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## IT COULD HAPPEN HERE . . .

It could happen here. The radical alteration of our way of life by destruction of the laws and institutions which sustain it. Legally, nothing could stop this process under the present system of single chamber government. How could such fundamental change come about in New Zealand?

An indirect attack could be made upon the institution of private ownership of the home itself. For example, persons who own two houses could be made to surrender one to the State; or owners of sizeable properties in city areas could be made to give up their gardens and lawns for housing subdivision. Heavy land and property taxes could be introduced. Furthermore, people owning large houses could be required to give them up in order to house people with large families. Massive expropriations, with or without compensation, could take place.

The churches, as property-owning institutions, could be substantially destroyed, for example, by amending the Rating Act so as to compel them to pay full rates.

The legal basis of the present trade union system, which rests entirely on statute, could be destroyed by legislative amendment. Conditions of "illegality" could be imposed overnight, funds and property of the unions could be expropriated, and their officials deprived of their legal functions.

Newspapers, broadcasting, television and other organs for dissemination of news and opinion could easily be controlled to suit some "Big Brother". These happenings are conceivable under the guise of pseudo-legality.

Even the office of Governor-General could be "phased out" if its holder showed any disposition to interpose in any way between parties or to criticise policies. This could be achieved in gradual stages, one of which would be by degrading the office by appointing to it some person of small account. Another method could be the specific diminishing and delimitation of his powers. It may be mentioned in passing that in the Irish Free State, in 1936, the King himself disappeared from the Constitution, and with him the Governor-General.

It must be stressed that legislation can always be forced through our Legislative Assembly by a dominant political party. A classic example in the constitutional field is the abolition of our Legislative Council by the National Party in 1950. The traditional role of the Council was one of second thoughts and revision. Our Labour Party, then in opposition, was to some extent embarrassed by sporadic hostility to the powers of the House of Lords by the Labour Party in England. Nevertheless, the then leader of the Opposition, Mr Peter Fraser, adopted an enlightened attitude against such sudden and complete destruction of our bi-cameral system. But his well-considered arguments were swept aside by the National Party, which destroyed an institution which it was its historical role to protect, and at least to reform and preserve.

Since 1950, New Zealand, with its unfettered single chamber, presents a governmental structure which is manifestly vulnerable to a constitutional take-over by any group whether radical or reactionary, under a leader with inflexible will and ruthless drive. A manipulated and hysterical general election, at a time of social unrest, could invest a Parliamentary majority with tyrannical powers over the mass of the people. Gross intimidation could soon expose the weakness of the so-called rule of law, which in actuality is the rule of men by virtue of their offices.

It has been affirmed from time immemorial that the law of England resides in the bosom of the Judges, and is made known only through their speaking lips to the subjects of the Crown. This is the position also in New Zealand. But it should be stressed that our Courts as such have no executive powers—behind them are ar-

rayed the constable, the marshal, the sheriff, the bailiff and the gaoler. Behind our Parliamentary decrees and laws are the armed services, the civil service, the police and a host of office-bearers.

At times when a political atmosphere of instability is accompanied by strikes, riots, and threats to public order, the great mass of people can become confused and desperate, angry emotions can be aroused, and there may be a tendency to panic. At such times a small group which could secure sufficient public backing, and which was led by men of inflexible determination, might assume leadership and direction. If sufficient support could be obtained from a group in Parliament itself, then at some critical and opportune moment there could be a dangerous shift in the control of executive power involving the current ruling civil and military apparatus. One can envisage, for example, a group of strong trade unions finding itself on a collision course with a weak government, or worse still, in collision with a strong government with a political policy of destroying the trade unions themselves. Or there could be a situation not of collision but of collusion where a powerful group of trade unions could control Parliament, by virtue of direction of the majority party in the House itself.

In pre-revolutionary situations, it is always an advantage to those who overthrow a government to invest the new government with the outward forms and trappings of legality. It is not suggested that we are now in some such situation in New Zealand. Nor is it intended to go so far as to make much play of the dark forces, the latent sediment of our free society. But it is our purpose to direct attention to a new actuality which could arise in our time; to note that there may well be some yet untapped reservoir of evil forces; and to suggest that novel and unpredictable circumstances could open the way to legal catastrophe. It could happen in New Zealand. A crisis of confidence in the law itself could arise. Unrestricted rule by a majority in Parliament could lead to tyranny.

A C BRASSINGTON

## CHRISTMAS MESSAGE TO THE PROFESSION
### From the Attorney-General

The Editor has asked me for "the usual Christmas message" to the profession. To comply, without pious platitudes, is difficult, but I suppose that's one of the responsibilities of office.

No one can contemplate the world today with unalloyed satisfaction and without gloomy forebodings; but we here in New Zealand have much less ground for concern than most. And this despite the efforts of professional Jeremiahs, whose prophesies of doom tend to be self-fulfilling. If, in President Roosevelt's memorable words, we do not "have nothing to fear but fear itself", at least our greatest danger is that the bottom will fall out of everything simply because the few convince the many that it's about to happen.

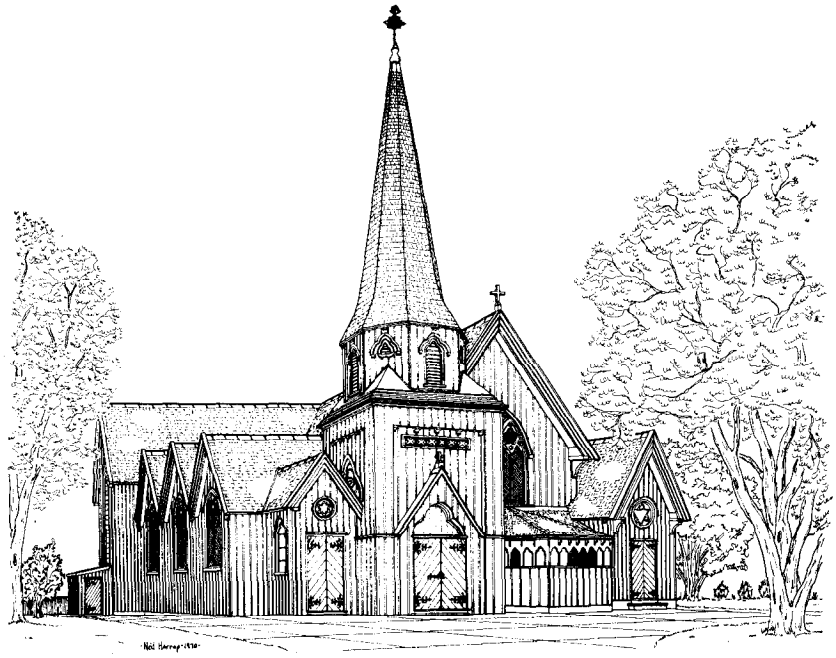
The legal profession has already taken some knocks. The common law side stoically saw much of its bread-and-butter work go out with Accident Compensation—many dancing, in fact, at the funeral. The property and financial markets' fever charts have shaken the conveyancers and commercial advisers; and I doubt whether the lawyers will occupy the same rewarding place in the next table of private incomes that they did in the last.

Notwithstanding this they rallied willingly behind the Duty Solicitor Scheme (which will enrich no one) and in some praiseworthy instances actually got in ahead of officialdom, when there was no remuneration at all. The profession's interest in community work (for example Citizens' Aid Bureaux and "Store-Front" Lawyers) continues unabated and the barb that the law lacked social conscience is now manifestly blunted.

I deeply appreciate this attitude, and on behalf of the Government warmly thank my colleagues, as I am proud still to think of them, and add, formally, the customary Season's Greetings.

A M FINLAY,
Attorney-General

May the joy and peace of Christmas,
remain with you throughout the New Year.



The Publishers and Editor of the
New Zealand Law Journal join in wishing subscribers
a Happy Christmas

*Neil Harrap's sketch is used with the kind permission of the Friends of Old St. Paul's Society Inc.*

# RESTATEMENT OF THE UNION

One thing that struck me about this last Election was how tranquil it all was. While inflation, slumpflation and stagflation roared and crackled all around, and while every politician told us of the worst economic peacetime crisis, the temperature of the country remained at considerably less than a pitch of fever.

It might be explained that the previous Election had been but seven months before. I doubt this reason, for the collective memory is really pretty short. What I think has been realised by the country (which has perhaps a surer, certainly less biased view) is that Parliament is rapidly approaching the end of its useful life. No doubt it will remain the appropriate law-making body for a while yet, but as an organ responsible for the actual government of the country, it seems now to be just plain living in cloud-cuckoo land.

During the Elections, speakers from all parties stressed the present threats to Parliamentary democracy: such threats being inflation and (some would say it is the same thing) the wage claims pursued and attained by the trade unions. But what all these speakers signally failed to say was why this mattered. If Parliamentary democracy is about to founder, so what?

The argument is that Parliament is not some sacred body handed down from on high as a pre-condition of all human existence. Parliament evolved for a whole variety of reasons which I have neither the time nor indeed the competency to discuss. People managed nicely without Parliament, then nicely with it, and will doubtless get on nicely without it again. If the people of this country have a deserved reputation for anything, it is for the peaceful evolution of institutions of government. Equally, we can (and must if necessary) evolve peacefully out of parliament, and into . . .

Just what might follow a formal recognition of the desuetude of Parliament has not been vouchsafed to me. The glimmerings are there in the guise of the Social Compact, the purported bargain between the Labour Party and the unions. Each agrees to give a little here and a little there, and all will be blissful harmony. Though they deride it, the Conservatives would give their collective eye-tooth for such an agreement: Mr Heath spent much blood and sweat attempting just this bargain when Prime Minister. He would doubtless do so again.

The teething problems of this experiment are seen everywhere. But every so often, the Social Compact has quietly achieved some successes. The railwaymen have agreed to leave 12 months between pay claims, as the Compact expressly requires. The engineers have agreed to moderate their claims to keep within the spirit of the Compact.

If these faltering beginnings can be aided (principally, I dare to say, by muzzling a highly unsympathetic press), then there does not seem to me a great deal to worry about if we concede that our long-standing method of government is evolving peacefully away. When Churchill said that Parliamentary democracy was the worst system of government in the world except all the others, he had hit on a truth more fundamental than he realised.

