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Announcements

Collected Papers by the Right Honourable Sir Geoffrey Palmer QC Part Part XVI Reforming Personal Injury Law

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 Palmer series is sponsored by an anonymous donor whom the Faculty gratefully acknowledges.

Table of Contents

Abolishing the Personal Injury Tort System: The New Zealand Experience
Sir Geoffrey Palmer QC, Victoria University of Wellington - Faculty of Law

Toward the Disappearance of Tort Law - New Zealand's New Compensation Plan
Sir Geoffrey Palmer QC, Victoria University of Wellington - Faculty of Law
Edward Lemons, Victoria University of Wellington

Social Engineering in New Zealand and the United States: A Comparison of Approaches to Tort Reform
Sir Geoffrey Palmer QC, Victoria University of Wellington - Faculty of Law

What Happened to the Woodhouse Report?
Sir Geoffrey Palmer QC, Victoria University of Wellington - Faculty of Law

The New Zealand Experience
Sir Geoffrey Palmer QC, Victoria University of Wellington - Faculty of Law

The Design of Compensation Systems: Tort Principles Rule, O.K.?
Sir Geoffrey Palmer QC, Victoria University of Wellington - Faculty of Law

'The Nineteen-Seventies': Summary for Presentation to the Accident Compensation Symposium
Sir Geoffrey Palmer QC, Victoria University of Wellington - Faculty of Law

The Future of Community Responsibility
Sir Geoffrey Palmer QC, Victoria University of Wellington - Faculty of Law

^top

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"Abolishing the Personal Injury Tort System: The New Zealand Experience"
9 Alberta Law Review 169, 1971

Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 67/2015

SIR GEOFFREY PALMER QC, Victoria University of Wellington - Faculty of Law
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The position advanced by Mr Laycraft in his earlier article in this volume is one side of what is becoming an ever deepening controversy. In this article Professor Palmer attacks Mr Laycraft's thesis and puts forward some justifications for root and branch change in the field of compensation for personal injuries. A plethora of plans has been suggested in recent years aimed at fundamentally altering compensation for personal injury. It has become evident that there are basic political difficulties involved in implementing these plans. The author, who was retained by the New Zealand Government to draft a White Paper on Personal Injury in New Zealand in 1969, discusses the political struggle which is now reaching a conclusion in New Zealand concerning a very radical proposal made by a New Zealand Royal Commission in 1967.

"Toward the Disappearance of Tort Law - New Zealand's New Compensation Plan"

University of Illinois Law Forum 693, 1972
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 68/2015

SIR GEOFFREY PALMER QC, Victoria University of Wellington - Faculty of Law
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EDWARD LEMONS, Victoria University of Wellington

Although the major thrust of this article concerns the New Zealand compensation scheme, it first takes a look at the system which the new scheme will supplant. It then describes the evolution of the compensation legislation arising out of the Royal Commission's proposals of 1967. The purpose is to analyze the nature of the compensation scheme and to show how the original blueprint was altered, what alternatives were considered, and what decisions were taken on the shape of the scheme.

The balance of the article attempts to trace the scheme through the labyrinths of the political process, showing how the scheme was successfully defused as a political issue and how the interest groups affected by the reforms have reacted. Although this structure necessarily involves some repetition, it is felt that the Accident Compensation Bill can only be understood in the context of events prior to its introduction.

"Social Engineering in New Zealand and the United States: A Comparison of Approaches to Tort Reform"

4 William Mitchell Law Review 312, 1978
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 69/2015

SIR GEOFFREY PALMER QC, Victoria University of Wellington - Faculty of Law
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Professor Geoffrey Palmer lectured at William Mitchell College of Law on November 19, 1977, during a day-long seminar devoted to Commonwealth law. His participation had been sought because of his eminence in the field of New Zealand compensation systems and his important advisory role in the drafting of accident compensation legislation for Australia. His lecture proved to be both entertaining and thought-provoking. Excerpts of it are presented here.

In this lecture, Professor Palmer voices his concern for the pattern of selective reform of compensation systems that has emerged in the United States. Not only has reform been piecemeal, but often it has been accomplished through the courts rather than through legislatures. By contrasting New Zealand's approach to tort reform with the American approach, Professor Palmer demonstrates the desirability - and the political complexity - of reform that is thorough.

"What Happened to the Woodhouse Report?"

