

Report No 21

**Annual Report
1991**

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NZLC R20	Arbitration (1991)
NZLC R21	Annual Report 1991 (1991)

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NZLC PP10	Hearsay Evidence (options paper) (1989)
NZLC PP11	"Unfair" Contracts (discussion paper) (1990)
NZLC PP12	The Prosecution of Offences (issues paper) (1990)
NZLC PP13	Evidence Law: Principles for Reform (discussion paper) (1991)
NZLC PP14	Evidence Law: Codification (discussion paper) (1991)
NZLC PP15	Evidence Law: Hearsay (discussion paper) (1991)
NZLC PP16	The Property Law Act 1952 (discussion paper) (1991)

Report of the

LAW COMMISSION

for the year ended
31 March 1991

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

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22 November 1991

Hon D A M Graham
Minister of Justice
Parliament Buildings
Wellington

Dear Minister

I have the honour to transmit to you the annual report of the Law Commission for the year ended 31 March 1991.

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

Yours sincerely
K J KEITH
President

INTRODUCTION

The Law Commission is a central advisory body with the task, under the Law Commission Act 1985, of promoting the systematic review, reform and development of the law of New Zealand. Its aim is to help achieve coherent and accessible laws that reflect the heritage and the aspirations of New Zealand society.

The Commission carries out its task in two main ways:

- by making recommendations to the Minister of Justice for the reform and development of a particular aspect of the law, on a reference from the Minister, or on its own initiative;
- by advising government departments and other public sector organisations on their own reviews of aspects of the law and on proposals made as a result of a review.

In making its recommendations, the Commission is to take into account te ao Maori (the Maori dimension) and give consideration to the multicultural character of New Zealand society, and to have regard to the desirability of simplifying the expression and content of the law as far as practicable.

1990 - AN OVERVIEW

In the period covered by this report, the Commission presented four reports to the Minister of Justice: *Discovery and Committal*, as Part One of a series on criminal procedure; *A New Interpretation Act*, in the context of its reference on legislation; *Company Law Reform: Transition and Revision*; and *Aspects of Damages: Employment Contracts and the Rule in Addis v Gramophone Co*. It also published two preliminary papers: one on *Unfair Contracts*, and one on another criminal procedure issue, *The Prosecution of Offences*.

Bills giving substantial effect to recommendations made by the Law Commission in its reports on company law and on the courts were introduced.

As in previous years, the Commission or its members, through participation in the work of the Legislation Advisory Committee and the Courts Consultative Committee, direct consultation with other agencies, and in giving evidence before Select Committees, again acted in an advisory capacity on a number of the Government's important legislative and policy initiatives. Its object in this context is to help ensure that the proposed Bill or other document achieves its policy aims effectively, conforms with legal principle and is expressed as clearly as possible.

During the year the Commission farewelled its first President, the Rt Hon Sir Owen Woodhouse KBE DSC, who retired from office on 3 February 1991, and welcomed as his successor Sir Kenneth Keith KBE, formerly the Commission's Deputy President.

PROGRAMME

COMPANY LAW

As foreshadowed in last year's annual report, in September 1990 the Commission presented to the Minister of Justice a further report, Company Law Reform: Transition and Revision (NZLC R16). This report "fine-tuned" three draft statutes earlier recommended by the Law Commission: the draft Companies Act and the related draft Property Law Amendment Act on receiverships proposed in the Commission's report, Company Law: Reform and Restatement (NZLC R9) (June 1989) and the draft Personal Property Securities Act proposed in A Personal Property Securities Act for New Zealand (NZLC R8) (April 1989). It also proposed four further draft Acts which would be necessary if the Companies Act 1955 were replaced by the legislation recommended in the earlier reports. These dealt with: the re-registration of existing companies; the application of some provisions of the new Companies Act to existing companies pending re-registration; amendments to the Land Transfer Act 1952 to deal with flat- and office-owning companies; and amendments to the Insurance Companies Deposits Amendment Act 1953 (to be renamed) to continue in force the existing special provisions relating to insurance companies.

In September 1990 the Minister of Justice introduced a Companies Bill. Although there were some departures from the Commission's draft - notably in the area of directors' duties - the Bill gives broad effect to the Commission's proposals for the reform of a major area of New Zealand law. It was referred to the Justice and Law Reform Select Committee. At the end of the year under review, the introduction of the necessary supporting legislation was still awaited. (The Companies (Ancillary Provisions) Bill has since been introduced.)

