



## Law and Justice at the Hocken

**L**IKE Australia and Canada, New Zealand adopted and adapted English law. Statutes enacted by Parliament are the highest legal authorities. The English Laws Act, 1858 specified that English statutes were valid law, in so far as they applied to the circumstances of the colony in January 1840. (In practical terms, this resulted in some uncertainty, as the applicability of any particular statute could only be finally determined by a court. This was resolved with the passing of the prescriptive Imperial Laws Application Act 1988)

The courts, based on English models, have two roles. One is to adjudicate in the criminal and civil matters brought before them. The other, incidental to this process, is to interpret legislation when its meaning is unclear in the context of a particular case. When deciding cases, judges call upon the legacy of recorded previous decisions. Over the centuries, out of the myriad of disputes brought before them, the courts developed principles (statements of legal doctrine) to be applied in the various subjects of the law, such as contract or defamation. They also evolved the 'doctrine of precedent' or 'stare decisis' (meaning 'let the decision stand'), which lays down that courts must apply these developed principles, until over-ruled or varied by a higher court, and provides an element of predictability and stability to the legal process.

Until modern times, large areas of the law were not dealt with by statute. This situation has changed considerably over recent decades, although some modern legislation simply codifies the long-standing principles developed by the judges. In practice, the courts have always been willing to listen to legal argument supported by decisions of the higher courts in those countries whose legal systems originated in England, including Australia, Canada and the USA.

A law library comprises both the raw materials of the law—the 'primary sources'—and also material about the law. Primary sources include the written decisions of judges and legislation, consisting of Parliamentary statutes ('acts') and also 'subordinate legislation' (made under express authority in the statutes), such as statutory regulations, local authority bylaws and, latterly, 'codes of practice'. The Hocken Library is not a law library, but it does hold much legal material.

### Statutes

N.Z. statutes are first published in pamphlet form, which cumulate into bound annual volumes. At irregular intervals (1908, 1936, 1957) official 'consolidations' or 'reprints' were published, to take account of amendments and repeals, and to present an authoritative version of the law at a specific date. Since 1979 the *Reprinted Statutes of N.Z.* have provided a rolling programme of reprinting, keeping the most heavily amended statutes in a reasonable state of repair. To find the state of the 'statute book' at a

specific time, when no up-to-date reprint exists, requires painstaking reconstruction, involving the identification and assembling of amending legislation. The process is aided by a range of guides, such as the several editions of the *Butterworths Annotations of N.Z. Statutes* and, since 1983, the annual *Tables of Acts* ... A commercial firm has provided a service to paste annotations into sets of statutes and regulations. There is a detailed subject index in the final volume of the 1908 reprint and Hocken also has 10 editions of the *Index to the Laws of N.Z.: General, Local and Provincial* between 1883 and 1931.

Hocken holds the 17 volume Irish University Press reprint of *British Parliamentary Papers Relating to N.Z.*, which includes much material relating to legislation, government and the parliamentary process, to 1896. There are also *General Indexes to [English] Bills, Reports, Estimates, etc* for the period 1801–1899. Hocken has the House of Commons paper *Copies of the Laws and Ordinances passed by the Governor and Council of the Colony of N.Z. ... 1841–42, 1844; Ordinances of N.Z. passed in the first ten sessions of the General Legislative Council: A.D. 1841 to A.D. 1849: to which are prefixed the Acts of Parliament, Charters, and Royal Instructions relating to N.Z.*, 1850; a fairly complete run of the annual statutes (from 1854); and the 1908 and 1931 reprints /consolidations. Most volumes are not annotated. Hocken also has some unofficial reprints and consolidations from last century, including the 1885 and 1893 editions of W. Badger's *The Statutes of N.Z. ...* There are also substantial holdings of legislative materials, including Gazettes, Ordinances, Journals and Votes and Proceedings from the various Provincial governments of last century. As is attested by the latest *Tables of Acts* ..., some provincial government ordinances remain in force. The Hocken is particularly strong on Parliamentary material, in the case of modern material even extending to sets of Notice Papers, Order Papers, Supplementary Order Papers and so on. One of the key finding aids in this area is the *Parliamentary Bulletin*, first published in 1986.

