announced in the middle of 1978. Meanwhile, 240 other recommendations of the Beattie Commission are also under study. These range from recommendations on:

- abolition of the right of appeal to the Privy Council (not to be done "lightly" and only to be done on the basis that it will be beneficial to the New Zealand judicial system and following an enlargement of the Court of Appeal of New Zealand),
- the reconstitution of the Supreme Court as the "High Court",
- the reconstitution of Magistrates' Courts as a judicial District Court,
- the reorganisation of criminal and civil business between the High Court and District Court,
- the establishment of a Family Court and of a Judicial Commission.

One interesting suggestion is that the Judicial Commission should have the power and duty to investigate complaints concerning the conduct of judges (short of removal) and the training of new members of the Bench. It is suggested that "all judges should visit penal institutions soon after their appointment and from time to time thereafter". The adoption of modern principles of court management and judicial administration is suggested and consumer monitoring of the system of justice by boards or committees formed on a district basis is specifically proposed.

Particularly refreshing is the very practical section on "The Courts and the People". Amongst the recommendations here are:

- provision of an Information Desk in a prominent place in the entrance to every court building;
- special training in public relations for court staff;
- education for school children and the general public;
- more flexible hours for court sittings;
- provision of interpreter services for Maori, Polynesian and other ethnic communities;
- the use of plain English in court, including in the framing of charges;
- (by majority) wigs and gowns to be retained in the High Court and Court of Appeal and the simple black gown to be worn in the new District Court by the presiding judge;
- redesign of court buildings and court rooms;
- establishment of a Suitors' Fund and provision of greater legal aid.

Everyone interested in the reform of the administration of justice should secure a copy of this important report. It ranges widely but shows a sound practical approach to law reform. It looks at the court through the eyes of the ordinary citizen. The A.L.R.C. is paying special attention to the suggested revision of penalties under the criminal law of New Zealand, in connection with its recently received reference on Sentencing reform.

Privacy Again

> "What infinite heart's ease
> must kings neglect that private men enjoy!"
> Shakespeare, *Henry V*, IV, 1, 256.

A number of national and international moves towards privacy protection have occurred in the last quarter. The debate concerning the declaration of pecuniary and other interests by Members of Parliament and Public Servants continues to occupy State Parliaments and at a federal level the Committee inquiring into Public Duty and Private Interest (Chairman: Sir Nigel Bowen). The Federal Public Service Board is reported to be opposed to a system of compulsory registration of such interests. Instead it favours a "declaration system" to include Defence Force personnel and possibly judges, members of tribunals, magistrates, statutory office holders and the staff of M.P.s. In rejecting the compulsory registration, the Board has asserted that such a system would "make inroads into the privacy of individuals and possibly their families". A similar point was made by the Prime Minister, Mr. Fraser, in answering a question asked by the Deputy Leader of the Opposition, Mr. Bowen. On 14 September 1978, Mr. Fraser told the House of Representatives:

> ". . . At this particular time there are many women within the Australian community who,

> no matter how happy their home is and so on, have independent assets and believe they have an independent status. They believe they have a right to be treated as equals and to have assets in their own right . . ."

Drawing the line between the private and public existence of a person in a public office is not easy. The forthcoming report of the A.L.R.C. *Unfair Publication* makes certain suggestions.

In New South Wales, the Privacy Committee has successfully negotiated an agreement with banks to allow customers access to bankers' opinions about them when these are given to persons making credit inquiries. This right of access is already guaranteed under legislation in South Australia. The voluntary agreement made by the Privacy Committee is in line with that Committee's approach toward persuasion and the avoidance of legislation. *The Australian* (31 Oct.) recognised the importance of credit references and commended the N.S.W. Privacy Committee's move as "timely". "It is now a matter of deciding whether its measures go far enough."

On this point, it is perhaps significant that the N.S.W. Attorney-General, Mr. Frank Walker, announced on 15 November 1978, a review of the problem of computers and corporate crime. Mr. Walker was opening a conference of the Institute of Commercial and Industrial Security Executives in Sydney:

> "The crux of the problem as I see it is that the speed at which our electronic wizards have been able to develop sophisticated computers and the range of electronic hardware has far exceeded the ability of the rest of our society to monitor the effects of their introduction . . ."

Mr. Walker said that the biggest danger to privacy came from the possible tie-in of computer banks.

> "Big brother is hard at work lining up the computers of insurance companies, banks and associated financial institutions. All we need to do then is add social security, police and health data to be faced with the next thing to the Orwellian vision."

The Attorney-General said that although the Privacy Committee had worked well, he had to admit that it could "never hope to check every invasion of privacy":

> "I suspect that before long we might see the need to strengthen the controls on privacy abuse through legislation."

If there is to be legislation, what should its principles be? This was the issue addressed by participants in the Second National Seminar organised by the A.L.R.C. and the Department of Science in Canberra on 31 October 1978. The seminar was attended by representatives of Commonwealth and State inquiries into Privacy and persons from departmental, industry and academic backgrounds.