During the year under review, there were further indications of a widely felt need for new, comprehensive legislation governing all types of charges over personal property, as the Law Commission had recommended (NZLC R8). The Australian authorities, at both the Commonwealth and the State level, are moving in the direction of introducing similar legislation. In New Zealand, the Companies (Ancillary Provisions) Bill has since made provision for Part IV of the Companies Act 1955 - dealing with the charges given by a company over its personal property - to be continued in force in association with a new Companies Act only for three years, thus requiring Parliament to consider, before the end of that period, the form of the permanent legislation which should replace the present regime.

LEGISLATION

The Law Commission has both a statutory duty and a standing reference from the Minister of Justice dating back to the establishment of the Commission in 1986, to examine and review ways in which the law of New Zealand can be made as understandable and accessible as is practicable. The reference gave the Commission the specific task of reviewing the provisions of the Acts Interpretation Act 1924 and recommending appropriate changes.

The Commission's response to this part of its task is set out in its report, A New Interpretation Act (NZLC R17 and summary version NZLC R17S) presented to the Minister of Justice in December 1990. The report recommends a new draft

Interpretation Act for introduction and enactment. The central provisions concern three main areas.

In its approach to interpretation, the draft Act maintains the emphasis of the 1924 Act and declares that the meaning of an enactment (or any part of an enactment) is to be ascertained from its text in the light of its purpose and in its context. Extrinsic material may continue to be used as a supplementary aid to interpretation, but there is no need to make express provision to this effect.

The Commission considered the effect of legislation on the rights of the Crown and concluded that, as a general rule, every enactment should bind the Crown. The draft Act so provides.

It also gives effect to the principle that enactments have prospective effect only. New legislation, in general, is to have no effect on established rights and liabilities. Actions of a continuing character done under a repealed enactment can continue under new, substituted legislation. References to an enactment which has been amended or replaced are, in general, to be read as referring to the current enactment.

In the coming year the Commission will carry on its work on a legislation manual which should provide helpful guidance on both principle and form to all who have a need to give instructions for, or to draft, legislative proposals.

As another step towards making the law understandable and accessible, the Commission has continued to experiment with a typeface and layout that would make the printed copy of an Act easier to read. Elements of a possible new design have already been used in printing the draft Acts which the Commission has recommended in its reports. We plan to put forward firm proposals on the format of legislation in consultation with the producers and the users of the statute book.

CRIMINAL PROCEDURE

Last year's annual report described the reference received from the Minister of Justice in August 1989 to "examine the law, structures and practices governing the procedure in criminal cases from the time an offence is suspected to have been committed until the offender is convicted". Such a wide-ranging reference has, of necessity, to be taken up in stages. In the year under review, the Commission concentrated on the following issues.

Discovery in criminal cases

In June 1990 the Commission published a report, Criminal Procedure -Part One: Disclosure and Committal (NZLC R14), recommending new statutory and administrative provision for the disclosure to the defence of all relevant recorded information held by the prosecution, subject to some limited, express exceptions. The proposed new arrangements took account of the 1986 proposals of the Criminal Law Reform Committee. The defence, for its part, would be obliged to make advance disclosure of intended expert evidence as well as alibi defences, and to do so in summary trials as well as in those on indictment. The Law Commission recommended that effect should be given to its proposals on disclosure by the draft amendments to the Summary Proceedings Act 1957 set out in its report.

The committal process

The Law Commission noted that the Criminal Law Reform Committee had seen the implementation of its recommended discovery procedures as enabling committal hearings to be replaced by a form of automatic committal, subject to a request by either the prosecution or the defence for a preliminary hearing. This, in the Committee's view, would have been a step towards the eventual abolition of preliminary hearings, but, first, any other purposes which the preliminary hearing may serve should be examined. The Law Commission will have the opportunity to undertake this examination in the course of its work on criminal procedure. As an interim measure, the Commission made two procedural recommendations: that witnesses should not be required to attend committal hearings without good reason; and that the use of cross-examination should be discouraged except when it is likely to serve a useful purpose.

The prosecution of offences

A question relevant to the utility of the preliminary hearing and important in its own right is the decision whether or not to prosecute. In November 1990 the Commission published an issues paper, *The Prosecution of Offences* (NZLC PP12), in which it looked at such questions as: who should have the authority to make the decisions about prosecution; on what basis should the decisions be made; if certain cases should be kept out of court, what are the relevant criteria; and who should conduct prosecutions once they reach the courts. The paper suggested a number of options and noted that there may be others. Comments were invited.

Since then, substantial work has been done reviewing the operation in practice of both the procurator fiscal service which has long been a feature of the Scottish legal system and also the new, central prosecution service recently set up in England and Wales, and considering the relevance of these models in the New Zealand situation.

