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Announcements

Collected Papers by the Right Honourable Sir Geoffrey Palmer QC: XIII Law Reform

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.

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"The Public and the Courts - A Parliamentarian's Perspective"
New Zealand Law Journal, p. 258, 1984
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 52

SIR GEOFFREY PALMER QC, Victoria University of Wellington - Faculty of Law
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There is published herewith the concluding Parts V and VI of a lecture given by Mr Geoffrey Palmer MP. This was the Annual Lecture in the Distinguished Scholars Program at the University of Windsor, Ontario, Canada, on 12 March 1984. In Part I Mr Palmer explained his background as an academic lawyer and more recently as a legislator. In Part II he spoke of his experience as a Law Professor at the University of Iowa in teaching courses concerned with the resolution of conflict within and without the legal system. In Part III he explains his involvement in the move for an Accident Compensation system separated from the concept of negligence as a branch of the traditional law of torts. Part IV dealt with the Social Welfare system as it has developed in New Zealand and the formal appeal rights built into the system. In Parts V and VI he speaks of his experience as a Member of Parliament, and the new view this has given him of the legal system; and then he sums up the points he had been making in the earlier part of the paper. It is these two latter Parts that are published here as being of particular interest to the legal profession. The complete text of Mr Palmer's address is to be published in volume V of "The Windsor Yearbook of Access to Justice."

"The Growing Irrelevance of the Civil Courts"
5 The Windsor Yearbook of Access to Justice 327 (1985)
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 53

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Through the eyes of a legal educator, law reformer, practicing lawyer and finally parliamentarian, the author examines the problems of the civil courts and how they provide access to justice. As a legal educator, the author discusses his experiences of teaching courses which focussed upon alternative methods of dispute resolution in a North American law school. As law reformer, the author discusses his experiences associated with the introduction of New Zealand accident compensation legislation. The more legalistic administrative regime of handling accident compensation is contrasted with that of the bureaucratic welfare benefits scheme. As parliamentarian, the author discusses the significant role a member of parliament plays in providing his or her constituents an alternative means of resolving disputes involving the state, and in particular how civil litigation is dismissed by constituents as a viable means of dispute resolution.

To concentrate upon disputes and their resolution is not necessarily to concentrate upon the law and courts. The task of resolving conflict may not be served best or most efficiently by dealing with legal rules and courts. As a teacher the materials taught the author that a narrow focus on court oriented methods of dispute settlement is dangerous. Lawyers should be encouraged to search for new techniques of resolving conflict and the dynamics of conflict should be examined if solutions are to be found. While the author taught torts law in the honest belief that traditional bodies of legal doctrine such as torts could protect important interests through civil litigation, his subsequent experience has made him question the usefulness of the civil courts for a large segment of the population.

The paper considers the reform of civil litigation associated with the law of negligence in personal injury law, and the replacement of personal injury civil compensation with the accident compensation scheme in New Zealand. The principle behind such a scheme is to produce swift and certain answers rather than tailormade assessments in every individual case. It discusses the Woodhouse Reports from both Australia and New Zealand, which evaluated the process of civil litigation and found that such a system seriously impeded rehabilitation of the injured person, involved high levels of legal costs, clogged the courts and made a negative contribution to accident prevention.

Despite the reform of civil litigation for personal injury in New Zealand, however, there has been almost no diminution of cases in the civil courts. A large number of other fields of civil work appear to have expanded at a time when the accident cases were running down. These include matrimonial property issues and the growth of administrative law. How can the civil courts be irrelevant when their business is expanding? The removal of the personal injury action in New Zealand has made the civil courts less relevant to the ordinary person than before. Appeal procedures through the Social Security Appeal Authority are not always accessible for those on benefits, who are often elderly, infirm, in poor health, or under-privileged. Administrative justice is often carried out through advocacy on the part of MPs for their constituents, and not through the civil courts. While New Zealand has a reasonably good system of civil legal aid it involves examination of means and litigants are expected to make a contribution to the expenses in proportion with their ability to pay. The question of expense is an extremely important deterrent for many. Negligence, nuisance, defamation, trespass to land, the police torts are often highly relevant to the needs of ordinary people, but they just do not bother because it will take too long, cost too much or involve a lot of trouble.

