Committee of Attorneys-General in Port Moresby and the Ministers agreed to study the proposals and their policy implications. The A.L.R.C. report is the catalyst. It suggests two paths to uniformity: one, by agreement, and the other by exercise of such heads of Federal power as exist under the Australian Constitution. Action on the report will be a real test for those who urge the merits of uniform law reform. In this area, technology forces the pace, and the fact is that defamation remains a popular legal remedy.

> The only reason for this that I can come up with ... is that defamation is the great bourgeois tort ... presumably, even in these permissive days ... good name means more than the purse.
>
> J. Cronin, (1979) 42 M.L.R. 237.

N.Z. Courts Shake-up

> The Royal Commission on the Courts wisely refrained from writing a report which could be described as 'bold and imaginative' (no shade of Woodhouse here) . . . Rather the Commission has written a report which may be described as practical, sensible and realistic.
>
> E. W. Thomas,
> Auckland *Northern News*, Dec. 1978.

The New Zealand Court system is about to be reorganised. Announcing acceptance of many of the recommendations of the Beattie Royal Commission on the Courts (August 1978), the N.Z. Minister of Justice, Mr. J. K. McLay, in August 1979 foreshadowed major changes:

- appeals to the Privy Council are to be retained for the time being;
- the Court of Appeal is to have an additional judge (making five) and in criminal cases will be comprised of two Appeal Court Judges and one High Court Judge;
- the Supreme Court is to be reconstituted as the "High Court" which, with the Court of Appeal, will be part of the "Supreme Court of New Zealand";
- Magistrates' Courts are to be restructured as District Courts with a civil jurisdiction raised from $3,000 to $12,000;
- a Family Court is to be created as a division of the District Court;
- many procedural and administrative recommendations are to be implemented.

Commenting on the decision to establish a Family Court, Mr. McLay said that an inspection of the Family Court of Australia convinced him that efforts should be made to avoid swamping the new court with jurisdiction before it was properly set up. He said that problems in the Family Court of Australia, to be avoided in New Zealand, included:

- divisions of jurisdiction between the Family Court and other courts;
- lengthy delays, especially in contested custody matters;
- failure to break down the adversary system;
- conciliation occurred too late to be of much use;
- establishment problems arising from the creation of an entirely new court.

The N.Z. Minister's announcement shows how quickly law reform implementation *can* happen. The Royal Commission's Report made public in September 1978 took nearly two years to complete and contained 246 separate recommendations. Some of the recommendations are committed to further study. These include:

- the creation of a Judicial Commission to give unified control to the courts and to recommend appointments and study programs;
- improve salaries and conditions for judges;
- better facilities and instructions for jurors;
- sound recording of evidence;
- professional court administration.

The criterion accepted by Mr. McLay in his announcement is the improvement of service for the citizen.

> In the final analysis the success of any revision of the court structure will be assessed not in terms of the comfort or convenience of judges and lawyers but rather by the manner in which it dispenses justice to New Zealand citizens and the extent to which those who attend our courts as witnesses, jurors or for any other reason are able to understand the procedures and are subjected to little or no inconvenience and delay.

One proposal for the creation of a permanent Law Reform Commission was stood over for the time being. Mr. McLay told the Victoria University of Wellington Law Faculty Club in June 1979 that the present part-time law reform structure in New Zealand appeared best suited to current needs.

> However, my mind is not closed on the matter and I have arranged for it to be a topic of discussion at future meetings of the Law Reform Council. In the meantime my Department has been able to provide a modest increase in

the research facilities available to law reform committees.

The Law Reform Council was summoned in 1979 for the first time since 1976 and was given the task by the Minister of Justice to review all Public Acts that are more than 50 years old. Mr. McLay suggested that clearing out old laws in this way was to be preferred to automatic "sunset laws". The Law Reform Council of New Zealand has also decided that consideration should be given to the possibility of appointing suitably qualified lay people when dealing with particular topics in which they might have expertise. Announcing this, the Minister said:

> It was agreed that law reform was not the prerogative of lawyers alone and that lay people should be involved wherever appropriate.

To monitor implementation of the Beattie Royal Commission Report, the Annual Report of the Department of Justice in New Zealand will contain a statement on progress, a self-imposed discipline that might be a useful precedent elsewhere.

The judiciary in New Zealand is not leaving reform exclusively to Royal Commissions and Parliament. Barker J. in *T. Flexman Limited* v. *Franklin County Council* used orthodox processes of common law reasoning to extend the duty which exists on judicial officers to give reasons for their decisions. In the circumstances of the case, he held that such a duty existed in an administrative body such as the County Council. The developments of administrative law in New Zealand and Australia were also the subject of close attention at the centennial of the Otago District Law Society at Dunedin, mid-year. Mr. Justice Brennan, President of the Administrative Appeals Tribunal of Australia, compared the reforms of administrative law proceeding in the two countries. He called attention to an important task of the next Century:

> Large volume jurisdictions are costly to operate on a judicial model and if the decisions turn on the facts of each case, the cost of creating a system of external review will no doubt be balanced against the expected enhancement in the quality of administrative justice ... The growth of public law will demand of lawyers a greater knowledge of the bureaucracy which is charged with the administration of that law, and a familiarity with instrumentalities that can furnish relief in the event of seeming administrative injustice.

Access to Justice, yes; Class Actions, maybe

> Class actions . . . are responses to the mass production of legal problems.
>
> J. M. Hazard, 58 F.R.D. 299, 309.

Lord Widgery once told an Australian legal audience that, entering his court, he was every day rebuked by the two lions that guarded the door. One, he declared, was the lion of costs. The other was the lion of delay.

There is increasing concern that the exclusive and individualistic system of adversary trial is not bringing claims by ordinary citizens to justice. The problem is not new. Responses to date have included:

- the proliferation of administrative protective agencies;
- the establishment of small-claims tribunals and consumer tribunals;
- the expansion of legal aid.

Despite these changes, the basic problem remains. Many people with a grievance never get to the community's independent umpire. Should we just shrug this off and put it down to "life"? Can the labour-intensive system of trial we have be adapted to the society in which the mass production of goods and services tends to mass produce legal problems?

These are questions that are addressed in the A.L.R.C. Discussion Paper *Access to the Courts—II Class Actions* (D.P.11). Led by Commissioner Bruce Debelle, an Adelaide Barrister and Solicitor, the A.L.R.C. has tentatively suggested the introduction of class actions into Federal jurisdictions in Australia, subject to a number of strict rules designed to overcome problems identified by class actions in the United States. The paper describes the way in which the "representative action" for damages went on to develop into class action procedures in the United States but atrophied in Commonwealth countries, as a result of a decision of the English Court of Appeal in 1910. Under that decision it has become generally accepted that damages cannot be recovered in an action brought by one person on behalf of numerous others, who have their own separate claims. In the United States class actions are mounted on behalf of large groups of unidentified and even unidentifiable persons who have a similar legal claim to the plaintiff. Large verdicts have been recovered