

CROWN LAW

ANNUAL REPORT

for the YEAR ENDING
30 JUNE 2007

*Presented to the House of Representatives
Pursuant to s44(1) of the Public Finance Act 1989*



ANNUAL REPORT

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SOLICITOR-GENERAL'S INTRODUCTION

It is with pleasure that I present Crown Law's annual report and its audited financial statements for the year ended 30 June 2007.

Throughout the year Crown Law focussed on providing legal services to government. Crown Law has two primary objectives in providing its services: to ensure that the Government is able to lawfully implement its chosen policies and that Executive Government is conducted lawfully. The work is challenging and diverse, bearing on the actions of government in all spheres. Crown Law's litigation and advice work spans New Zealand's courts, touching on constitutional and public law along with the criminal prosecution and appeal functions. Some of the highlights of Crown Law's legal work are described at pages 15 to 28 of the report.

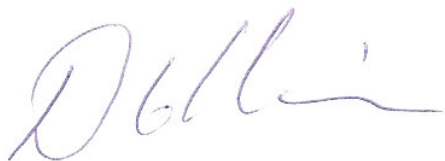
In the past year, Crown Law has also worked to further develop its capacity to respond to clients' needs. In December 2006 the three legal practice groups were restructured to enable better co-ordination of work and improved sharing of resources.

A Knowledge Services team was established to enhance access to legal information and protect Crown Law's vital archive of legal advice to government developed since the establishment of the office in 1875.

The decision in 2006 to implement Signature Cannae, an electronic litigation management programme, is now demonstrating its value. In its first use in the High Court the programme resulted in a saving of approximately 30% in court time.

In February 2007 we welcomed Cameron Mander who joined Crown Law as Deputy Solicitor-General (Criminal and Human Rights). Cameron has 20 years of experience as a Crown prosecutor and partner in private practice.

I would like to thank all staff for their professionalism and commitment throughout the year.



David Collins QC
Solicitor-General & Chief Executive
27 September 2007

STRATEGIC DIRECTION

CROWN LAW – STATEMENT OF DIRECTION

Supporting New Zealand's system of democratic government, in accordance with the law and in the public interest.

CROWN LAW'S VALUES

Crown Law:

- will support the Law Officers, the Attorney-General and the Solicitor-General, in their work in a way that enables them to meet their obligations to make decisions independently and objectively in the public interest;
- will demonstrate a proper understanding of the roles of each of the branches of government;
- will take a “whole of government” perspective in carrying out our primary functions;
- will be responsive to client needs and concerns and will provide legal advice and representation which:
 - shows an understanding of the particular contexts in which legal problems arise;
 - is relevant and focused;
 - is well researched and well reasoned;
 - is balanced but decisive;
 - is expressed and organised in a simple, direct and concise way;
- will conduct itself consistently with the expectation of the Crown as a model litigant; and
- aims to create a work environment which stimulates and challenges all who work in Crown Law to meet the highest standards of public service, while recognising the need for a balanced and well-rounded personal life.

THE WORK OF CROWN LAW

Crown Law provides legal services to the Crown thus contributing to the effective and lawful functioning of New Zealand's Government. The work of Crown Law comprises legal advice to, and legal representation of, public sector clients. Crown Law also supports the Law Officers, the Attorney-General and the Solicitor-General.

Legal services are provided to the Government and government departments by in-house legal advisors, private sector legal advisors and Crown Law. In-house legal advisors typically instruct Crown Law. The engagement of external legal advisors, for example, Queen's Counsel, is undertaken where particular specialist knowledge is required, where work pressures within Crown Law create capacity problems, and to preserve independence.

Crown Law operates much like a private sector legal practice and charges for services to public sector clients. Unlike private law firms, however, Crown Law charges on a cost recovery basis and does not make any profit. Crown Law has sought to service client departments and agencies efficiently and effectively. Key to this is the quality of the working relationship established with the client's internal legal advisors, and the strength of the organisational links with the client's operational and policy functions.

LEGAL ADVICE AND REPRESENTATION

The Crown is subject to the rule of law and has an obligation to ascertain what the law is, comply with it and enforce it. This means that when advising individual departments Crown Law has an overarching duty to the public interest.

Thus Crown Law's clients have two needs: advice that is of high quality addressing the immediate legal problem and advice which takes into account the Crown's overriding obligations and interests.

The Cabinet Directions for the Conduct of Crown Legal Business 1993 direct departments in the use of Crown Law's legal services. The Cabinet Directions provide for two categories of legal work:

- Category 1, which must be referred to the Solicitor-General, includes cases concerning actual or imminent litigation where the Government or a government agency is a party, situations involving the lawfulness of the exercise of government powers, constitutional questions (including Treaty of Waitangi issues), and issues relating to the enforcement of the criminal law and the protection of the revenue.
- Category 2 is essentially all other work, e.g. employment matters, and is contestable. Departments may choose other legal advisors to assist them to resolve Category 2 matters.

When requested, Crown Law provides legal input on policy issues.

By providing legal services Crown Law ensures that the Crown's legal interests are protected and its responsibilities are lawfully carried out. This work assists to manage legal risk arising from the operations of government agencies and policy development.

To further promote these outcomes across government, Crown Law provides leadership for legal services within government. Crown Law has convened three Chief Legal Advisors' Fora, three full client seminars and supported PS Law, an opinion database and workspace for government lawyers, by sitting on the steering committee and contributing opinions.

SUPPORTING THE LAW OFFICERS

Crown Law supports the Law Officers of the Crown, the Attorney-General and the Solicitor-General, by providing legal advice and assisting them in the performance of their statutory and constitutional functions. Specific activities include advice and representation to support the following functions:

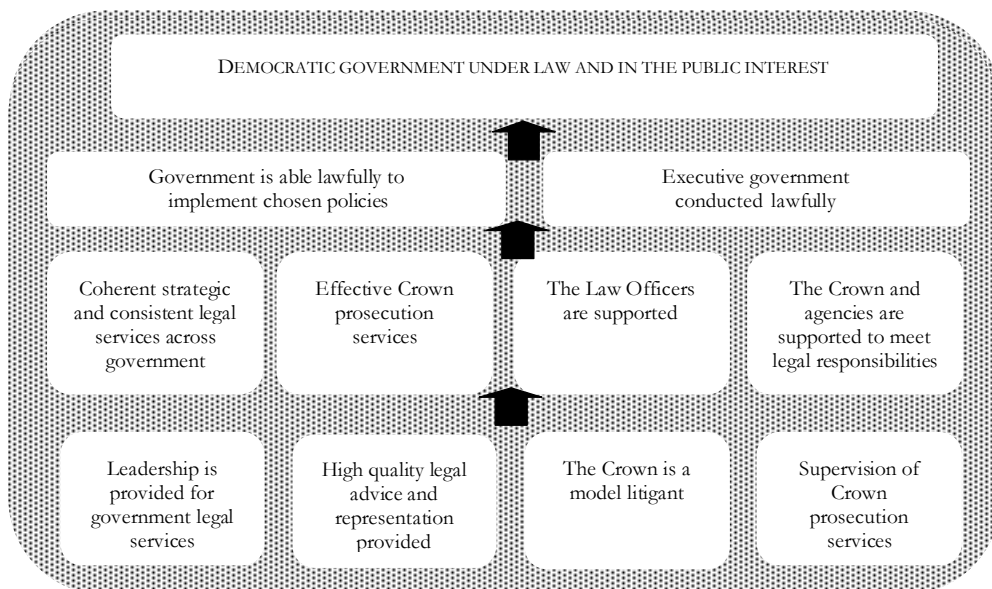
- supervision of charities;
- representation of the public interest;
- vexatious litigant proceedings;
- extraditions;
- participation in Pacific Island Law Officers Meeting (PILOM); and

- the exercise of approximately 70 other powers, duties and authorities arising from statutory powers and constitutional conventions.

Crown Law makes key contributions to the criminal justice system and the Law Officers' responsibilities through the supervision and conduct of the Crown prosecution function. The Solicitor-General has responsibility for prosecuting indictable crime throughout New Zealand. Crown Solicitors are appointed throughout the country under warrant of the Governor-General. They undertake indictable prosecution work for the Crown and appeals to the High Court from the summary jurisdiction. Crown Law provides a co-ordination role within the network to guide and share prosecution practice and knowledge. Crown Law also oversees the prosecution work of the Serious Fraud Office, and conducts criminal appeals to the Court of Appeal, the Supreme Court and the Privy Council.

Crown Law's activities have an impact on the lawful conduct of Executive Government and the ability of government to lawfully implement its chosen policies. Ultimately, Crown Law contributes to New Zealand's system of democratic government under law and in the public interest. The figure below demonstrates how Crown Law's activities are directed toward that outcome.

Figure 1



CROWN LAW STRATEGIC GOALS 2007-2010

In order to make progress towards its outcomes Crown Law has identified two goals for the next three years. These goals are intended to ensure that Crown Law's activities are effective. In late 2006 Crown Law adopted a new team structure, together with management and governance changes, which are intended to contribute to these goals.

GOAL 1: ENSURING THE HIGHEST POSSIBLE QUALITY OF LEGAL SERVICES TO GOVERNMENT

This goal recognises that high quality legal services to government are crucial to the Government's long-term priorities as well as to Crown Law's objectives. Crown Law has well-established processes to ensure high standards of advice – these include peer review of advice, litigation management planning processes and the introduction of litigation support software in 2006 to improve the quality of litigation support offered to clients. Crown Law recognises that continuous improvement is necessary to ensure that, as well as being trustworthy and professional, the services offered are solution-focused, innovative and efficient.

ENHANCING SERVICES

Crown Law is strengthening the management structure of the office by enhancing the role of Team Leaders.

Team Leaders now have a more managerial role enabling them to manage the team's workload and oversee team development, assisting teams to perform to their maximum potential.

RESPONDING TO CLIENTS' NEEDS

Fundamental to developing the capability of Crown Law is an understanding of clients' requirements. This is an ongoing process which is enabling a better alignment of internal resources, processes and structures to meet both individual client and the wider Crown needs for legal services.

Crown Law now has underway:

- the development of a client relationship management protocol which clearly sets out what clients can expect in their relationship with Crown Law, and reviewing processes to ensure these commitments are met; and
- a programme of exchanges of staff between Crown Law and its clients designed to improve Crown Law's understanding of its clients and also clients' understanding of Crown Law's role and wider responsibilities.

To improve its participation in policy consultation Crown Law has established the new position of Crown Counsel (Policy).

PROMOTING LEADERSHIP

Promoting Crown Law's legal leadership role contributes to improved standards of legal advice across government. Crown Law has contributed to PS Law, an opinion database and workspace for government lawyers, and led three Chief Legal Advisors' Fora and three full client seminars. In addition, Crown Law has provided three newsletters on employment law.

GOAL 2: ENSURING CROWN LAW IS THE MOST ENGAGING AND RESPONSIVE WORKPLACE FOR LEGAL AND SUPPORT STAFF

To offer its clients quality legal advice, Crown Law has continued to attract staff of the highest quality. Crown Law aims to ensure that all staff know they are truly valued and have opportunities to continue their career development. This goal is also consistent with the State Sector Development Goals: employer of choice and excellent state servants.

Crown Law has focused on:

- continuing to build leadership and management capability through providing opportunities for Team Leader and senior manager development;
- being clear about performance expectations through the development of competency frameworks;
- reviewing Crown Law's approach to the provision of professional development to ensure that the need for a challenging career in the public service is addressed but also that Crown Law is able to respond to the varying needs of clients as an authoritative, trusted, responsive and cost-effective provider of legal services; and
- developing a work environment that is open and receptive to different and more flexible ways of working and which supports a balance between work and home.

CROWN LAW'S CONTRIBUTION TO GOVERNMENT GOALS AND JUSTICE SECTOR OUTCOMES

GOVERNMENT THEMES

The Government has identified three key themes as its priorities for the next decade:

- Economic Transformation;
- Families – Young and Old; and
- National Identity.

Through the Justice sector Crown Law contributes strongly to the Families – Young and Old theme, as highlighted below. In a broader sense access to legal services and maintenance of the rule of law underpins all aspects of government and has contributed to all three themes by supporting government agencies in meeting their legal responsibilities.

Crown Law is a member of the Govt3 programme, an initiative which encourages government agencies to practise sustainability, and is working towards sustainable initiatives in recycling and waste minimisation and purchasing.

DEVELOPMENT GOALS FOR THE STATE SERVICES

The Government's overall goal for the State Services is:

A system of world class professional State Services serving the government of the day and meeting the needs of New Zealanders.

The State Sector Development Goals outline the future direction for New Zealand's State Services. Crown Law's contribution to the goals is described below.

GOAL 1: EMPLOYER OF CHOICE

Ensure the State Services is an employer of choice attractive to high achievers with a commitment to service.

Crown Law has begun a number of initiatives to ensure it continues to be an attractive employment option for existing staff and prospective employees. These initiatives include delivering leadership and managerial training and development, reviewing the approach to professional development and ensuring that the way Crown Law rewards staff reflects both their contribution and the employment market.

GOAL 2: EXCELLENT STATE SERVANTS

Develop a strong culture of constant learning in the pursuit of excellence.

Professional development and translating this into valued results for clients is an ongoing priority. Crown Law is committed to improving access to professional development. During the year Crown Law has focused on developing an appropriate learning framework through which Crown Law can deliver a range of learning opportunities for staff including exchanges and secondments.

GOAL 3: NETWORKED STATE SERVICES

Use technology to transform the provision of services for New Zealanders.

Crown Law has continued to support PS Law, a secure Internet workspace on the Public Sector Intranet that is designed to assist lawyers in the public sector. Through PS Law, public sector lawyers have been able to share their legal advice and intellectual property. Crown Law has sat on the steering group for the workspace and posted legal opinions that have relevance and interest to a wide public sector audience.

GOAL 4: CO-ORDINATED STATE AGENCIES

Ensure the total contribution of government agencies is greater than the sum of its parts.

Crown Law has led three Chief Legal Advisors' Fora and three full client seminars, contributing to the quality of legal advice available to government.

The Solicitor-General has contributed to the Legislation Design Committee.

Crown Law has participated fully in Justice sector processes that are progressively improving planning and management and the quality of services offered to the public by Justice sector agencies.

GOAL 5: ACCESSIBLE STATE SERVICES

Enhance access, responsiveness and effectiveness, and improve New Zealanders' experience of State Services.