As soon as resources permit, work will continue on the evaluation of the present New Zealand system. Generally speaking, it still follows the original English model under which the police and other agencies simply exercise the right which all citizens have to initiate a prosecution, although some special features have evolved. Where offences are tried on indictment, Crown Prosecutors conduct the prosecution. A "diversion scheme" has also been developed on the initiative of the police.

The rights of suspects and police powers in relation to suspects

The Commission is also working on a discussion paper on silence, self-incrimination and official questioning, including a consideration of the rights of suspects and police powers in relation to suspects. Various evidential issues will also be examined.

EVIDENCE

In the year under review, the Commission has again given a high priority to the reference from the Minister of Justice in August 1989 requiring the Commission to examine the statutory and common law rules governing evidence in proceedings before courts and tribunals, and to make recommendations for its reform with a view to codification. There is general agreement that there are fundamental problems in a number of areas of evidence law. There is also a real need to restate both the principles and the rules in order to avoid the technicality and artificiality of the present law and to

provide for the future development of the law on a sound basis. Good evidence laws have a major impact on the justice and efficiency of the trial process.

At the end of the year under review, discussion papers on the principles for reform, on codification, and on hearsay were in the final stages of preparation (since published as NZLC PP13, NZLC PP14 and NZLC PP15). These three papers are the first of a series. Further papers will follow on topics such as: expert and opinion evidence; documentary evidence; privilege; conduct, character and credibility. The paper on silence, self-incrimination and official questioning, already mentioned in the context of the Commission's closely related reference on criminal procedure, will contain drafts of relevant rules which will form part of an Evidence Code.

The aim is to complete a review of core evidence law in 1992. Although this is an ambitious undertaking, the Commission believes it is preferable to deal with the whole topic in as short a period as possible, rather than undertake a process of piecemeal reform. Dealing with the topic as a whole helps to ensure that proposals on each aspect are consistent, and should lead to more coherent reform.

Each paper will discuss the issues and put forward questions for consideration. It will also indicate the Commission's provisional conclusions, following extensive research and considerable preliminary consultation. Discussion papers (other than the first in the series, on the principles for reform) will include a draft of relevant sections of an Evidence Code, accompanied by a commentary. We hope in this way to give a clear indication of our approach to the various issues. Responses from all those who have an interest in, and practical experience of, the operation of the law of evidence will be invited.

CONTRACTS

As forecast in last year's annual report, the Commission published, in September 1990, a discussion paper, "Unfair" Contracts (NZLC PP11). This paper discussed the complex and controversial issue of setting aside "unfair" or "unconscionable" or "oppressive" contracts, outlining the present state of the law as well as the possibilities for changes to that law through legislation. The responses, for which we were most grateful, were fairly evenly divided between those expressing the view that there was a need for statutory intervention to protect the weaker party to a contract, at least in the consumer context, and the contrary view that the concept of sanctity of contract and the commercial certainty flowing from it would be endangered if those who entered into what might turn out to have been a bad bargain could not be held to its terms.

The Law Commission is not at present able to give a high priority to pursuing these difficult issues, but will take them up again, probably in the context of consumer contracts, as soon as resources permit.

The other part of the Commission's work on contracts has been a review of the operation in practice of the statutes which have codified or varied the common law rules on such matters as the contracts of minors, illegal contracts, contractual remedies, privity of contracts and contractual mistakes. The experts who were invited to contribute papers presented them at a successful seminar convened by the Commission early in March 1991. After final editing they will be published as appendices to a short report by the Commission with its recommendations for amendment of the statutes to

deal with the few problems that have been identified and are susceptible of statutory correction or reform.

DAMAGES

Last year's annual report indicated that the Law Commission's review of aspects of the law of damages would continue, but with a low priority. The introduction of the Employment Contracts Bill early in 1991, perpetuating the anomaly in the existing law concerning the circumstances in which compensation would be available for any harshness or oppression in terminating a contract of employment, led us to revise our timetable so that it was possible to complete and present to the Minister of Justice (for reference to the Labour Select Committee) a report, *Aspects of Damages: Employment Contracts and the Rule in Addis v Gramophone Co* (NZLC R18).

This report recommended legislative reversal of the common law rule, to permit the award of compensation to any employee who has been dismissed without good reason in circumstances involving humiliation, loss of dignity and injury to the employee's feelings. Amendments reported back by the Labour Select Committee and incorporated in the Employment Contracts Act 1991 in its final form included provisions substantially implementing the Commission's recommendations.