Not worrying about a new system of government is wholly dissimilar from not worrying abou about the rule of law: for whatever the law-making body (which is presently the sole authority), the law must be observed by all. Here, the Clay Cross councillors resolutely refuse to lie down and be quiet. As you may remember, these men had refused to implement the Housing Finance Act 1972, a measure passed by the Conservative government. In Clay Cross, implementation would have meant raising council house rents.

The consequence to the councillors was that they were, all 11 of them, surcharged the deficit in the accounts, some £7,000. They were all also debarred from public office. Now, the Labour government is to introduce Bills of Indemnity to allow these rebels, Labour men all, to hold public office again. The surcharge is not formally to be removed, but encouragement is to be given to fund-raising schemes. This, surely, is bad. In any case, your true rebel should willingly accept the risks of his action; or at least use the forces of law, technicalities and all, in his defence.

What, then, is the state of the union? Like it was and ever will be, I suppose; like Mr Punch's curate's egg: good in parts.

R G LAWSON

# CASE AND COMMENT

**New Zealand Cases Contributed by the Faculty of Law, University of Auckland**

### Taking of land—Hearing procedure

In *Coles v County of Matamata* (Supreme Court, Hamilton, A 158/73. 19 August 1974, McMullin J), the plaintiffs sought certiorari to quash a decision of the Council to take a portion of farm land for a road. The Council had conducted a hearing under s 22 (1) (f) of the Public Works Act 1928 (prior to s 6, Public Works Amendment Act 1973 taking effect) and had heard the objections of the plaintiffs. The Council later received and considered a petition and a number of letters supporting the taking but did not give the plaintiffs a further opportunity to make submissions on the new evidence. His Honour followed (inter alia) *Perpetual Trustees v Dunedin City* [1968] NZLR 19 and *Pearlberg v Varty* [1972] 2 All ER 6 as requiring that the rules of natural justice be observed, but that natural justice in this context only required that the objector be given a fair opportunity to state his case. There was no requirement for a plurality of hearings or representations or counter-representations. Furthermore, the question whether the taking was "expedient" entitled the Council to have regard to matters of policy, and the preliminary decision to give notice of intention to take was a necessary prejudgment in the process. The later evidence was of no special significance and the application was dismissed.

One can comment that under the new 1973 procedure, involving the hearing of objections by the Town Planning Appeal Board with the Board making a recommendation to the Council, that similar events will occur. When the Council considers a recommendation of the Board it will most probably call for reports thereon by its own officers and there is no further hearing contemplated. In fact, the objector now has no right at all to state his case before the Council. It will be interesting to see whether Councils are prepared to permit persons affected to make further submissions against a recommendation adverse to the land owner.

However, the 1973 amendment represents a significant improvement over the old position for at least two reasons. First, it affirms through the use of the independent Board the basic maxim, nemo judex in sua causa, and secondly, it recognises the town planning consequences which most public works involve. The test is no longer whether the taking is "expedient", but whether the Board recommends the taking as "fair, sound, and reasonably necessary for achieving the objectives . . . of the authority." This test must involve a consideration of the merits and alternatives to any public works proposal.

K A P

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## Personal Injury by Accident: To Define or not to Define

[1974] NZLJ 405

The authors note that a part of the proposed definition of personal injury by accident was omitted in the above article. The portion omitted reads as follows:

"And for the purposes of this definition—

"(d) Damage to the human system to the extent that it is caused by exposure to conditions of temperature or of moisture, fumes, or other physical factors, shall be deemed to have been caused or contributed to by a mishap or an untoward event only if that damage is caused by special exposure on a particular occasion to abnormal conditions of temperature or of moisture, fumes, or other physical factors:

"(e) The human system includes the body and mind;

And 'personal injury' and 'accident' have corresponding meanings:"

It is considered that the omission does not affect the writers' conclusions, more particularly those set out in paragraph 1 (d).

A A P WILLY
JOHN L RYAN

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**Sitting Out**—"I haven't seen so many people who deserved to be on the bench since I owned the Cleveland Indians." *Bob Hope at the American Bar Association Dinner.*

# MERRY CHRISTMAS, M'LUD!

The spirit of Christmas under the law is summed up for me by that superb case a few years ago when two zealous police officers at an East Coast resort stopped a milkman on his round at 7.30 on Christmas morning and breath-tested him. As an official spokesman later explained: "A milk float is a motor vehicle within the meaning of the Road Safety Act," and the milkman had aroused suspicions of insobriety by—of all things!—singing happily in the street at that early chill hour of the morning.

In vain, the milkman—blood-alcohol content, nil—protested: "It's Christmas. I feel happy. I often sing on my round." The poor man still had to blow into that awful little bag.

Yet I suppose I can just about understand the churlishness of the police on this occasion. Christmas must be very trying for them. The whole season is to modern Britain what Bacchanalian orgies were to Ancient Rome.

Forget all that talk of Anglo-Saxon reticence or British calm. At Christmas-time we go berserk: the celebration of the Nativity of Jesus Christ so often degenerates into nation-wide contravention of the law.

Even Father Christmas is not immune. Three Christmases ago in London 12 "Santa Clauses" who formed a trade union and demonstrated outside a West End department store against the commercial exploitation of children at this festive time were each fined £10 with £2 costs by Mr Edward Robey, the Marlborough Street Magistrate. Their offence: obstruction of the pavement, as they danced in full costume outside the store chanting "Down with red-leg labour" and "No charge to see Santa".

They pleaded not guilty to the charge and claimed they were picketing in contemplation of a trade dispute. But "I think it was a demonstration in fancy dress to entertain children and passers-by," said the imperturbable Magistrate.

Father Christmas figured in another brush with the law some six years ago, in 1967. For some considerable time, American servicemen at a US Air Force base near Huntingdon had been giving their children a treat by arranging for them to receive letters from Santa franked with his official address: "Santa Claus, North Pole".

FENTON BRESLER'S *cautionary Christmas Court cases originally appeared in* Punch.

They did it by writing the letters themselves, stamping the envelopes with United States stamps bought at the base, then forwarding them in a US Air Force plane to the air force weather station Alaska—whence they were posted back to England by the United States authorities in the normal way. It was a splendid idea, and at Christmas 1967 the sentimental US airmen wanted local English parents to join in the scheme. It was reckoned that 75,000 children would benefit.

But there was one difficulty: the English parents could not buy US postage stamps at the base. They would need to frank their envelopes with British postage stamps—and the Post Office ruled that would be illegal.

"It would be a violation of international postal regulations," a US Air Force spokesman told a reporter. "All letters must carry stamps from the country of origin. The Post Office have told us that penalties are extremely harsh. So we have abandoned the scheme."

As might be expected, drink enters heavily into Christmas-time law-breaking. It surely was not coincidental that only six days before Christmas 1972 the Queen's Bench Divisional Court suddenly got it into its head to rule that snap breath tests were legal. "The mere fact that a check can be described as random in the eyes of some people is no ground for dismissing the charge if all the requirements of the law have been carried out," said Lord Widgery, the Lord Chief Justice. Strange! I had always believed—along with about 99.99 percent of the population—that when the breathalyser law was first enacted in 1967 random breath tests were specifically excluded: both as a sop to the motoring organisations and for genuine civil rights reasons.

The timing of their Lordships' decision was, indeed, dextrous. With a zeal that no doubt gladdened the heart of Sir Robert Mark, police officers promptly stopped and breath-tested 20-30 percent more motorists than the previous festive season. Yet the average number of positive results from those test was less than half —which would seem to indicate the tests *were* pretty random.

Mind you, back in those pioneering early breath-test days of Christmas 1967, it seemed that much of the traditional delights of Christmas, or at least of Christmas parties, was likely to disappear. A spokesman, for instance, of the 7,000 Greater London Council employees at County Hall said: "There has been no official instruction about office parties and the breath test." But he added, "We assume our staff are aware of Mrs Castle's" (then the Transport Minister's) "views and will act accordingly. Office parties have to finish at 7.0 pm and a senior officer must be present."

Some foresaw even greater dangers than purely legal transgressions. Dr Maurice Packer, local Bournemouth secretary of the Christian Medical Fellowship, was quoted as fearing a "moral backlash". He was reported as saying that rather than risk a breath test after parties held at single girls' flats, young men might stay the night. "Thus the scene may be set for moral tragedies, involving not only those directly concerned, but others as well." I don't think it has quite worked out like that myself. In the Britain of the Seventies, "moral tragedies" of that somewhat vague nature are as likely to occur on Christmas Day as any other day. There is no close season for virtue.

Undoubtedly, parties do pose a special problem for the law at Christmas-time. I have always rather liked the case of the young girl singer back in the nineteen-fifties who objected to being kissed under the mistletoe by the bandleader at their Christmas party. Result: she sued for assault—and recovered one shilling damages. I swear to you that is a true story.

In December 1972, a pre-Christmas party in Stoke Newington, London, landed the host in Court. In the early hours of the morning, his neighbours, unable to sleep, telephoned the local police station to complain. As often happens in such cases, a policeman duly went round, rang the fellow's front door bell and asked him to cut down the noise.

But this particular host was enjoying his own party too much. He refused to curtail his guests' activities, and was rash enough to tell the policeman so. This was not the first time the police had had complaints from neighbours about this chap's parties. So the policeman did what I have always known him to be empowered to do but have never yet known of a case where one actually did it: he arrested the fellow on the spot—in the middle of his party—and took him down to the police station, where he was charged with committing a breach of the peace.

In due course, he appeared before the local Magistrates—and was bound over in the sum of £500 to keep the peace for two years and to refrain from using his home for parties. I wonder where he is going for his Christmas party this year?

Christmas is also, of course, a time for bribery on a national scale. Most of it is illegal under the Prevention of Bribery and Corruption Acts, which, if fully enforced, would probably bring the nation's economy to a halt even more effectively than the current efforts of the trade unions. Some years ago, a tobacconist, who gave a nearby office clerk a Christmas "present" of £1 because he knew that the clerk always had the job of buying the firm's cigars for its Christmas gifts to cleints, was fined £100. Nowadays, £1 seems very small beer indeed.