Crown Law has provided legal services across government and contributed indirectly to this goal. Crown Law's approach to the conduct of litigation and management of functions such as the Attorney-General's role as protector of charities has contributed directly to this goal.

GOAL 6: TRUSTED STATE SERVICES

Strengthen trust in the State Services, and reinforce the spirit of service.

Crown Law has provided advice to government agencies, to assist them to meet their legal responsibilities and effectively carry out their functions.

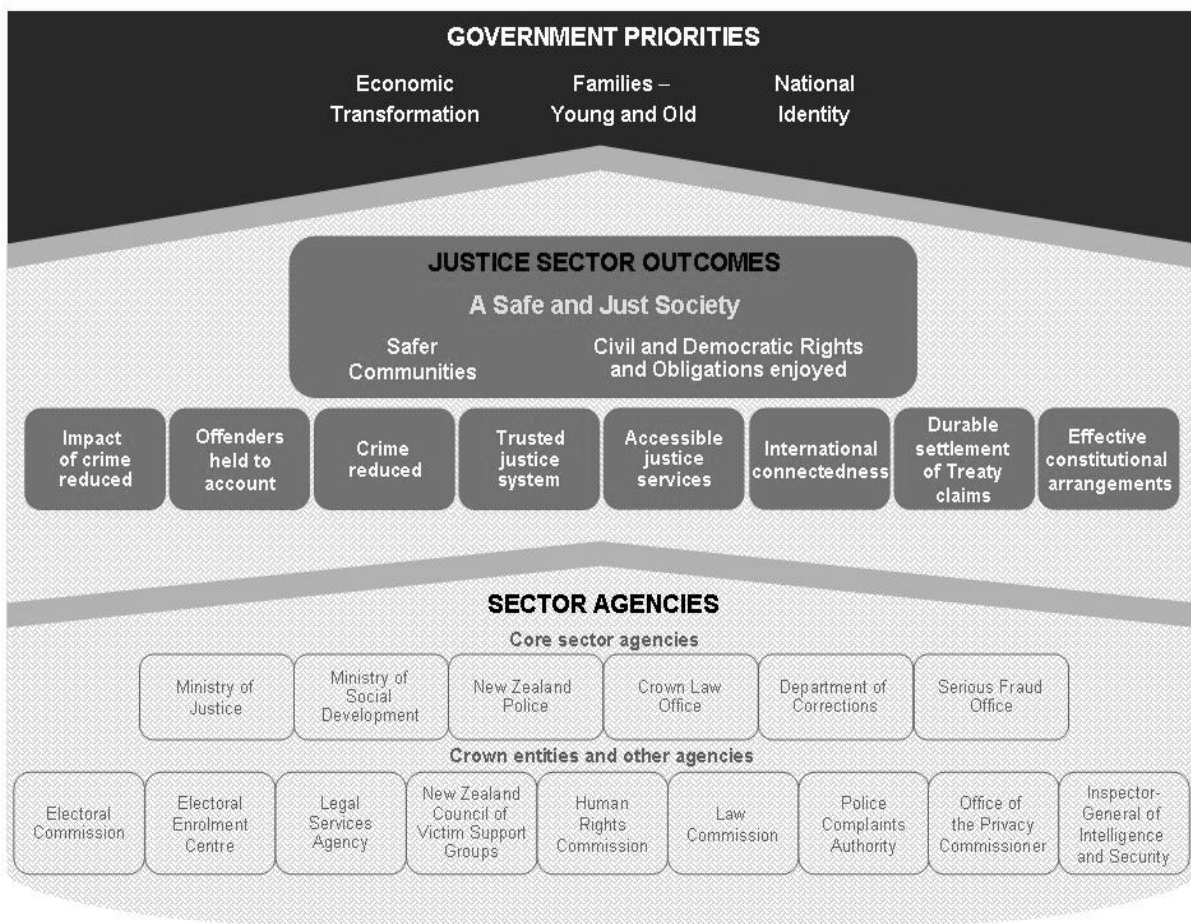
OVERVIEW OF THE JUSTICE SECTOR

THE JUSTICE SECTOR – MAKING A DIFFERENCE FOR NEW ZEALANDERS

The Justice sector comprises a complex array of institutions and participants contributing towards government priorities and shared outcomes that are fundamental to the success of New Zealand society.

The following diagram provides an overview of how the agencies in the sector contribute through the sector outcomes to the Government’s priorities.

Justice Sector Contribution to Government Priorities



SECTOR CONTRIBUTION TO GOVERNMENT PRIORITIES

The Government has set three high-level, long-term priorities for the next decade on which the success of the social, economic, political and cultural activities of the nation will be built:

- Economic Transformation;
- Families – Young and Old; and
- National Identity.

Over the past year, the Justice sector has redeveloped its outcomes framework as part of the sector planning approach that is linked to the achievement of these priorities. Work will continue over the next few years to fully develop the framework and clearly define the contributions of each agency. This includes the development of appropriate performance indicators that will help track performance and demonstrate the progress the sector is making towards the outcomes and government priorities.

ECONOMIC TRANSFORMATION

The Justice sector supports *Economic Transformation* by providing effective administration and infrastructure for civil courts and tribunals so that national and international business transactions can be conducted with security and confidence. The development of legislation and policy advice by the Justice sector helps to support an effective trading regime for businesses. Reduced crime also has benefits for businesses by supporting a safe domestic environment in which to operate.

FAMILIES – YOUNG AND OLD

The priority of *Families – Young and Old* seeks to make New Zealand a place in which all New Zealanders:

- can contribute to and benefit from the success of New Zealand;
- have the support and choices they need to be secure and able to reach their potential throughout their lives;
- have access to a safe and secure environment in which they are accorded respect and dignity throughout their lives; and
- are supported to live healthy and fulfilling lives.

The Justice sector supports *Families – Young and Old* by protecting the safety and security of individuals and communities, and ensuring that people can enjoy their civil and political rights. Reducing crime is a key contributor to safe communities – and it is also important to hold offenders to account, and mitigate the impact of crime.

NATIONAL IDENTITY

The Justice sector contributes to core elements of New Zealand's *National Identity* by providing services that support the maintenance of effective constitutional arrangements. The settlement of Treaty of Waitangi claims, the integrity of electoral processes, how the interests and rights of the individual are addressed and how offenders are treated are all key elements of how New Zealand is characterised as a nation. The sector's contribution to public confidence in the justice system enhances New Zealand's reputation as a good place to live and raise children. The Justice sector has also had an increased role in ensuring that New Zealand is connected internationally. This includes making sure that New Zealand's laws meet international obligations and support New Zealand as an international citizen.

SECTOR OUTCOMES

The sector’s overall outcome is a “Safe and Just Society” for New Zealand. For this outcome to be achieved, communities need to be safe and individuals need to feel secure and that they live in a society where civil and democratic rights and obligations can be enjoyed.

Each Justice sector agency has a role to play in delivering on these outcomes, and in many instances sector agencies need to work together

to deliver core services effectively and maximise contributions to outcomes.

The outcomes framework reflects how Justice sector agencies contribute to a safe and just society through eight outcome areas. Further detail about the outcome areas and examples of the contributions of different agencies may be found in the Ministry of Justice Statement of Intent.

Crown Law’s Contribution to Justice Sector Outcomes

The table below illustrates the Justice sector outcomes towards which Crown Law’s outcomes, activities and outputs contribute, which are further detailed in the Statements of Objectives and Forecast Service Performance.

Justice Sector Outcome	Contributing Crown Law Outcomes	Crown Law Activities	Crown Law Outputs
Offenders Held to Account Crime Reduced	Effective Crown Prosecution Service	<ul style="list-style-type: none"> Provision of Solicitor-General’s Prosecution Guidelines Managing Crown Solicitor warrants Prosecution of criminal trials on indictment Conduct of appeals arising out of summary prosecutions Conduct of appeals arising out of criminal trials on indictment and from Crown appeals 	Supervision and conduct of Crown prosecutions Conduct of criminal appeals
Trusted Justice System	Crown is a model litigant Coherent and consistent legal services across government Law Officers are supported Effective Crown Prosecution Service High quality legal advice and representation services are provided	<ul style="list-style-type: none"> Adherence to court rules and ethical obligations Provision of legal advice Conducting litigation including criminal prosecution Leadership of government legal services through Chief Legal Advisors’ Forum 	Legal advice and representation Conduct of criminal appeals Supervision and conduct of Crown prosecutions Principal Law Officer functions
International Connectedness	The Crown and its agencies are supported in meeting their legal responsibilities	<ul style="list-style-type: none"> Participation in Pacific and other international legal fora Provision of advice on international legal issues affecting New Zealand 	Principal Law Officer functions Legal advice and representation
Durable Treaty Settlements	Democratic government under law and in the public interest The Crown and its agencies are supported in meeting their legal responsibilities	<ul style="list-style-type: none"> Legal advice on settlements, including during negotiations Representation in the Waitangi Tribunal and courts Advice on policy proposals with implications for Treaty settlements 	Legal advice and representation
Effective Constitutional Arrangements	Democratic government under law and in the public interest Executive Government is conducted lawfully The Crown and its agencies are supported in meeting their legal responsibilities Law Officers are supported	<ul style="list-style-type: none"> Advice to the Attorney-General and Solicitor-General on constitutional issues and Law Officer functions Advice to government agencies on operational legal issues Advice to government agencies on the legal and constitutional implications of policy proposals Representation of government agencies in litigation Conduct of criminal prosecutions 	Principal Law Officer functions Legal advice and representation Conduct of criminal appeals Supervision and conduct of Crown prosecutions

CHIEF EXECUTIVE'S OVERVIEW

Crown Law supports New Zealand's system of democratic government, in accordance with the law, by providing legal advice and representation to Executive Government and supporting the Attorney-General and Solicitor-General in the performance of their statutory and other functions as Law Officers. Crown Law has continued to perform this role by providing legal advice to government departments and agencies, often on complex and urgent matters, and conducting litigation on behalf of the Crown generally, in the name of the Attorney-General.

Crown Law was involved in matters during the year which covered a wide range of issues and areas of the law. Some of these matters, which demonstrate the nature of work undertaken by Crown Law, are summarised below.

PUBLIC LAW GROUP

"LEAKY BUILDINGS" LITIGATION

A number of owners of dwellings, mainly in multi-unit developments, have sued the Building Industry Authority (BIA) (now the Department of Building and Housing), amongst others, claiming that the BIA was negligent in the performance of its statutory functions under the Building Act 1991 and that that negligence has caused or contributed to water damage to these dwellings. Claims have been brought in the High Court and the Weathertight Homes Resolution Service. Crown Law has been managing the claims in conjunction with external counsel.

The Court of Appeal struck out claims against the BIA in *Sacramento* in 2005 but two further plaintiffs, *Siena* and *Struthers*, are continuing their claims with the object of challenging the

Sacramento judgment. *Siena* conceded the strike-out application against its claim in the High Court, whereas *Struthers* argued against the strike-out application but was unsuccessful. Both have filed appeals in the Court of Appeal but neither has had fixtures allocated.

Additionally, the North Shore City Council in *The Grange* proceeding has issued a claim against the BIA alleging that the BIA owed it a duty of care in respect of the way the BIA reviewed the Council's performance of its functions under the Building Act 1991. The Attorney-General (as the successor to the BIA's liabilities) has applied to strike out this claim and this application will be heard in the Auckland High Court in either late 2007 or early 2008.

HISTORIC CHILD WELFARE AND PSYCHIATRIC HOSPITAL CLAIMS

As reported in the last two annual reports, the number of historic damages claims being brought against the Crown concerning social welfare institutions and psychiatric hospitals continues to increase.

Claims against the Crown concerning alleged sexual and physical abuses on former residents of social welfare institutions continue to be filed. As at June 2007, there were 177 claims filed (some also include a claim concerning time spent in psychiatric hospitals).

The claims mostly relate to institutions run by the former Department of Social Welfare but there are also some claims concerning foster homes.

The first of the claims against the former Department of Social Welfare commenced trial in the High Court in Wellington on 25 June 2007. It is expected to be completed in late 2007.

There are now 267 claims filed against the Crown Health Financing Agency alleging mistreatment at various psychiatric hospitals from the 1950s to the 1990s.

The claims include allegations that treatment (such as the administration of electroconvulsive therapy or drugs) was given as punishment and that plaintiffs were sexually and physically assaulted.

The Crown applied to strike-out seven plaintiffs' claims (as a representative sample) on the grounds that their claims are barred for lack of leave under the mental health legislation, now repealed. In 2006, the High Court found that the claims as pleaded did not fall within the scope of the Mental Health Act immunity and leave requirement and overturned the Associate Judge's decision striking out much of the claims for want of leave under the Act. All parties have filed appeals against the High Court decision. The Court of Appeal hearing is expected to be scheduled in the first half of 2008.

Two claims not affected by the strike-out will be heard in the Wellington High Court in October and November 2007.

In 2005 the Government established a "Confidential Forum for Former In-Patients of Psychiatric Hospitals". That Forum provided a panel of independent people to listen to former patients (and their families and staff members) and to refer them to appropriate social services agencies. The Forum was not charged with determining the truth of the stories it heard.

The Forum conducted hearings throughout New Zealand between July 2005 and April 2007. Four hundred and ninety-three people attended a meeting with the Forum, the bulk of whom were former in-patients (82%), followed by smaller groups comprising family members

of former in-patients (17%) and former staff members (6%). The experiences described dated back to the 1940s, with the majority of participants referring to experiences from the 1970s through to the 1990s.

In June 2007, the Forum, after completing its hearings, reported to the Government. The Forum reported that many participants indicated that they found the process of attending hearings and follow-up assistance useful.

In June 2007, the Government announced a further initiative for people who were in state care. A listening and assistance services package is being developed to allow former state care recipients (whether in the social welfare, psychiatric hospital or other areas) the opportunity to talk in a confidential and respectful environment and to be referred, with their permission, to appropriate existing social services agencies. Officials are to report back to Ministers with specifics of the proposal in late 2007.

TAX AVOIDANCE

The 2006 Annual Report noted that there had been a steady stream of litigation in the High Court involving what are alleged by the Commissioner of Inland Revenue to be sophisticated large-scale tax avoidance arrangements. That litigation has developed in a number of ways over the past year.

First, there have been three significant decisions by the Court of Appeal in tax avoidance cases: *Accent Management* (also known as the "Trinity" case), *Ch'elle Properties* and *Glenbarrow Holdings Ltd*. In each, the Commissioner was successful. Applications for leave to appeal to the Supreme Court have already been filed in all three cases.