"Systematic Development of the Law: The Function of the Law Commission"
New Zealand Law Journal, p. 104, April 1986
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 54

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In this article the Attorney-General explains the background to the formation of a permanent Law Commission which will be largely although not exclusively concerned with what is generally described as law reform. The author explains that the Law Commission will have both a proactive and reactive role. This means that there should be a continuously developing programme as well as the prompt consideration of specific issues that may arise from time to time.

"The Reform of the Crimes Act 1961"
20 Victoria University of Wellington Law Review 9, 1990
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 55

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Some have asked why revision of the Crimes Act 1961 is necessary, given that it was a considerable advance on its predecessor, the consolidation of 1908. The simple answer is that the changes which have occurred in our society in the last thirty years are probably at least equivalent in significance to those which occurred between 1908 and 1961. Because we have chosen to codify all matters that give rise to criminal liability in New Zealand, it is essential that our code be as up-to-date as possible. This means that existing offences need to be revised and new offences created at reasonable intervals. At the same time, the current revision of the Crimes Act 1961 is no more than a continuation of the embodiment of the forward thinking and ample vision of legislators of the late nineteenth century. It is essential, if we are to be consistent in our law reform, that we understand the legacy left to us by law-makers.

The prevailing idea in the 1800s was that all colonies should be modelled on England. The noble institutions of the mother country were to be reproduced if at all possible. But the piecemeal approach adopted in the United Kingdom did not appeal to nineteenth century New Zealand law-makers, who regarded a Bill which would codify all indictable offences as a very attractive proposition. The Criminal Code Act of 1893 abolished many old Common Law rules, standardised and simplified criminal procedure, reduced the scope for purely technical defences and provided ample powers to amend indictments. All indictable offences became statutory, so that offenders were charged under either the Criminal Code Act or some other statute not inconsistent with it. In 1908 the Code was re-enacted and consolidated, but with little change. In 1961 a more significant revision occurred.

The article discusses the proposed amendments to the Crimes Act, including new provisions on voluntariness, omissions, intention and knowledge, recklessness, heedlessness, negligence, mistake of fact, intoxication, necessity; and revised provisions on the age of criminal responsibility, insanity and duress. As examples of what the Bill is trying to achieve, the author discusses the definitions of recklessness and heedlessness in the current law. It also discusses the current law relating to insanity, the suggested changes regarding provisions relating to murder and manslaughter, and other changes including the abolition of the death penalty (now achieved independently in the Abolition of the Death Penalty Act 1989), changes to the sedition law, and new computer offences to recognise the advent of new technology.

"The Provision of Legal Services to Government"
Victoria University of Wellington Legal Research Paper Palmer Series Paper No. 56
(2000) 31 VUWLR

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This lecture discusses law reform and the organisation of legal services within the New Zealand Government. The most difficult challenge for any government is the achievement of coordination and integration of its policies. The pervasive character of overall legislative and constitutional policy makes the task of integration still more difficult. If one examines the law enterprise within government, one cannot find a principled distinction between litigation, legal advice and opinion writing, and legislation (whether delegated or Act of Parliament). Legal policy within the Government also crosses all department boundaries.

The manner in which the legal services are delivered to the Government is deficient in multiple ways, the most pressing of which is structural. Legal services within the Government have been restructured and Balkanised so that by the time a problem reaches the Crown Law Office, it is sometimes too late to rectify. Serious policy failures are not being addressed because no one organisation has responsibility for addressing them. The author recommends reorganising multiple offices into one department known as the Law Department and giving that department responsibility for providing legal advice as well as control functions in respect to the legal activities of other departments. This would ensure that one department gains authority and responsibility for the efficiency and effectiveness of the provision of legal services. This recommendation is not engaged in for its own sake. Ministers need and deserve better and more comprehensive strategic advice than they can obtain from the existing disparate structures.

The author suggests that many Crown entities should be abolished or returned as departments of State. Current work on reforming Crown entities is being done by Treasury and the State Services Commission. The problems in the system are structural, legal, constitutional and legislative. These agencies do not have expertise in these areas and are not therefore the appropriate instrument to carry out reform. The Government is entitled to have an agency capable of advising on those issues in a comprehensive, competent and strategic manner.

The only way to achieve such appropriate constitutional and legal standards may be to adopt a written constitution as higher law. A written constitution brings with it a degree of prominence and permanence that a code of legislative practice is unlikely ever to approach. It also entrusts ultimate responsibility for governmental standards with the courts, rather than with a bureaucratic agency of necessary vulnerability.

