent's Case*. That emphasis on the facts – an insistence evident from the beginning of the work of the Commission – is highlighted very nicely by a book prepared as a consequence of research undertaken for the work of the American Law Institute on product liability: *Exploring The Domain of Accident Law: taking the facts seriously* (Oxford University Press, New York, 1996). Its sub-title helps make the point I wish to emphasise. The authors, including Professor Michael Trebilcock, come to what they refer to as “a bleak judgment about the tort system as a compensatory mechanism” (436) for personal injury. Tort law, they say, should be abandoned for that purpose. They would radically restrict tort liability and look to other sanctions for enforcement.

Finally, the draft paper draws on relevant principles, including the principles bearing on judicial immunity. The Commission is at the same time considering the issues arising from the Court of Appeal decision in *Harvey v Derrick* [1995] 1 NZLR 314, in which the Court of Appeal held that in certain circumstances proceedings can be brought against individual District Court judges. That search for principle had regard not just to the long-established proposition that where there is a right there should be a remedy, but also to relevant international obligations, and in particular to the recent report of the Human Rights Committee (elected under the International Covenant on Civil and Political Rights) on New Zealand's compliance with the Covenant. Although the Committee knew about *Baigent's Case*, it proposed that there should be an explicit remedy for breach of the Covenant and the Bill of Rights.

As a result of this systematic approach, we were able, first, to better state the issues in this case by taking a wider view, and, secondly, to propose, in a tentative way, some possible answers to the significant questions. The draft papers begin with the proposition that legislation conferring public powers might sometimes – for reasons of community responsibility – provide for compensation which is not necessarily fault-based. I have already mentioned the example of emergency legislation.

Secondly, the draft paper recommends that public power (for instance of search and seizure or arrest) should be conferred in appropriate terms; and that there should not be an immediate rush to support those powers with protective provisions. For at least a century, some state officials have had powers alone without protection. Their experience suggests that the double drafting to be found in many statutes is not necessary. Certainly, it is difficult to reconcile many of the protection provisions with principle. That is not however to deny the value, in some circumstances, of providing for protection of the individual actor, particularly those who are volunteers, so long as the person who has been injured by an unlawful act is still entitled to appropriate relief. There are other particular areas in which protection provisions can also be justified.

Thirdly, any liability should in general match the responsibility or the powers of the person who is to be held liable. There are real difficulties with some of the wider propositions that have been read into the judgments in *Baigent's Case* about the Crown having a role of general guarantor under the Bill of Rights.

Finally, the Commission draws on its understanding of why it is that people comply with the law. That is greatly assisted by much research and writing, including that mentioned earlier of Michael Trebilcock and his colleagues. They are very careful to test the theories against the facts. That scholarship reminds us of the proposition by Karl Llewellyn to the effect that morals without technique is a mess, but technique without morals is a menace.

My final thought is to suggest that to carry out the tasks of the kind that I have mentioned, relating to both the general view of power and the more particular issue of monetary remedies for breaches of the Bill of Rights, as well as to the vast range of other matters on the Commission's agenda, the Commission needs to rely on a very good mixture of people, process, and principle – both internally and externally. It is also important that the Commission, but also others, look to a fourth factor, the *product*. That is partly manifest in specific legislative measures and administrative changes. But it is to be seen even more in discovering different ways of understanding the law in its social, economic and political contexts, both within New Zealand and outside. This makes the systematic constitutional role of the Law Commission, which I have emphasised, all the more necessary in these changing times.

APPENDIX B

Strategic Initiatives and their Implementation

Initiatives	Implementation
<p>To develop our organisation to enable it to respond to changes in its role and work requirements. In particular we will work to:</p> <p>(a) improve our ability to operate in a bicultural way and to take account of multicultural issues; and</p> <p>(b) develop our capacity to use research from the social sciences and other disciplines.</p>	<p>Implementation commenced in 1995/96:</p> <ul style="list-style-type: none">• Policies on staff training in bicultural issues and te reo Māori reviewed;• new project procedures developed to enable bicultural and multicultural perspectives, and multidisciplinary input, to be obtained;• procedures for the engagement of project consultants reviewed.
<p>To develop long-term, effective working relationships with others involved in the process of law reform and development, to foster a climate of support for our project work throughout all its stages.</p>	<p>Ongoing; resources to be allocated in 1996/97.</p>
<p>To develop new and effective procedures and processes for consultation, to enable as many voices as possible to be heard in the process of law reform.</p>	<p>Review of principles and procedures for consultation in projects commenced.</p>
<p>To increase the certainty of our project timeframes and publication dates, to enable interested parties to plan their contributions.</p>	<p>Publication schedule for 1996/97 developed and disseminated.</p>
<p>To develop new policies on the publication and dissemination of information, to make our processes as responsive as possible to the widest range of views, and to reach all relevant audiences.</p>	<p>Implementation completed:</p> <ul style="list-style-type: none">• Publication policies reviewed• range of Law Commission publications expanded• quarterly newsletter – <i>Te Aka Kōrero</i> established• publication covers and layouts revised.