Secondly, the "structured finance" cases, involving allegations of high value tax avoidance against the five major trading banks have moved towards trial, with the first hearing (involving Deutsche Bank) scheduled for November 2007. Hearing dates have also been set for the BNZ and ANZ trials (April and

August 2008 respectively). The litigation continues to be extremely resource-intensive. There has been a number of interlocutory appeals heard by the Court of Appeal in the past year. The litigation now encompasses some 60 separate High Court challenge proceedings, three applications for judicial review and two originating applications.

The other major tax avoidance litigation referred to in last year's report – the so-called "films and shows" cases – has settled.

UNCLAIMED MONEY

The Commissioner of Inland Revenue has filed a claim in the Wellington High Court against BNZ, Westpac and ANZNB. The Commissioner claims those banks have failed to pay the Commissioner money that is "unclaimed money" under the Unclaimed Money Act 1971. The Commissioner's claim is by way of counterclaim to the banks' claim that the money in question is not "unclaimed money". The Commissioner has sought a hearing on legal liability without a full trial (because the facts are agreed) and an inquiry as to the exact amount owed by the banks. The proceeding is scheduled for hearing in November 2007.

OTHER TAX LITIGATION

The trend noted last year as to an increase in judicial review proceedings challenging the Commissioner's statutory discretion to remit debt and to enter into instalment arrangements with taxpayers has continued.

Other ongoing cases of significance for Crown Law involve judicial review of the Commissioner's exercise of his search and seizure powers, including legal issues around the processes that should be followed when the cloning of computer hard drives occurs in the context of such search and seizure. There is also an ongoing series of cases relating to assessments issued to investors in Donald Rea's *Ponzi* scheme, which had been the subject of separate fraud proceedings that ended in May last year with Mr Rea's death.

Report of the Securities Commission inquiry on effects on the securities markets of certain statements concerning telecommunications

On 25 July 2006, the Securities Commission released its report on its inquiry into matters relating to the release by the Government of the telecommunications stocktake paper on 3 May 2006 and a news media interview with the Minister of Communications on 15 May. Following the unauthorised disclosure of a Cabinet paper by a Parliamentary messenger, Ministers determined that the policy should be publicly disclosed, and the disclosure was made while the Australian Stock Exchange, on which Telecom shares were traded, remained open. The inquiry concerned whether any person may have misused price-sensitive information. Crown Law represented the Crown in the inquiry process.

The report vindicated the actions of the Minister and officials on 3 May but has made recommendations about how the Government should deal with price-sensitive information in future cases. In particular it recommended that the affected issuers and the New Zealand Stock Exchange should be notified in advance of release and that the Government engage with the New Zealand Stock Exchange in relation to procedures/guidelines regarding disclosure of such information.

In relation to the news media interview, the Commission found that the Minister was entitled to make the comments he did but suggested that Ministers exercise caution when commenting on matters that might affect the price of listed securities.

Attorney-General v Cannest & Ors

The High Court gave declarations confirming that the Ministry of Economic Development is not required to consider the effects of "band expanders" on radio reception when it issues radio frequency licences under the Radiocommunications Act 1989. "Band expanders" are devices that are attached to imported car radios with limited frequency ranges, which enable users to access higher

frequencies. Listeners often encounter reception difficulties with these devices when one frequency is transposed over another. The Ministry sought declarations from the High Court because it was concerned that the utility of the FM frequency resource would be greatly reduced if it had to accommodate some users' reception difficulties arising from their use of non-standard equipment in allocating frequencies.

Commerce Commission and Attorney-General v Powerco Ltd and Vector Ltd

Crown Law represented the Attorney-General in an application for judicial review challenging the Commission's report recommending, and the Government's decision to impose, price control under the Commerce Act 1986 on the gas pipelines businesses of Powerco and Vector.

Before the case was heard substantively, the Court of Appeal overturned an order of the High Court that the Commission's expert witnesses and chairperson be available for cross-examination. The court held that the test the High Court should have used was whether cross-examination was necessary, rather than whether it would assist the judge.

The case is the first to challenge the interpretation and application of the power to impose control on monopolies and raises important issues concerning the scope of that power. They include whether, as the defendants said, the Commission and the Minister were entitled to focus on the benefits to consumers from control as opposed to considering only whether control would benefit the economy as a whole. The case also raises important questions about the court's role in judicial review, such as how "hands off" it should be in assessing the reasonableness of the Commission's recommendation for control.

The High Court heard the case over nine days in November 2006 and its judgment is pending.

Attorney-General v Unitec Institute of Technology and Anor

The Court of Appeal upheld the Attorney-General's appeal against the decision of the High Court which found that the Minister of Education's suspension of the statutory processes concerning Unitec's proposal to become a university was unlawful. Unitec had sought under the Education Act 1989 to change its status from a polytechnic to a university, and the Minister had decided not to resolve the question one way or another while the Government carried out a review of its tertiary policy over a number of years. The High Court's decision laid the way open to Unitec to seek compensation.

The Court of Appeal disagreed with the High Court and held that the Education Act 1989 did not contain any requirement that the Minister deal with Unitec's request in any particular time frame and so the Minister was entitled to suspend or discontinue the statutory processes while the Government finalised its tertiary education policy.

Mihos v Attorney-General

Mr Mihos had imported five second-hand cars from Singapore and declared their cost at a significant undervalue, which could have resulted in an underpayment of GST. Customs seized the cars on the grounds that customs offences had been committed and Customs therefore had good cause to suspect the cars were forfeit to the Crown. Mr Mihos then unsuccessfully asked the Minister of Customs twice to waive the forfeiture. He then applied for judicial review, challenging Customs' decisions to requisition bank records and to seize the cars, and the Minister's refusal to waive forfeiture.

The High Court in June 2007 affirmed the operation of Customs border activities and upheld Customs' application of the statutory seizure and forfeiture regime. The Judge did not accept the applicant's argument that conviction for customs offences is a necessary prerequisite to forfeiture. The High Court also

upheld the chief executive's delegation of powers to a Customs officer, rejecting the applicant's technical argument that there was a "gap" in the delegation that rendered it ineffective.

The High Court considered, however, that the applicant's allegation that there had been breach of his right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment under section 9 of the New Zealand Bill of Rights Act 1990 meant that the court needed to assess the "proportionality" in a general sense of the Minister's decision not to waive forfeiture. The Judge has therefore sought further submissions. Final judgment is anticipated in late 2007 or early 2008.

Air Nelson Ltd v Minister of Transport & Hawke's Bay Airport Authority

Air Nelson, a subsidiary of Air New Zealand, applied for judicial review to challenge the validity of a 9% increase in landing charges imposed with effect from 1 January 2005 at Hawke's Bay Airport.

Two successive Ministers of Transport made decisions. The first decision was affected by a factual error and was held to be unlawful. This was because the Airport Authority and/or officials had not provided the then Minister with correct information on which to base his decision. The second decision, which had been intended to fix the errors identified in the first, was held lawful by the High Court in its judgment in December 2006. The case is one of a relatively small number where the High Court has exercised its discretion (by reference to the particular factual context) in favour of the Crown to withhold any legal remedy from Air Nelson concerning the tainted first decision. The end result is that the increased landing charges with effect from 1 January 2005 are lawful and enforceable by the Airport Authority.

Air Nelson's appeal to the court of Appeal is pending.

Anderson v Attorney-General

This case is the first claim in the High Court for "educational negligence". The Judge struck out the plaintiff's claim in June 2007.

Mr Anderson, a former special needs pupil, claimed \$450,000 in damages against the Crown, saying that the Special Education Services Board (SES) made insufficient resources available to him during his attendance at Mount Roskill Grammar School between 1998 and 2000. Essentially, he alleged that this failure prevented him from developing to his full potential.

The High Court held that the broad-based and general duties of care the plaintiff alleged were owed to him by SES could not exist in the context of the statutory framework of the Education Act 1964 and in light of the plaintiff's relationship with SES which was, at its closest, arms-length. In particular, the High Court accepted the Crown's submissions that the duties advanced, if upheld, would be indeterminate in scope in that they would demand that infinite resources be applied to the plaintiff and would be owed to all special needs children.

The effect of the judgment is to prevent damages claims for failure to provide adequate resources in the area of special education and suggests that a damages claim alleging that a suitable (general) education was not provided in the state system would also be unlikely to succeed.

S v Chief Executive, Department of Labour

The Court of Appeal's reserved judgment in favour of the Crown and dismissing the appeal was given on 8 May 2007. Mr S is an Iraqi who sought refugee status in New Zealand on the grounds that he had a well-founded fear of persecution if he returned to Iraq because of his ethnicity, religion and politics. The Refugee Status Appeals Authority declined refugee status. The appeal to the Court of Appeal challenged that decision and a later decision of the High Court that confirmed it. While it was

readily accepted by the Court of Appeal that the evidence demonstrated the parlous state of the civil state and economy in Iraq there was no evidence to establish that there was a real chance that S specifically would face persecution under any of the grounds recognised by the Refugee Convention as interpreted by the courts in New Zealand and internationally.

Ding / Ye Children & Qiu Children v Minister of Immigration

These Crown appeals were heard over three days in the Court of Appeal on 5, 6 and 7 June 2007. They concerned a challenge to the compulsory removal process invoked against two couples from the People's Republic of China who had claims for refugee status rejected (primarily on the basis of adverse credibility findings) and then remained unlawfully in New Zealand for several years until the families were located and served with removal orders. During the lengthy period of unlawful presence, children were born to both couples (*Ding*, 3; *Qiu*, 2), and the children are New Zealand citizens by birth (the amendment to the Citizenship Act that removed automatic citizenship by birth did not come into force until 1 January 2006 and is not retrospective). Issues in the appeals included:

- whether the New Zealand citizenship of the New Zealand born children is now to be given greater weight in light of New Zealand and international legal developments;
- the extent, if any, to which New Zealand citizen children should be treated independently of their parents, and immigration officers may not rely solely on what their overstayer parents say or don't say;
- whether a dependent New Zealand citizen child is entitled not to be compelled, by forced removal of his or her parents, to unsafe conditions;

- whether immigration officers are under a duty to make their own independent enquiries of whether removal of alien parents to a particular country might deprive New Zealand citizen children of basic decencies of life: either by exposure to unacceptable conditions, or by loss of parental care because of the reasonable refusal by the parents on their own removal to subject the children to such conditions;
- whether the children here should have been treated as independent parties in immigration litigation brought by their parents; and
- whether the court should have appointed state funded counsel to represent the children.

The judgment of the Court of Appeal is pending.

Yadegary v Chief Executive, Department of Labour

Mr Yadegary had been held at Auckland Central Remand Prison for approximately 26 months on the basis of his refusal to co-operate with removal. He successfully challenged that detention in the High Court, which ordered his conditional release in a judgment dated 4 April 2007.

Mr Yadegary is an Iranian national who has been declined refugee status but who could not be removed from New Zealand because he refused to obtain necessary travel documents and he could not be returned to Iran without them.

The Crown has appealed to the Court of Appeal on the basis that the High Court judgment wrongly overlooked the purpose of the detention scheme in preventing persons such as Mr Yadegary from willfully obstructing their own removal. The appeal also has implications for several other detainees.

A hearing date in the Court of Appeal is not yet allocated.

Arbutnot v Chief Executive, Department of Work and Income

The Supreme Court heard its first Social Security Act appeal in May 2007. The case was about the scope of the Social Security Appeal Authority's powers to conduct appeals "by way of rehearing" of the chief executive's decisions under the Act, which are primarily about benefit entitlements.

The judgment, delivered in July 2007, unanimously upholding the Court of Appeal, held that the authority has broad powers in determining appeals under the Act, which include reconsidering all relevant matters at issue, whether or not a specific issue had been raised by the beneficiary in formulating the appeal.

CONSTITUTIONAL GROUP

Taunoa & Ors v Attorney-General

These proceedings, which were heard by the Supreme Court in August and November 2006, concern the rationale for and scope of public law compensation for breach of human rights and substantive standards for treatment in custody. They arise from complaints by prisoners about the behavioural management regime that operated in Auckland Prison between 1998 and 2003. The decision has been delivered. The amount of damages awarded to the appellants has been substantially reduced by the Supreme Court.

Fang v Jiang

Crown Law appeared for the Attorney-General in a case where Falun Gong members sought damages for alleged acts of torture carried out by officials of the People's Republic of China. The case concerns application of state immunity to civil claims for torture and other human rights breaches and the extent of New Zealand's territorial jurisdiction. The first procedural issue was whether the application for leave to serve the proceedings outside New Zealand should be granted. The Attorney-General did not express any view on the merits

of the plaintiffs' claims but intervened to make submissions on whether sovereign immunity attached to officials, submitting that the defendants were entitled to claim sovereign immunity. The High Court found that the plaintiffs had no arguable prospect of proving an exception to sovereign immunity and, accordingly, declined leave to serve the proceedings outside New Zealand. The plaintiffs have appealed to the Court of Appeal.

Belcher v Chief Executive, Department of Corrections

The Court of Appeal in September 2006 gave its judgment in this appeal against the imposition on a convicted child sex offender of an Extended Supervision Order (ESO) of 10 years. It was submitted on behalf of Mr Belcher that the ESO regime was in breach of various provisions of the New Zealand Bill of Rights Act 1990 (NZBORA) and the International Convention on Civil and Political Rights, with the principal argument focusing on issues of retroactive penalties and double jeopardy, in respect of which a declaration of inconsistency was sought. On the NZBORA aspect of the case, the court gave an interim judgment, which held that the prohibitions in NZBORA against retrospective penalties were engaged and asked for further submissions and hearing largely on the issue of jurisdiction to grant declarations.

The court subsequently held that there was no jurisdiction to grant a declaration in a criminal appeal. The Supreme Court refused Belcher's application for leave to appeal.

Peta & Chief Executive, Department of Corrections

After hearing extensive oral expert evidence in this appeal against an ESO, the Court of Appeal issued a judgment in February 2007 which provides useful practical guidance to health assessors, counsel and courts determining ESO applications on the use and limitations of risk assessment measures, best practice methodology, and on the application of psychological evidence to the statutory criteria for both making an ESO and for determining the appropriate length of any order made. The

guidance provided also has a wider application to other proceedings where psychological assessments are used.