"Law Reform and the Law Commission in New Zealand after 20 Years – We Need to Try a Little Harder"
New Zealand Centre for Public Law, Occasional Paper Number 18
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 57

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Everywhere law reform agencies face serious challenges. Even once law reform reports are produced, the issue of how to secure

governmental legislative and official attention is a significant problem. This lecture attempts to shed some light on the real nature of the underlying issue and suggests possible methods for resolution. It begins by outlining the nature of the New Zealand Law Commission, the author's approach to law reform and background in that field. It then sets out a set of observations on post-modern philosophical approaches to the law that pose obstacles for statutes and for law reform projects. It makes suggestions how to approach the problem of the design of statute law, the presentation of it and particularly its accessibility. It considers the relationship to delegated legislation and the problems which this field poses. Finally, it examines the under-developed fields of both pre-legislative and post-legislative scrutiny of legislation.

In experiences as an academic lawyer, law practitioner, and Member of Parliament, the author has reached the conclusion that law and properly structured legal institutions are important. But post-modernism has had, and will continue to have, an important effect on our legal institutions; post-modernists tend to believe there should be as little law and legislation as possible since they are sceptical that law can achieve anything. Such a theory undermines trust in the institutions of the law, its effectiveness and its legitimacy, and replaces philosophical underpinnings with a pragmatic, short-term approach.

The lecture considers accessibility of statute law and, comparing it to the American approach, finds the New Zealand statute book both massive and unmanageable. It uses the Iowa Code as a comparative example of how New Zealand statute law could be better indexed to create adequately accessible law. At the same time attention should be given to both statutory regulations and deemed regulations, so that it is apparent what delegated legislation has been made under the authority of the primary law. Greater effort should be made regarding what is appropriate for delegated legislation. In general, more effort is required in the initial design of legislation, its architecture and relationship with established laws. Post-legislative scrutiny should also ensure that stated objectives are met and that unexpected consequences have not arisen.

"A View of the Legal Debate"
6 Policy Quarterly Number 2, 33, 2010
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 58

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The proposed Regulatory Responsibility Bill amounts to a substantive constitutional change shifting power away from the executive branch of government towards the courts. It is a serious diminution in the range of ministerial responsibility, the prime instrument of accountability in our democratic framework.

The Bill's justiciable character opens a new dimension of court cases not hitherto contemplated in New Zealand. Courts and judges have handled the provisions of the New Zealand Bill of Rights Act very well. Both criminal lawyers and judges are familiar with matters such as search and seizure, arrest, legal advice, detention and police powers. In contrast, neither judges nor the legal profession are proficient in policy analysis of the type that leads to regulatory legislative proposals. The Bill brings the courts into areas of law making not within their province and for which they lack institutional competence. It amounts to a very significant transfer of power and will redefine the relationship between the three branches of government.

History illustrates that the New Zealand Parliament is unwilling or unprepared to deal to the executive in the form of disallowing statutory regulations despite legislation intended to serve as a heavy check on executive power. Without the House of Representatives being prepared to exercise control over regulations in any meaningful way, it seems unlikely that ex ante legislative controls will rectify the situation.

"Dangerous Products and the Consumer in New Zealand"
New Zealand Law Journal, p. 366, 1975
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 59

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The consumer movement aims to prevent monopoly and encourage competition. The movement encourages the development of standards to eliminate physical hazards from products which endanger safety. The most perplexing problem is to decide when the market left to itself provides the appropriate means of increasing people's welfare and when intervention in the market will provide a better solution. A gap exists in New Zealand law relating to defective and dangerous products. The great attraction of focusing attention on product safety lies in the realisation that, while we have devoted great efforts to the prevention of road accidents and occupational injury, we have done hardly anything to encourage safety in the home. Different views exist as to whether negligence, strict liability, or caveat emptor provides the best rules of civil liability to allocate accident costs. With the passage of the Accident Compensation Act 1972 all use of these methods for allocating personal injury costs were rejected.

For the following reasons, New Zealand should enact legislation to minimise the losses caused by dangerous and defective products: as a community which shares the costs of compensation and rehabilitation, we are entitled to minimise the accident costs caused by dangerous and defective products; unsafe products are a danger to the consuming public; a competitive market needs informed consumers. This paper makes suggestion for a Products Safety Act and discusses the features it should include, such as a Products Safety Commission which formulates product safety standards to be prescribed by regulation.
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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 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 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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