The Commission also began work on a short report recommending the statutory abolition of two more common law rules affecting the damages payable in certain actions relating to land. They are the rule in *Bain v Fothergill*, limiting the damages which an intending purchaser would normally be able to recover for breach of the contract of sale by the vendor, and the rule in *Joyner v Weeks* allowing a plaintiff a possible windfall above the amount of actual loss in a claim for a lessee's failure to deliver up premises in good repair. (The report has since been published as NZLC R19).

The Commission will also continue its work on the interest component of damages with the intention of publishing a discussion paper.

ARBITRATION

Work continued throughout the year under review, in consultation with a number of experts in the field, on the preparation of a report recommending a new arbitration statute for New Zealand. The responses to the Commission's earlier discussion paper, *Arbitration* (NZLC PP7) (1988), and its subsequent soundings, indicated developing support for an arbitration regime based essentially on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL) with the qualification, at least for domestic arbitration, that, by agreement of the parties or with leave, there should be a right of appeal to the courts on a point of law. (The Commission's report, *Arbitration* (NZLC R20), has since been completed and published.)

EMERGENCIES

The Commission's 1990 annual report described the origins of this project in the Government's planning for national emergencies, the issue of the Commission's First Report on Emergencies: *Use of the Armed Forces* (NZLC R12), and the implementation, in the Defence Act 1989, of the Commission's recommendations for legislation.

In the year under review, work continued on a final report, examining in depth the issues of law and of principle which need to be considered in contemplating any invocation of emergency powers. The Commission has maintained the preference expressed in the First Report for a "sector approach" - that is, the conferment of the powers necessary to deal with an emergency affecting a particular sector by a statute geared to the specialised requirements of that sector, and the avoidance of any general grant of emergency powers like that made by the Public Safety Conservation Act 1932 (repealed in 1987).

The Commission has also examined and will report on the extent to which existing or proposed legislation conferring powers in the various sectors conforms with the applicable principles and makes adequate provision for the foreseeable range of emergencies. Where legislation falls short on either count, the Commission will recommend amendments or new legislation.

At the time of writing, the report is about to be submitted to the Minister of Justice and published. The Commission hopes it will prove valuable both as a source of guidance in the longer term about the place of emergency powers in the New Zealand legal system, and as a basis for wide public consultation before the enactment of the particular measures recommended.

PROPERTY STATUTES

During the year the Commission carried forward its review of the Property Law Act 1952 and related statutes. The object of the review is to bring the statutory provisions up to date, weeding out what is obsolete, clarifying provisions that have proved difficult to apply because of doubts about their meaning, examining the need for revision of rules of common law or equity pertaining to property that are commercially unrealistic or operate unfairly, and rewriting the Act as a whole in a style that is more in conformity with present-day terminology and is more accessible to the reader. Provisions of Imperial statutes relating to property, identified by the Commission in its report *Imperial Legislation in Force in New Zealand* (NZLC R1) and continued in force as part of the law of New Zealand by the Imperial Laws Application Act 1988, have been included in the review.

At the year's end the Commission was preparing a discussion paper (since published as NZLC PP16) examining the various groups of provisions dealing with general rules relating to property, the law relating to mortgages, the law relating to leases, and further rules on miscellaneous matters.

As a separate but related exercise, the Commission is also examining the question whether the feudal concept of tenure should remain the basis for the ownership of real property in New Zealand. A discussion paper on this question will be published.

CROWN

In the year under review, the Commission has been unable to accord high priority to the reference received from the Minister of Justice in August 1989 on the legal status of the Crown. Two issues - whether the Crown should in general be bound by statutes and whether it should be subject to criminal liability - were, however, examined in detail in

the Commission's report on A New Interpretation Act (NZLC R17). See under LEGISLATION.

Papers on legislation relating to the contractual powers of the Crown have been circulated, and valuable information and comment obtained as a result. Work done for the Legislation Advisory Committee on Crown agencies and on immunity provisions included in statutes is also relevant.

Other issues requiring examination under this wide-ranging reference have practical implications not only for the operation of the Crown Proceedings Act 1950, but also for many other areas of government responsibility, including the State sector and public finance legislation, and the relationship with the State owned enterprises and other publicly funded agencies, not to mention the Crown as one of the parties to the Treaty of Waitangi. The work done so far has shown that, before dealing with particular rules affecting the legal position of the Crown, there is a need to explore fully the nature of the Crown as the manifestation of the State and the legal consequences which should follow from its various roles.

Research on discrete aspects, leading to the publication of discussion papers, will be continued as resources permit.

HABEAS CORPUS

Because, in scope, it is the smallest of the four references received from the Minister of Justice in August 1989, it has been possible to undertake basic research on the review of the Imperial statutes which relate to this ancient common law remedy, with a view to their replacement by a New Zealand enactment.