I remember an odd little item of news last Christmas, when Mr Derek Ezra, Chairman of the Coal Board, sent a reminder to the Board's over-34,000 staff, ranging from clerks to managers, counselling them to refuse Christmas gifts, apart from calendars, diaries, ball-point pens and small items of office equipment. An official explained: "This is simply a reminder to members of the staff that they should use their own common sense in accepting gifts."

But the message is not parochial. The same "common sense" should apply throughout industry. Besides, what is wrong with a leather-bound desk diary or solid-gold ball-point pen? Discretion is all, when contemplating law-bending.

Yet above all, from the legal point of view, Christmas is a time for assessing the exact consequences of material self-indulgence. There was an admirable example of this earlier this year, when the Edinburgh Sheriff Court had to consider whether it was over-eating or "off" food that had caused rather disastrous after-effects at a "gourmet night" dinner held in a leading Edinburgh restaurant.

A local firm of Scottish chartered accountants on their annual Christmas outing sat down to a meal of mussels, oysters, frogs' legs and snails, followed by fish soup, chicken in wine with spaghetti, pigs' trotters, calf's head and ham baked in champagne, rounded off with a rich gateau and a fine Brie cheese. It was claimed that the party of 34 consumed a total of 28 bottles of wine with meal plus drinks before

and after. Quite clearly, the boat was very well pushed out.

Unfortunately, within 48 hours, the Edinburgh Judge was told, the happy diners began to "drop like flies". They were physically ill. With the result that the firm of accountants refused to pay the £161 bill.

The restaurant sued for their money, and their lawyer told the Judge: "I submit that the combination of the grain and grape, along with an over-indulgence in exotic and unusual food, was the reason for the sickness and stomach pains suffered by some members of the party." One partner countered with his evidence that he had eaten every dish and had drunk wine with the meal and he thought that no one in the party had drunk any more than a normal amount during the evening: besides, he was no stranger to exotic food, having sampled local dishes in the Caribbean.

At the end of the first day's hearing one was still left in suspense: one did not know whether it was too much food or bad food that had caused the trouble. I am afraid we will never know! The case was eventually settled out of Court, and the mystery remains—to tease one's mind this coming Christmas. C *Punch* 1973

# AND NOW THE NEW SECTION 108

I L M RICHARDSON, *who played an active role in the recent Law Society submissions on the proposed amendments, reviews the new s 108 and its background.*

Rarely has a single section of a statute commanded the continuing attention given in recent years to s 108 of the Land and Income Tax Act 1954. Within the last 10 years it has been argued twice in the Privy Council, on 10 occasions in the Court of Appeal and in about 30 cases in the Supreme Court and Board of Review. There have been literally hundreds of other cases where its application has been considered by the Commissioner and/or by taxpayers and their advisers. There have been numerous seminars for lawyers and accountants directed to discussion of its application. One series organised by the New Zealand Society of Accountants in 1971 attracted 1,000 registrants, which is vivid testimony both to the practical significance of an anti-avoidance tax section in professional practice in the 1970s and to the continuing difficulties of interpretation and application of the provision. Indeed, few sections of the laws have created more problems in practice and for the Courts.

In *CIR v Gerard* [1974] 2 NZLR 279 delivered on 20 May 1974 McCarthy P began his judgment in these words (p 280-281):

> This appeal is from a judgment of Wilson J in the Supreme Court in which he raises his voice against the failure of the Legislature to take heed of the many criticisms of s 108, not only by Judges of this Court and the Supreme Court in New Zealand, but also by members of the Privy Council, Lords Donovan and Wilberforce in particular, and against the Commissioner's extension of the operation of this extraordinarily difficult section into what he, Wilson J, called a world of fiscal phantasy. I think it proper that I should say that I think that strong words by the Judge were justified . . . One can only hope that the Legislature will now listen to what has been said by the Judiciary and by legal commentators, and will state in precise language not only what classes of transactions are to be struck down, but what are to be the results of that action."

The Government picked up the gauntlet and in cl 8 of the Land and Income Tax Amendment Bill (No 2) introduced on 23 July 1974 proposed to replace the six line s 108 with a provision running to two pages. Following an upsurge of objections to the proposal (from the New Zealand Law Society, the New Zealand Society of Accountants, New Zealand Chambers of Commerce, Federated Farmers and others) a substantially modified draft was introduced in the Committee stages and enacted on 8 November 1974. In the course of the debate in the House of Representatives the Opposition moved the adoption of an alternative draft and when that was defeated announced that it would enact its version "when" it became the Government. So the uncertainties inherent in the new section are compounded by uncertainty as to its future.

The object of this article is to review the development of s 108, the reason for recasting the legislation and the broad effect of the new pro-

vision. It is not intended to analyse the problems which are likely to arise in the interpretation and application of the new section as that would unduly lengthen the paper.

**The development of s 108**

The early Land Tax and Property Tax Acts contained generally worded anti-avoidance provisions and it was not a big step for the framers of the first combined Land and Income Tax Act of 1891 to cover income tax as well as land tax in the anti-avoidance section. But in those palmy days income tax was a minor concern. In 1900 when the general anti-avoidance provision was re-drafted in the form adopted ultimately in Australia as well as in New Zealand the maximum individual rate of income tax was one shilling in the pound and land tax contributed more than double the revenue from income tax. The first reported income tax case on the anti-avoidance provision was in 1938. The Commissioner lost and did not have recourse to the section again before the Courts until the mid 1960s—70 years after the first provision was enacted. Following on the Commissioner's success in *Elmiger v CIR* [1967] NZLR 161 and particularly since the decision of the Privy Council in *CIR v Mangin* [1971] NZLR 591 in which the Crown succeeded against various arguments designed to limit the scope of the section, its possible impact became a primary consideration in tax planning.

In retrospect it is clear that until relatively recent times tax avoidance was not such a serious problem from the Commissioner's point of view and he was content to rely on specific provisions designed to cover particular forms of tax avoidance, eg, s 107 and s 139 and in some areas on his discretionary powers. The upsurge in tax planning dates from the 1950s and is a product of the high tax rates in the middle income ranges which with increasing affluence and inflation were felt by more and more taxpayers. The tax bite and the design of the tax system together provided a positive invitation to indulge in tax avoidance and in the late 1950s and 1960s tax advisers set to work with enthusiasm. Faced with tax losses to the Revenue the Commissioner relied on new specific provisions and at the same time encouraged by the reception given by the Australian Courts to the counterpart of s 108 turned to that section.

One might ask why the Commissioner is not content with specific provisions designed to catch specific forms of tax avoidance. The classic answer was given by Menzies J in the leading Australian case of *Peate v FCT* (1964) 111 CLR 443, 445:

> "It is perhaps inevitable in an acquisitive society that taxation is regarded as a burden from which those who are subject to it will seek to escape by any lawful means that may be found. This is generally called tax avoidance and it is successful if by reason of what is done, what is potentially taxable, is put outside the effective operation of the revenue laws . . . As often as a particular loophole is closed through which it has been discovered that revenue is lost, another is likely to be found, so that as long as it confines itself to stopping gaps the Legislature is always a step behind the reluctant taxpayers and their ingenious advisers. It is not, therefore, surprising that Parliament has some times sought to anticipate tax avoidance by general laws rendering ineffectual against the Commissioner arrangements which are not shams but are entered into to avoid taxation obligations that would otherwise in due course be incurred."

Incidentally this justification contains an element of hindsight because the legislators who framed the predecessors of s 108 could scarcely have foreseen the impact of income tax in the community in the 1970s let alone the sophisticated tax planning developing in recent years. However, the widespread invoking by the Commissioner of s 108 does highlight the importance in a modern tax system of buttressing specific anti-avoidance provisions by a general provision.

Curiously, the old s 108 was both unreasonably restrictive and too broad in its language. In the ordinary sense "the incidence of income tax" and "his liability to pay income tax" can relate only to the burden which is imposed by the Act on the person who derives the income in question. But as Taylor J said in *Newton* (96 CLR 578, 665):

> "It is a condition precedent to the liability of the taxpayer that he shall derive income and it is difficult to understand how, except in a loose sense, a person can be said to avoid liability for tax by putting himself in a position where he will, neither in fact nor in law, derive future income. Nevertheless, in an attempt to give some intelligible meaning to the section the view has been taken that there may be, on the part of the taxpayer, an avoidance of liability to tax, within the meaning of the section, in respect of income before that income has been derived."

Moving to the other extreme, the section applies in so far as any purpose or effect of an arrangement is tax relief. As McCarthy P said in *Gerard* (at p 280):

> "It cannot be given a literal application, for that would, the Commissioner has always agreed, result in the avoidance of transactions which were obviously not aimed at by the section. So the Courts have had to place glosses on the statutory language in order that the bounds might be held reasonably fairly between the Inland Revenue authorities and taxpayers. But no-one suggests that this is satisfactory, especially as one result has been that the Privy Council has been forced in a number of cases to assume the task, rightly one for the Legislature, of providing the tests according to which our people are to be taxed."

The first Privy Council decision was *Newton v Commissioner of Taxation* [1958] AC 450. The Judicial Committee (at p 466) enunciated the predication test under which arrangements escape tax if they are "capable of explanation by reference to ordinary business or family dealing, without necessarily being labelled as a means to avoid tax". It would seem that the Privy Council in *Mangin* had some reservations about the possible width of the interpretation in *Newton* because it went out of its way to say of the *Newton* test (at p 598):

> "In their Lordships' view this passage properly interpreted, does not mean that every transaction having as one of its ingredients some tax saving feature thereby becomes caught by a section such as s 108. If a bona fide business transaction can be carried through in two ways, one involving less liability to tax than the other, their Lordships do not think s 108 can properly be invoked to declare the transaction wholly or partly void merely because the way involving less tax is chosen . . . Their Lordships think that what this phrase refers to is, to adopt the language of Turner J in the present case 'a scheme . . . devised for the sole purpose, or at least the principal purpose, of bringing it about that this taxpayer should escape liability on tax for a substantial part of the income which, without it, he would have derived."

