

PUBLIC LAW REVIEW

Volume 15, Number 2

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INTRODUCTION

The New Zealandness of New Zealand public law – *Michael Taggart*81

ARTICLES

What a difference a Treaty makes – the pathway of aboriginal rights jurisprudence in New Zealand public law – *PG McHugh*

From the 1970s and through the 1980s public law in the common law jurisdictions of North America and Australasia developed a greater rights consciousness as well as an increased willingness to render executive conduct subject to judicial review. The recognition by courts of key aboriginal rights in that period was consistent with that new, more activist mood. In New Zealand “Treaty principles”, incorporated into statutes and augmented by judicial interpretation, were the platform for Maori rights recognition. This was the basis for a jurisprudence similar to that in other jurisdictions. This similarity suggests that the pathway of New Zealand law in the 1990s would have developed much the same direction – whether steered by statutory “Treaty principles” or common law “aboriginality”. Once all jurisdictions had made the preliminary recognition of rights, downstream questions of rights integration and management surfaced giving rise to a new, more complex legalism87

Common law rights and navigation lights: Judicial review and the New Zealand Bill of Rights – *Paul Rishworth*

The *New Zealand Bill of Rights Act 1990* has now been in force for almost 14 years. In the early years judges and commentators tended to concentrate on what the *Bill of Rights* was not – an entrenched supreme law – rather than what it was – an affirmation of fundamental rights and freedoms that all public actors in New Zealand must observe. But, by the end of 1999, things had changed. The Court of Appeal had asserted both a right and duty to review the consistency of legislation with the *Bill of Rights* and to declare any inconsistency. And, as in the United Kingdom, the court demanded clear legislative statements before legislation is read so as to limit fundamental rights unreasonably. That said, the *Bill of Rights* remains intrinsically susceptible to being overridden, provided the overriding legislation is sufficiently clear. There are embryonic signs of a trend whereby rights of unpopular minorities may indeed be expressly overridden, without apparent political cost to the government 103

What difference does proportional representation make? – Andrew P Stockley

In 1996 New Zealand replaced a first-past-the-post electoral system with a proportional representation system. This article assesses the effectiveness of the mixed-member proportional representation system (MMP). In view of the perceived deficiencies of first-past-the-post, the expectations of the new electoral system and experience since 1996, what difference can MMP be said to have made? 121

There's more than one song worth singing: The Supreme Court and the legal system – Richard Cornes

A century after Sir Robert Stout first mooted ending appeals to the Judicial Committee of the Privy Council, New Zealand finally achieved this goal with the enactment of the *Supreme Court Act 2003*. This article does not revisit the lengthy debate over whether reform should have proceeded, nor does it set out a detailed analysis of the model of court New Zealand has chosen. Rather, 10 conjectures are ventured about ways the new court may alter New Zealand's legal and political scene. These conjectures may be viewed as hypotheses about what difference the Supreme Court may make; hypotheses which may be tested over the coming years as the court sets about its work 137

BIBLIOGRAPHY

New Zealand Public Law Scholarship, 1998-2003: Select Bibliography – Mary-Rose Russell 146

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5. Austin, n 4, p 56.

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