To develop integrated information systems, to enable rapid and accurate access to research information.

To develop new internal practices and processes, to satisfy our quality standards and improve the timeliness of our outputs.

Addressed in the replacement of the Commission's computer system, due for completion in 1996/97.

Implementation commenced in 1995/96:

- new procedures to control and manage the allocation of resources between different areas of the Commission's work;
- a review of the Commission's information technology requirements, and modernisation of its computer system;
- improvements to, and the automation of, the project management system;
- redefinition of the roles of Commissioners and research staff in the management of Commission projects;
- a review of the Commission's information handling procedures and the structure of its library, administration and support staff arrangements;
- development of a comprehensive human resources and career development strategy for its staff.

APPENDIX C

Projects on the Law Commission's Programme 1995/96

GROUP: EVIDENCE / CRIMINAL PROCEDURE

<i>Project</i>	<i>Purpose</i>	<i>Subprojects</i>
Evidence	To replace the present complex and uncertain common law and statutory rules of evidence with an evidence code.	Conduct, character and credibility Competence of witnesses, vulnerable witnesses Identification evidence Witness questioning rules Tribunal evidence Burden and standard of proof Warnings Waiver Privilege General research Policy
Criminal Procedure	To review the whole of criminal procedure, to ensure that it provides for fair trials and effective and efficient investigation and prosecution of offences, taking account of New Zealand's obligations under the International Covenant on Civil and Political Rights, the New Zealand Bill of Rights Act 1990 and the Treaty of Waitangi.	Privilege against self-incrimination Prosecution of offences Diversion Jury trials Right of silence and confessions

GROUP: COMMERCIAL LAW AND PROPERTY

<i>Project</i>	<i>Purpose</i>	<i>Subprojects</i>
Succession		Wills (format and substantive requirements, revocation, interpretation etc) Non-wills (including testamentary claims) Policy (including Māori succession law) Procedures
Remedies for wrongs to goods	To review the fragmentary common law remedies and replace them with a modern statute.	
Apportionment of civil liability	To review the law relating to liability where the acts or omissions of two or more persons cause loss or damage.	

GROUP: PUBLIC LAW

<i>Project</i>	<i>Purpose</i>	<i>Subprojects</i>
Women's Access to Justice	To examine the response of the legal system to the experiences of women in New Zealand, recognising the importance of the Treaty of Waitangi in the examination of Māori women's experiences, taking account of the multicultural character of New Zealand society and New Zealand's obligations under international law. To report to the Minister of Justice by the end of 1997 concerning: <ul style="list-style-type: none">· principles and processes to be followed by policy makers and lawmakers,· specific law reforms, and· educational and other strategies which will promote the just treatment of women by the legal system.	

<i>Project</i>	<i>Purpose</i>	<i>Subprojects</i>
Women's Access to Justice (contd)	<p>Priority will be placed on examining the impact of laws, legal procedures and the delivery of legal services upon:</p> <ul style="list-style-type: none"> · family and domestic relationships, · violence against women, and · the economic position of women. <p>At all stages of the project, there will be widespread consultation with women throughout New Zealand. The project will also draw upon, and complement, the work of other government agencies, the Judicial Working Group on Gender Equity and other Law Commission projects.</p>	
Official Information Act 1982	To review the operation in practice of aspects of the Act.	
Legislation	To make the law of New Zealand as understandable and accessible as practicable.	Legislation Manual Part 4
Habeas Corpus	To review and replace the Imperial Acts dealing with the remedy of Habeas Corpus.	
International Obligations	To promote the adoption of uniform or harmonised law and law consistent with New Zealand's international obligations.	The Making, Acceptance and Implementation of Treaties
Crown	To review the legal status of the Crown, generally and in the context of the Crown Proceedings Act 1950.	
Māori Custom Law	To produce (on behalf of the Māori Committee of the Law Commission) guidelines on the principles of Māori custom law.	