In the cases decided in the mid-1960s and up to *Mangin* in 1970 the New Zealand Commissioner faced one technical argument after another attempting to constrict the scope of the section. After *Mangin* the contest in the Courts tended to focus on the annihilation consequences of the section and the application of the *Newton* and *Mangin* tests in specific fact circumstances, although arguments as to the scope of the section continued to be raised. Before turning to indicate the circumstances giving rise to the enactment of the new provision it is worth noting what arguments to limit the scope of s 108 have been rejected by the Courts. These are:

(1) That the section applies only to sham transactions—rejected in *Elmiger* after being upheld in *Lewis v CIR* [1965] NZLR 634.

(2) That the section has no fiscal effect—rejected by the Court of Appeal in *Elmiger* and the Privy Council in *Mangin*.

(3) That the section is limited to arrangements affecting an accrued liability to tax or an accrued incidence of tax—rejected by the Court of Appeal in *Elmiger* and the Privy Council in *Mangin*.

(4) That the section cannot apply to bar deductions otherwise allowable—rejected in *Elmiger* in the Supreme Court ([1966] NZLR 683) and abandoned in argument in the Court of Appeal but its ghost was resurrected in observations in the Court of Appeal in *Europa Oil (NZ) Ltd v CIR* [1970] NZLR 321 before being given a qualified burial in *Wisheart v CIR* [1972] NZLR 319.

(5) That the section applies only to transactions to which the taxpayer is legally a party —rejected in *CIR v Ashton* [1974] 2 NZLR 321 and *Udy v CIR* [1972] NZLR 714 after being upheld by Turner J in *Wisheart*.

In *Mangin* it was accepted by the taxpayer that if the section applied in the circumstances, the assessment was correct. But the Privy Council drew attention to the gap in the old s 108. It was a destructive provision only and assisted the Commissioner only if following annihilation of the arrangements voided by the section a taxable situation was disclosed. Before *Mangin* the Courts had not adopted a strict approach to annihilation questions (eg, see the comments of McCarthy J in *Marx v CIR* [1970] NZLR 182, 221). But in *Wisheart*, which was the next case to reach the Court of Appeal after the Privy Council decision in *Mangin*, North P noted (at p 326):

> "While then on the state of the authorities at the time, the Chief Justice was fully entitled to rely on *Peate v Federal Commissioner of Taxation* (supra) in coming to the conclusion he did, yet I think it must now be accepted that in the view of all their Lordships who sat in *Mangin's* case what was said in *Peate's* case really amounted to legislat-

ing rather than interpreting the section. I draw this inference because the suggested amendment to s 108 proposed by Lord Donovan in *Mangin's* case closely follows the way the majority of their Lordships expressed themselves in *Peate's* case."

The practical issue was raised on the facts in *Gerard*. There the taxpayer had engaged in the type of paddock trust arrangement held in *Mangin* to fall within the section. But the proceeds of sale of the crop never reached the hands of the taxpayer. The Court of Appeal upheld Wilson J's conclusion that there was no basis on which the Commissioner could assess the taxpayer in respect of the income in question. Clearly the Government could not leave unchanged a section which produced this taxation result and in the amending process it took the opportunity to deal with certain other matters of concern to it in the interpretation and application of the provision.

**First draft of the new s 108**

Clause 8 of the Land and Income Tax Amendment Bill (No 2) is set out at [1974] NZLJ 379. As noted at the beginning of this article the draft clause provoked a great deal of opposition and controversy, as well it might. For it tilted the scales very much in favour of the Revenue. It was obvious that if enacted in its draft form it would have operated unfairly to taxpayers and created serious problems for the Courts and for lawyers called on to advise in relation to its application. It was subject to five major general criticisms:

(1) It was prolix and difficult to understand and apply. For example, subcl (1) occupied 21 lines. The long involved subclauses would have made it difficult to determine the interpretation and application of the provision. A taxpayer would certainly not have understood it and even a lawyer with experience in the field would have found it difficult to advise on its application with any confidence.

(2) The Courts criticised the old section for its lack of clarity and its arbitrariness. In *Gerard* it was stigmatised as "fiscal fantasy". But all that was done in the new subcl (1) was to add additional phrases designed to eliminate some of the problems the Commissioner had met in the Courts by adding sufficient words to cover every possibility.

(3) Kitto J in *Newton* (96 CLR 578 at p 596) (and his statement was said by Lord Wilberforce in *Mangin* at p 603 to be "the last word . . . on the Australian section") said:

"Section 260 is a difficult provision, inherited from earlier legislation and long overdue for reform by someone who will take the trouble to analyse his ideas and define his intentions with precision before putting pen to paper."

The first draft did not take that opportunity.

(4) It would still have been necessary for advisers to know the case law under the old s 108 and the Australian s 260—running to at least 30 reported cases—with all the inconsistencies which have resulted from developments and changes in judicial thinking over the years as the Courts have themselves acknowledged.

(5) The first draft by no means resolved the key interpretation problems under the old s 108. First, McCarthy P's basic criticism in *Gerard* was not met. Further, there was no attempt to meet his suggestion that the legislation should state in precise language what classes of transaction were to be struck down. Second, in *Mangin* Lord Wilberforce noted that there were four areas of uncertainty. He said (at p 602):

"If one compares it with more recent examples of legislation, it can be seen, and the decisions show, that it is deficient in a number of respects:

"(a) It fails to define the nature of the liability to tax, avoidance of which is attacked. Is this an accrued liability, a future, but probable liability, or a future hypothetical liability? Is it one which must have arisen but for the arrangement, or which might have arisen but for the arrangement, and if 'might' probably might or ordinarily might or conceivably might?

"(b) It fails to specify any circumstances in which arrangements, etc, which, in fact, have fiscal consequences may be outside the section, and, if such exist, to specify on whom the onus lies, and to the satisfaction of whom, to establish the existence of such circumstances. The taxpayer is left to work his way through a jungle of words, 'purpose', 'or', 'effect', 'purported purpose', 'purported effect' which existing decisions have glossed but only dimly illuminated.

"(c) It fails to specify the relation between the section and other provisions in the income tax legislation under which tax reliefs, or exemptions, may be obtained. Is it legitimate to take advantage of these so as to avoid or

reduce tax? What if the only purpose is to use them? Is there a distinction between 'proper' tax avoidance and 'improper' tax avoidance? By what sense is this distinction to be perceived?

"(d) It gives rise to a number of extremely difficult problems as to what hypothetical state of affairs is to be assumed to exist after the section has annihilated the tax avoidance element in the arrangement."

All four of these uncertainties remained to a greater or lesser extent under cl 8 of the Land and Income Tax Amendment Bill (No 2). In view of the fact that it was superseded there is no point in considering the detailed criticisms that could and were made of the various subclauses of the clause except to note that it was retrospective in the sense that it applied to income derived under an arrangement after 1 April 1975 whether the arrangement was entered into before or after that date and if before whether or not it satisfied the tests under the old legislation.

**The new s 108**

It is suggested that in considering the approach taken in the new draft, which was set out in full at [1974] NZLJ 510, the observations of Kitto J and Lord Wilberforce should be kept in mind and that it might be expected in a provision of this kind:

(1) That the section should hold a fair balance between the State and the citizen by adopting a middle course and avoiding the two extremes of taxing on the premise that every citizen is under an obligation to conduct his affairs so as to pay the maximum tax on the one hand and of taxing only if an existing tax liability is deliberately shifted or changed on the other.

(2) The middle course should recognise that tax is an important and proper factor in the making of business decisions. What should be struck at are arrangements which are outside the range of acceptable business and family practices.

(3) The provision should be self-contained in the sense of being capable of being understood by lawyers, accountants and taxpayers without reference to the mass of earlier case law. Accordingly it should be formulated using terms which have a single settled meaning or which are defined for the purposes of the section.

From time to time it has also been suggested that the section should specify the classes of transaction affected by it or should expressly exclude certain classes of transactions from its operation, eg those involving permanent dispositions of enduring assets. However, this poses problems because even an absolute transfer of land may involve such other factors as to the control of the income earning activity of the transferee and of the disposition and use of the income to justify the inference that the arrangement including the transfer of property was entered into in that way for tax avoidance purposes. It has also been suggested at times that at least the more significant guidelines in determining the application of the provision should be spelled out in the legislation. After all, in the argument of cases under the section it was standard practice for counsel to point to the various features of the facts which it was alleged justified or did not justify the drawing of the inference that the purpose of the arrangement was escape from tax and any review of the cases would show the sort of factual features that the Courts have tended to regard as significant.

Subsection (1) now provides:

"Every arrangement made or entered into, whether before or after the commencement of this Act, shall be absolutely void as against the Commissioner for income tax purposes if and to the extent that, directly or indirectly—

"(a) Its purpose or effect is tax avoidance; or

"(b) Where it has 2 or more purposes or effects, one of its purposes or effects (not being a merely incidental purpose or effect) is tax avoidance, whether or not any other or others of its purposes or effects relate to, or are referable to, ordinary business or family dealings,—

whether or not any person affected by that arrangement is a party thereto."

Subsection (6) defines the crucial terms "arrangement", "liability", and "tax avoidance". The definitions of "arrangement" and "liability" closely follow the meanings given to the terms in the decided cases and "tax avoidance" is a compendious expression including the alteration of the incidence of tax, relieving from liability for tax and avoiding, reducing or postponing liability to tax. It might have been desirable for the sake of clarity to have defined "purpose" in terms of the meaning accorded to it in *Newton* and subsequent cases, namely, the end in view or object of the arrangement, but not including the motive or intention of

the taxpayer except in so far as evidenced in the arrangement. Finally, in view of the reading down by the Australian and New Zealand Courts of the word "effect" in the old section, one wonders what purpose is met by its retention in the new section.

Under the new provision it is not necessary for tax avoidance to be the sole or principal purpose of an arrangement. It is sufficient if it is a minor purpose so long as it is not a "merely incidental purpose". This is further emphasised by the express statement that where there is a tax avoidance purpose present other than a merely incidental purpose the arrangement is void whether or not *other* purposes are referable to ordinary business or family dealing. It is clear from the debate in the House of Representatives that the Government considered that in terms of social policy the interpretation of s 108 had been correctly settled in *Elmiger* that the Courts had subsequently retreated from that position in favour of the taxpayer and that the new provision was designed to restore the legal position as understood following *Elmiger*. Thus Dr A M Finlay, Minister of Justice, said ((1974) NZPD 4193): "The *Elmiger* case unfortunately represented something of a high point, and since that time the Courts have tended to retire from the position that was taken up." Second, Parliament in its definitions of terms in subs (6) and in the closing words of subs (1) has forestalled the raising again of various argument advanced in the cases designed to limit the scope of the section. The definitions also serve the purpose—highly desirable in this area—of reducing the uncertainties inherent in a general anti-avoidance provision.