Trevethick v Ministry of Health

The plaintiff has multiple sclerosis and has a consequent disability that means she is reliant for mobility on a wheelchair and a modified car. If her disability had been caused by an accident she would receive better assistance from ACC than she receives from the Ministry of Health. The plaintiff claims in the Human Rights Review Tribunal that this difference in treatment is discriminatory. The Ministry sought to strike out the claim on two bases. First, that she was not in comparable circumstances to someone on ACC and therefore could not use that group as a comparator. Second, that she was actually alleging differential treatment based on the cause of her disability not on the disability itself, which was not prohibited by the Human Rights Act 1993 (and through it the New Zealand Bill of Rights Act 1990).

The Tribunal refused to strike out the claim on the first ground but asked for further submissions on the second ground. A decision on the second ground is expected by the end of September 2007.

Attorney-General v G A R Palmer – Vexatious Litigant Application

One of the functions of the Attorney-General is to apply to have an individual litigant declared “vexatious” under s 88B of the Judicature Act 1908. Mr Palmer was the subject of such an interim order to prevent him from commencing a civil proceeding without first obtaining leave of the High Court. This interim order had been made on the basis that the High Court was satisfied that at least nine previous proceedings brought by Mr Palmer had been vexatious, but declined to deliver its final judgment until the outcome of Mr Palmer’s attempts to have various convictions for sexual offences (in respect of which he was serving a sentence of preventive detention) set aside.

In February 2006 the Court of Appeal quashed the two most serious convictions, as a result of which Mr Palmer was released from prison. Although a fresh trial was ordered, the complainant’s refusal to testify again meant that no new trial could take place, and Mr Palmer was granted a discharge without conviction. Mr Palmer argued that because many of his vexatious proceedings had been aimed at indirectly challenging his convictions, which had now been shown to have been the result of an unfair trial, the court should not exercise its discretion in favour of making a final “vexatious litigant” order against him. Against this, the Attorney-General argued that other factors, including Mr Palmer’s abusive and improper conduct of his litigation, required the continuation of restraining orders against him. During the course of the hearing, Mr Palmer gave an undertaking to the court not to commence certain classes of proceeding.

The High Court in September 2006 dismissed the application and discharged the interim order, on the basis that, in view of the circumstances relating to Mr Palmer’s convictions, it would be disproportionate to make a final order against him. It accepted Mr Palmer’s submission that his vexatious litigation should be attributed to an attempt to adduce evidence for the purpose of challenging his convictions. In arriving at its conclusion, the court took into account that Mr Palmer would be bound by the findings against him in the interim judgment, and gave him a “solemn warning” that the issue of further proceedings by him would, almost inevitably, lead to a “vexatious litigant” order against him.

Berryman v Solicitor-General

In 2005, Mr and Mrs Berryman applied for judicial review of the Solicitor-General’s decision not to order, or apply to the High Court for, a new inquest under the Coroners Act 1988 into the cause of death of Kenneth Richards, a beekeeper who died when a bridge on the Berryman’s property, built by the Army, collapsed.

The Berrymans allege, among other things, that the original inquest miscarried as a result of wrongful conduct by, in particular, the Army. The Berrymans say that the Army did not advise the Coroner that it had held a court of inquiry that had identified construction defects with the bridge and did not make available to the Coroner a report prepared by an engineer for that inquiry. The suggestion is that had that material been available to the Coroner, the outcome of the inquest would have been different, and the Coroner would have exonerated Mr and Mrs Berryman. The Berrymans say that the Solicitor-General did not take this into account in making his decision not to apply for a new inquest.

The judicial review application is to be heard in September 2007.

Application by Solicitor-General to have Dr Moodie Held in Contempt

In February 2007 three judges of the High Court issued their judgment on the Solicitor-General's application to have Dr Robert Moodie held in contempt of court for releasing a confidential report provided to him after he gave an express undertaking as counsel not to copy or disclose its content. The report came to Dr Moodie in the course of his legal representation of Mr and Mrs Berryman in their claim to have a new inquest (see *Berryman v Solicitor-General* above).

Dr Moodie subsequently made the report available to TVNZ and also published it on the internet. Dr Moodie did not dispute that he had published the report in breach of his express and implied undertakings, but he argued that he was justified in doing so as the confidential status of the report furthered a "corrupt cover-up" by the New Zealand Defence Force and other government agencies.

The High Court found that Dr Moodie was in contempt of court, but was satisfied that he genuinely believed that a grave injustice had been committed against his clients by the report not being in the public domain.

The court considered that Dr Moodie's motivation to vindicate his clients substantially mitigated his offending. As a result, Dr Moodie was fined \$5000 for contempt of court, ordered to pay costs to the Solicitor-General and suspended from practising as a lawyer for three months. The court said that, but for the mitigating factor referred to, it would have struck him off the roll of barristers and solicitors.

In related proceedings, Dr Moodie brought contempt proceedings (arising out of matters occurring in the course of the Solicitor-General's contempt application) against the Attorney-General, the then Solicitor-General, Terence Arnold QC, Robert Dobson QC and Robert Lithgow QC. These proceedings were struck out in late 2006.

TREATY OF WAITANGI ISSUES

Work continued throughout the year in representation of the Crown before the Waitangi Tribunal in regional inquiries (National Park, Whanganui and Tauranga). The following were other key inquiries.

Wai 262

The Wai 262 Indigenous Flora and Fauna inquiry re-commenced hearings (after several years' break) in August 2006 and was concluded in June 2007. Over 2006/07 nine hearing weeks were held: for claimant updating evidence, interested parties, Crown evidence, and closing submissions. The claim is about rights of tino rangatiratanga and kaitiakitanga (broadly, control) over taonga. Some particular issues are: protection and control of matauranga Māori/ Māori knowledge (e.g. haka, waiata, rongoa), Crown policies and operations in respect of the Department of Conservation estate, Crown actions regarding international fora and agreements impacting on taonga, interests in biological and genetic resources of indigenous species, the health and use of Te Reo Māori and dialects. Twenty-six Crown organisations appeared during the three Crown hearing weeks (13 departments and

13 Crown entities). The Tribunal's report is expected to focus on contemporary issues.

Affiliate Te Arawa

There have been a number of proceedings before both the Waitangi Tribunal and the courts regarding the deed of settlement of historical claims between Affiliate Te Arawa iwi and hapū and the Crown. The Tribunal's inquiries have covered mandate issues and issues relating to the cultural redress outlined in the deed of settlement.

Proceedings were brought before the High Court and subsequently the Court of Appeal seeking declarations that the forestry redress outlined in the deed of settlement with Affiliate Te Arawa iwi and hapū was inconsistent with agreements in relation to licensed Crown forest land entered into in 1989 and which resulted in the Crown Forest Assets Act 1989. Neither the High Court (judgment 4 May 2007) nor the Court of Appeal (judgment 2 July 2007) granted the declarations sought. The plaintiffs have applied for leave to appeal to the Supreme Court.

Ngati Apa ki Te Waipounamu Trust v Attorney-General and Others

Crown Law appeared before the Privy Council for the Office of Treaty Settlements in the case of *Ngati Apa ki Te Waipounamu Trust v Attorney-General and Others*. The case concerned whether Ngati Apa were represented in proceedings before the Māori Appellate Court in 1990 when that court heard and determined the traditional northern boundary between Ngai Tahu and various northern South Island iwi. The Crown's submissions in these proceedings among other matters addressed the relationship between the Ngai Tahu Treaty settlement (based on the boundary determined by the Māori Appellate Court) and the effect of this on any settlement with Ngati Apa. The Privy Council held that Ngati Apa could fairly be treated as having been represented by Te Runanganui o Te Tau Ihu o Te Waka a Maui in the proceedings before the Māori Appellate Court.

Whakapuaka

Crown Law acted for the Minister of Conservation in High Court proceedings for judicial review of the Māori Land Court decision that the Whakapuaka mudflats near Nelson were included in a title to land awarded to Māori in the nineteenth century. The application for judicial review was unsuccessful. The decision is under appeal to the Court of Appeal.

HISTORICAL TREATY OF WAITANGI CLAIMS

Crown Law has continued to assist the Office of Treaty Settlements by providing advice to support negotiations with claimant groups for the settlement of their historical Treaty of Waitangi claims.

Foreshore and Seabed Act 2004

Crown Law has continued to provide advice to the Ministry of Justice to assist in the negotiation of agreements under the Foreshore and Seabed Act 2004 to recognise territorial customary rights; and to provide representation for the Crown in relation to applications for customary rights orders in the Māori Land Court.

Three foreshore and seabed negotiations are still underway between the Crown and representatives of certain East Coast, Bay of Plenty and Coromandel Māori groups for the negotiation of agreements to recognise territorial customary rights. The Foreshore and Seabed Act requires that any such agreements be confirmed by the High Court.

One of the customary rights order applications notified by the Māori Land Court is progressing through its preliminary interlocutory stages and is presently timetabled for hearing in November 2007. Few or no developments have occurred in the other applications for customary rights orders filed with that court.

NATURAL RESOURCES ISSUES

A focus over the last year has been the continuing scampi litigation (*Barine Development Limited v Minister of Fisheries and others/Howell v Minister of Fisheries and others; Goodship and others v Minister of Fisheries and others/United Fisheries Limited v Attorney-General and others*). The first set of proceedings was settled on the eve of the commencement of a five-week hearing as the plaintiffs' case against the Crown for misfeasance and breach of statutory duties became less tenable. The second set of proceedings, which also related to permit applications for scampi that were not granted as an exemption was not made to the moratorium, were largely unsuccessful. There was no evidence of misfeasance in public office, there was no evidence of loss from any negligence and although there was no breach of statutory duty, Goodship was entitled to some damages due to an earlier declaration. These proceedings are subject to appeal.

Orange roughly, kahawai and seaweed were all the subject of litigation. The reduction in quota for orange roughly was reconsidered by the Minister of Fisheries following proceedings started by ORH1 Exploratory Fishing Company Ltd; the conflict between recreational and commercial fishers was examined in *New Zealand Recreational Fishing Council v Minister of Fisheries and others*; while seaweed permit disputes have been resolved by negotiation.

The Minister of Conservation's decision was set aside in *Whangamata Marina Society Inc v Attorney-General* because he considered matters outside of the Environment Court's report. The court did not, however, find that the Minister was biased in terms of pre-determination or veto weight given to particular issues or that the decision was unreasonable. The Minister was invited to reconsider his decision. The Minister for the Environment was delegated that responsibility and, on the basis of other information provided by the Environment Court, the coastal permit was granted for the marina.

LAND LAW

Land law issues of note include *Attorney-General v Body Corporate 68792* [which held that the Crown could, under the Public Works Act 1981, acquire component parts of interests held by unit holders and did not need to comply with the Unit Titles Act for approval of proprietors to remove land from the unit plan]. This enabled Transit New Zealand to deal with part of the land and buildings already taken under the Public Works Act for motorway even if the body corporate did not agree.

Napier Public Health Action Group v Minister of Conservation and others confirmed that the actions relating to the removal of reserve status also dealt with the statutory trust and the publicity given to the closure of Napier Hospital was sufficient so that the Crown could dispose of the hospital.

Attorney-General v Holland usefully explored the law relating to easements and that an easement to take water to serve the dominant land cannot be extended to other land as that places a greater burden on the servient land than the grantor accepted when agreeing to the easement.

There has been a steady stream of work relating to high country pastoral leases (both tenure review and rental review), proceedings against errant valuers brought on behalf of the Valuer-General, and s 40 Public Works Act 1981 "offer back" and associated valuations.

CRIMINAL AND HUMAN RIGHTS GROUP

Bain v R

On 10 May 2007 the Judicial Committee of the Privy Council delivered a unanimous decision quashing David Bain's 1995 convictions on five counts of murder and directing a retrial. The basis for the decision is that a substantial miscarriage of justice occurred because of the cumulative effect of fresh evidence which, had it been before the jury, might reasonably have led it to reach a different verdict. Although the Court of Appeal had applied the correct legal

test in deciding this question against the appellant, the Privy Council said that it had overstepped its role as an appellate court in determining factual issues that are properly the province of a jury.

In particular, the Privy Council was critical of the Court of Appeal for resolving matters of contentious affidavit evidence in the absence of cross-examination of some of the deponents. It also criticised the Court of Appeal for its reliance on what the court identified as three key points of evidence that all but conclusively established the appellant's guilt. In its view, neither singly nor cumulatively could these points bear the weight the Court of Appeal had given them.

R v Condon

This important decision of the Supreme Court dealt with issues surrounding the right to a lawyer at trial. The Supreme Court agreed with the Crown's general argument that breach of the right to a lawyer does not automatically amount to an unfair trial, but held on the facts of this particular case that there was unfairness in the appellant's trial. The appellant's conviction was quashed and no retrial was ordered, since the appellant had already served his sentence of 18 months' imprisonment.

R v Wilson

This was an appeal against sentence in which the question of the retrospective application of guideline sentencing judgments arose because the sentencing judge had applied the Court of Appeal's guideline judgment for offences involving grievous bodily harm – *R v Taueki* [2005] 3 NZLR 372 – when the offences were committed prior to the delivery of that judgment.

The Court of Appeal in July 2006 held that the law on the retrospectivity issue was settled by the Supreme Court in *Morgan v Superintendent, Rimutaka Prison* [2005] 3 NZLR 1, where the majority determined that s25(g) of the New Zealand Bill of Rights Act 1990 and s6 of the Sentencing Act 2002 are concerned with

variations in the maximum penalty prescribed by law for a generic offence, rather than being directed at the particular penalty imposed on an individual offender. The application of guideline judgments to offending committed before they were delivered did not therefore breach the principle in s25(g) and s6.

The Court also considered and rejected the alternative argument that, while those sections might not require the adoption of this approach, as a matter of fairness, sentencing should be on the basis of the tariff applicable when the offences were committed. The court considered other situations (pre-dating *Morgan*) where this approach had been taken, but considered that the decisions cited did not create a general rule of unfairness that should be applied by analogy where the issue is the application of evolving sentencing guidelines.

An application for leave to appeal to the Supreme Court was dismissed in October 2006.

Reid, Bindon and Staples v Parole Board

These were three sets of judicial review proceedings heard together and transferred from the High Court to the Court of Appeal in view of the point of law involved. The plaintiffs were serving prisoners who challenged decisions of the Parole Board declining release, in part in reliance on the principles of general deterrence. The Court of Appeal declined to follow the earlier decisions of *Hawkins v District Prisons Board* [1995] 2 NZLR 14, and *R v Brown* [2002] 3 NZLR 670 and held that general deterrence is an irrelevant consideration for the Parole Board. In broad terms, the decision means that offenders must be released on parole after serving one-third of their sentence (or their minimum period of imprisonment, where applicable) unless they pose a risk to the community.