CIVIL CONTRIBUTION

In accordance with the hope expressed last year, this project, concerned with the liability of the parties to civil actions where the losses are attributable to the fault of more than one person, will in this current year be given priority. Submissions on the Building Bill and increasing concern about the extent of professional liability have shown that there is widespread interest in this complex topic. It is hoped that a discussion paper inviting submissions will be ready for publication early in 1992.

INTERNATIONAL TRADE LAW

This heading links several topics formerly included in the Commission's programme as separate projects: choice of law, international sale of goods and reciprocal enforcement of judgments. They all have important implications for the trading relationships between those in business in New Zealand and in other countries (although in some cases the relevant rules may apply also to other spheres of human activity). A feature in common is the drive to unify or harmonise the applicable rules across national frontiers, including, but not limited to, the Australian Federal and State jurisdictions covered by the Australia New Zealand Closer Economic Relations Trade Agreement.

During the year under review, discussions were held with the Australian Law Reform Commission on the choice of law project on which the two Commissions are co-operating. It was not possible, however, to make progress with any of the other topics at present within the scope of the project. For the time being it will be difficult to give it the priority it deserves.

COST SAVINGS

The Law Commission is conscious that there is a need to make the best use of the resources available both to Government and to the wider community in New Zealand, especially at a time of economic downturn. It tries to take this need into account when putting forward its proposals for the reform and development of the law, many of which are designed to bring about substantial cost savings.

So, for example, the Commission believes that savings in administrative costs should be achievable through the implementation of its proposals for the reallocation of the business of the courts (since given substantial effect in the legislation resulting from the Courts Amendment Bill), for the greater pre-trial disclosure of evidence in criminal cases and the reduction in scope of the preliminary hearing, and for the enactment of new companies legislation, giving more record-keeping duties to the company itself and opening up a greater range of remedies to shareholders.

A reduction in transaction and compliance costs was a specific objective of the Commission's recommendations relating to the formation of companies and to the operation of the company structure, and to the establishment of a comprehensive system for the recognition and ranking of the various rights and interests in personal property.

There is also likely to be a reduction in costs for litigants and the wider community every time the substantive content of the law can be clarified and made more systematic and therefore easier to find and apply. This policy objective has played a major part in the work done or in progress on limitation defences in civil proceedings, the law of evidence, the Property Law Act 1952 and civil contribution, to take some examples.

Finally, much of the work the Commission has done, both generally and under its reference on legislation, is designed to make the law more accessible, mainly by improving the organisation, language, drafting style and layout of statutory provisions. This is a specific application of the plain English movement - an initiative which the Commission supports in all fields of law. Costings done elsewhere show the extensive savings which can be achieved by making all legal documents easier to read and understand.

GENERAL

Digest of law reform

In its 1990 annual report, the Commission explained that, following the example of law reform agencies elsewhere, it planned to set up an electronic database containing two broad categories of information:

- work in progress on the reform of the law (or of its administration) by government departments and other agencies and by Commissions, committees or individual experts appointed on an ad hoc basis - work initiated outside government with the specific aim of reviewing the existing law or recommending amendments to it would be included;
- suggestions about the need for the reform of a particular aspect of the law - these may originate from a wide range of sources.

The database is now in operation, but to make it comprehensive, we are, of course, dependent on the cooperation of departments and other agencies which are in a position to provide relevant information. We are grateful for all the help already received and hope it will be possible not only to maintain but also to build up the necessary network of personal contacts in the coming year.

Access to the information on the database can be readily arranged on request, but to facilitate the dissemination and use of the information collected, the Law Commission has decided to publish abstracts, at least of the law reform work in progress, on a trial basis over an 18-month period.

Meeting of Commonwealth Law Reform Agencies

On 16 and 19 April 1990, the Law Commission hosted a meeting of Commonwealth Law Reform Agencies convened under the auspices of the Commonwealth Secretariat in conjunction with the Ninth Commonwealth Law Conference held in Auckland. Some 20 agencies were represented, and papers were received from others who could not attend. Selected agencies, representative of the regions of the Commonwealth, had been asked to present short papers on the experiences of their agency in relation to one or both of the themes of the meeting: the relationship between law reform agencies and the Ministers or governments they advise; and international and regional initiatives for law reform.

The papers were briefly introduced by or on behalf of those who had prepared them, and lively discussion followed, revealing a wealth of common experience, and much useful comment about the ways in which law reform agencies can draw on the relevant national and international models, and, by full consultation before making their final recommendations, prepare the way for their favourable consideration. At the resumed session, the meeting was addressed by the Minister of Justice, the Hon W P Jeffries.