Where an arrangement is void under subs (1), subs (2) empowers the Commissioner to make an assessment to counteract the tax advantage obtained from or under the arrangement by any person affected by it. It removes at a stroke the annihilation problems under the old section and allows taxing to proceed on a realistic basis. It is complemented by subs (3) designed to prevent double taxation under which income included in an assessment under subs (2) is deemed to have been derived by that person and not by any other person.

Subsection (3) although designed to deal with dividend stripping is potentially much wider and may cause considerable problems in practice if the Commissioner seeks to extend its application. It is at least arguable that it allows the Commissioner to apportion the sale price of shares wherever there are accumulated profits in the company at the time of sale. This is because sooner or later those profits might be expected to be paid out as dividends and because in the calculation of the price of the shares some regard is had to the profit retentions and cash funds of the company.

Subsection (5) is a rather wordy provision which broadly speaking continues to apply the old s 108 to arrangements entered into before 1 October 1974 so long as they are not in law terminable and the arrangement continues to be strictly according to its terms.

Finally, in view of the Leader of the Opposition's statement that the amendment moved unsuccessfully in the course of the debate would be enacted "when" National became the Government, it is interesting to note the criteria provided in that amendment for consideration in determining whether an arrangement has the necessary tax avoidance purpose. The criteria set out in the amendment are:

"(a) whether the arrangement might reasonably be expected to have been entered into and implemented in that particular way if tax avoidance had not been its principal purpose:

"(b) whether the rights and obligations arising under the arrangement might reasonably be expected to have been created under an arrangement not having tax avoidance as its principal purpose:

"(c) the extent to which the emphasis in the arrangement is substantially on income factors:

"(d) the overall effect of the arrangement on the practical carrying on of any existing business or other income earning activity to which it relates:

"(e) the extent of the control over the earning and disposition of income under the arrangement in practice exercised by the taxpayer:

"(f) other courses of action open to the taxpayer at the time he entered the arrangement, and

"(g) the family or commercial purpose or purposes served by the arrangement."

It seems inevitable that s 108 will continue to occupy the attention of practitioners and the Department, if not of the Courts, as much as it has over the last 10 years.

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**Offered separately, or as a job lot of three?**—The Minister of Justice announced today that tenders have now been called for the new Court of Appeal.—*Press release.*

# TRIBUTES TO SIR WILFRID SIM

The recent passing of Sir Wilfrid Sim, QC, was marked by the honour of a special sitting of the Supreme Court in the No 1 Courtroom at Wellington, a venue Sir Wilfrid had so frequently graced with distinction. With the Chief Justice, Sir Richard Wild, were sitting Sir Thaddeus McCarthy, Sir Clifford Richmond, Sir Alec Haslam, Mr Justice Mahon, Mr Justice Quilliam, Mr Justice Beattie and Sir Alexander Turner.

On behalf of the New Zealand Law Society, Mr L J Castle said:

"First, may I say that the Attorney-General regrets that he is unable to be present this morning and that he has asked that he be associated with the tributes to be tendered.

"The profession at large welcomes the opportunity to pay its respects to the life and work of the late Sir Wilfrid Sim.

"It is given to few men to serve the law, the community and the nation in divers ways over a remarkable term of some 60 years. Significantly he was one of the New Zealand Law Society's first representatives on the Rules Committee of the Supreme Court when established in 1930, and gave valued service to that body until his retirement in 1952. Perhaps more significantly he was appointed with Sir Kenneth Gresson, to whom tributes were so recently paid in this Court, the New Zealand Law Society representative on the Law Revision Committee in 1937 when that Committee, the precursor of the Law Revision Commission, was established. Not surprisingly, this appointment followed a paper delivered by Sir Wilfrid at the Legal Conference in Dunedin in 1936 entitled 'Law Reform in New Zealand'. Noteworthy, too, was his paper delivered at the 1938 conference of the Society in Christchurch in which he advocated absolute liability in motor collision cases, which not only provided keen discussion but also led to a resolution by the conference supporting the principle of absolute liability; this, one is reminded, in 1938.

"In addition to conducting an extensive practice throughout New Zealand, he devoted his energies to party politics—an activity that culminated in his serving as President of the National Party for some seven years.

"Other notable contributions of a national character include his authorship of the well known standard textbooks on the Practice of the Supreme Court and Court of Appeal, and on Divorce.

"Many remember him as a kindly, gentle man yet as a great protagonist for equity and good conscience and as a doughty antagonist in all encounters. His eminence was undoubted. Whilst we are saddened by his passing, we recall with pride his great contributions to public life and to the profession of which he was so proud. We offer our condolences to his family," Mr Castle concluded.

For the Wellington District Law Society, Mr R D Richmond observed that when the late Sir Wilfrid Sim was called to the Inner Bar in the Supreme Court at Christchurch on 25 July 1939, the then Chief Justice, the Right Honourable Sir Michael Myers, commented that the letters patent entitling Sir Wilfrid to practise as a King's Counsel, as he was then, not only conferred a privilege and an honour; they imposed obligations both express and implied—and the implied were greater than the expressed because they involved the responsibility of leadership of the Bar and of helping, in a way that only leaders can do, the younger men of the profession to maintain in their integrity the great traditions established in England and followed in this country.

"Throughout his career in the law Sir Wilfrid fulfilled those obligations truly and well," Mr Richmond continued. "He also assumed with distinction the responsibilities of leadership outside the law, specifically in the army during the First World War and later in public life. Graduating from Victoria University in 1913 he practised in Wellington until August 1914 when he enlisted in the army. He served with distinction in Samoa until 1915 and then further afield with a regular Scottish regiment, the Argyll and Sutherland Highlanders, receiving the Military Cross for gallantry in action. When he returned to New Zealand he practised in Christchurch and became a partner in Messrs. Duncan, Cotterill & Co. He conducted an extensive practice at the Bar and was connected with many important cases in that city. In 1939 he returned to Wellington, where he practised at the Inner Bar until he became ill

earlier this year. His learning in the law, his diligence and ability in his work, his qualities, his character and his integrity earned him the highest regard and respect among his colleagues and a place as one of the principal legal figures not only in Wellington but throughout the country. He maintained and upheld the traditions of the profession. He will be long remembered with affection and esteem. To his son, Peter, with whom many of us were students, law clerks and young practitioners, to his daughter, Mrs Murdoch, and to their families, we offer our sincere condolences and sympathy," he concluded.

The Chief Justice, Sir Richard Wild, said that the Judges of the Court of Appeal and the Supreme Court desired to join with the profession in this public tribute to the life and work of Sir Wilfrid Sim QC.

"Your two Presidents have described Sir Wilfrid's notable services to the law. For their part the Judges remember in particular his contribution to the original Law Revision Committee and to the Rules Committee on each of which he served for many years. They also have cause for special gratitude to him in the course of their daily work for his service in keeping up the two standard works on Civil Procedure and Divorce Law which originally bore the name of his distinguished father—for many years a Judge of this Court—and which Sir Wilfrid continued with unrelenting devotion to edit and supplement almost to the day of his death.

"We shall all retain vivid memories of him in his practice as a leader of the Bar, more especially in the field of equity and revenue work. He appeared often in the Supreme Court and the Court of Appeal and before various Commissions. By his appearance before the Judicial Committee of the Privy Council in 1955 he became one of the first to demonstrate that New Zealand appeals are best handled by New Zealand counsel, and one remembers the pride he had on that occasion in journeying to London to argue before their Lordships and his delight in being able to hold the judgment in his client's favour. It is noteworthy that the example that he and others set is now followed as almost standard practice.

"Sir Wilfrid had for long been the doyen of Queen's Counsel in this country. His record in having held the patent for no less than 35 years certainly eclipsed that of any of his predecessors, and it is likely to stand for a long time to come. His whole period of practice was such that in more recent times he appeared not infrequently before Judges who were not born until after he himself had reached the mid-stream of practice. And yet if in the course of that long career he suffered disappointments, he kept them to himself. He was indeed always a staunch champion of the Courts of Justice and of the due place of the Judges, for whose office and for whom as individual persons he never failed, despite his own seniority in age, to show exemplary respect and courtesy. In regard to such a man it is almost impertinence to speak of integrity yet, in a way, that was his most memorable quality—strong and unyielding integrity.

"On such occasions as this morning's sitting he was always in his place at the Inner Bar and we shall miss him. Only a few months ago he was in this Court for the last time in the familiar role of counsel for the trustees upon the interpretation of a will. On his intimating that it was indeed his final appearance, Mr Justice Cooke aptly marked the occasion by inviting Sir Wilfrid to fix the costs of all counsel. You will sense the pleasure it gave my brother Cooke to pay that graceful little compliment and the equal pleasure that it gave Sir Wilfrid to accept it and act upon it in fixing the costs appropriately.

"He was one of the old school: but there is much for us all to learn from the old school as represented by such a man as Sir Wilfrid Sim," he concluded. "To his son, Professor Sim, and to his daughter the Judges extend their respectful sympathy."

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## CONFERENCE CORNER—1

### Puha and Pakeha

The 1975 Conference is to feature a "New Zealand theme" dinner. Practitioners may recall that a certain soup on the Rotorua menu aroused press speculation as to the possibility that a protected species might have found its way into the pot (the pukeko soup). Inquiries later revealed that the birds had either been taken in season legally, or else taken out of season by motor vehicles whilst the fowls were crossing roads. Now that the Wellington Zoo boasts a kiwi-house nothing can, of course, be ruled out. After all, in the gloom almost anything can pass for a kiwi, and a kiwi can pass for almost anything. However the latest intelligence is that the planning for the dinner is at an advanced stage. Now that the wines (domestic) have been chosen, planning *can* advance.

# WOODHOUSE IN AUSTRALIA

*By* PETER SAMUEL. *The article originally appeared in* The Bulletin.