R v Greer

This appeal to the Supreme Court raised the novel jurisdictional question of whether s70(2) of the Bail Act 2000 should be read as denying a right of appeal to the Supreme Court against a

Court of Appeal's decision to refuse bail pending the determination of a substantive appeal against conviction and/or sentence.

The Supreme Court observed that s70(2) of the Bail Act is silent on the point and that, if bail were a criminal proceeding, this would appear to preclude jurisdiction. However, proceedings under the Bail Act are specifically included in the definition of civil proceedings in s4 of the Supreme Court Act 2003. The Supreme Court held that as s7 of the Supreme Court Act gives it the power to hear and determine an appeal by a party to a civil proceeding in the Court of Appeal in the absence of a specific statutory provision to the effect that no right of appeal exists, s70(2) of the Bail Act should not be read as denying a right of appeal against a refusal of bail.

Solicitor-General v Xie, Zhang and Guo

This was a Solicitor-General's appeal against the sentences imposed on three co-offenders in respect of their role in six large-scale importations of pseudoephedrine-based tablets (a Class C controlled drug).

The sentencing Judge in the High Court had held that because the shipments were part of the same criminal transaction, he was required to impose concurrent sentences and hence limited to the maximum for a single offence (eight years).

The Court of Appeal confirmed that this approach was in error. The principle (reflected in s84(2) of the Sentencing Act 2002) that concurrent sentences are generally appropriate for a connected series of offences must yield to the more general principle that the sentence imposed must reflect the overall criminality. In a case involving multiple offending where the maximum sentence for a single offence is insufficient to reflect the overall criminality, cumulative sentences should be imposed.

Solicitor-General v Hutchison

This was a Solicitor-General's appeal against a finite sentence of 13½ years' imprisonment

imposed in relation to the respondent's repeated rape and violation of the daughter (who was aged 3-8 years at the time) of his *de facto* partner.

The Solicitor-General sought a sentence of preventive detention. The case was unusual in that the respondent had no history of offending, and had not had the opportunity of treatment in the past. Moreover, the experts who prepared the psychological reports for the purposes of sentencing declined to indicate a long-term risk assessment.

However, the offending itself was prolonged with serious aggravating features, and the respondent had a number of grave risk factors, including psychopathy, voyeurism and paedophilia. The Court of Appeal was divided on the issue, but the majority allowed the appeal and substituted a sentence of preventive detention. The decision reinforces the principle that sentencing judges must make their own risk assessments, regardless of the expert reports.

R v Wanballa

In this case a Full Court of the Court of Appeal considered how juries should be directed as to the standard of proof in criminal trials, namely beyond reasonable doubt. The court considered English, Canadian and Australian common law in formulating a set of possible directions. The court explicitly rejected the appellant's argument that any deviation from the model form constituted a miscarriage of justice; the court held each case must be considered on its own facts.

R v Williams

The Court of Appeal considered a number of important questions in relation to search and seizure pursuant to s21 of the New Zealand Bill of Rights Act 1990, namely standing to allege a breach of the statutory right (to be free from unreasonable search and seizure), the link between legality and reasonableness, the operation of *Shabed* and the framing of search warrants. The court stated that it was realigning

the law notwithstanding the existence of a number of earlier Court of Appeal decisions.

R v Walsh

Ms Walsh defrauded a number of victims using forged documents. The issue for the Supreme Court was whether a copy of a forgery could itself be a forgery so as to be the subject of that


crime. The Supreme Court held that forgery was concerned with falsity of authorship and not merely falsity of the document's contents and hence, on the facts, Walsh had not forged the relevant documents. However, as the appellant had used the documents in issue the court held she should have been convicted of uttering forgeries. Therefore, her appeal was dismissed.

Statistics for Criminal Appeals

SUPREME COURT (CRIMINAL APPEALS)	NUMBERS
Application for leave to appeal granted, substantive hearing held, appeal dismissed	2
Application for leave to appeal granted, substantive hearing held, awaiting decision on appeal	1
Application for leave to appeal granted, substantive hearing held, appeal allowed	2*
Number of applications for leave to appeal filed	49
Application for leave to appeal considered and refused	33
Awaiting determination of leave application	7

* 1 of these heard 05/06 – decision given 23/8/06
 1 of these heard 05/06 – decision given 04/7/07

COURT OF APPEAL	NUMBERS
Solicitor-General appeals filed	29
Pre-trial	12
Sentence	15
Case stated	2
Solicitor-General appeals heard	44
Allowed	33
Dismissed	5
Abandoned	2
Judgment given outside period	4
Criminal appeals filed *(includes Solicitor-General appeals)	441 ¹
Heard orally	450 ²
Heard on the papers	7
Abandoned	86



Dr David Collins QC
 Solicitor-General and Chief Executive

¹ Of these, 123 were not heard in the 06/07 period.
² Of these, 228 were filed outside the 06/07 period.

ORGANISATION INFORMATION

Crown Law is organised into three practice groups, comprising eight client service legal teams and a Corporate Services group. The legal teams are focused on the delivery of specialist legal services to government covering the following core areas of business:

- Public Law issues which, for example, arise out of the exercise and control of governmental power and public sector governance
- The conduct of Crown prosecutions and criminal appeals
- Constitutional advice and litigation including Treaty of Waitangi work, advice on international human rights obligations, bill of rights, and constitutional conventions

The practice group structure is designed to enable better co-ordination of work, to enable improved sharing of resources across teams, and to improve the capacity to serve Ministers and clients. A Deputy Solicitor-General is responsible for the professional leadership and management of each practice group. Within each practice group, there are a number of specialist client service teams. A Team Leader, who is a Crown Counsel, has responsibility for the development and management of staff in each team and is also the principal contact point for clients of the team. Each team is staffed with further Crown Counsel, Associate Crown Counsel, Assistant Crown Counsel, and Litigation and Secretarial Support staff.

The current* Group/Team structure comprises:

Practice Group	Legal Teams
Public Law Group	<ul style="list-style-type: none"> • Markets, Infrastructures and Borders Team • Social Services and Employment Team • Taxation and Public Revenue Team
Criminal & Human Rights Group	<ul style="list-style-type: none"> • Criminal and Crown Solicitors Team • Human Rights Team
Constitutional Group	<ul style="list-style-type: none"> • Natural Resources Team • Law Officer Team • Treaty Issues and International Law Team

Corporate Services consists of Finance, Human Resources, Information Technology, Knowledge Management, Litigation Services, Support Services, including Facilities Management and Central Business Support.

* These were restructured in December 2006.

MANAGEMENT STRUCTURE

SENIOR MANAGEMENT GROUP:

Dr David Collins QC	Solicitor-General from 1 September 2006
Cheryl Gwyn	Acting Solicitor-General to 31 August 2006, Deputy Solicitor-General (Constitutional) and Team Leader of Law Officer Team to 31 December 2006
Karen Clark	Deputy Solicitor-General (Public Law) to 28 February 2007
John Pike	Deputy Solicitor-General (Criminal Law) to 19 January 2007
Cameron Mander	Deputy Solicitor-General (Criminal Law & Human Rights) from 23 January 2007
Diana Pryde	Practice Manager

LEGAL TEAM LEADERS:

Bronwyn Arthur	Team Leader, Natural Resources
Rebecca Ellis	Team Leader, Taxation and Public Revenue
Peter Gunn	Team Leader, Law Officer*
Virginia Hardy	Team Leader, Treaty Issues and International Law
Brendan Horsley	Team Leader, Criminal Law
Una Jagose	Team Leader, Public Law, Social Services and Employment**
Grant Liddell	Team Leader, Public Law – Markets, Infrastructure and Borders***
Val Sim	Team Leader, Human Rights

HUMAN RESOURCE MANAGEMENT

During 2006/07 the overall permanent staffing of Crown Law increased to reflect the increased demand for services. The number of employees permanently employed at year-end was as follows:

	30 June 2007	30 June 2006
Solicitor-General, Deputy Solicitors-General and Practice Manager	5	4
Counsel (including Legal Advisors)	88	79
Legal Support	12	13
Secretarial and Word Processing	30	32
Corporate Services Group	29	30
Total Number of Employees	164	158

(Part-time arrangements are included in these numbers)

* From 1 January 2007, previously Team Leader – Employment.

** From 1 January 2007, previously part of Government Business and Employment Teams.

*** From 1 January 2007, previously part of Government Business.

OUR PEOPLE CAPABILITY

In common with other professional services organisations, Crown Law's human resource management policies, procedures and systems are aimed at attracting and retaining skilled and experienced staff who have a focus on client service.

Crown Law provides significant advantages for lawyers who wish to develop their public and criminal law practice. Crown Law has begun a number of initiatives to enhance that individual professional experience and provide a better service for our clients and in accordance with s56 of the State Sector Act 1988, is designing these initiatives to support equal opportunity for employment.

Our initiatives to improve our people capability are based on an understanding of the need to develop a supportive and healthy work environment and to encourage and develop the diverse contributions and potential of all staff.

Crown Law's success in realising potential and maximising contribution is dependent on providing clear expectations, successfully challenging people to perform to the highest standard, developing and supporting individual performance potential and being flexible about how that performance is delivered.

Crown Law has reviewed its learning and development policy and framework for delivery of learning activities. This was intended to communicate Crown Law's commitment to ongoing learning and provide a better structure and context for the delivery of learning programmes.

This policy identified four distinct streams of learning that will be a focus for development and refinement:

- Managerial and Leadership
- Induction
- Legal and Professional
- Technology

Crown Law has established a number of Team Leader positions, identified expectations of these roles and begun delivery of an ongoing development programme. The first stage of the programme has had a focus on developing people and better use of core financial and human resource programmes. Work has also begun on identifying a senior management development programme, which will be delivered in 2007/08.

Crown Law is refocusing its performance development processes around competencies. Work has begun on developing a competency framework and development library for Counsel, which will be implemented in 2007/08. This work will form the basis for a review of learning and development for Counsel, enable better communication of expectations at different levels of career and targeting of talent through the recruitment process.

Crown Law has enhanced its capacity for delivery of technology training through the appointment of a full-time trainer which will enable greater efficiencies in the use of our technology-based systems.

Other initiatives begun in the year include a review of more flexible ways of working, specifically remote working, and a review of our secondment processes intended to support a programme of exchanges with our clients.

Crown Law has also begun a review of its remuneration policies and structures, in association with the PSA and in consultation with all staff, to ensure they adequately contribute to rewarding outstanding performance and enable us to compete for and retain resources.

Crown Law continues to make steady progress in developing an environment that is clear about expectations for service to our clients, provides people with the leadership and development to meet these expectations and which allows all people the opportunity to develop to their potential.

CROWN SOLICITOR NETWORK

There are 15 private law practitioners holding 16 warrants as Crown Solicitors. Together with their partners and staff solicitors from the practice and the local prosecution panels, Crown Solicitors prosecute indictable offences in those centres where District Court and High Court jury trials are conducted.

LEGISLATIVE RESPONSIBILITIES

Crown Law administers the Crown Solicitors Regulations 1994 which set out the basis upon which the scale of fees is calculated and the process by which fees are claimed and paid to Crown Solicitors for undertaking Crown prosecution work.

The Cabinet Directions for the Conduct of Crown Legal Business 1993 govern the conduct of legal business between the Law Officers of the Crown, Crown Law and government departments and agencies.

INFORMATION SYSTEMS MANAGEMENT

Effective use is made of information technology and systems to support the legal advice and representation functions of Crown Law. Much of the focus of this investment is directed towards the production and management of documents, the conduct of legal research, communication with clients and the management of matters on behalf of those clients. Strategies are in place to ensure that technology and systems are reviewed on a regular basis and updated or replaced where justified.

ELECTRONIC LITIGATION SUPPORT IN CROWN LAW

At the start of 2006 the Management Board took the decision to implement electronic litigation support within the office. After calling for tenders the decision was made to purchase Signature Cannae from Systematics Pty Ltd in Brisbane, Australia. The system produces discovery and chronology lists, and allows

Counsel to review the documents when preparing the case and allows for multiple data being coded against a single image.

This system was purchased and implemented in June 2006. An Historic Child Abuse case was selected as the pilot. As the files were old and had been archived, this posed major problems for the scanning team, given the poor quality originals.

This case is currently being heard in the High Court using Signature@Court, the presentation side of Signature Cannae. Signature@Court allows the documents to be presented simultaneously to all parties on screen quickly and efficiently. Current indications are that the trial that was scheduled to take 45 days, should now finish in 32½ days. Most of this saving is due to the technology. This is a saving of between 25% and 30% in court time.

Currently housed in the Signature Cannae database is a total of 205,532 pages equalling 69,943 documents over 83 different matters originating from all eight legal teams.

KNOWLEDGE MANAGEMENT

Knowledge management became a key focus for Crown Law in 2007 with the establishment of a Knowledge Services team. This appointment signals a commitment to enhancing staff and clients' access to legal information and services through a more systematic and centralised approach to the provision of information and knowledge services within Crown Law.

Work is focused on managing the way in which information and knowledge are captured, stored, shared, used and re-used to support legal practice and incorporates a range of solutions focused on people, processes and technology. Initial projects included redeveloping the Crown Law Intranet, reviewing document management processes and implementing a comprehensive information audit.

A draft knowledge strategy has been developed that identifies a number of potential initiatives including the development of a best practice repository, processes to guide the management of large-scale litigation, an expertise locator and initiatives to promote collaboration and knowledge sharing.

OFFICE ACCOMMODATION

Crown Law is located in Unisys House, The Terrace and occupies four floors of office accommodation. The premises are under lease until 31 March 2013, with a further renewal available until 31 March 2019.

NEW ZEALAND INTERNATIONAL FINANCIAL REPORTING STANDARDS

In December 2002 the New Zealand Accounting Standards Review Board announced that the New Zealand equivalents to International Financial Reporting Standards (“NZIFRS”) will apply to all New Zealand entities for the periods commencing on or after 1 January 2007 with the earlier adoption optional.

The Minister of Finance announced in 2003 that the Crown will first adopt NZIFRS for the financial year beginning 1 July 2007.

Crown Law has continued a project to identify the differences involved in the adoption of NZIFRS. The key areas of change are likely to be in the accounting treatment of fixed assets and financial disclosures.