APPENDIX D

Examples of Advisory Work Undertaken by the Commission in the Year to 30 June 1996

Legislative reviews (work completed on new requests received during the period under review)

- submission to the Justice and Law Reform Select Committee on the Degrees of Murder Bill
- comments to the Ministry of Commerce on draft legislation prepared by the Working Group on Improved Product and Investment Adviser Disclosure
- submission to the Securities Commission on insider trading law
- comments to the Department of Internal Affairs on the draft Protection of Moveable Cultural Heritage Bill.

Legislative reviews (work continued on requests received in previous financial year)

- comments on the draft Health and Disability Services Consumer Code
- assistance with guidelines for drafting of income tax legislation, and the form and structure of the legislation
- advice to the Department of Internal Affairs on the review of the Local Government Act 1974
- advice to the Ministry of Transport on the re-write of land transport legislation
- advice to the Securities Commission on proposed amendments to the Securities Act 1978.

Policy proposals (work on new requests received during the period under review)

- advice on the Ministry of Justice's draft paper on restorative justice

- comments on proposals by the Department for Courts to enhance the accessibility and effectiveness of Disputes Tribunals, the appointment of lay magistrates, and matters relevant to the selection of jurors.

Policy proposals (work continued on requests received in previous financial year)

- advice to Ministry of Commerce on legislation for the Quality of Regulation project
- advice to the Ministry of Health on its review of safety regulation, and on food standards in relation to harmonisation with Australian standards
- advice to the Minister of Accident Rehabilitation and Compensation Insurance following release of the report of the Regulations Review Panel.

Constitutional issues

- comments to the Justice and Law Reform Select Committee on the Commissions of Inquiry Amendment Bill (arising out of the "Wine-box" Inquiry)
- advice to the Whistleblowing Advisory Group
- participation in discussions on the future of Privy Council appeals
- issues concerning proportional representation and Māori governance.

Regular and ongoing involvement

- participation in the Law and Economics Association of New Zealand
- provision of a quarterly contribution to the Australian journal *Public Law Review*
- membership of the Criminal Practice Committee and the committee to advise the Principal Family Court Judge on international law issues
- participation in the activities of the Public Law Institute of the Victoria University of Wellington.

APPENDIX E

Legislation Advisory Committee Submissions

Submissions were made by the Legislation Advisory Committee on the following Bills, with research assistance provided by the Commission, in the year to 30 June 1996:

1995

Courts and Criminal Procedure (Miscellaneous Provisions) Bill
Parliamentary Privilege Bill
Waikato-Tainui Raupatu Claims Settlement Bill
Hospitals Amendment Bill
Cooperative Companies Bill
Institute of Chartered Accountants of New Zealand Bill
Customs and Excise Bill
Agricultural Compounds Bill
Submarine Cables and Pipelines Protection Bill
Subordinate Legislation (Confirmation and Validation) Bill
Disclosure of Political Donations and Gifts Bill
Protected Areas (Prohibition on Mining) Bill and the Coromandel
Hauraki Gulf (Prohibition on Mining) Bill

1996

Civil Aviation Law Reform Bill
Land Transport Law Reform Bill (No 2)
Smoke-Free Environments Amendment Bill (No 2)
Taxpayer Compliance, Penalties and Dispute Resolution Bill
Chemical Weapons (Prohibition) Bill
Investment Product and Adviser (Disclosure) Bill
Tax Reduction and Social Policy Bill
Osteopaths Bill
Ozone Layer Protection Bill
Resource Management Amendment Bill (No 3)
New Zealand Antarctic Institute Bill
Food Amendment Bill
Survey Amendment Bill
Urban Trees Bill
United Nations Convention on the Law of the Sea Bill
Social Welfare (Miscellaneous Provisions) Bill

APPENDIX F

Members and Staff of
the Law Commission
as at 30 June 1996

MEMBERS OF THE LAW COMMISSION:

Professor Richard J Sutton – *Deputy President*
Leslie H Atkins QC – *Commissioner*
Joanne Morris OBE – *Commissioner*
Judge Margaret Lee – *Commissioner*

PERMANENT STAFF OF THE LAW
COMMISSION:

<i>Director</i>	Robert Buchanan
<i>Senior Legal Research Officers</i>	David Calder Loretta Desourdy Louise Delany Christine Hickey Janet Lewin Philippa McDonald Elisabeth McDonald Susan Potter Bill Sewell Michelle Vaughan
<i>Legal Research Officers</i>	Ross Carter Nigel Christie Ian Murray Mäkere Papuni-Ball Diana Pickard
<i>Finance & Administration Manager</i>	John Lett
<i>Library Manager</i>	Katrina Young-Drew
<i>Reference Librarian</i>	Judith Porter
<i>Serials Librarian</i>	Jacqueline Kitchen

Secretaries

Pam Fitzgerald
Alison Johnston
Jacqui Kellett
Christine Kleingeld
Moira Thorn

Receptionist

Colleen Gurney

Administration Officer

Serena Barrett

Finance & Administration Assistant

Brenda Speak

Administration & Library Assistant

Marilyn Cameron

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APPENDIX G
 Areas of Law
 Reviewed by the Law Commission
 as at 30 June 1996

Area of law	Publication	Type	Date	Outcome
LEGISLATION (Reference)	Imperial Legislation in Force in New Zealand	Report	March 1987	Largely implemented by the Imperial Laws Application Act 1988 and associated legislation
	Legislation and its Interpretation: The Acts Interpretation Act 1924 and Related Legislation	Discussion paper	June 1987	Followed by report NZLC R17
	Legislation and its Interpretation	Discussion and seminar papers	December 1988	Followed by report NZLC R17
	Legislation and its Interpretation: Statutory Publications Bill	Report	September 1989	Implemented in part by the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989
	A New Interpretation Act: To Avoid "Prolivity and Tautology"	Report	December 1990	Under consideration by the Minister of Justice

Area of law	Publication	Type	Date	Outcome
	The Format of Legislation	Discussion paper	December 1993	Recommendations endorsed by the Justice and Law Reform Select Committee and referred to the Standing Orders Committee for consideration; being considered by a Committee chaired by Chief Parliamentary Counsel
	Legislation Manual: Structure and Style	Report	May 1996	For use as a resource. No law changes recommended. Now in widespread use
ACCIDENT COMPENSATION SCHEME (Reference)	The Accident Compensation Scheme	Discussion paper	September 1987	Followed by reports NZLC R3 and NZLC R4
	The Accident Compensation Scheme: Interim Report on Aspects of Funding	Report	November 1987	} Considered in preparing the Accident Rehabilitation and Compensation Insurance Act 1992 and some recommendations reflected in its provisions
	Personal Injury: Prevention and Recovery (Report on the Accident Compensation Scheme)	Report	May 1988	
LIMITATION PERIODS (Reference)	The Limitation Act 1950	Discussion paper	September 1987	Followed by report NZLC R6
	Limitation Defences in Civil Proceedings	Report	October 1988	Under consideration by the Minister of Justice. Reflected in part in the Building Act 1991

Area of law	Publication	Type	Date	Outcome
COURTS (Reference)	The Structure of the Courts	Discussion paper	December 1987	Followed by report NZLC R7
	The Structure of the Courts	Report	March 1989	Substantial effect given to the Commission's recommendations in the various enactments passed to reform the jurisdiction of the courts in 1991 and 1992
COMPANY LAW (Reference)	Company Law	Discussion Paper	December 1987	Followed by reports NZLC R9 and NZLC R16
	Company Law: Reform and Restatement	Report	June 1989	Companies Act 1993, Receiverships Act 1993 and amendments to the Property Law Act 1952 and the Companies Act 1955 entered into force on 1 July 1994
	Company Law Reform: Transition and Revision	Report	September 1990	
LAW OF PROPERTY	Reform of Personal Property Security Law	Discussion paper	May 1988	Followed by report NZLC R8
	A Personal Property Securities Act for New Zealand	Report	April 1989	Under consideration by the Minister of Commerce. The Companies (Registration of Charges) Act 1993 entered into force on 1 July 1994 and applied the provisions of Part IV and section 463 of the Companies Act 1955 to companies registered or re-registered under the Companies Act 1993, but, under the Companies Act Repeal Act 1993, which comes into force on the close of 30 June 1997, the Companies Act 1995 is repealed

