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## Announcements

Collected Papers by the Right Honourable Sir Geoffrey Palmer QC  
Part II Constitutional Law, Government and Reform: New Zealand Bill of Rights

The Palmer Series collects the papers of the Right Honourable Sir Geoffrey Palmer QC, Distinguished Fellow of the Victoria University of Wellington Law Faculty. The series is sponsored by an anonymous donation, which the Faculty gratefully acknowledges.

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## **LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS**

### **"A Bill of Rights for New Zealand?"**

*K. J. Keith, ed., Essays on Human Rights, Sweet and Maxwell, 1968  
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 7*

**SIR GEOFFREY PALMER QC**, Victoria University of Wellington  
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The two Bills of Rights which have been suggested for New Zealand so far were in their different ways misconceived and we are better off without them. It would be possible, however, to have a Bill of Rights for New Zealand of the declaratory type, the provisions of which would not be enforceable. Such a Bill might be of benefit if a body such as a Human Rights Commission could report publicly on human rights implications of the government's policies. To set up a Bill of Rights with real teeth involves a political judgment that Parliament and the political process cannot be trusted all the time to protect fundamental rights and liberties. The only way to enforce such a Bill of Rights would be through granting the courts the power to strike down legislation which is inconsistent with provisions in the Bill of Rights. This would involve a fundamental change in the distribution of political power in our society. This chapter traces the history of suggestions for Bills of Rights in New Zealand, discusses the matters above and evaluates the American experience with their Bill of Rights. It considers the complex institution of judicial review of governmental action, the ambit of any application of a Bill of Rights, and the policy content and political consequences of Bill of Rights interpretation.

It concludes that New Zealand conditions are not right for an enforceable Bill of Rights because of the lack of inclination or ability on the part of New Zealand judges to take up a political role, the threat to the stability and respect of the New Zealand judicial system, the lack of clarity regarding any need for such a Bill, and the contrary nature of such a Bill to New Zealand's pragmatic political traditions. Additionally, Bills of Rights with judicial review available will not protect society from overwhelming social forces likely to restrict liberty.

### "Implementing Open Government: A Progress Report"

*New Zealand Law Journal*, p. 46, 1985

*Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 8*

**SIR GEOFFREY PALMER QC**, Victoria University of Wellington

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For the second year running the Hon G Palmer, as he has now become, was invited to address the Annual General Meeting of the New Zealand Section of the International Commission of Jurists. In this paper given at Wellington on 6 December 1984 the Attorney-General develops and considers from his new perspective of executive responsibility some of the themes of his earlier paper, published at [1984] NZLJ 31. He explains what the new government has already done and what it hopes to achieve, more particularly in the area of parliamentary reform and the enactment of a Bill of Rights. He sees the two as interrelated and as involving a radical change in administrative, legislative and judicial responsibilities and attitudes.

### "Human Rights: The Proposed New Zealand Bill of Rights"

*The Parliamentarian*, January 1988, 10-13

*Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 9*

**SIR GEOFFREY PALMER QC**, Victoria University of Wellington

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This article explains the Labour Party policy of introducing a Bill of Rights Act, discusses how the White Paper introducing such an Act would work to protect rights and freedoms in New Zealand, and covers the Justice Department's report to the select committee considering the White Paper as well as the positive and negative responses to the Paper.

### "Human Rights and the New Zealand Government's Treaty Obligations"

*4 Yearbook, New Zealand Association for Comparative Law 57*, 1998

*Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 10*

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New Zealand law on a wide range of issues must take into account and is often bound by the relevant international norm or obligation. The number of new treaties which appear on the scene with increasing regularity is extraordinarily high. Of central importance are issues such as the effects of globalisation on state sovereignty and democracy. Apart from the increase in sheer quantity of international instruments that bear upon the conduct of states, three features of international law since the Second World War stand out. The first is the enormous range of treaties concerning the environment. The second is the development of international human rights law. The third is the burgeoning quantity of international trade law. This paper discusses the development of international human rights law. It considers the relationship between international law and municipal law and the increasing acceptance of the two becoming intertwined as a monist legal system.

Human rights became legally recognised at international law following international revulsion regarding World War Two atrocities. International law has now gradually provided a framework for the delivery of human rights to individuals as well as sometimes to peoples. The paper covers the background of this evolving framework of human rights law from the Charter of the United Nations onwards. It discusses the philosophy behind the understanding of universal human rights and the idea that the content of the international norm cannot vary – the International Bill of Rights reflects minimum standards that recognise the humanity of all individuals.

The paper turns to consider New Zealand's response to international human rights. It recognises that New Zealand has always been an enthusiastic supporter of human rights and the development of careful treaties defining them. With that said, the Human Rights Committee has noted that it is expressly possible to enact legislation contrary to the Bill of Rights Act provisions and that this appears to have been done in some cases. New Zealand has been enthusiastic to embrace internationally promulgated norms on human rights but not so anxious to monitor its own domestic laws and practices to

see that they were fully in compliance with those international obligations. The New Zealand legislature has not been meticulous about protecting basic rights. Neither have the administrative and judicial authorities been zealous in ensuring that the exercise of state power remains within the norms.

The decision by the Government to terminate the Consistency 2000 project, and repeal provisions in the Human Rights Act intended to give primacy to human rights prohibitions, is susceptible of serious criticism. It significantly reduces New Zealand's commitment to the honouring of its human rights obligations and is likely to attract the attention of the Human Rights Committee. A full systematic and comprehensive study of the problems of New Zealand law and practice would have been greatly to our advantage so that New Zealand had a full inventory of exactly what its problems were in respect of the grounds of prohibited discrimination. This would have been an invaluable resource in reshaping statutes over time. The issues will remain for New Zealand if domestic law does not comply with international obligations. It will make it harder to argue that we are, as a country, as steadfast in pursuit of human rights principles as we represent ourselves to be at an international level. In the pragmatism that dominates New Zealand government, it is easy to lose sight of principle.

## "The Bill of Rights after Twenty-One Years: The New Zealand Constitutional Caravan Moves On?"

(2013) 11(1) NZJPIL 257

Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 11

**SIR GEOFFREY PALMER QC**, Victoria University of Wellington

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The New Zealand Bill of Rights Act 1990 was an important constitutional development in New Zealand. Twenty-one years after its enactment it appears to have made a positive contribution to the protection of human rights in New Zealand. It is a significant check on executive power. Perhaps the time has come to entrench the Bill of Rights Act and make it superior law. In this article the author, who was then the minister in charge of its production and parliamentary passage, looks at how the Bill of Rights Act has fared and considers its future. With a constitutional consideration now drawing to a close in New Zealand, the future of the Bill of Rights Act is being reviewed. The author considers that the Bill of Rights Act needs to be measured along with other constitutional changes. Thus, the wider context and the overall constitutional balance must be assessed before deciding where next the New Zealand constitutional caravan should travel. The author examines the nature of the constitutional consideration currently underway. He concludes there is a strong case for making the Bill of Rights Act superior law.

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## About this eJournal

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Judicial Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the **Law School** has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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