### Statutory Regulations

Statutory Regulations are available as a separate series of bound volumes from 1936. As with statutes, Hocken's largely un-annotated set requires much patient reconstruction to establish the exact wording of a particular regulation at any point in time, because of frequent amendments and infrequent reprints. Pre-1936 regulations (and a few later ones) are in the *N.Z. Gazette* (1854–), of which Hocken holds a nearly complete set. The term 'statutory regulation' includes documents with titles such as 'Order', 'Notice', 'Rules' and so on.

### Other Subordinate Legislation

Many entities are empowered by statute to promulgate rules and regulations; examples at Hocken include DCC

Bylaws, district schemes and University Rules and Regulations.

## Law Reports

Lawyers and courts need ready access to the ever-evolving legal principles and interpretations of legislation as laid down by the higher courts. To this end, commercial publishers select legally significant decisions and publish them, giving an account of the facts of each case, the reasoning of the judge(s) and the decision of the court. Note that the reports are very selective. Few cases from lower courts will be reported, because their decisions are not binding on other courts. Many cases which are of great public interest do not appear in the law reports because there is no new legal ground being broken; they are simply being decided on the facts and merits. So for the historian, newspapers will provide many more cases than the law reports and, even for those which *are* in the law reports, may give much more detail of the courtroom evidence.

Hocken holds most of the early series of law reports, such as the *Reports of cases determined by the Court of Appeal of N.Z.* (covering 1867 to 1877); *N.Z. jurist reports, comprising reports of cases in the Supreme Court of N.Z., and in the Court of Appeal ...* (covering 1873 to 1879); *Ollivier, Bell & Fitzgerald's reports of cases decided in the Court of Appeal and the Supreme Court of N.Z., 1878–79–80*; and *N.Z. Privy Council cases, 1840–1932: being appeals from the N.Z. courts determined by the Judicial Committee of the Privy Council*, 1938. The *Colonial law journal; being a selection of reports and cases argued in the Supreme Court of N.Z., 1865–1875 and various articles*, published in Dunedin, is part law report and part journal, including details of the subjects and reading required for the Chief Justice's examinations for barristers and solicitors (including Greek, Latin, Euclid and quadratic equations) and details of practitioners admitted in Dunedin during 1875. There is also a partial run of the *N.Z. Law Reports* from 1949 (the series began with the 1883 volume). Hocken has few other modern series of law reports, and lacks most related finding aids, but these are publicly available at the University Law Library (as are complete N.Z. treaties and related indexes).

## Bibliographies

There are two standard N.Z. legal bibliographies. The first is J.O. Wilson's contribution to volume 6 (1958) of the 2nd edition of the *Legal Bibliography of the British Commonwealth of Nations*. It is best described as a handlist of items then held in Wellington libraries and is by no means complete, although it helpfully provides separate lists of books and pamphlets, law reports, digests of case law, and legislation. For detailed bibliographic information one must turn to sources such as Bagnall's *N.Z. National Bibliography to the Year 1960*. A check of a sample of the Wilson entries for monographs and pamphlets suggests that Hocken holds about 50% of these pre-1958 imprints. The University Law Library scores similarly, with the majority of the holdings being common to both libraries.

In the 1970s, J.F. Northey (Dean of Law at the University of Auckland) created the *Index to N.Z. Legal Writing*, which ambitiously attempted to list, by subject, all books, articles, theses and law reform publications on N.Z. law. The second edition and its supplement provide coverage from 1954 to 1985. (In many respects, this cov-

erage has been continued by the LINX database, not available at Hocken.)