STAFF PUBLICATIONS AND PRESENTATIONS DURING THE YEAR

BEN KEITH – CROWN COUNSEL

“The limits of the international law in The Limits of International Law”, paper to the 14th Annual Conference of the Australia and New Zealand Society of International Law; edited version to be submitted for publication 2007.

“Current developments in the application of international law in New Zealand law”, presentation to ANZSIL conference (as above).

“International Standards: Sources and Effects” and “International Standards: The Experience of the Courts”, papers and presentation to Institute of Policy Studies/ Public Service Emerging Issues series seminar Parliamentary Sovereignty in an Interdependent World, March 2007; IPS considering publication of papers and transcript.

JANE FOSTER – ASSOCIATE CROWN COUNSEL

“Is it a breach of religious rights?”, paper presented at the Victoria University of Wellington cross campus symposium “Contemporary Human Rights and Perspectives”. Since published in the journal *Human Rights Research*, Victoria University of Wellington, 2006, edited by Paul Morris and Helen Greatrex.

PAUL G SCOTT – CROWN COUNSEL

“Unresolved Issues in Price Fixing: Market Division, The Meaning of Control and Characterisation” (2006) 12 *Canterbury Law Review*, 197-236.

CHRISTINA INGLIS – CROWN COUNSEL; AND CRAIG LINKHORN – CROWN COUNSEL

Casenote on “Ngati Kuri Trust Board v Noho and Others”. *Māori Law Review*, November 2006, 6-8.

“Obligations of Māori Charitable Trusts”. *Māori Law Review*, December 2006.

DAMEN WARD – ASSOCIATE CROWN COUNSEL

“Constructing British Authority in Australasia; Charles Cooper and the Legal Status of Aborigines in the South Australian Supreme Court, c. 1840 – 60”. *The Journal of Imperial and*

Commonwealth History, Vol. 34, No 4, December 2006, 483-504.

MARK HICKFORD – CROWN COUNSEL

“Treaty of Waitangi Issues”, lecture delivered to University of Canterbury law students, September 2006.

MARK HICKFORD – CROWN COUNSEL

“The New Zealand Law Commission and the Review of Privacy”, speech presented to the Asia-Pacific Privacy Authorities Forum, Cairns, 23 June 2007.

ANNSLEY KERR – CROWN COUNSEL

“The 16th Australia and New Zealand Society of International Law Conference – an outline of New Zealand issues arising in the field of international law over the past year”, speech presented to the ANZSIL conference, Canberra, 29 June 2007.

MATHEW DOWNS – CROWN COUNSEL

“Police questioning and the Bill of Rights Act: Where are we at?”, paper presented to the 2006 Criminal Bar Association Conference in Queenstown.

ANTHEA WILLIAMS – ASSOCIATE CROWN COUNSEL

“Government Litigation and Settlement of Health Care Tort Claims a Framework for Consistency and Management of Legal Risk 2007”, *NZULR* Vol 22, No 3.

LISA FONG – ASSISTANT CROWN COUNSEL

Review of David McGee’s book, *Parliamentary Practice in New Zealand* (3rd ed., Wellington, Dunmore Publishing, 2005) (2006) 12 *AULR* 218.

**JOANNA HOLDEN – CROWN COUNSEL;
AND PETER GUNN – CROWN COUNSEL/
TEAM LEADER, EMPLOYMENT TEAM**

Seminar on the Holidays Act 2003 at NZLS Employment Law Conference 2006.

AARON MARTIN – CROWN COUNSEL

“Foresight of Harm and Inherently Stressful Occupations”, *NZLJ*, November 2006, 395.

STATEMENT OF RESPONSIBILITY

FOR THE YEAR ENDED 30 JUNE 2007

Pursuant to s45 and s45c of the Public Finance Act 1989, I am responsible, as the Chief Executive of Crown Law for the preparation of the financial statements, statement of objectives and service performance and the judgements made in the process of producing these financial statements.

In my opinion, these financial statements, statement of objectives and service performance fairly reflect its financial position and operations of Crown Law for the financial year ended 30 June 2007.

I have responsibility of establishing and maintaining Crown Law's internal control procedures designed to provide reasonable assurance as to the integrity and reliability of the financial reporting.



Dr David Collins QC
Solicitor-General and Chief Executive
27 September 2007

Countersigned by:



Chris Walker
Chief Financial Officer
27 September 2007



Diana Pryde
Practice Manager
27 September 2007

AUDIT REPORT

TO THE READERS OF THE CROWN LAW OFFICE'S FINANCIAL STATEMENTS AND PERFORMANCE INFORMATION FOR THE YEAR ENDED 30 JUNE 2007

The Auditor-General is the auditor of the Crown Law Office. The Auditor-General has appointed me, John O'Connell, using the staff and resources of Audit New Zealand, to carry out the audit on his behalf. The audit covers the financial statements and statement of service performance included in the annual report of the Crown Law Office for the year ended 30 June 2007.

Unqualified Opinion

In our opinion:

- The financial statements of the Crown Law Office on pages 52 to 68:
 - comply with generally accepted accounting practice in New Zealand; and
 - fairly reflect:
 - the Crown Law Office's financial position as at 30 June 2007; and
 - the results of its operations and cash flows for the year ended on that date.
- The statement of service performance of the Crown Law Office on pages 40 to 51:
 - complies with generally accepted accounting practice in New Zealand; and
 - fairly reflects for each class of outputs:
 - its standards of delivery performance achieved, as compared with the forecast standards outlined in the statement of forecast service performance adopted at the start of the financial year; and
 - its actual revenue earned and output expenses incurred, as compared with the forecast revenues and output expenses outlined in the statement of forecast service performance adopted at the start of the financial year.

The audit was completed on 27 September 2007 and is the date at which our opinion is expressed.

The basis of our opinion is explained below. In addition, we outline the responsibilities of the Solicitor-General and the Auditor, and explain our independence.

Basis of opinion

We carried out the audit in accordance with the Auditor-General's Auditing Standards, which incorporate the New Zealand Auditing Standards.

We planned and performed the audit to obtain all the information and explanations we considered necessary in order to obtain reasonable assurance that the financial statements and statement of service performance did not have material misstatements, whether caused by fraud or error.

Material misstatements are differences or omissions of amounts and disclosures that would affect a reader's overall understanding of the financial statements and the statement of service performance. If we had found material misstatements that were not corrected, we would have referred to them in our opinion.

The audit involved performing procedures to test the information presented in the financial statements and statement of service performance. We assessed the results of those procedures in forming our opinion.

Audit procedures generally include:

- determining whether significant financial and management controls are working and can be relied on to produce complete and accurate data;
- verifying samples of transactions and account balances;
- performing analyses to identify anomalies in the reported data;
- reviewing significant estimates and judgements made by the Solicitor-General;
- confirming year-end balances;
- determining whether accounting policies are appropriate and consistently applied; and
- determining whether all financial statement and statement of service performance disclosures are adequate.

We did not examine every transaction, nor do we guarantee complete accuracy of the financial statements or statement of service performance.

We evaluated the overall adequacy of the presentation of information in the financial statements and statement of service performance. We obtained all the information and explanations we required to support our opinion above.

Responsibilities of the Solicitor-General and the Auditor


The Solicitor-General is responsible for preparing financial statements and a statement of service performance in accordance with generally accepted accounting practice in New Zealand. The financial statements must fairly reflect the financial position of the Crown Law Office as at 30 June 2007 and the results of its operations and cash flows for the year ended on that date. The statement of service performance must fairly reflect, for each class of outputs, the Crown Law Office's standards of delivery performance achieved and revenue earned and expenses incurred, as compared with the forecast standards, revenue and expenses adopted at the start of the financial year. The Solicitor-General's responsibilities arise from sections 45A, 45B and 45(1)(f) of the Public Finance Act 1989.

We are responsible for expressing an independent opinion on the financial statements and statement of service performance and reporting that opinion to you. This responsibility arises from section 15 of the Public Audit Act 2001 and section 45D(2) of the Public Finance Act 1989.

Independence

When carrying out the audit we followed the independence requirements of the Auditor-General, which incorporate the independence requirements of the Institute of Chartered Accountants of New Zealand.

Other than the audit, we have no relationship with or interests in the Crown Law Office.



John O'Connell
Audit New Zealand
On behalf of the Auditor-General
Wellington, New Zealand

Matters relating to the electronic presentation of the audited financial statements

This audit report relates to the financial statements of the Crown Law Office for the year ended 30 June 2007 included on the Crown Law Office's web site. The Solicitor-General is responsible for the maintenance and integrity of the Crown Law Office's web site. We have not been engaged to report on the integrity of the Crown Law Office's web site. We accept no responsibility for any changes that may have occurred to the financial statements since they were initially presented on the web site.

The audit report refers only to the financial statements named above. It does not provide an opinion on any other information which may have been hyperlinked to/from these financial statements. If readers of this report are concerned with the inherent risks arising from electronic data communication they should refer to the published hard copy of the audited financial statements and related audit report dated 27 September 2007 to confirm the information included in the audited financial statements presented on this web site.

Legislation in New Zealand governing the preparation and dissemination of financial statements may differ from legislation in other jurisdictions.

STATEMENT OF OBJECTIVES AND SERVICE PERFORMANCE

FOR THE YEAR ENDED 30 JUNE 2007

OUTPUT EXPENSE: CONDUCT OF CRIMINAL APPEALS

OBJECTIVE

To determine whether the Crown should take pre-trial and case stated appeals in the appeals against sentence are lodged and to appear or arrange representation at the hearing of appeals whether brought by the Crown or by offenders following trials on indictment.

OUTCOME

Contributes to building safer communities that requires that offenders be held to account. By its conduct in criminal appeals Crown Law also contributes to the outcome of a trusted justice system in which civil and democratic rights are enjoyed.

FINANCIAL PERFORMANCE

(Figures are GST exclusive)

2006 Actual		2007 Actual	2007 Main Estimates	2007 Supp Estimates
\$000		\$000	\$000	\$000
1,933	Revenue – Crown	3,363	1,963	3,363
2,564	Expenditure	3,175	1,963	3,363
(631)	Net surplus / (deficit)	188	–	–

EXPLANATION OF MAJOR VARIATIONS:

The demand for and costs of criminal appeals continue to increase. The increase in appropriation in the supplementary estimates was to fund the initiatives undertaken by the court to reduce the backlog of criminal appeals, the Bain appeal to the Privy Council and the historical shortfall in prior years' funding.

The appropriation was breached in March 2007 pending approval of the increased appropriation which was approved in April 2007.

OUTPUT EXPENSE: CONDUCT OF CRIMINAL APPEALS - CONTINUED

SERVICE PERFORMANCE

QUANTITY

2006 Actual	Measures	2007 Actual	2007 Forecast
	Number of appeals disposed of by the Court of Appeal/Supreme Court/Privy Council arising out of criminal trials on indictment, brought by:		
49	• the Crown	29	25 – 35
477	• offenders	412	550 – 600
	Decisions made on requests for the Solicitor-General to take Crown appeals in relation to:		
18	• sentence	15	40 – 50
31	• case stated or other appeals	14	25 – 30

The above forecast measures do not correctly reflect the time commitment for criminal appeals that the Solicitor-General has a statutory duty to appear on. The performance measures focus on clearances of cases by the courts and not the demand on Crown Law. The more appropriate measure of demand and cost impacts are as follows:

2006 Actual	Measures	2007 Actual	2007 Forecast
526	Number of Criminal Appeals filed in the Court of Appeal	441	
	Manner of disposition of appeals		
381	• heard orally	450	
11	• heard on the papers	7	
77	• abandoned by the offender	84	
1	• abandoned by the Crown	2	
	Number of Criminal Appeals filed in the Supreme Court		
27	• number of applications considered by the Court and refused	33	
1	Number of Criminal Appeals to the Privy Council	1	

There was an increase of 69 Court of Appeal hearings during the year as the Court addressed a backlog of appeals and an additional 12 applications for leave to the Supreme Court. In addition to this increase in demand the Privy Council heard the appeal of David Bain (refer page 25).

OUTPUT EXPENSE: CONDUCT OF CRIMINAL APPEALS - CONTINUED

QUALITY AND TIMELINESS

Measures	Performance
Success rate for appeals brought by the Solicitor-General to be not less than 60%	To date 44 appeals brought by the Solicitor-General have been heard. 33 cases have been decided in favour of the Solicitor-General.
Compliance with court procedures and requirements of the judiciary, as specified in the <i>Court of Appeal and Supreme Court Practice Notes – Criminal Appeals</i>	No complaints have been received by Crown Law for non-compliance with court procedures and practice notes
The hearing of appeals to be undertaken in accordance with the schedule of sitting days which is agreed by the court one month in advance, and resulting in no requests for adjournment being sought by the Crown	The hearing of appeals was undertaken in accordance with the timetable set by the court
Written submissions to be filed within the time-frame stipulated in the practice notes prepared for the guidance of Counsel in the Court of Appeal and Supreme Court (which state that submissions are to be filed by the Crown by the required date, or within three days of receipt of the appellant’s submissions, or if that timeframe is not available then prior to the appeal hearing)	The Crown filed written submissions within the timeframe stipulated in the <i>Court of Appeal Practice Note – Criminal Appeals</i>

OUTPUT EXPENSE: LEGAL ADVICE AND REPRESENTATION

OBJECTIVE

To provide legal advice and representation services to central government departments and agencies with special emphasis on matters of public and administrative law, including Treaty of Waitangi and revenue issues.

OUTCOME

Crown Law contributes to the outcomes of its clients and the wider public sector by protecting the Crown's legal interests, supporting the responsibilities of the Crown and maintaining of public interest factors in the application of the law, including timely process and fair results.

Crown Law will assist clients to achieve their outcomes in the provision of legal advice and representation on litigation matters.

FINANCIAL PERFORMANCE

(Figures are GST exclusive)

2006 Actual \$000		2007 Actual \$000	2007 Main Estimates \$000	2007 Supp Estimates \$000
17,131	Revenue – Department	19,571	18,810	20,700
17,146	Expenditure	18,847	18,810	20,700
(15)	Net surplus / (deficit)	724	–	–

EXPLANATION OF MAJOR VARIATIONS:

The appropriation was increased in the supplementary estimates process to meet the increase in the demand for litigation services and disbursements paid on behalf of clients.

