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Collected Papers by the Right Honourable Sir Geoffrey Palmer QC
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["Deficiencies in New Zealand Delegated Legislation"](#) 

30 Victoria University of Wellington Law Review 1, 1999

[Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 60](#)

[SIR GEOFFREY PALMER QC](#), Victoria University of Wellington - Faculty of Law
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In this article, the author, a former Minister of Justice and Prime Minister, examines the history and role of statutory regulations. Processes for reviewing regulations, especially through the Parliamentary Regulations Review Select Committee, have been significant in offering protection against undesirable regulation-making. The courts have played a lesser role in this regard and the author calls for them to be "a little more robust in their approach to delegated legislation". The development of a third tier of law-making, by the use of so-called "rules", is worrying, as these rules received the same scrutiny as regulations neither before nor after their making. The author recommends that either we abandon making such rules or we introduce processes which are more formal and transparent. At present, "the coherence of our legal system is threatened".

["Improving the Quality of Legislation - the Legislative Advisory Committee, the Legislation Design Committee and What Lies Beyond"](#) 

[Waikato Law Review, Vol. 15, 2007](#)

[Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 61](#)

[SIR GEOFFREY PALMER QC](#), Victoria University of Wellington - Faculty of Law

The inductive method of the common law, as opposed to the more deductive method of policy analysis appeals greatly to many lawyers, judges and legal academics. Legal academics prefer to write analyses of judicial decisions rather than to analyse the policies, drafting and implications of new statutes. But to focus primarily on case law at the expense of legislation is misplaced and misguided. The main source of new law comes from legislation; it requires much more attention from lawyers, judges and academics than it has received in the past.

However, if statute law bears such importance then quality control of legislation must be essential. The expectation in New Zealand now is that new Acts be drafted in plain English. This is not to say that the whole of the statute book is plainly, clearly, and succinctly worded. But notwithstanding, plain English drafting is not enough to produce high quality legislation. The Legislation Advisory Committee attempts to improve the quality of law making in a variety of ways. Its work has value and its Guidelines provide a checklist of factors to be considered when drawing up legislation. But they are not always followed and the Committee is not at the centre of the legislative process. As a result, the impact on the quality of New Zealand legislation appears to be benign but peripheral. Something more is required.

In response to this lack, the Legislative Design Committee was introduced to provide high level advice on the framework and design of legislation at an early stage of policy development. This new committee may, in conjunction with the Advisory Committee, provide significant impact on quality, but the degree of success will require assessment after further experience. Both committees might also benefit from amalgamation into a combined entity.

A more profound issue not addressed by either Committee is the other aspects of legislative design and practice not covered in the Advisory Committee guidelines. Matters such as Treaty of Waitangi principles, Bill of Rights Act, Human Rights Act and Privacy Act implications, and international obligations must be taken into account. Quality of regulation has also been problematic.

To successfully address problems of legislative design, all these relevant matters must be engaged with early in the process of policy design. It may be too late by the time the proposal even goes to Cabinet. But to try and deal with all these issues at the beginning of the policy development process, and to bear them in mind as the process iterates, is a Herculean task. We do also need vigorous examination of whether legislation meets policy objectives after it has been passed. More considered monitoring of legislative design, effect and consequences is necessary.

["Innovation in New Zealand Statute Law"](#)

Geoffrey Palmer (ed) 'Reflections on the New Zealand Law Commission : papers from the twentieth anniversary seminar' (Lexis Nexis, Wellington, 2007)

[Victoria University of Wellington Legal Research Paper Palmer Paper No. 62](#)

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Some statutes are known for the boldness and novelty of their policy. Others for the use of intricate and novel legislative techniques. Some lawyers may admire particular legislative techniques that have no great impact except to implement faithfully the policy of the Act. On the other hand, statutes that are simple in drafting terms may raise enormous controversy leading to a difficult and long parliamentary passage. In an informal survey of Law Commission lawyers, three pieces of legislation were elected as the top innovative pieces of New Zealand legislation: the accident compensation legislation; the Official Information Act 1982; and Treaty of Waitangi legislation. The criteria adopted for selection by the author in this paper are innovation in the policy behind the legislation, including policy that is unusual by international standards; innovation in how the legislation operationalizes the policy; and examples of failure and ineffectiveness of legislation. While New Zealand tends to pat itself on the back regarding our supposed innovation and bold law reform, we could do a great deal better with our legislation and we have a number of endemic faults that need to be cured.

This paper attempts to analyse those features of New Zealand statute law that are novel and innovative. It first looks at the history of legislation in New Zealand, then analyses innovative features in particular areas of law. These include: environmental statutes; constitutional statutes including statutes dealing with local government; social welfare statutes and other social legislation; economic regulation statutes; family law; commercial law; tax law; and education. First, the question of whether statute law is derivative or original is discussed. That is followed by an attempt to look at statutory innovation in terms of waves of reform at various historic periods. Then comes a discussion arranged around legal topic headings.

The New Zealand statute book reeks of the common law method. It is unsystematic, incomplete, sporadic and episodic. New Zealand passes highly elaborate statutes to deal with particular policy issues without really considering the profile of the statute book as a whole. Codification is essentially a rational activity trying to produce order out of chaos, and there must be a better intellectual method for arranging the body of the law in a coherent pattern.

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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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