The seminar had before it the draft guidelines on the basic rules for privacy protection prepared for the O.E.C.D. Expert Group which is chaired by Mr. Justice Kirby. This Group is seeking to secure international agreement on privacy principles, so that these can be reflected in domestic legislation of member countries of the O.E.C.D. The development of computers, which can cheaply communicate via satellite and other means from one country to another, also requires the provision of international law to ensure effective privacy protection within domestic jurisdiction. The draft guidelines which were also considered by the O.E.C.D. experts in Paris on 5-8 December 1978 include the principle of individual access to one's own data. This principle, designed as the best practical means of ensuring the quality of data, is a universal feature of privacy protection legislation both in North America and in Europe. Among the fair record-keeping principles proposed are:

- there should be no systems of personal data the very existence of which is secret;
- personal data should be obtained and recorded by fair and lawful means;
- it should be stored with a view to specified purposes;
- it should be accurate and, where necessary, kept up to date;
- there should be limits on external disclosures of personal information;
- adequate security measures should be provided;
- time limits should be imposed upon the retention of personal data in identifiable form;
- an accountable controller should be identified for personal data systems.

These recurring general principles and the right to have them enforced by appropriate

means can be found in almost all of the proliferating laws for privacy protection which have sprung up, particularly in Western Europe, as a reaction to the development of computerised records. The universality of computing technology and the basic similarity of privacy protection legislation (despite other cultural and legal differences) have a lesson for Australia. It is likely that future Australian legislation for privacy protection will reflect the "hard core" principles governing personal information systems. It is also likely that the "universal mechanism" to uphold these principles, namely individual access to one's own data, will be at the core of future Australian privacy legislation.

Temptations of the Bench

> "A judge is not supposed to know anything about the facts of life until they have been presented in evidence and explained to him at least three times."
>
> Lord Chief Justice Parker, *Observer*, 12 March 1961.

Professor Gordon Reid's suggestion of a new "judicial imperialism" (reported in [1978] *Reform* 23) has been followed by a series of published articles agonising over the proper limits on the use of judges for non-curial functions. The "hard line" of the Victorian Supreme Court judges is summed up in the article by Sir Murray McInerney "The Appointment of Judges to Commissions of Inquiry and Other Extra-Judicial Activities" (1978) 52 *A.L.J.* 540. That article, itself a revision of a paper originally presented to a conference of judges in January 1974 recounts in detail the history of successive attempts (generally without success) to secure the appointment of Victorian judges as Royal Commissioners:

> "Let it be assumed—it is perhaps a rather large assumption—that a Judge would perform [executive and administrative] tasks better than most people. Nevertheless the job of the Judge is to judge. It is a job which very few people in the community can do, and the number of people who can do that job at any given time, outside those already on the Bench doing it, is necessarily very limited. There are, however, sufficient men of the calibre to fill whatever needs there may be for Royal Commissioners and Boards of Inquiry without calling on the judiciary to undertake that work."

The extent of the feeling on this subject in Victoria is evidenced by the following quote from Sir Murray's article:

> "It has not been regarded in Victoria as improper to act as President of a Club, such as the Melbourne Cricket Club . . . Sir Owen Dixon was, I understand, at one time the President of the Australian Club. On the other hand the Presidency of a body such as the Victorian Football League might involve entry into the political arena to an extent which would make it undesirable for a Judge to accept such an office." (p. 552)

In the same vein is Mr. Justice Connor's article "The Use of Judges in Non-Judicial Roles" (1978) 52 *A.L.J.* 482. Connor J. identifies three categories of non-judicial functions in which judges have been increasingly used in recent years:

- the conduct of Royal Commissions and Inquiries;
- membership of Commissions, Tribunals and Councils;
- appointment to functions which are frankly of an executive nature.

It is the third category which captures his attention. He instances the appointment of Latham C.J. of the High Court of Australia as Minister to Japan in the critical period 1940-41 and Dixon J. as Minister to the United States from 1942-1944. The appointment of Mr. Justice Woodward as Director-General of Security and Mr. Justice Fox as Ambassador at large are also mentioned:

> "Take a Judge out of the [judicial] system by placing him in an executive role, deprive him of the assistance of professional advocates whose sole task is to further the cause of someone who may be affected by what he does, have him operate behind closed doors, free him during his ordinary working day from scrutiny by press, public and court of appeal . . . render it unnecessary for him to make a public statement of his reasons for doing what he does, and the chances are that after a while he will not act very differently from a good public servant. There will be times when, because of inexperience in an unfamiliar milieu, he may not do any better than a distinguished public servant would do if he were temporarily seconded to the judiciary. In my view these appointments should not be used as precedents for further judicial secondments to the executive; rather they should be seen for what they are, namely rare exceptions." (p. 484)