Just before he left for the United Nations Prime Minister Gough Whitlam had his staff prod several ministers to see that the legislation for a national compensation scheme was quickly drafted. The ambitious $2 billion-a-year scheme is intended to replace third-party motor vehicle insurance and workers' compensation and to provide complete compensation for all kinds of accidents, sickness and even inherited incapacities.

It is the one project in the welfare field about which government ministers express optimism. The momentum has gone out of efforts to nationalise health insurance, despite the passage of most of the legislation in the post-election joint sitting of the parliament. Work on introduction of a comprehensive superannuation system has hardly begun and ministers express disappointment at what they describe as the fence-sitting of their expert committee of inquiry on the subject, and there is similar lack of interest in the reports on tax reform and poverty.

All these are detached, almost scholarly reports, pointing up complexities and difficulties and emphasising the need for caution and concensus building. The national compensation report, on the other hand, has all the hallmarks of a Labour Party pamphlet. It vigorously denounces State government and private insurance and the legal philosophy of fault and negligence, and declares that the national government must take full responsibility. With all the breezy confidence of electioneering politicians its authors gloss over problems of transition and simply assert that their proposed Department of Compensation, with its elimination of legal procedures in accident cases, will usher in a new order of benevolent treatment for the incapacitated and the sick.

The committee, headed by a New Zealand Judge, Mr Justice Woodhouse, obligingly included a draft bill with its report and Whitlam has insisted that it be brought quickly into parliament without any delaying analysis or examination. But senior officials from several departments are concerned that the government will come a cropper if they implement the proposals with undue haste. Legal opinion is that the Commonwealth Government has no clear power to abolish common law rights to sue for damages in accident cases, except in its own territories. And there is no clear constitutional power for it to override the State legislation on insurance arrangements either. Mr Justice Woodhouse, coming from a country with a unitary system and an all-powerful single parliament, does not seem to have appreciated the limited role for Canberra in our system.

The basic proposal is that every injured or sick person should receive weekly compensation payments related to 85 percent of their earnings in the previous year and the percentage incapacity they suffer as determined by departmental inquiry. The report says: "There should be an avoidance of the adversary atmosphere in the assessment and administration of benefits . . . any real doubt should go in favour of the applicant. All this could be achieved by the detached administration of a department or instrumentality of the State . . ."

The report so wholeheartedly embraced by Whitlam is no levelling egalitarian proposal. Its earnings-related system of benefits would permit weekly compensation payments up to a ceiling of $409 a week for people who had earned $25,000 or more the previous year. And all medical, hospital and rehabilitation costs would be free for everyone. The report's justification for paying benefits related to previous income is that higher-income people have higher financial commitments and need more. A sentiment which hardly squares with many of the government's tax measures or its other social programmes.

There are brief references in the Woodhouse report to "passengers" who may exploit the system, but "the real safeguard against abuse will always be personal initiative and self-respect". The proposal before the parliament does try to overcome the major disincentive which compensation schemes always have against rehabilitation—by the sweeping device of making compensation payments permanent and a right for life regardless of recovery. So, for example, the farmer who managed to earn

$25,000 one season and fell off his tractor and managed to persuade the Department of Compensation of his complete incapacitation would be on a pension of $409 a week (adjusted for inflation and national productivity quarterly) for the rest of his life, and this income would not be jeopardised by his successful rehabilitation and resumption of farming activity.

Many officials in Canberra say bluntly that the Woodhouse proposals are cloud-cuckoo-land nonsense, but that Whitlam is so sold on them as promising a step into the brave new world that he gets angry at even the slightest criticism of them.

However, the scheme is probably doomed because of a change of thinking by deputy Prime Minister Jim Cairns. He has recently been stressing the need to cease regarding progressive income tax as a bottomless well of finance for the Welfare State.

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# ACCIDENT COMPENSATION—AMENDMENTS WELCOMED BY COMMISSION

The Accident Compensation Amendment Act passed by Parliament not only raises maximum payments in lump-sum compensation to a level in keeping with current trends, but gives effect to other changes hoped for by the Accident Compensation Commission, said the Commission's Chairman, Mr K L Sandford. "The alterations to lump sums and the limits for earnings-related compensation are the first since the 1972 Act was passed," he said.

The amendment lifts the aggregate of lump sums for non-economic loss from $12,500 to $17,000. The upper limit for permanent loss of impairment of bodily function, including loss of part of the body, rises from $5,000 to $7,000 and the maximum for loss of amenities of life and such effects as disfigurement, pain and mental suffering increases from $7,500 to $10,000. These new limits apply to accidents which occurred on or after October 1 this year.

Welcoming the passing of the new Act, Mr Sandford said that from April 1 next year, the maximum income on which compensation can be paid has been increased from $200 a week to $300 a week, with the compensation limit raised accordingly from $160 a week to $240, said Mr Sandford. This increase will apply to any period of incapacity occurring on or after 1 April, 1975, even though the accident giving rise to the incapacity happened *before* that date. In line with income limits for compensation, the maximum income on which levies can be charged has been increased from $10,400 to $15,600.

The new maximum of $15,600 for levy purposes will be effective when levies become payable next year—for employers on employee earnings for the year ending 31 March 1975, and for self-employed people on earnings to 30 September 1975. The new maximum levy on self-employed then will be $156 (ie, 1 percent).

Other aspects of the legislation are:

(a) Clarification of important aspects of personal injury by accident.
(b) It includes certain types of injury suffered by the victims of crime.
(c) Powers to extend the cover of people who were previously earners are widened.
(d) The Commission is allowed to take into account pay increases received by an accidentally injured person shortly before the accident in order to arrive at his average pre-accident earnings.

In addition, the Act also gives the Commission wider powers to extend the cover of people who are non-earners; to increase the range of persons who suffer loss of potential earning capacity; and allows employers to deduct for levy purposes reimbursements of compensation.

### Personal injury by accident

The new legislation redefines the term "personal injury by accident" along the lines recommended by the Statutes Revision Committee. This provides a more specific guide to personal injury by accident than existed before. Personal injury by accident includes the physical and mental consequences of the accident, and of medical, surgical, dental or first aid misadventure.

Further, the new legislation will, as from April 1, 1975, transfer to the Commission the functions hitherto exercised by the Crimes Compensation Tribunal. Under this jurisdiction, the Commission will be able to accept that the victim of rape who becomes pregnant and any girl under 12 who becomes pregnant will be treated as having suffered personal injury by

accident and will be entitled to compensation accordingly.

"Also, anyone unlawfully infected by another person with disease or sickness will be treated as having suffered personal injury by accident," he said. "However, disease or infection in itself will not constitute personal injury by accident. It will have to be shown to be the consequence of an accident or to be due to the nature of an earner's employment."

Another guideline to personal injury by accident relates to heart attacks and strokes. These will not be treated as personal injury by accident unless shown to be the consequence of an accident or, in the case of employees, to have been caused by abnormal, excessive or unusual effort, stress or strain in the course of employment.

**Self-employed people**

The new legislation extends the Commission's power to pay compensation based on the "fair and just" provision to beyond the first five weeks of incapacity. The Commission may now apply this provision to the whole period of incapacity. This will enable the Commission to deal more satisfactorily with the claims of self-employed people without having to call for or wait for detailed accounts.

**Pay increases**

Another amendment included in the new legislation allows the Commission to take into account pay increases that may be awarded or made to a person just before his injury by accident so that his average pre-accident earnings may properly reflect his newly increased income. Such pay increases would include general wage orders and established salary increments.

**Extension of cover**

Under the new legislation, the time limit on the Commission's discretion to extend the period of cover for former earners has been removed. The previous limit of 15 months from the date when the injured person ceased to be an earner was found too restrictive and unduly penalised people who, for various reasons, had had to give up work but who later would return to the work force. An example of this would be where an earner is admitted to a hospital because of illness and while there is accidentally injured—perhaps in a fall—before being discharged. In appropriate circumstances the Commission will have a discretion to put such a person on earnings-related compensation even though a considerable time may have elapsed since that person last worked.

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## ACC RULING — TANGI EXPENSES NOT PAYABLE

The Accident Compensation Commission has found, on an application for review of a compensation claim, that funeral expenses payable by the Commission will not include tangi expenses. The Commission's decision followed an application for review of a claim in connection with the death of a Maori person who had been killed in a road accident in the Taupo district. A tangi was held on the marae after the person's death.

In publishing its decision on the application for review of the claim for tangi expenses, the Commission did not release the names of the parties involved which is in line with its policy of keeping the identity of review applicants confidential.

The Commission's decision said:

"Authority for payment of funeral expenses under the Accident Compensation Act 1972 is found in s 122. That section provides:

> 'Subject to any regulations made under this Act, where a person dies as a result of personal injury or accident in respect of which he has cover under this Act, the Commission shall pay his funeral expenses to the extent that it considers that the amount thereof is reasonable by New Zealand standards.'

"The question is whether in respect of the accidental death of a Maori, s 122 should be interpreted and applied so that the cost of a tangi should be paid by the Commission in addition to the expenses normally attendant on a funeral and interment where a tangi is not held.

"In the past where claims were brought under the Workers' Compensation Act and the Deaths by Accidents Compensation Act, the expenses of a tangi have often been allowed as part of funeral expenses, subject to the test of

reasonableness and, under the Workers' Compensation Act, to a prescribed maximum.

"However, the fact that all deaths by accident are now compensatable and that the party at fault no longer has to pay any damages for the consequences of his negligence, requires this topic to be regarded, in the Commission's opinion, as one in a new situation, permitting the Commission to adopt its own policy on the subject of tangi expenses, while paying full regard to the decisions, and the reasons therefor, that have previously applied to tangi expenses in a narrower field.

"The Commission recognises that in the past, the tangi has been an important part of Maori tradition and a significant element in Maori tribal life. It has provided the opportunity for members of the family, friends, and for the tribe and other sub-tribes, to gather together on the marae to honour the dead and console the living, in a public and community way.

"It is still of importance and significance to many people of the Maori race and ancestry, but it is also true that urbanisation, intermarriage, the pressures of other cultures, conversion to different religious beliefs, and the declining recognition in some places of older values and traditions, have all contributed to the traditional tangi often not being observed. For some Maori people, the tangi has lost its former significance. The question then is whether the Commission should pay expenses of a tangi in those cases where the Maori people have retained the traditions of the tangi.