Area of law	Publication	Type	Date	Outcome
	The Property Law Act 1952	Discussion paper	July 1991	Followed by report NZLC R29
	A New Property Law Act	Report	June 1994	Under consideration by the Minister of Justice
	Tenure and Estates in Land	Discussion paper	June 1992	No further consideration is intended
ARBITRATION	Arbitration	Discussion paper	November 1988	Followed by report NZLC R20
	Arbitration	Report	October 1991	Arbitration Bill introduced in September 1995; under consideration by the Government Administration Select Committee
MĀORI FISHERIES (Reference)	The Treaty of Waitangi and Māori Fisheries – Mataitai Nga Tikanga Māori me te Tiriti o Waitangi	Background paper	March 1989	For use as a resource. Reference withdrawn by the Minister of Justice at the Law Commission's request
LAW OF EVIDENCE	Hearsay Evidence	Options paper	June 1989	Followed by discussion papers NZLC PP13, NZLC PP14, NZLC PP15, NZLC PP18, NZLC PP22 and NZLC PP23
	Evidence Law: Principles for Reform	Discussion paper	April 1991	} To be followed by a report
	Evidence Law: Codification	Discussion paper	April 1991	

Area of law	Publication	Type	Date	Outcome
	Evidence Law: Hearsay	Discussion paper	April 1991	To be followed by a report
	Evidence Law: Expert Evidence and Opinion Evidence	Discussion paper	December 1991	
	Evidence Law: Documentary Evidence and Judicial Notice	Discussion paper	May 1994	
	Evidence Law: Privilege	Discussion paper	May 1994	
LAW OF CONTRACT	"Unfair" Contracts	Discussion paper	September 1990	No further consideration is intended
	Contract Statutes Review	Report	May 1993	Under consideration by the Minister of Justice
EMERGENCIES	First Report on Emergencies: Use of the Armed Forces	Report	February 1990	Implemented in the Defence Act 1990
	Final Report on Emergencies	Report	December 1991	Recommended principles for the grant of emergency powers adopted. Draft War Emergencies Act under consideration by Government
COMMUNITY SAFETY (Reference)	Community Safety: Mental Health and Criminal Justice Issues	Report	August 1994	Comments on provisions of the Mental Health (Compulsory Assessment and Treatment) Act 1992, including its definition of "mental disorder", and the Criminal Justice Act 1985. Further reform under consideration by Minister of Health and Minister of Justice respectively

Area of law	Publication	Type	Date	Outcome
CRIMINAL PROCEDURE (Reference)	The Prosecution of Offences	Issues paper	November 1990	To be followed by a discussion paper
	Criminal Procedure: Part One: Disclosure and Committal	Report	June 1990	Under consideration by the Minister of Justice and Minister for Courts
	Criminal Evidence: Police Questioning	Discussion paper	September 1993	Followed by report NZLC R31. To be followed by a separate report on the Right of Silence and Confessions
INTELLECTUAL PROPERTY	Police Questioning	Report	October 1994	Under consideration by the Minister of Justice
	Intellectual Property: The Context for Reform	Report	March 1990	For use as a resource. No law changes recommended
DAMAGES	Aspects of Damages: Employment Contracts and the Rule in Addis v Gramophone Co	Report	March 1991	Implemented almost in entirety by the Employment Contracts Act 1991
	Aspects of Damages: The Rules in Bain v Fothergill and Joyner v Weeks	Report	May 1991	Abolition of the rule in Bain v Fothergill implemented by the Property Law Amendment Act 1994. Problems with the rule in Joyner v Weeks partially addressed in Māori Trustee v Rogross Farms Ltd [1994] 3 NZLR 410 (CA)
	Aspects of Damages: Interest on Debts and Damages	Discussion paper	November 1991	Followed by a report
	Aspects of Damages: The Award of Interest on Money Claims	Report	May 1994	Under consideration by the Minister of Justice

Area of law	Publication	Type	Date	Outcome
APPORTIONMENT OF CIVIL LIABILITY	Apportionment of Civil Liability	Discussion paper	March 1992	Under further consideration in the context of the law relating to professional liability
PRIVATE INTERNATIONAL LAW	The United Nations Convention on Contracts for the International Sale of Goods: New Zealand's Proposed Acceptance	Report	June 1992	Backgrounds, and expresses support for, the Government's announced intention of introducing implementing legislation and acceding to the Convention. Sale of Goods (United Nations Convention) Act 1994 enacted 1 July 1994 and in effect on 1 October 1995
	A New Zealand Guide to International Law and Its Sources	Report	May 1996	For use as a resource. No law changes recommended

* For a list of the Law Commission's publications in numerical order, see inside front cover (Reports) and inside back cover (Preliminary Papers).