New Zealand Law Journal 561, 1981
Victoria University of Wellington Legal Research Paper Series Palmer Paper No.70/2015

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This paper traces the genesis of the New Zealand accident compensation legislation, discusses its shortcomings, comments on the amending Bill which is still under scrutiny by Parliament, and indicates some of the ways in which the present Act differs from the Woodhouse Report recommendations. The issues upon which attention is lavished while the policy is being settled are different from those upon which focus falls during an appraisal of the scheme’s performance. There are a lot of people with many

different axes to grind involved in the injury industry in New Zealand. Those people with the weakest voice are those who have been hurt. People who have suffered incapacity and disablement and who continue to suffer it must play a bigger role in the development of policy in the accident compensation arena.

It is to be hoped that the emergence of academic literature will heighten the quality of public debate in New Zealand on accident compensation issues. There is a great deal of public misunderstanding about the history of accident compensation, its features and its coverage. The media have had consistent difficulty in understanding and explaining the subject over the years. On few subjects has there been more public misinformation concerning the New Zealand scheme than on its costs, and the effect of those costs on those who bear them. Another point not to be overlooked is the international interest in accident compensation. It has attracted rapt attention everywhere and not only in the common law world. The number of overseas visitors to New Zealand to investigate the scheme is very considerable.

"The New Zealand Experience"

University of Hawaii Law Review, Vol. 15, p. 604, 1993
International Workshop – Beyond Compensation: Dealing with Accidents in the 21st Century
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 71/2015

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The public opinion polls show in New Zealand that accident compensation is an accepted part of the social support system. Therein lies the reason why the most recent changes have not really disturbed the most fundamental aspects of the scheme although some important changes have been made to some of the details. This paper discusses the author’s experience in tort law, both academic and reform, and the introduction of accident compensation in New Zealand. The author refers to his difficulty in trying to find coherent, intellectually honest arguments in favour of the tort system. Its retention in the United States appears to depend upon a combination of vested interests and inability to reach a consensus on the nature of the replacement.

The problems of dealing with issues one at a time rather than approaching reform comprehensively are considerable. Inequities and inequalities are created which cannot be defended and which create social resentment. This remains one of the central difficulties in the mixture of systems that the United States has. It is important to observe that the New Zealand tort system never exhibited the same characteristics as the United States tort system. While both are common law countries, the diversity that exists within common law countries is not always capable of being analysed in terms of the legal rules which are operating.

A number of factors help to explain the differences in the way the law of negligence works. New Zealand law reform is the responsibility of the government, to be accomplished by legislation. And New Zealand’s governmental system is not democracy as Americans know it. It is more akin to an elective dictatorship. The principle of community responsibility on which the Royal Commission report, and the eventual accident compensation scheme, was based is a socially acceptable principle in New Zealand. Suing is a very prominent characteristic of the American legal system and of the American value system, but it was not availed of nearly with the same vigor or determination in New Zealand and was a very moderate system. More broadly, New Zealand has always had a developed welfare state which now includes an extremely generous national superannuation scheme. All of these factors led to accident compensation being accepted in New Zealand.

The widespread acceptance of the scheme by the New Zealand public has insulated it against efforts of those in government and in the Treasury who are interested in reducing government expenditure on income maintenance across the board. The significant feature of the Accident Rehabilitation and Compensation Insurance Act 1992 is the clear indication that the new National government wants to fence accident compensation off. It does not want accident compensation to be the instrument which remakes the income maintenance system. It wants to restrict it, and to have the scheme remain as the vehicle for dealing with accidents but nothing else. There also remains a determination in the government to avoid bringing common law remedy back.

The basic principle of the reform was to eliminate common law actions. In order to do that, it was necessary to introduce sufficient benefits that it could not be said that this was a mean scheme. 20 years later the common law remains gone. But the benefits have also been sharply reduced. There will be many legal and technical problems with the definitions in the new Act. The new legislation has also been attacked by Sir Owen Woodhouse as not compatible with the principles of his scheme. It is unprincipled, inconsistent and lacking in a coherent policy approach.

"The Design of Compensation Systems: Tort Principles Rule, O.K.?"