OUTPUT EXPENSE: LEGAL ADVICE AND REPRESENTATION - CONTINUED

SERVICE PERFORMANCE

QUANTITY

2006 Actual	Measures	2007 Actual	2007 Forecast
471	Number of new instructions for legal advice	454	550 – 600
951	Average number of requests for legal advice in progress during the year	903	750 – 850
625	Number of new instructions in respect of litigation matters	787	600 – 650
2,290	Average number of litigation matters in hand	2,632	2,000 – 2,200

EXPLANATION OF MAJOR VARIATIONS:

The number of new instructions for legal advice and litigation is difficult to estimate given the demand-based nature of this activity. There was a 13% increase in the number of new instructions received, however, the average number of matters on hand increased mainly because of the complexities of the issues, and the timeframes to finalise these issues is much longer.

QUALITY AND TIMELINESS

Measures	Performance
Legal advice, including opinions and representation services will be provided in accordance with Crown Law's Professional Standards: Crown Law Advice and Conduct of Litigation, respectively	Quality assurance review processes have been implemented to ensure compliance with the standards established for legal advice and representation services

The number of litigation matters increased by 26% and was offset by a small reduction in legal advice.

OUTPUT EXPENSE: SUPERVISION AND CONDUCT OF CROWN PROSECUTIONS

OBJECTIVE

To provide a national Crown prosecution service to undertake criminal trials on indictment, and related appeals the supervision of the network of Crown Solicitors who deliver the prosecution services and the provision of advice on criminal law matters.

This output class comprises three outputs:

- *Crown Prosecution Services* – The provision of a national Crown prosecution service to undertake criminal trials on indictment, including appeals against conviction and sentence arising from summary prosecutions, for all regions in New Zealand.
- *Supervision of the Crown Solicitor Network* – Includes administering the Crown Solicitors Regulations 1994, and in particular the classification of counsel, approval of special fees and approval of additional counsel for lengthy or complex trials.
- *Criminal Law Advice and Services* – The provision of advice in relation to criminal law and undertaking work in the following areas: proceeds of crime, mutual assistance, blood sampling for DNA, requests for Crown appeals, consents to prosecute, applications for stays and immunity from prosecution, and ministerials in relation to criminal matters.

OUTCOME

Crown Law is responsible for prosecuting indictable crime throughout New Zealand, and contributes to effective Crown prosecution services and the justice sector outcome of safer communities that requires that offenders be held to account. By its conduct of Crown prosecutions Crown Law also contributes to the outcome of a trusted justice system in which civil and democratic rights and obligations are enjoyed.

FINANCIAL PERFORMANCE

(Figures are GST exclusive)

2006 Actual		2007 Actual	2007 Main Estimates	2007 Supp Estimates
\$000		\$000	\$000	\$000
30,386	Revenue – Department	31,510	31,410	31,510
29,407	Expenditure	32,119	31,410	31,510
979	Net surplus / (deficit)	(609)	–	–

EXPLANATION OF MAJOR VARIATIONS:

At the time of finalising the supplementary estimates a small increase in the appropriation was approved for the forecasted impact of the increase in Police numbers and corresponding impact on the indictable charges laid.

During the latter part of the year there was an unexpected increase in demand. In accordance with s26B of the Public Finance Act, approval was obtained for up to an additional \$630,000 of expenditure.

OUTPUT EXPENSE: SUPERVISION AND CONDUCT OF CROWN PROSECUTIONS - CONTINUED

SERVICE PERFORMANCE – OUTPUT: CROWN PROSECUTION SERVICES

QUANTITY

2006 Actual	Measures	2007 Actual	2007 Forecast
	Number of trials for indictable crime:		
1,572	• District Court	1,790	1,350 – 1,450
209	• High Court	222	160 – 180
	Number of trials for indictable crime*		
110	• District Court	68	180 – 200
75	• High Court	79	120 – 140
	Number of other criminal matters conducted by the Crown Solicitors:		
1,194	• Bail applications and appeals	1,238	1,400 – 1,500
2,558	• Guilty pleas / lower band and middle band sentencing	2,821	2,600 – 2,800
603	• Appeals relating to summary prosecutions	572	700 – 800

EXPLANATION OF MAJOR VARIATIONS:

The demand-based nature of this activity makes it difficult to estimate the number of criminal matters before the courts. For the 2007 year high cost matters were defined as exceeding \$20,000. The analysis of high cost matters identifies the matters that have required longer court time. The arbitrary threshold had not been reviewed previously despite increases in costs.

QUALITY AND TIMELINESS

Measures	Performance
Prosecution services to be provided in accordance with prosecution guidelines and case management practices developed by the Solicitor-General and judiciary, respectively	Service Performance – Supervision of Crown Solicitor Network

* 2006 costs greater than \$10,000, 2007 cost greater than \$20,000.

OUTPUT EXPENSE: SUPERVISION AND CONDUCT OF CROWN PROSECUTIONS - CONTINUED

SERVICE PERFORMANCE – OUTPUT: SUPERVISION OF CROWN SOLICITOR NETWORK

QUANTITY

2006 Actual		2007 Actual	2007 Forecast
1	Number of Crown Solicitors' practices to be reviewed	0	1 – 2
297	Number of applications from Crown Solicitors for special fees, classification of counsel and approval of additional counsel	300	275 – 325

EXPLANATION OF SIGNIFICANT VARIANCES:

The Hamilton Crown Solicitor Review, which was incomplete as at 30 June 2006 has been completed. Three reviews of Crown Solicitor warrants have been commenced. It is anticipated that they will be completed before 30 June 2008.

QUALITY AND TIMELINESS

Measures	Performance
Applications by Crown Solicitors for special fees, classification of counsel and approval of additional counsel to be considered in accordance with the Crown Solicitors Regulations 1994 and Crown Law's protocols which support the application of the Regulations. The protocols describe the processes to be followed, the quality standards relating to the process and the content and justification required for the applications	All applications made by Crown Solicitors were considered in accordance with the Crown Solicitors Regulations 1994, and Crown Law's protocols, which support the application of the Regulations. Notification of approval and feedback on the applications was formally advised to the Crown Solicitor within the agreed timeframe

OUTPUT EXPENSE: SUPERVISION AND CONDUCT OF CROWN PROSECUTIONS - CONTINUED

SERVICE PERFORMANCE – OUTPUT: SUPERVISION OF CROWN SOLICITOR NETWORK - CONTINUED

QUALITY AND TIMELINESS - CONTINUED

Measures	Performance
<p>The provision of prosecution services by Crown Solicitors is to be reviewed by an independent review panel with reference to a range of quality standards which include:</p> <ul style="list-style-type: none"> • compliance with professional standards of conduct • application of the Solicitor-General’s prosecution guidelines • compliance with court procedures and the requirements of the judiciary and clients in the management of cases • compliance with the Crown Solicitors Regulations 1994 and, in particular, the charging for services rendered • compliance with the protocols and financial guidelines developed by Crown Law to support the application of the Regulations 	<p>The Review Panel, which comprised a senior representative of Crown Law and an independent advisor, performed a review of one Crown Solicitor practice in this period. The review addressed compliance with the performance measures covering:</p> <ul style="list-style-type: none"> • case processing efficiency and effectiveness • practice management case allocation, “good employer” responsibilities, financial reporting on cases and compliance with the Regulations and the supporting protocols

CROWN SOLICITOR PRACTICE REVIEW PROCESS

The Crown Solicitor Practice Review process has been established to ensure that Crown Solicitors meet certain quality standards in undertaking Crown prosecutions. These standards are described in the above table. It is aimed to review all Crown Solicitor practices at least once in each four to five-year period. The number of reviews undertaken in any year will depend upon the size of the practice to be reviewed, the resources available to undertake the reviews and the operational efficiencies derived from reviewing practices in close geographic proximity. A review of the Hamilton Crown Solicitor was commenced in March 2006, and completed in September 2006.

CROWN SOLICITOR APPOINTMENT PROCESS

The Solicitor-General is responsible for the process of appointment of Crown Solicitors. The process, which includes extensive consultation and inquiry to determine the suitability of candidates to undertake the role of Crown Solicitor, results in a recommendation to the Attorney-General and, in turn, to the Governor-General for the issuing of the Crown Solicitor warrant.

OUTPUT EXPENSE: SUPERVISION AND CONDUCT OF CROWN PROSECUTIONS - CONTINUED

SERVICE PERFORMANCE – OUTPUT: CRIMINAL LAW ADVICE AND SERVICES

QUANTITY

2006 Actual	Measures	2007 Actual	2007 Forecast
344	Number of new requests for legal advice or determination of applications received in relation to criminal law issues	326	400 – 450
471	Average number of requests for legal advice or determination of applications in relation to criminal law in process during the year	502	400 – 450
32	Number of new ministerials and parliamentary questions received	31	30 – 40

EXPLANATION OF MAJOR VARIATIONS:

The number of new requests for legal advice has unexpectedly decreased slightly from the forecast, and reflects the difficulty of accurately estimating this demand-based activity.

QUALITY AND TIMELINESS

Measures	Performance
Legal advice, including opinions, and representation services to be provided in accordance with Crown Law’s Professional Standards: Crown Law Advice and Conduct of Litigation, respectively	Quality assurance review processes have been implemented to ensure compliance with the standards established for legal advice and representation services
Ministerial correspondence and parliamentary questions to be responded to within the following time-frames: <ul style="list-style-type: none"> • Replies to ministerial correspondence will be completed within 20 working days of receipt in 90% of cases • All responses to parliamentary questions will be provided within the required deadlines 	<ul style="list-style-type: none"> • Replies to ministerial correspondence were provided within the required timeframe in 97% of cases (2006: 85%) • Responses provided to parliamentary questions received (2006: 13 parliamentary questions were received and responded to within the required deadlines)

OUTPUT EXPENSE: THE EXERCISE OF PRINCIPAL LAW OFFICER FUNCTIONS

OBJECTIVE

To provide legal and administrative services to the Attorney-General and the Solicitor-General to assist them in the exercise of the principal Law Officer functions. The functions include monitoring the enforcement and application of the law, supervision of charities, representation of the public interest, relator proceedings, and the exercise of a variety of powers, duties and authorities arising from various statutory requirements and constitutional conventions.

OUTCOME

Contributes to building safer communities by assisting in the maintenance of law and order and contributing to the maintenance of public interest factors in the application of the law.

FINANCIAL PERFORMANCE

(Figures are GST exclusive)

2006 Actual \$000		2007 Actual \$000	2007 Main Estimates \$000	2007 Supp Estimates \$000
	Revenue:			
1,278	- Crown	2,164	1,278	2,164
4	- Other	3	-	-
<u>1,282</u>		<u>2,167</u>	<u>1,278</u>	<u>2,164</u>
1,342	Expenditure	2,108	1,278	2,164
<u>(60)</u>	Net surplus / (deficit)	<u>59</u>	<u>-</u>	<u>-</u>

OUTPUT EXPENSE: THE EXERCISE OF PRINCIPAL LAW OFFICER FUNCTIONS - CONTINUED

SERVICE PERFORMANCE

QUANTITY

2006 Actual	Measures	2007 Actual	2007 Forecast
124	Number of new applications or requests for legal advice	237	120 to 140
342	Average number of applications or requests for legal advice in process during the year	393	300 to 320
242	Number of new ministerials and parliamentary questions received	170	240 to 260

QUALITY AND TIMELINESS

Measures	Performance
Legal advice, including opinions, and representation services to be provided in accordance with Crown Law's Professional Standards: Crown Law Advice and Conduct of Litigation, respectively	Quality assurance review processes have been implemented to ensure compliance with the standards established for legal advice and representation services
Ministerial correspondence and parliamentary questions to be responded to within the following timeframes: <ul style="list-style-type: none"> • Replies to ministerial correspondence will be completed within 20 working days of receipt in 90% of cases • All responses to parliamentary questions will be provided within the required deadlines 	<ul style="list-style-type: none"> • Replies to ministerial correspondence were provided within the required timeframe in 93% of cases (2006: 86%) • Responses provided to 13 parliamentary questions received (2006: No parliamentary questions were received)
Brief the Attorney-General in a timely and relevant way on significant legal matters affecting the Crown	A weekly report is provided to the Attorney-General advising on significant legal matters involving the Crown

STATEMENT OF ACCOUNTING POLICIES

FOR THE YEAR ENDED 30 JUNE 2007

REPORTING ENTITY

Crown Law is a government department as defined by s2 of the Public Finance Act 1989. These are the financial statements of Crown Law prepared pursuant to s45 of the Public Finance Act 1989. In addition, Crown Law has reported on the trust monies which it administers.

MEASUREMENT SYSTEM

The financial statements have been prepared on an historical cost basis modified by the revaluation of the Library asset.

ACCOUNTING POLICIES

The following particular accounting policies which materially affect the measurement of financial results and financial position have been applied.

BUDGET FIGURES

The Budget figures are those presented in the Budget Estimates (Main Estimates) and those amended by the Supplementary Estimates (Supplementary Estimates) and any transfer made by Order in Council under the Public Finance Act 1989.

REVENUE

Crown Law derives revenue through the provision of outputs to the Crown and for services to third parties. Such revenue is recognised when earned and is reported in the financial period to which it relates.

COST ALLOCATION

Crown Law has determined the cost of outputs using a cost allocation system that is outlined below.

COST ALLOCATION POLICY

Direct costs are charged directly to significant activities. Indirect costs are charged to significant activities based on cost drivers and related activity/usage information.

DIRECT AND INDIRECT COST ASSIGNMENT TO OUTPUTS

Direct costs are charged directly to outputs. Personnel costs are charged to outputs on the basis of actual time incurred. For the year ended 30 June 2007, direct costs accounted for 87.6% of Crown Law's costs (2006: 87%).

Indirect costs are the costs of corporate management and support services, including depreciation and the capital charge, and are assigned to outputs based on the proportion of direct staff costs for each output. For the year ended 30 June 2007, indirect costs accounted for 12.4% of Crown Law's costs (2006: 13%).

The increase in direct costs is due to the increase:

1. in the number of Counsel;
2. in disbursement on behalf of clients; and
3. in the demand and associated costs of criminal prosecutions and appeals.

STATEMENT OF ACCOUNTING POLICIES - CONTINUED

WORK-IN-PROGRESS

Work-in-progress is determined as unbilled time plus disbursements that can be recovered from clients, and has been valued at the lower of cost or expected realisable value.

DEBTORS AND RECEIVABLES

Receivables are recorded at estimated realisable value, after providing for doubtful and uncollectable debts.