To all those who wrote papers, attended in person, and in other ways helped to make the meeting a success, including the members of the Legal Division of the Commonwealth Secretariat, the Law Commission expresses its warm appreciation. The next meeting of

the Commonwealth Law Reform agencies will be held in conjunction with the Tenth Commonwealth Law Conference.

Ninth Commonwealth Law Conference

Commissioners, the Director, and members of the research staff took the opportunity to attend the Ninth Commonwealth Law Conference held in Auckland from 9 to 14 April 1990. All were stimulated by the uniformly high quality of the papers and discussion on a wide variety of important legal policy issues, as well as profiting from the many opportunities which the whole week provided for informal contacts with old and new friends and colleagues.

CHANGES IN THE COMMISSION'S MEMBERSHIP

As architect of the Law Commission's governing statute and as its founding President, the Rt Hon Sir Owen Woodhouse KBE DSC was the Law Commission's guiding force throughout the period of its setting up and its first five years of operation. He retired from office on 3 February 1991.

Sir Owen brought to the Law Commission a clear vision of the part it could play in the reform and development of New Zealand law. For all of us he set high standards of writing and scholarship, as well as wisdom and common sense in recommending the policies on which the law should be based. We record our appreciation of his leadership, and extend to him and Lady Woodhouse our best wishes for the years of retirement.

On 31 March 1991 the Law Commission farewelled Jack Hodder, who had also been a Commissioner from the inception of the Law Commission and played a major part in its work in the commercial law area. In moving to a partnership in Chapman Tripp Sheffield Young he takes with him our best wishes for his future career.

On Sir Owen's retirement, Sir Kenneth Keith KBE succeeded him as President. He, too, was a founding member of the Law Commission, and had served as its Deputy President.

The Commission also welcomed the appointment as a Commissioner, on 6 September 1990, of Mr Peter Blanchard who is a partner in the Auckland office of Simpson Grierson Butler White and had already assisted the Commission with its work on security interests in personal property and on receiverships.

Staff

The Commission expresses its appreciation to all members of its staff for their hard work and support. One member of the research staff left during the year - Megan Richardson, a senior legal research officer who was one of the Commission's first research officers, and contributed in full measure to a number of the Commission's projects. We wish her well in the new challenges she has undertaken. There were also a number of changes in the administrative staff. Penelope Root, our finance officer, who had demonstrated her abilities by filling a number of roles since coming to the Commission as its first staff member, two secretaries, Susan Davies and Linda Sundberg, and our systems operator, Tracy Forde, resigned during the year. To them, too, we express our thanks and good wishes.

The Commission has been fortunate in being able to recruit several more legal and senior legal research officers to fill all vacancies. Its membership and staff as at 31 March 1991 are listed in the appendix.

FINANCE

The Law Commission is funded from money appropriated by Parliament. The accounts of the Commission for the year ended 31 March 1991 are attached.

At the beginning of the financial year the Commission had a working capital (current assets less current liabilities) of \$2 207 527. This amount had accumulated since the Commission's establishment, primarily as a result of its depreciation and investment policies.

During the year under review, the Commission funded the bulk of its capital expenditure on new computer technology from this working capital. It was also able to respond positively to the Government's initiatives to reduce the projected deficit by foregoing the last quarter's proposed grant. As a result, the Commission's grant income was \$2 885 630 net in the financial year under review, in comparison with \$3 750 606 net in 1989/90.

The smaller grant voted for the period 1 July 1990-30 June 1991, \$2 545 000 gross (\$2 262 222 net) will have an even greater impact in the Commission's current financial year. In addition to completing its investment in computer systems from working capital, the Commission expects to incur a substantial operating deficit. (The Appropriation Act 1991 has since made provision for a grant of \$3 159 000 gross (\$2 808 000 net) for the period 1 July 1991-30 June 1992, an amount which, although greater than that voted in 1990/91, still imposes some constraints on the Commission's activities.)

In accordance with s 45 of the Public Finance Act 1989, the Commission will, on 1 July 1992, move to a July-June financial year.

REPORT OF THE AUDIT OFFICE

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

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

In the opinion of the Audit Office, the financial statements on pages 17 to 22 fairly reflect the financial position as at 31 March 1991 and the financial results of operations and cash flows for the year ended on that date.