Otago's early lawyers and judges brought law books with them and we know from the *Catalogue of the Library of the Supreme Court of N.Z., at Dunedin*, 1874 that by 1874 there was a substantial private library of several thousand volumes available to Bench and Bar. Given this and the technical nature of most law books, we cannot blame Dr Hocken for taking a relatively small interest in collecting legal material. This collection, now the responsibility of the Otago District Law Society (established in 1879) includes collections of classical authors, volumes of history and historical documents and has probably the most complete run of the *Gentleman's Magazine* in the country.

## Legal History

The leading works are Peter Spiller *A N.Z. Legal History*, 1995 and N.A. Foden *N.Z. Legal History (1642 to 1842)*, 1965.

## Legal Profession: Biographical

The history of the legal profession and the judiciary in N.Z. has been reasonably well documented at a general level. *Portrait of a Profession: the Centennial Book of the N.Z. Law Society*, 1969, edited by Robin Cooke (now Lord Cooke of Thorndon) provides a national perspective, with some local detail. (Retired judge, Hon. Sir Ian Barker has recently been commissioned to write an updated account.) M.J. Cullen *Lawfully Occupied: The Centennial History of the Otago District Law Society*, 1979 is an excellent example of a regional account. Both of these books attempt to record the convoluted histories of law firms. Other regional works include D.F. Dugdale *Lawful occasions: notes on the history of the Auckland District Law Society 1879–1979*, 1979; Colin McLachlan *The legal firms of Canterbury as at March 31, 1993*, 1993; and Elaine Brewster *A history of the early law firms in Rotorua, 1898–1948*, 1992.

Some of the largest law firms in the country have commissioned institutional histories, leading examples being R.C.J. Stone *The Making of Russell McVeagh: the first 125 years of the practice of Russell McVeagh McKenzie Bartleet & Co., 1863–1988*, 1991 and Julia Millen *The Story of Bell Gully Buddle Weir, 1840–1990*, 1990. At the other extreme, the Hocken also holds the 10 page *Fortune Manning; barristers, solicitors & notary public, 1886–1986*, 1986. As a foil to the generally male-dominated histories, there is Gill Gatfield's *Without prejudice: women in the law*, 1996.

## Individuals in the Law

The outstanding Chapman dynasty is treated in detail by Peter Spiller in *The Chapman Legal Family*, 1992. (H.S. Chapman was, in 1864, the second judge appointed to the Dunedin Supreme Court. Hocken has his *Court Note Books, 1844–51* (16 vols), in the Archives Collection at MS-0411. One son, Frederick Reavons Chapman, was the first N.Z.-born Supreme Court judge, lectured in law at the University of Otago in succession to Robert Stout, and was involved with the preparation of several early series of law reports. Another son, Martin, founded a leading law firm, now called Chapman Tripp Sheffield Young.)

Published biographies are relatively few. As regards the Bench there are W.D. Stewart *Portrait of a Judge, Sir Joshua Strange Williams, P.C.*, 1945 (both author and

subject being of local distinction); W.H. Dunn *Sir Robert Stout: a biography*, [1961]; W.D. Stewart *The Right Honourable Sir Francis H.D. Bell, P.C., G.C.M.G., K.C.: his life and times*, 1937; C.G. Lennard *Sir William Martin: the life of the first Chief Justice of N.Z.*, 1961; Bridgit Coleman *Henry Barnes Gresson: a biography*, 1982; J.G. Denniston *A N.Z. Judge, Sir John Edward Denniston*, 1939; O.T.J. Alpers *Confident Tomorrows: a biographical self-portrait of O.T.J. Alpers*, 1993; O.T.J. Alpers *Cheerful Yesterdays*, 1932 and 1951.

One of the few N.Z. jurists to attain international fame was Sir John Salmond, whose achievements are recorded in Alex Frame's *Salmond: Southern Jurist*, 1995.