"The Commission finds that part of this tradition lies in the sense of participation by relatives, and others, sharing with the bereaved family a long lament before interment, sharing their grief, sharing their tributes, reinforcing that sense of community so deeply implanted in the Maori race.

"It is inherent in Maori custom that, while the visitors must be received and appropriately fed and housed, those visitors have traditionally brought their own contributions to the community living that they experience over the period of the tangi. In the past, contributions were usually made in kind, and visitors brought food and other necessaries with them. Nowadays this is usually achieved by those attending making contributions of money to a common pool from which food and essentials are purchased. But the tradition of participation has been maintained by the contribution of the mourners to the koha, or common fund, devoted towards the financial expenses necessarily incurred.

"To eliminate that sense of participation in kind or in money would, we consider, intrude into the true tradition of tangi, and would replace the custom of sharing with a mercenary equivalent, destroying much of that sharing instinct. The Commission believes that it would not be in the interests of the preservation of the Maori tradition of tangi if the expenses thereof were to be paid by the Commission.

"This belief gives support to the Commission's view that, for the purposes of s 122 of the Accident Compensation Act, the expression 'funeral expenses' does not, and should not, include the expenses of a tangi. We find accordingly and therefore decide that the tangi expenses in this case will not be paid."

## REX MASON PRIZE TO ROBERT MOODIE

On 24 September, at a simple ceremony at Wellington, the Hon Rex Mason, QC, made the first presentation of the Mason Prize for Legal Writing to Mr R A Moodie. Mr Moodie was awarded the country's premier prize for legal writing for his article, "The Gilfedder Affair", which appeared at [1973] NZLJ 457.

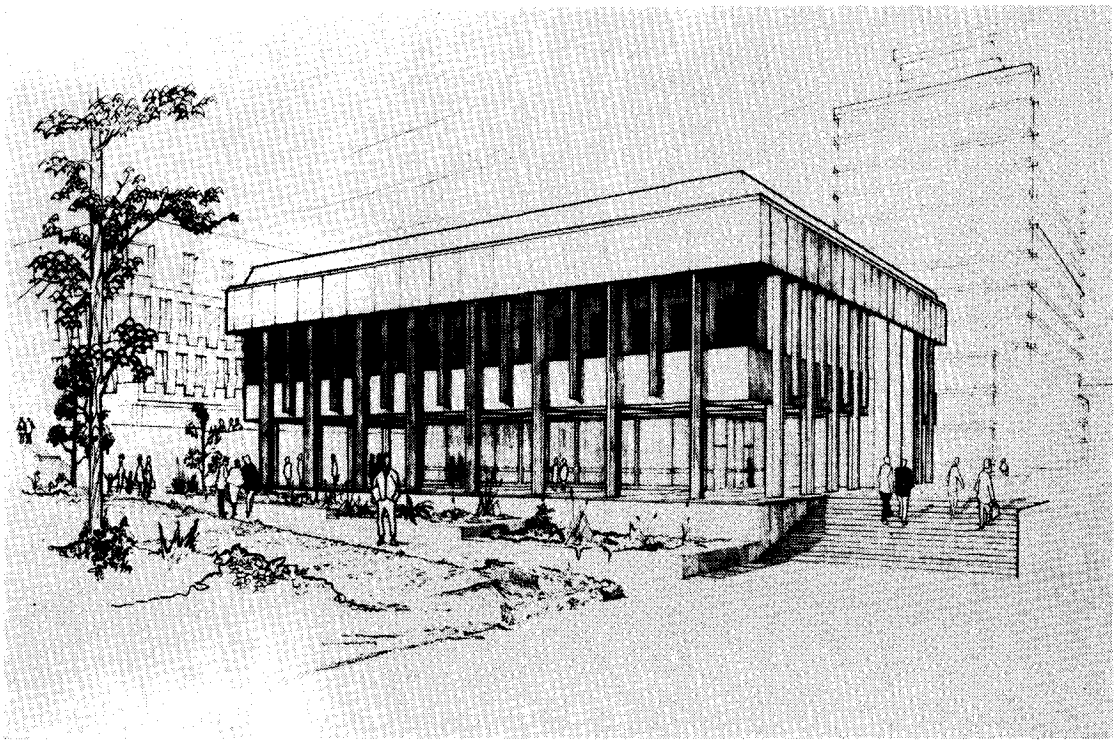
In making the award, the judges, Sir Richard Wild, Professor J C Thomas and Mr Jeremy Pope, said that the article dealt with a topical and lively subject in a restrained yet stimulating manner and, in a difficult decision, more closely reflected the true quality of the interests and attitude of Mr Mason, in whose honour the Trust was established.

Highly commended was "Discipline Within the New Zealand Legal Profession" [1973] VUWLR 337 by Mr W R Flaus, a comprehensive treatment of a subject hitherto overlooked.

The award is to be made annually from a trust fund established last year by Mr Mason's sister, Miss Henrietta Mason (see [1973] NZLJ 528).

**Truism?**—"But that's a maximum fine and if you know anything about Court procedure you will know that maximum fines are never imposed . . ." *Hon J. R. Marshall, M.P., on the N.Z.B.C. Programme "Checkpoint".*

# NEW COURT OF APPEAL BUILDING



The Honourable Dr A M Finlay, Minister of Justice, has announced that tenders have now been called for the new Court of Appeal building.

Dr Finlay said the Court had occupied its existing premises for almost 17 years and the present accommodation has always been unsatisfactory. The Minister said he respected the forebearance of the Judiciary in tolerating for so long conditions which were entirely inappropriate to the highest Court in the country. They imposed a great strain on the health and endurance not only of those who, like the Judges, sit in it continuously, but also on counsel who appear there, and it is an entirely unacceptable earthquake risk.

However, Dr Finlay said all the problems associated with the existing accommodation will be resolved when the new Court of Appeal is erected opposite Parliament Buildings. The Government Architect had chosen a site which is within the area of the proposed Government Centre and close to Parliament, but at the same time showed the Judiciary's impartiality in the administration of justice. The building itself will have two Courtrooms, chambers for six Judges, and ancillary rooms for staff and public. Ministry of Works and Development architects have designed a building which will provide, for many years, all the facilities that are required. The Minister went on to say that the facade of the building will present an appearance which is in keeping with the dignity of the highest Court in the land.

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**Tea for Two in Upper Tooting**—"If history is to be made of the tittle-tattle of the Upper Tooting tea tables, you will no doubt consider whether it would not be better that history should not be made at all." Mr Justice Avory.

# PERMISSIVENESS, AUTHORITARIANISM AND LAW

Dr Spock's apparent recantation has no doubt confirmed the thinking of quite a few people—those who tend to ascribe the faults of society to a "general attitude of permissiveness". Permissiveness, whether at home, in school or in the law, they would argue, leads to moral decay which is in turn responsible for the decline of civilisation. Therefore, the only way to reverse the trend is more authoritarian home life, harsher laws and less judicial leniency.

But the bringing up of children is really quite a different thing from governing a society of adults. Parents alone can instil their children with a sense of inner decency which they carry into adulthood. Governments, laws and experts cannot supply the necessary ethical commitment to those who are without it. Richard Nixon once said that the American people were like children but, Nixon's assertions notwithstanding, governments *are* not and *cannot* be in loco parentis to the adults they govern. What Dr Spock was recanting, after all, was the tendency of "experts" to undermine the confidence of parents in bringing up their own children.

In the meantime the Nixon administration, which so avidly pursued the war against "permissiveness" and the "Permissive Society", was exposed as self-permissive and self-indulgent. Not only was Nixon a criminal, but ex-Vice President Spiro Agnew, the self-proclaimed scourge of the permissive society, now stands convicted of tax evasion; one former tough, "law and order" Attorney-General has been convicted of failure to co-operate with a Congressional Committee, and another is on trial for conspiracy to obstruct justice. And these are but a few of the vast catalogue of former Nixon administration officials and Nixon associates who have been convicted, indicted, or face indictment for such crimes as tax evasion, perjury, conspiracy, burglary and obstruction of justice.

One thing that these men undoubtedly share now that they are dependent for their liberty and livelihood upon the judicial system that they once derided as "too lenient", is a newfound reliance on the "quality of mercy", and the American judicial system so far has been extremely lenient with them as it would not have been with others, less highly placed, accused of the same crimes.

It is ironic that the wrongdoing with which these men are charged should be part of a systematic assault on the very rights on which they are now so dependent. Indeed, some of the men have been caught in the very legal traps they themselves set. It is also ironic that Nixon and Agnew should have both appealed to the public not to prejudge *their* guilt, where they had both been quick to prejudge the guilt of others accused of other crimes.

Neither Nixon nor any of the men surrounding him have ever complained of an overly permissive upbringing. And yet the most shocking revelation of the Ervin Committee was that most of the Nixon associates called to testify about their roles in Watergate displayed a distinct lack of ethical commitment. Those who had thought about the ethics of the situation at all displayed confusion and lack of direction. Thus we can assume, without resorting to pop psychology, that their upbringing, whatever it was, did little to provide them with the necessary inner gyroscope. There is a profound lesson in all of this, and it is a lesson that we, in New Zealand, should not forget when we consider our own attitude to law.

Those who talk of "permissiveness" in the law forget one crucial but obvious point—that the opposite of "permissive" (whatever that means) is "prohibitive". If one accepts the premise that society ought to be "prohibitive", the question ultimately arises "who is to prohibit whom from doing what?". And in a society of adults that argument can be intensely destructive. Once we enter into that debate we find ourselves discussing the relative merits of the various segments of society. Should the law protect the interests of pakeha over and above the interests of Maoris or Islanders? Or vice versa? Should it protect the interests of the poor or the interests of the rich? The interests of the merchant or those of the consumer? The interests of men or the interests of women? The moral sensibilities of the Society for the Promotion of Community Standards or the New Zealand Booksellers' Association? The Catholic clergyman or the pregnant unmarried? In each case the debate is acrimonious and interests are polarised. And the answers, whatever they be, are fundamentally inconsistent with the idea of equality under the law.

The expression "equality under the law" confuses many. What the idea really signifies is that each member of society is to be treated by the law as an end in himself or herself, not as a means which others may manipulate to their own ends. Admittedly, this is an ideal situation—a goal to be striven for and perhaps never to be completely attained. But the question is whether we want to strive for it.