D C Cruickshank
for Controller and Auditor-General

15 August 1991

BALANCE SHEET AS AT 31 MARCH 1991

	Note	1991	1990
CURRENT ASSETS			
Bank of New Zealand		48,986	66,121
Short-term deposits	2	-	400,000
BNZ term deposits	2	2,363,000	2,900,000
Accounts receivable		1,709	2,301
Interest receivable		127,127	207,588
Goods and Services Tax		<u>48,802</u>	<u>39,703</u>
		2,589,624	3,615,713
FIXED ASSETS	3	<u>1,203,316</u>	<u>952,332</u>
TOTAL ASSETS		<u>\$3,792,940</u>	<u>\$4,568,045</u>
CURRENT LIABILITIES			
Accounts payable		536,112	284,075
Grant in advance		-	911,111
Provision for superannuation		-	<u>213,000</u>
		536,112	1,408,186
ACCUMULATED FUNDS	4	<u>3,256,828</u>	<u>3,159,859</u>
TOTAL FUNDS EMPLOYED		<u>\$3,792,940</u>	<u>\$4,568,045</u>

The accompanying notes form part of the financial statements.

Signed on behalf of the Law Commission:

Alison Quentin-Baxter
Director

Ernst & Young
Chartered Accountants

14 August 1991

14 August 1991

**STATEMENT OF INCOME AND EXPENDITURE
FOR THE YEAR ENDED 31 MARCH 1991**

	Note	1991	1990
INCOME			
Government grant		2,885,630	3,750,606
Interest received		460,122	429,130
Sales of publications		14,245	8,780
Sundry			
Consultancy fees		<u>97,778</u>	<u>8,889</u>
Total income		<u>3,457,775</u>	<u>4,197,405</u>
EXPENDITURE			
Personnel			
Salaries and wages		1,548,758	1,407,001
Superannuation		-	213,000
ACC Levy		17,764	13,402
Fringe benefit tax		2,432	2,265
Commission activities			
Advertising		-	691
Publications		68,936	52,213
Research and consultation		319,233	297,650
Travel		141,859	96,529
Library			
Library acquisitions		127,507	123,671
Searches - database		4,425	5,072
Computer software			
		80,707	-
Administration			
Audit fees		7,274	1,555
Bank interest and charges		675	453
Cleaning		17,257	14,450
Communications		47,852	53,983
Depreciation		196,548	200,556
Electricity		16,838	14,069
Insurance		4,121	4,044
Loss on disposal of assets		63,175	-
Other operating		46,943	28,550
Professional services		97,744	35,844
Rent and rates		473,590	405,590
Repairs and maintenance		55,282	47,847
Stationery		<u>21,886</u>	<u>20,187</u>
Total expenditure		<u>3,360,806</u>	<u>3,038,622</u>
Excess income over expenditure			
Transfer to Accumulated Funds	4	<u>\$96,969</u>	<u>\$1,158,783</u>

The accompanying notes form part of the financial statements.

**STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED 31 MARCH 1991**

	1991 \$000	1990 \$000
CASH FLOWS FROM OPERATING ACTIVITIES		
Cash was provided from:		
Grant	1,975	5,219
Receipts from customers	<u>122</u>	<u>48</u>
	<u>2,097</u>	<u>5,267</u>
Cash was disbursed to:		
Payments to suppliers and employees	3,043	2,660
Taxes paid (GST)	<u>36</u>	<u>451</u>
	<u>3,079</u>	<u>3,111</u>
Net cash flows from operating activities	<u>(982)</u>	<u>2,156</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Cash was provided from:		
Investments	9,870	6,150
Proceeds from sale of fixed assets	2	5
Interest received	<u>541</u>	<u>225</u>
	<u>10,413</u>	<u>6,380</u>
Cash was applied to:		
Investments	9,333	8,350
Purchase of fixed assets	<u>515</u>	<u>60</u>
	<u>9,848</u>	<u>8,410</u>
Net cash used in investing activities	<u>(565)</u>	<u>2,030</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Nil -	-	
Net increase (decrease) in cash held	(417)	126
Add opening cash brought forward 1/4/90	<u>466</u>	<u>340</u>
Ending cash carried forward 31/3/91	<u>49</u>	<u>466</u>

The accompanying notes form part of these financial statements.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 1991

1 STATEMENT OF ACCOUNTING POLICIES

General accounting policies

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

Particular accounting policies

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

- Accounts receivable are stated at their estimated net realisable value.
- Investments are valued at cost.
- 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 aggregate depreciation. Depreciation has been calculated using the diminishing value method. The rates used are:

Computer equipment	20% DV
Furniture and fittings	20% DV
Office equipment	20% DV
- Computer software is charged against income in the year that it is installed.
- Items of income and expenditure are stated exclusive of Goods and Services Tax.
- Operating lease payments, where lessors effectively retain substantially all the risks and benefits of ownership of the leased items, are included in the determination of the current year's excess income over expenditure in equal instalments over the lease term.
- Research and development expenditure is charged against income in the period in which it is incurred.

