n z l r c?

> It is not that Kiwis necessarily sleep with their heads in the sand but that New Zealand has a long tradition of public service by part-time committees which has made an impoverished system work surprisingly well.
>
> Prof. J.H. Farrar, (1980) 1 *Canlab LR* 109

impoverished system? With these words, Professor John Farrar, formerly of the Canterbury Law School in Christchurch, NZ, introduced the debate concerning the establishment of a permanent full-time law reform commission in New Zealand. The debate has been previously reviewed in these pages. See [1981] *Reform* 25. There is a great deal of interest in law reform in New Zealand. It is significant that the new *Canterbury Law Review,* in which Professor Farrar's note appears, contains a permanent special section on 'law reform'. In the first issue it analyses the structure of the present part-time committees, the funding and research support they receive from the Department of Justice, and the action or lack of action on law reform reports delivered over the past decade or so. After reviewing the arguments for and against the full-time nucleus for law reform in New Zealand, Farrar urges the establishment of an LRC consisting of a full-time Chairman of at least High Court calibre, four part-time commissioners and a full-time research and secretarial staff, calling in consultants from private practice. Specifically, he urged that public hearings should be conducted on proposals for reform.

The debate about the best way of doing law reform arose again at the Dunedin Law Conference in April 1981. One of the sessions examined a paper by Mr. Victor Tennekoon QC, Chairman of the Law Commission of Sri Lanka. Also before the conference was the long-awaited statement by the New Zealand Law Society, advocating a restructuring of existing law reform machinery in New Zealand 'necessary to meet the day's conditions'.

Mr. Tennekoon's paper outlined the history leading up to the establishment of law commissions in Britain, Sri Lanka and Australia. He referred specifically to the need for local bodies to replace law reform borrowing from Britain and judicial inventiveness which in earlier times had operated to modernise the law.

n z law society proposal. The NZ Law Society proposal urged the establishment of a permanent NZ law reform commission comprising a commissioner who would simultaneously be a judge of the High Court of New Zealand, a deputy commissioner, five research officers and aided in each case by an ad hoc committee. The latter would include practising and academic lawyers, lay persons and a senior Justice Department officer. Also included in the scheme to provide for the proper processing of proposals were suggestions that reports should all be tabled in Parliament (this does not now happen in New Zealand); that they should be automatically referred to a parliamentary committee and that within six months of reporting back, the government's intentions should be notified.

Amongst the arguments advanced for a new full-time approach was one familiar to Australian observers of the law reform scene:

> ... the need to involve the public more closely than at present in the process of law reform, and to inform the public of the implications of law reform proposals — something which at present occurs only sporadically and is much dependent on the whims of newspaper reporters and the availability of newspaper space. The reaction of the public, and of various specially affected groups, should be diligently pursued in the interests of democracy. At present only highly charged or readily grasped proposals attract any widespead discussion: even then it is often short-lived and the outcome hard to evaluate. The Society believes that there should be more public discussion of all law reform proposals, and that this should involve a carefully planned public relations programme, and on occasions, the use of travelling seminars to explain proposals and television appearances. The present Standing Committees cannot do any of this. ... Only a Law Reform Commission can plan and execute [such a programme] with discrimination and vigour.
>
> NZ Law Society, *Law Reform Machinery,* 1981

The Minister of Justice, Mr. Jim McLay, described by Professor Farrar as 'an energetic but pragmatic reformer', is reported to have expressed doubts about the need for change. In [1979] *NZLJ* 346, whilst conceding that the system of law reform 'must be allowed to develop and adapt to changing circumstances' he was 'unconvinced of the need for a fundamental change'. Furthermore, in a number of recent addresses, Mr. McLay has cautioned against putting too much faith in legislation to achieve reform.

n s w l r c 'sharpens'. Meanwhile, in Australia, changes are occurring. Commenting on the appointment of Professor Ronald Sackville to head the NSW Law Reform Commission, legal correspondent of the Sydney Morning Herald, Mr. John Slee, predicted that his appointment would 'sharpen the pace':

> No-one doubts that with Professor Sackville in charge the pace will quicken at the NSW Law Reform Commission. ... A vital part of his mopping up operation will be to see that one of the central questions in the inquiry into the legal profession, the solicitors' conveyancing monopoly, is not overlooked.

By the same token, law reform happens in mysterious ways and Mr. Slee points out that during the four-year inquiry by the NSWLRC into the legal profession, great changes have already occurred in the attitude of the NSW Law Society to reform:

> From a truculent refusal to admit that there was anything seriously wrong in the profession, the Law Society has come to accept in effect much of the argument put forward by the Law Reform Commission in its 1979 discussion paper on Complaints.