As regards those in legal practice, material ranges from the popular to the anecdotal, including Glyn Strange *Brief Encounters*, 1997 (on Canterbury lawyers); R.A. Galbreath *Walter Buller: the Reluctant Conservationist*, 1989; A.C. Hanlon *Random Recollections: Notes on a Lifetime at the Bar*, 1939; Ken Catran *Hanlon: a Casebook*, 1985; Hilda Small *Nelson's First Lawyer*, 1951; L.P. Leary *Not Entirely Legal*, 1977; Sir V.R.S. Meredith *A Long Brief; Recollections of a Crown Solicitor*, 1966; and Charles Sturt *Dirty Collars*, 1998.

General works include the *Dictionary of N.Z. Biography; Southern People*; the *Cyclopedia of N.Z.*; and G.H. Scholefield's *Dictionary of N.Z. Biography*, 1940. Also the various editions of *Who's Who In N.Z.* and *N.Z. Who's Who Aotearoa*. (For historical figures whose legal careers began in Britain, there is A.W.B. Simpson's *Biographical Dictionary of the Common Law*, 1984. For more detailed research consult Guy Holborn's two-part article on *Sources of Biographical Information on Past Lawyers* in v.23 (1992) of the *Law Librarian*, pp 75–90 and 119–135, in the Law Library.

For lists of the legal profession and people holding particular legal posts, such as judges, magistrates, justices of the peace and coroners, or memberships of administrative tribunals etc, the Hocken has, in addition to general directories, the *N.Z. Law List* 1901 (including dates of admission to legal practice, with a surname index to the geographical lists of practitioners) and the *Law List and Legal Directory*, 3rd ed., 1908. There are holdings for 1952, 1958–61, 1965–73 of the *Law List of Australia and N.Z.* and a slightly broken run from 1950 of the annual *N.Z. Law Register* (now *Brookers' Law Directory*); the earlier editions of the former often give the date or year of admission to legal practice. From 1997 the latter includes increasing amounts of biographical information on judges and lawyers. Hocken also has *Who's Who in N.Z. Law*, 1994 and the *N.Z. Barristers & Solicitors Directory*, 1997.

For a short period in the 1980s, detailed lists of members of quangos were published by the Cabinet Office; *Government Appointments* was published in loose leaf format in 1986 and 1987. It was preceded by the [*Register of*] *Statutory and Allied Organisations*, which was made available to the public for 1983, 1984 and 1985. (Neither publication has surname indexes.) Lawyers and others in legal posts will also be found in the *N.Z. Government Directory* (published in various formats from 1984) and the *Government Sector Directory* (from 1987).

By virtue of their training and experience, lawyers and judges have often been called upon to chair commissions and committees of enquiry. An index of 'chairmen' (only) is included in *A Checklist: N.Z. Royal Commission, Commissions and Committees of Inquiry*, 1982 by E. Robertson and P.H. Hughes.

Although 'rolls of lawyers admitted to practice' have been in existence since 1842 (for Auckland) these often existed only in the archives of the relevant local law societies. An early example of a published roll is the 1874 list of Otago and Southland barristers and solicitors included in the *Catalogue of the Library of the Supreme Court of N.Z. at Dunedin*, 1874.

## Obituaries

In addition to obituaries in newspapers, one should not overlook the *N.Z. Law Journal*, which often publishes obituaries of judges, magistrates and leading lawyers (although now less frequently than formerly). For the period 1928–52, a cumulative index dealing with biographies, obituaries, reports of law conferences and historical events, such as courthouse openings, was printed at the end of v.29 (1953). There is a 'Cumulative Table of Contents' in the 1971 journal, covering 1962–71 and somewhat more structured indexes for 1972–86 and 1987–91 appear in the 1986 and 1991 volumes, respectively. For the period 1953–61 one has to turn to the annual indexes.