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.

2 SHORT-TERM INVESTMENTS

	Interest rate	Maturity date	1991	1990
BNZ term investments	11.75%	16/4/91	250,000	500,000
	12.20%	26/4/91	350,000	300,000
	11.95%	29/4/91	200,000	400,000
	13.40%	07/5/91	213,000	400,000
	11.82%	09/5/91	350,000	300,000
	14.70%	31/8/91	500,000	500,000
	14.70%	31/8/91	250,000	250,000
	14.70%	31/8/91	<u>250,000</u>	<u>250,000</u>
		<u>\$2,363,000</u>	<u>\$2,900,000</u>	
BNZ Money Market deposits	11.20%	1/4/91	<u>\$ -</u>	<u>\$400,000</u>

3 FIXED ASSETS

	1991 Aggregate		
	Cost	depreciation	Book value
Computer equipment	759,056	319,420	439,636
Foundation library	181,847	-	181,847
Furniture and fittings	914,122	392,667	521,455
Office equipment	<u>110,834</u>	<u>50,456</u>	<u>60,378</u>
	<u>\$1,965,859</u>	<u>\$762,543</u>	<u>\$1,203,316</u>

	1990 Aggregate		
	Cost	depreciation	Book value
Computer equipment	510,869	241,587	269,282
Foundation library	174,254	-	174,254
Furniture and fittings	817,388	357,174	460,214
Office equipment	<u>86,836</u>	<u>38,254</u>	<u>48,582</u>
	<u>\$1,589,347</u>	<u>\$637,015</u>	<u>\$952,332</u>

4 ACCUMULATED FUNDS

	1991	1990
Balance at 1/4/90	3,159,859	2,001,076
Excess income over expenditure	96,969	1,158,783
Balance at 31/3/91	<u>\$3,256,828</u>	<u>\$3,159,859</u>

5 COMMITTED EXPENDITURE

	1991	1990
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Rent

The Commission has a lease for the rental of the premises at Levels 10 and 11, Fletcher Challenge House, 87-91 The Terrace, Wellington.

The lease is from 16/2/87 until 30/6/98

One to two years	877,003	708,984
Two to five years	1,351,434	1,063,476
Beyond five years	<u>1,013,575</u>	<u>1,152,099</u>
Total rent expenditure committed	<u>\$3,242,012</u>	<u>\$2,924,559</u>

Capital expenditure

The Commission is currently upgrading its computer system to a Sun Microsystem on an Unix platform. Expenditure committed up until 30/6/91 is as follows:

Hardware	60,906	-
Software	29,304	-
Maintenance	<u>52,759</u>	<u>43,308</u>
Total committed for current year	142,969	43,308
Other capital expenditure committed for the current year, at balance date	<u>8,434</u>	<u>32,190</u>
Total committed capital expenditure	<u>\$151,403</u>	<u>\$75,498</u>

Other

As at balance date, the following current expenditure had been committed but is not included in these financial statements:

Consultants' fees	4,500	22,750
Other operating	<u>27,490</u>	<u>35,659</u>
	<u>\$31,990</u>	<u>\$58,409</u>

Summary

One to two years	1,060,396	842,891
Two to five years	1,351,434	1,063,476
Beyond five years	<u>1,013,575</u>	<u>1,152,099</u>
Total committed expenditure	<u>\$3,425,405</u>	<u>\$3,058,466</u>

APPENDIX

Members of the Law Commission:

Sir Kenneth Keith KBE - *President*

The Hon Mr Justice Wallace - *Deputy President*

Peter Blanchard - *Commissioner*

Permanent staff of the Law Commission as at 31 March 1991:

Director

Alison Quentin-Baxter

Senior Legal Research Officers

Loretta Desourdy

Phil Shattky

Penelope Stevenson

Moira Thompson

Legal Research Officers

Lisa Atkinson

Michael Dreaver

Paul McKnight

Grant Marjoribanks

Susan Potter

Nicola White

Sachin Zodgekar

Manager

Frank Muller

Librarian (part-time)

Katrina Young-Drew

Assistant Librarian (part-time)

Jocelyn Ferguson

Secretaries

Brenda Bracegirdle

Lynette Bridgeman

Margaret Roche

Carol Stevenson

Receptionist

Glenys Bunkall

Records Officer (part-time)

Marjorie Park

Office Assistant

Melissa Harrison

The office of the Law Commission is located at Level 10, Fletcher Challenge House, 87-91 The Terrace, Wellington.

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