29 Valparaiso University Law Review 1115, 1995
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 72/2015

SIR GEOFFREY PALMER QC, Victoria University of Wellington - Faculty of Law
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In the 1994 Monsanto Lecture, Professor Sir Geoffrey Palmer argues that the New Zealand experience in abolishing tort law as a method of compensating personal injuries contains some lessons for the United States. The common-law tort action for damages was removed twenty-one years ago in New Zealand. Despite its removal, the common law exerts a powerful influence on the statutory scheme substituted for it. Common-law analogies speak to both coverage of the scheme and the benefits. This conclusion is counter-intuitive. It might have been anticipated that after more than twenty years the influence of the common law had been forgotten, allowing the whole issue to be dealt with on the basis of an integrated and comprehensive income-maintenance scheme. So long as the scheme in New Zealand is confined to accidental injuries, that will not be possible.

Recent legislative changes to the New Zealand scheme have opened up the possibility of common-law actions again in some areas, conspicuously nervous shock. The range of these changes is analysed here. The law relating to nervous shock is analysed both at common law and under the New Zealand scheme to try to determine the range of policy options available for handling what is admittedly a difficult problem.

A reduction in both coverage and benefits in the New Zealand scheme since 1992 has caused a demand for return to the common law. The New Zealand policy is currently undergoing further revision. It appears likely that the common-law analogies in areas like nervous shock will demonstrate again the necessity of ensuring that the statutory scheme follows the baseline of protection provided by the common law. The New Zealand experience further suggests that it is impossible to ignore elements of pain and suffering altogether, as intangible losses represent real human values.

For United States reformers, the New Zealand experience suggests that it is not practicable to offer in the United States substitute schemes comparable to the American common law. The American level of awards for non-pecuniary loss, the contingent fee, the vagaries of trial by jury, the relatively liberal availability of punitive damages, and community hostility toward centralised state control of substitute schemes that would keep the administration costs down, suggest that reform efforts based on the offering of substitutes will never succeed. Yet, the American tort system appears to be an expensive, incoherent mess about which little positive can be said. Society would be better off without it.

Thus, the conclusion reached here is that the United States tort system should be abolished for personal injury, and no statutory scheme should be substituted. That would allow for many and various creative private responses to fill the gap. It would in effect mean starting again with the accident problem. In the end, that will produce better solutions than the existing tort system which appears to achieve no goal whatsoever with any consistency or focus. Without some change in direction, American reformers will achieve little in the foreseeable future. The tort system will limp along, the object of obloquy. It will mutate in strange new ways. Before anything good can happen, the beast must be slaughtered.

"'The Nineteen-Seventies': Summary for Presentation to the Accident Compensation Symposium"

34 Victoria University of Wellington Law Review 239, 2003
Victoria University of Wellington Legal Research Paper Series Palmer Paper 73/2015

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After the Woodhouse Commission delivered its Report, more conventional political considerations surrounded its progress toward legislative enactment. The stunning replacement of common law stood at the core of reform, but the nature of the alternative scheme remained open to debate. It took six years, multiple cabinet reports and committee procedures, and political compromises amidst a change in government before the legislation took effect in 1974. In this article, one of the central players from this period reflects on the political environment leading up to enactment, and describes how the ultimate legislation modified aspects of the original Woodhouse vision.

"The Future of Community Responsibility"

35 Victoria University of Wellington Law Review 905, 2004

Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 74/2015

SIR GEOFFREY PALMER QC, Victoria University of Wellington - Faculty of Law
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This paper considers the future of community responsibility - the central philosophical principle of the 1967 Report of the Royal Commission concerning compensation for personal injury in New Zealand (the Woodhouse Report). Central to the Report was the advancement of earnings-related benefits free of all income or means test. Community responsibility was developed by the Royal Commission as the entire basis and principle for its recommendations. This principle has been traced to international instruments like the Universal Declaration of Human Rights. The Australian Woodhouse report proposed a similar version of the principle but the response in the two countries differed. In Australia it was argued that collective responsibility would be the death of individualism whereas in New Zealand the principle was never really attacked and was not seen as alien to the country's culture. A problem with the notion of community responsibility in both reports is that it is difficult to see how to limit it. In New Zealand the responsibility was restricted to injuries and not extended to sickness, which creates glaring social inequalities and discrimination. However it seems unlikely that this situation will change in the immediate future because of the lack of public disquiet about the issue. In the future, policy in the area may be affected by human rights norms which conflict with the current situation where eligibility for support is based on the manner in which the disability was acquired.

^top

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The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

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 Massachussetts 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 Appellate 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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^top

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