## Persons Caught Up in the Legal Process

While genealogists are familiar with legal records relating to births, deaths and marriages, there are other sources to hand worth exploring. For example, the series of (mostly) annual volumes from the Department of Labour known as the *Book of Awards* (catalogued as N.Z. Dept of Labour. *Awards, agreements, orders, and decisions* and with various variant titles) includes much detailed information about conditions of employment in a wide range of occupations, from 1894 (Hocken's run ends in 1974). Some awards will even specify the individuals to which they apply; in most cases, it will list the particular firms, companies, or organisations. (There are no name indexes; awards are 'indexed' by broad occupational class.)

Individuals appear in the pages of the law reports; for further details, visit the University Law Library.

The earlier *Appendices to the Journals of the House of Representative* have much personal detail relating to legal processes. Denis Hampton has made it easier to trace such references through his microfiche compilations, such as *N.Z. Patents 1860–1890: an Index to Applications by N.Z. Residents; Petitions to Parliament, 1854–1975: an index; Witnesses who gave Evidence to Commissions and Committees 1858–1935: an index; and Intestate Estates: N.Z. Gazette, 1843–1869*.

## Law Reform

Most of the Reports (and some Working Papers) of the bodies of the 1960s and 70s, such as the Torts and General Law Reform Committee and the Contracts and Commercial Law Reform Committee are held, along with the much more substantial publications of their successor, the Law Commission.

## Trials

Public interest has long ensured a ready market for books describing sensational trials, such as *The Telegraph libel case: report of proceedings in the Resident Magistrate's Court, Dunedin, on the hearing of the charges of libel brought by the General Government of N.Z. against Mr. George Burnett Barton, in the case of Regina v. Barton*, 1871 and C.A.L. Treadwell *Notable N.Z. Trials*, 1936. To identify such material at Hocken, explore the computer catalogue under the subject headings 'Trials (Murder)—N.Z.' and 'Trials—N.Z.' and various

subheadings. Subject headings for various types of crime will also bear fruit, for example 'Infanticide' leads to Lynley Hood *Minnie Dean: Her Life and Crimes*, 1994 and John Rawle *Minnie Dean: a Hundred Years of Memory*, 1997.

### Courts

In addition to much technical material, there are key works such as *Reports of the Commissioners appointed by His Excellency the Governor-in-Chief to inquire and report Concerning a System of Procedure Suited to the Supreme Court of N.Z.*, 1854 and the *Report of Royal Commission on the Courts*, 1978, 1978. Local historical material includes Anthony Scott *A History of the Oamaru Courthouse, 1883–1983*, 1983.

### Maori Land Law and the Treaty of Waitangi

There are large numbers of publications on these topics, ranging from P.S. McLean *History and Policy of the Native Land Laws of N.Z.: from 1840 to 1886*, 1886 through Norman Smith's classic *Maori Land Law*, 1960 and Claudia Orange's *The Treaty of Waitangi*, 1992 to P.G. McHugh *The Maori Magna Carta*, 1991 and Richard Boast *Maori Land Law*, 1999. Key subject headings in the computer catalogue include 'Treaty of Waitangi' and various sub-headings of 'Maori (N.Z. people)' such as 'Claims', 'Land Tenure', and 'Legal Status, Laws, etc'.

Hocken has the *Reports of the Waitangi Tribunal*, the many published items from the *Rangahaua Whanui* series, including working papers and Alan Ward's three volume *National overview*, 1997 and the Waitangi Tribunal newsletter *Te Manutukutuku*. Primary sources include F.D. Fenton *Important judgments in the Compensation Court and Native Land Court: 1866–1879*, 1879 and the microfilmed *Maori Land Court Minutes 1865–1975* (selective for the North Island, post-1900), with an index at the Reference Desk.

### Police

There is a wide range of material, from recent histories such as David McGill *No Right to Strike: the History of the N.Z. Police Service Organisations*, 1992; David A. Thomson *A Century of Service: a History of the South Canterbury and North Otago Police*, 1987; Miles Singe *Authority to Protect: a story of Policing in Otago*, 1992 to biographical items such as Gideon Tait *Never Back Down*, 1978. Periodical holdings include the *Otago Police Gazette*, 1861–1877 (with gaps); *NZ Police Association News* (broken run from mid-1970s) and *Ten-one: the N.Z. Police Magazine* (partial holdings from 1991).