If we answer the question affirmatively, we begin to deal with a wholly different set of questions. How do we protect the interests of all members of society, Maori, Islander or pakeha, so that no one is exploited because of his race, colour or natural origin? How do we protect the consumer so that he does not merely serve the ends of the merchant? What laws do we change if women are to enjoy equality in our society? How do we protect employees from merely serving the ends of their employers, and the public from suffering from the contest of wills between the employer and the employee represented by his unions? But the most important question is: How do we prevent those whose end is to seek and hold power from manipulating us all to that end? In other words: How permissive or prohibitive are we with those in authority?

In attacking "permissiveness" the gentlemen surrounding Nixon did not comprehend that anyone was to prohibit *them* from doing anything. Rather, they saw themselves as the prohibitors—the strong men who were to prevent the anarchy of too much liberty *by all necessary means*—legal or illegal, moral or immoral and (yes) decent or indecent. Seen in that light, "the Permissive Society" is really a rather shabby slogan.

Decency cannot be inculcated in men or institutions by the whip and the gun. Harsh and repressive laws demanding absolute and total obedience cannot instil in men and women any sort of ethical sense. Harsh criminal laws are at best cosmetics concealing the problems that make them seem desirable. The politician who sponsors them may intend to show the majority of his constituency that he is "doing something about their problems" but, in reality, he is aggravating their problems by ignoring underlying causes.

Order precedes law and makes it possible. Law does not create order. Harsh laws are powerless to create order if there is none; they do not destroy corruption when society loses its ethical face.

The authoritarians' anti-permissive answer to conditions of disorder does not resemble anything we know of as "law" in the Western sense —the impartial mediating institution which treats the human being as an end in himself. Totalitarians treat the question of "who is to prohibit whom from doing what" in terms of the ends people are intended to serve—whether that end is seen as "the interests of the working class", or "racial purity" and "the greater glory of the Fatherland", or even "the interests of the silent majority". When that happens, all the traditional virtues become transformed. Fidelity becomes a willingness to serve; honour becomes a militarist slogan; respect for others is made conditional on their usefulness to a cause; patriotism becomes strident militarism, racial prejudice and a ready foil to repel criticism of authority. Patriotism may then become the first resort of demagogues and the cement of dictatorship. Law becomes the arbitrary "will of the Fuehrer" or the dictates of "Socialist Legality". That is where the authoritarian answer ultimately leads us.

But authoritarians never engender respect for the law. Fear of the consequences is not respect —it means only that the law will be evaded if one thinks that the consequences can be avoided, and that is inner moral commitment to nothing but one's own hide. If we reject totalitarianism, then law must play a humbler role. Legislation must be addressed to the problem of protecting people from serving the ends of others. It must be directed at social problems without losing its objectivity. This may require deep and careful thinking, heedless of self-interest. It does require informed debate rather than simple sloganeering or the unsubtle *don't* of non-permissive legislation. It will require a willingness to abandon that which does not work, and try again. Perhaps this is unpalatable to those who disdain intellectual effort and prefer "simple answers", but one cannot smash the atom with a sledgehammer. It requires something more subtle.

If the law is to avoid treating each one as a means to someone else's end, it must not pander to racial prejudice and religious predilections, not even those of the majority, be it silent or vocal. It must be sufficiently permissive to avoid encroaching on the most deeply held commitments of minority segments of society (unless those commitments are based upon an unshakeable assumption that others must serve their ends). Some values are so deeply held that those who would encroach upon them must expect a fight. It is also irresponsible to pass a law which patently caters for some special interest, and treats the indivi-

dual as a means to ends sought by other individuals or institutions, and then to prate to the opponent of that law about "law and order" or "the rule of law".

What then is this "inner moral commitment"? It is a commitment to a free and open society. It is not a slavish commitment to the letter of the law if that law is unjust or ludicrous. Rather, it is a readiness to remain vigilant against such laws and to protest loudly and forcefully before such laws are passed. To do this is to avoid the frequently deplored consequences of such laws—civil disobedience and outright defiance.

Returning to the upbringing of children, which is where we started. This seems to be the place to begin, rather than with the law. And what is needed is permissiveness tempered with firm, reasoned guidance, love and, above all, fairness and example. Healthy people, not harsh laws, make and preserve healthy societies.

J B ELKIND

# DUTY CONVEYANCERS FOR NOTIONAL DEALINGS

ALAN GRANT *muses on tax, backlogs, incomes, parachutes, and other matters of moment to the profession.*

Recently I attended a seminar on the dreaded Property Speculation Tax and the equally dreaded s 88AA of the Land and Income Tax Act. One can imagine the scene deep in the Inland Revenue Department's underground bunker in Wellington, where Oberleutnant Sims has caught a property-owning taxpayer fair in the middle of his periscope.

"Harris! Fire the Property Speculation Tax!"

"Ja, mein Leutnant."

"Curses! Missed the swine! Load section 88AA! Ready? Fire! (Pause.) Aha! Beautiful shooting! Hit him right in the profits! We should win an Iron Penal Assessment with Oak Leaves for this! Heil Rowling!"

One of the reasons why both the Act and the section are so unsatisfactory is that neither comes directly to grips with the problem the Government seeks to tackle. Trying to stamp out property speculation and development by taxation is like trying to contain the spread of VD by a system of dikes. What the Government should do is employ direct methods and impose an annual limit on the number of property transactions it will alow in one year, say, 150,000. This overall number would be allocated between the various land registration districts proportionately to population. It would be used upon a first-come, first-served basis, provided that no one person or company would be allowed more than one transaction per year. Property speculation would thus be abolished at a stroke. If one land registration district did not use up all its transactions, persons in another district whose allocation had been exhausted could apply to have the spare transactions transferred, rather like hotel licences. Regional development could be advanced by allowing a disproportionate number of transactions to occur in the South Island. The present difficulties being experienced by the Land Transfer Office would vanish, since each office would know in advance every year how many transactions it was going to have to deal with, and could plan accordingly.

The scheme has another attraction, which I will come to in a roundabout sort of way somewhere towards the end of this paragraph. Many groups of people nowadays look to the Government for assistance when times are hard. Farmers are the obvious example. Doctors are paid by the State, whatever the times are like. Teachers, nurses, soldiers, Cabinet Ministers all support themselves from the public purse. Why should lawyers miss out? My proposal would enable the Government to extend a helping hand to our profession during times of recession, such as the present. If the total number of transactions was obviously going to fall short of 150,000, in other words if conveyancing was a bit slack, the Government could create notional transactions in order to subsidise lawyers, who would otherwise be roving the highways in savage packs, desperate, unshaven, descending on small communities and indulging in uncontrolled outbreaks of conveyancing. These notional transactions could be deemed to take place between Government Departments such as the Ministry of Works and the Lands and Survey Department, or alternatively between real-life citizens endowed by the Minister of Justice for the purpose of the scheme with notional properties.

There are other ways in which State assistance could be furnished to a beleagured pro-

fession. Many of us help to operate, and all of us applaud the duty solicitor scheme. Why not a duty conveyancer? I envisage a system whereby task forces of trained duty conveyancers hover above all main cities and towns in air force helicopters, ready to parachute into action whenever their monitoring equipment detects a land agent about to sign up a contract. Their job would be to explain to the parties the meaning of phrases like "subject to finance", "vacant possession", and "carpets, drapes and blinds". They would not be allowed to act for either party except in special circumstances, eg, where a person signing a contract for the purchase of a house is at the same time being arrested for child-molesting, in which case the duty conveyancer would apply for bail and search the title. There are, of course, many practical obstacles to this proposal, most of them related to the near-impossibility of obtaining both negligence and accident cover for lawyers parachuting into built-up areas, but these difficulties could probably be overcome by a simple amendment to the Accident Compensation Act. A more fundamental problem is the innate conservatism of our profession, as manifested by a reluctance to jump out of aircraft. Here, education is the answer. Parachutemanship could be added to the practical subjects like Advocacy and Taxation in which aspirant lawyers are required to qualify before being admitted.

Mention of taxation brings me back to the starting point of this dissertation. And mention of the starting point of this dissertation brings me forward to the end of it. Before I do conclude I should like to make it clear that I am well aware of the type of objection that my critics are likely to level at my proposals: "ridiculous", "extravagant", "impractical", "it'll never work", etc. May I point out to those Carping Thomases that precisely the same sort of thing was said about the East African groundnut scheme and the League of Nations.

# OBITUARY

**A T Young**

The death occurred recently of Mr Alexander Tolhurst Young, a prominent member of the legal profession in Wellington.

Mr Young was educated at Miss Somerville's School in Hill Street and at Wellington College. He studied law at Pembroke College, Cambridge University, England, where he gained the degrees of MA and LLB. He was called to the English Bar and spent some months in Chambers in London before returning to New Zealand.

Mr Young joined the firm founded by his father, the late Mr Thomas Young and he practised his profession in the City for more than 50 years. At the time of his death he was the senior partner of the firm of Young, Bennett and Co.

Mr Young took a keen interest in the affairs of the Law Society and was a past president of the Wellington District Law Society and treasurer for some years of the New Zealand Law Society.

Some of Mr Young's forebears were involved in commerce and while being in his earlier years a practitioner in the Courts of some note, he later developed his practice along commercial lines.

He was a director of a number of companies including T and W Young Limited, Associated British Cables Limited, The Wellington Gas Company Limited and Dominion Breweries Limited.

During the war he served at headquarters in Wellington with the rank of major.

Mr Young was a keen fisherman and spent a good deal of his leisure time at Turangi. He was also a member of long standing of the Wellington Golf Club, Wellington Racing Club, the Wellington Club and the Wellesley Club.

Mr Young is survived by his widow, his son Peter, who is a member of the firm, and two daughters, Mrs James Tennyson and Mrs Jeremy Shaw of Auckland.

# LEGAL LITERATURE

**Indexes to the Decisions of the Indecent Publications Tribunal** (2nd ed cumulative 1964-73) by Stuart Perry (available from McCrae Publishers, PO Box 3509, Wellington).

Mr Stuart Perry has furthered his already invaluable service to those affected by the Tribunal in this his latest compilation of classifications.