Amongst changes that have already occurred, in advance of the NSWLRC final report, are:

- election of younger and 'less conservative' leaders by the Law Society;
- establishment of the Lay Review Tribunal;
- acceptance of compulsory indemnity insurance for solicitors to cover professional negligence claims;
- liberalisation of restrictions on advertising;
- publication of a 120 page directory listing accreditation of specialists; and
- provision of a liens conciliation service to help settle disputes over documents retained for unpaid costs.

The NSW Bar's relationship with the NSW Law Reform Commission has been less congenial. An article in the *National Times* (17 May 1981) predicts that a forthcoming discussion paper's treatment of the Bar will 'raise passions'. The same article suggests that, under Professor Sackville, the NSWLRC will receive References from the NSW State Government on:

- the law of land transfers in New South Wales, including the solicitors' monopoly of certain aspects of paid land conveyancing;
- accident compensation, including a review of the Woodhouse report. See [1981] *Reform* 56.

exquisitely languid. In Britain, the Civil Service College has published a working paper, No. 26, on 'Law Reform'. The paper contains a summary of the seminar held at the College, near Ascot, in which the functions of the English and Scottish Law Commissions, and their relationship with government, were explored. The chairman and chief conductor of the seminar was Lord Scarman, first Chairman of the Law Commission of England and Wales. He repeated his suggestion that parliament should consider developing the use of select committees to advance law reform, possibly by establishing a specific Select Committee on Law Reform, with the task of examining proposals and, where appropriate, 'promoting' their implementation. Discussion ranged from such practical issues as the inestimable value of the word processor for refining law reform reports and draft legislation to the relationships between senior government officials and law reformers. The dangers of non-co-operation between law commissions and the departments of state were frankly examined. One

experienced participant reflected on 'the most difficult question' of how far a commission should go in promoting its proposal. There seemed to be general acknowledgement that increased informal consultation at an early stage in the LRC work, particularly after consultation papers were published, could aid law reform, in a practical way. It could promote mutual respect and a clear understanding of proposals and their rationale. The unmentioned theme of conferences such as this is the very great power of a key administrator, almost single-handed, to bring to nought the patient, exhaustive deliberations of institutional law reformers by simply ignoring a law reform report which lands on his desk or by processing it at an exquisitely languid pace.

This phenomenon has been agitating parliamentary committees and the press in Britain of late. The first report of the Home Affairs Committee of the House of Commons, recounting the large number of reports upon which no policy decisions had been made, declared:

> The various reports to which we have referred all dealt with matters of considerable importance. A great deal of time and effort, as well as public money, was devoted to the inquiries on which they were based, and to their preparation. Though we have no means of judging whether the delay in implementing so many of their recommendations can be attributed primarily to the reluctance of Ministers to take the necessary decisions or to the failure of civil servants to urge action upon Ministers, we are not satisfied from the evidence we received that the Home Office have treated the work of these committees with the seriousness which the time and expertise of so many eminent people deserve.

In the London *Times* (6 May 1981) the Chairman of the English Bar, Mr. Richard Du Cann, responded to a suggestion that those who report with recommendations to government have no right to anything but that government 'should treat their recommendations with courtesy':

> What if the recommendations are sound, generally supported, non-political in character and if their implementation requires no significant expenditure? Mere courtesy is then a poor recompense for hours of wasted effort by those sitting on the commission and none for the public whose interests are not properly protected.

Referring to the report of the Royal Commission on Criminal Procedure (see [1981] *Reform* 62) Du Cann urged:

> An early and unambiguous statement that this report will not be allowed to gather dust will be required by all those who have watched the deteriorating situation between police and public in and out of the criminal courts with mounting dismay.

In the same vein, commenting on the ALRC 1979 report on defamation laws, and under the banner 'dead slow reform', the *Canberra Times* (23 March 1981) urged:

> The Commission has produced a report which would solve [most] difficulties and ... the legislators should have to face the obligation of making a decision on it. Delay and deferment is not acceptable. ... On the whole the Commission's recommendations on defamation recognise the balance necessary. They should be implemented. Certainly there is no case for delay; the report should be either adopted or rejected.

See also below, p. 98. The obligation to reconcile the law with modern perceptions of justice is no longer an armchair legal study of existing rules, political hunches or mere juggling with legislative words. The pressures for change and re-examination of laws are great. In all parts of the common law world, hard pressed lawmakers and administrators are being posed the same question: how can we help our law-making institutions to cope in today's times of change?

aboriginal law hearings

> Our law and your law are different. ... Our law never changes from the beginning. White law isn't our law. You should keep it that way. ... We want our law. That's our life. That's our happiness and goodness in life. White man has got a book. The black fellow's got it here [in his head].
>
> ALRC Public Hearings, *Transcript,* Fitzroy Crossing, 31 March 1981.

major hearing circuit. The Australian Law Reform Commission has just concluded its most exhaustive series of public hearings. For more than nine weeks during March, April and May of 1981, the commissioner in charge of the ALRC inquiry into Aboriginal customary laws, Mr. Bruce Debelle, travelled to the four