### Judicial Statistics

The *Report of the Review Committee on N.Z. Justice Statistics*, [1982] provides a history of the subject and contemporary collection mechanisms. The key source of statistics on courts and offending is the annual *Justice Statistics* (title varies) published by the Department of Statistics 1921–1990; Hocken has a virtually complete run from 1946. Since 1990, one must turn to the limited data available in the *N.Z. Official Yearbook* and the annual *Report of the N.Z. Judiciary* (first published for 1995, Hocken has only the 1998 volume at present).

### Humour

Home grown contributions to the field of legal humour

include George Joseph's *Distorted Torts; Leaves from a Lawyer's Memory*, 1972; *Wigs and Weepers*, 1980 and (with Nevile Lodge) *Legal Litter*, 1977.

### Theses

Local theses of relevance held at Hocken include Lyn Smith *The Otago Legal Profession 1848–69*, 1978 (forms the basis of the first chapter of M.J.Cullen's book on the Otago District Law Society); Carol Brown *Ethel Benjamin—N.Z.'s First Woman Lawyer*, 1985; G.S. Cox *Early life of Sir Robert Stout, 1844–1879*, 1931; W. Paerau Warbrick *NZ Judges & the Law Lords: the Failure of the N.Z. Judiciary to Develop a Distinctive N.Z. Jurisprudence, 1918–1960*, [1994]; Marianne Van Der Voorn *The Police Department on the Otago Goldfields: Dunstan 1861–1864*, 1979; P.A. Lorimer *Minnie Dean: a Case and Public Response*, 1978.

### Photographs and Pictures

The Reader Access File reveals a limited number of law-related photographs under headings such as Dunedin. Law Courts; Dunedin. Supreme Court; N.Z. Court of Appeal; Dunedin. University Of Otago. Law Faculty; and Law (the latter including 1885 photographs of 19 senior English judges). The separate sequence of Portraits includes many well-known legal identities, such as Sir Robert Stout, Ethel Benjamin and Sir F.R. Chapman as well as lesser lights, such as Robert Gilkison, amateur historian and Law Society Secretary.

Other sources of photographs, particularly for notable legal events, include the *Otago Witness*, 1900–1928 and the *Auckland Weekly News*, 1900–1942 (both partly indexed). One should not overlook books, such as many of those listed in the Biography section above.

The Pictures Collection includes paintings of notable early lawyers and judges including Sir Francis Bell, Sir Robert Stout, Sir Joshua Williams and H.S. Chapman, and many watercolours by William Mathew Hodgkins, less well-known as a lawyer than as father of Frances Hodgkins and founder of the Otago Art Society. The cartoons collection includes caricatures of well-known lawyers from the late 19th and early 20th centuries.

### Archives

More than 25 separate collections of papers from Otago law firms or trustee companies have been donated or are on deposit. They range from a few volumes, such as letterbooks of Ethel Benjamin, to collections of more than 100 linear metres. In most instances, however, material may not be consulted without prior permission from the depositor or, for some collections, the Otago District Law Society. Most of the material has yet to be listed although a few receipts lists exist.

### Periodicals

Hocken does not purchase modern technical legal books or periodicals, but it does hold the *Otago Law Review* and the *N.Z. Law Journal* (for details of indexes see the Obituaries section, above). Other law-related titles include *N.Z. Justices' Quarterly* from v36 (1967) and a fairly complete run of *Lawtalk: Newsletter of the N.Z. Law Society* from its inception in 1974. In recent years law firms have taken to publishing newsletters (often repeating material on their web-sites); Hocken has a few examples, notably the Lawlink Group's *Lawlink*, from 1986.

*the staff of the Hocken Library; edited by George Griffiths; designed by Gary Blackman.*