OPERATING LEASES

Operating lease payments, where the lessors effectively retain substantially all the risks and benefits of ownership of the leased item, are charged as expenses in the periods in which they are incurred.

FIXED ASSETS

All new fixed asset purchases costing more than \$1,000 are capitalised and recorded at historical cost.

EMPLOYEE ENTITLEMENTS

The liability for entitlements by staff to annual leave, long service leave and retirement leave have been provided for as follows:

- Existing entitlements to annual leave and long service leave have been calculated on an actual entitlement basis at current rates of pay.
- Future entitlements to long service leave and retirement leave have been calculated on an actuarial basis based on the present value of expected future entitlements.

FOREIGN CURRENCY

Foreign currency transactions are converted at the New Zealand dollar exchange rate at the date of the transaction. No forward exchange contracts are entered into.

DEPRECIATION

Depreciation of fixed assets is provided on a straight line basis at rates that will write off the cost of the assets, less their estimated residual values, over their estimated useful lives. The useful lives of the major classes of assets have been estimated as follows:

Depreciation Table

ASSET CLASS	ASSET LIFE	DEPRECIATION RATE
Computer equipment	3 years	(33.3%)
Office equipment	5 years	(20%)
Furniture and fittings	5 years	(20%)
Leasehold improvements	9 years	(11.1%)
Library	10 years	(10%)

The cost of leasehold improvements is capitalised and amortised over the unexpired period of the lease or the estimated remaining useful lives of the improvements, whichever is shorter.

STATEMENT OF ACCOUNTING POLICIES - CONTINUED

FINANCIAL INSTRUMENTS

Crown Law is party to financial transactions as part of its normal operations. These financial instruments, which include bank accounts, debtors and creditors, are recognised in the Statement of Financial Position and all revenues and expenses in relation to financial instruments are recognised in the Statement of Financial Performance. Except for those items covered by a separate accounting policy, all financial instruments are shown at their estimated fair value.

GOODS AND SERVICES TAX (GST)

The Statement of Unappropriated Expenditure and the Statements of Departmental and Non-Departmental expenditure and Appropriations are exclusive of GST.

The Statement of Financial Position is exclusive of GST, except for Trade Debtors and Receivables and Creditors and Payables, which are GST inclusive. All other statements are GST exclusive.

The amount of GST owing to the Inland Revenue Department at balance date, being the difference between Output GST and Input GST, is included in Creditors and Payables.

TAXATION

Government departments are exempt from the payment of income tax in terms of the Income Tax Act 2004. Accordingly, no charge for income tax has been provided for.

COMMITMENTS

Future expenses and liabilities to be incurred on contracts that have been entered into at balance date are disclosed as commitments to the extent that there are equally unperformed obligations.

CONTINGENT LIABILITIES

Contingent liabilities are disclosed at the point at which the contingency is evident.

TAXPAYERS' FUNDS

This is the Crown's net investment in Crown Law.

CHANGES IN ACCOUNTING POLICIES

All policies have been applied on a basis consistent with the previous year. There have been no changes in accounting policies, including cost allocation, since the date of the last audit.

STATEMENT OF FINANCIAL PERFORMANCE

FOR THE YEAR ENDED 30 JUNE 2007

2006 Actual		2007 Actual	2007 Main Estimates	2007 Supp Estimates
\$000	Note	\$000	\$000	\$000
REVENUE				
33,597	Crown	37,037	34,651	37,037
17,135	Other	19,574	18,810	20,700
50,732	Total operating revenue	56,611	53,461	57,737
EXPENSES				
14,948	Personnel costs	16,076	15,615	16,020
34,568	Operating costs	39,211	36,763	40,688
834	Depreciation	865	1,003	932
109	Capital charge	97	80	97
50,459	Total expenses	56,249	53,461	57,737
273	Net surplus / (deficit)	362	–	–

The accompanying accounting policies and notes form part of these financial statements.
For information on major variances refer to Note 1.

STATEMENT OF MOVEMENTS IN TAXPAYERS' FUNDS

FOR THE YEAR ENDED 30 JUNE 2007

2006 Actual	Note	2007 Actual	2007 Main Estimates	2007 Supp Estimates
\$000		\$000	\$000	\$000
1,797	Taxpayers' funds as at 1 July	1,297	1,297	1,297
273	Net surplus / (deficit)	362	–	–
273	<i>Total recognised revenues and expenses for the year</i>	362	–	–
(500)	Repayment of capital contribution to the Crown	–	–	–
(273)	Provision for repayment of surplus to the Crown	(362)	–	–
1,297	<i>Taxpayers' funds as at 30 June</i>	1,297	1,297	1,297

The accompanying accounting policies and notes form part of these financial statements.

STATEMENT OF FINANCIAL POSITION

AS AT 30 JUNE 2007

2006 Actual			2007 Actual	2007 Main Estimates	2007 Supp Estimates
\$000		Note	\$000	\$000	\$000
ASSETS					
Current assets					
2,599	Cash		3,746	1,869	2,504
3,350	Debtors and receivables	8	3,973	3,375	3,350
5,949	Total current assets		7,719	5,244	5,854
Non-current assets					
3,476	Fixed assets	9	3,206	3,594	3,298
9,425	Total assets		10,925	8,838	9,152
LIABILITIES					
Current liabilities					
6,781	Creditors and payables	10	8,005	6,494	6,781
273	Provision for repayment of surplus	11	362	—	—
786	Provision for employee entitlements	12	1,010	780	786
7,840	Total current liabilities		9,377	7,274	7,567
Non-current liabilities					
288	Provision for employee entitlements	12	251	267	288
8,128	Total liabilities		9,628	7,541	7,855
TAXPAYERS' FUNDS					
1,001	General funds		1,001	1,001	1,001
296	Revaluation reserve		296	296	296
1,297	Total taxpayers' funds		1,297	1,297	1,297
9,425	Total liabilities and taxpayers' funds		10,925	8,838	9,152

The accompanying accounting policies and notes form part of these financial statements.
For information on major variances against budget refer to Note 1.

STATEMENT OF CASH FLOWS

FOR THE YEAR ENDED 30 JUNE 2007

2006 Actual		2007 Actual	2007 Main Estimates	2007 Supp Estimates
\$000		\$000	\$000	\$000
CASH FLOWS – OPERATING ACTIVITIES				
<i>Cash was provided from: Supply of outputs to</i>				
33,597	Crown	37,037	34,651	37,037
16,868	Government departments and related agencies	18,990	18,810	20,700
50,465		56,027	53,461	57,737
<i>Cash was applied to: Produce outputs</i>				
31,151	Operating	35,998	34,883	38,401
14,381	Personnel	15,631	15,030	16,020
2,030	Net GST paid	2,287	2,287	2,287
109	Capital charge	97	80	97
47,671		54,013	52,280	56,805
2,794	Net cash flows from operating activities	2,014	1,181	932
CASH FLOWS – INVESTING ACTIVITIES				
<i>Cash was provided from:</i>				
–	Sale of fixed assets	–	–	–
<i>Cash disbursed for:</i>				
240	Purchase of fixed assets	594	810	754
(240)	Net cash flows from investing activities	(594)	(810)	(754)
CASH FLOWS – FINANCING ACTIVITIES				
<i>Cash disbursed for:</i>				
–	Repayment of net surplus to Crown	273	–	273
500	Repayment of capital contribution received from the Crown	–	–	–
(500)	Net cash flows from financing activities	(273)	–	(273)
2,054	Net increase/(decrease) in cash held	1,147	371	(95)
545	Add opening cash	2,599	1,498	2,599
2,599	Closing cash	3,746	1,869	2,504

The accompanying accounting policies and notes form part of these financial statements.
For information on major variances against budget refer to Note 1.

RECONCILIATION OF NET SURPLUS TO NET CASH FLOW FROM OPERATING ACTIVITIES

FOR THE YEAR ENDED 30 JUNE 2007

2006 Actual		2007 Actual	2007 Main Estimates	2007 Supp Estimates
\$000		\$000	\$000	\$000
273	Net (deficit)/surplus	362	–	–
	Adjustment for items which do not impact cash flow:			
834	Depreciation	865	1,003	932
44	Increase/(decrease) in non-current employee entitlements	37	–	–
878	Total non-cash items	902	1,003	932
	Adjustment for movements in working capital items:			
135	(Increase)/decrease in debtors and receivables	(623)	(135)	–
1,450	Increase/(decrease) in creditors and payables	1,223	313	–
58	Increase/(decrease) in current employee entitlements	150	–	–
1,643	Working capital movements – net	750	178	–
	Add/(less) investing activity items:			
–	Net loss/(gain) on sale of fixed assets	–	–	–
–	Total investing activity items	–	–	–
2,794	Net cash inflow from operating activities	2,014	1,181	932

The accompanying accounting policies and notes form part of the financial statements.

STATEMENT OF COMMITMENTS

AS AT 30 JUNE 2007

Crown Law leased office premises in Wellington as from 1 April 2004. The term of the lease is for an initial period of nine years expiring on 31 March 2013, with a rental review as from 1 April 2007. Subsequent to 30 June 2007 the revised rent has been agreed. The amounts disclosed below as future commitments are based on the lease rental rates applying from 1 April 2007. The next rental review is effective from 1 April 2010.

Operating leases include lease payments for premises, car parks and photocopiers.

2006 Actual \$000		2007 Actual \$000
<i>Operating lease commitments</i>		
1,395	less than one year	1,691
1,343	one to two years	1,674
3,968	two to five years	5,018
2,314	over five years	1,254
9,020	Total operating lease commitments	9,637
9,020	Total commitments	9,637

No significant commitments were outstanding for the purchase of goods and services as at 30 June 2007.

STATEMENT OF CONTINGENT LIABILITIES

AS AT 30 JUNE 2007

There were no contingent liabilities as at 30 June 2007 (2006: Nil)

The accompanying accounting policies and notes form part of the financial statements.

STATEMENT OF UNAPPROPRIATED EXPENDITURE

FOR THE YEAR ENDED 30 JUNE 2007

TABLE 1

2006 Unappropriated Expenditure \$000	(Figures are GST inclusive where applicable)	2007 Actual \$000	2007 Appropriation \$000	2007 Unappropriated Expenditure \$000
Vote: Attorney-General				
631	Output Expense – Conduct of Criminal Appeals	3,175	3,363	–
64	Output Expense – The Exercise of the Principal Law Officer Functions	2,108	2,164	–
–	Output Expense – Supervision and Conduct of Crown Prosecutions	32,119	31,510	609

TABLE 2

	Authority \$000	Amount without Appropriation \$000
Expenditure incurred prior to authorisation:		
Vote: Attorney-General		
Output Expense – Supervision and Conduct of Crown Prosecutions		630
Unappropriated expenditure for validation under s26c of the Public Finance Act 1989 – expenditure in excess of appropriation:		
Vote: Attorney-General		
Output Expense – Conduct of Criminal Appeals	1,963	218

The expenditure without appropriation S26C occurred during the process to obtain approval. The unappropriated expenditure arose from unexpected increases in demand. Due to timing factors over the Easter period approval was not obtained before the expenditure was incurred. Approval was subsequently received in April 2007.

The accompanying accounting policies and notes form part of the financial statements.

STATEMENT OF DEPARTMENTAL EXPENDITURE AND APPROPRIATIONS

FOR THE YEAR ENDED 30 JUNE 2007

(Figures are GST exclusive where applicable)	2007 Actual Expenditure \$000	2007 Appropriation Voted ^{*1} \$000
Vote: Attorney General		
<i>Appropriations for classes of outputs</i>		
Conduct of Criminal Appeals	3,175	3,363
Legal Advice and Representation ^{*2}	18,847	20,700
Supervision and Conduct of Crown Prosecutions	32,119	31,510
The Exercise of Principal Law Officer Functions	2,108	2,164
Total appropriations	56,249	57,737

STATEMENT OF TRUST MONIES

FOR THE YEAR ENDED 30 JUNE 2007

Account	As at 1 July 2006 \$000	Contributions \$000	Distributions \$000	Revenue \$000	Expenses \$000	As at 30 June 2007 \$000
Crown Law Legal Claims Trust Account	49	871	(858)	3	–	65

This interest bearing bank account is operated to receive and pay legal claims and settlements on behalf of clients of Crown Law. In accordance with the Public Finance Act 1989 the interest income is payable to the Crown.

The accompanying accounting policies and notes form part of these financial statements.

^{*1} The Appropriation Voted includes adjustments made in the Supplementary Estimates.

^{*2} Legal Advice and Representation is funded by Inland Revenue Department.

NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED 30 JUNE 2007

NOTE 1: MAJOR BUDGET VARIATIONS

STATEMENT OF FINANCIAL PERFORMANCE (GST EXCLUSIVE)

OUTPUT EXPENSE: CONDUCT OF CRIMINAL APPEALS

This output recorded a surplus of \$188,000 for the year.

An increase of \$1.4 million was approved in the supplementary estimates to fund the historical funding shortfall, the initiatives taken by the courts to address the backlog of criminal appeals, and the Bain appeal to the Privy Council. The surplus is due to a small decrease in the number of appeals heard during May and June.

OUTPUT EXPENSE: LEGAL ADVICE AND REPRESENTATION SERVICES

This output class recorded a surplus of \$724,000 for the year.

An increase of \$1.89 million was approved in the supplementary estimates to fund the increased litigation work and disbursements paid on behalf of clients. The surplus is due to an increase in chargeable work.

OUTPUT EXPENSE: SUPERVISION AND CONDUCT OF CROWN PROSECUTIONS

This output recorded a deficit of \$609,000 for the year.

There was an unexpected increase in demand for criminal prosecutions in May and June. Due to the timing of the supplementary estimates it was not possible to include this unexpected increase in demand.

OUTPUT EXPENSE: THE EXERCISE OF PRINCIPAL LAW OFFICER FUNCTIONS

This output class recorded a surplus of \$59,000 for the year.

An increase of \$886,000 was approved in the supplementary estimates to fund the forecasted demand. Actual costs incurred were slightly below forecast.

Further information on the changes in output classes is set out in the Statement of Objectives and Service Performance.

NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

NOTE 2: OTHER REVENUE

2006		2007	2007	2007
Actual		Actual	Main	Supp
\$000		\$000	Estimates	Estimates
			\$000	\$000
	Legal fees and disbursements received from:			
17,131	– Government departments/other government entities	19,571	18,810	20,700
4	– Other clients	3	–	–
–	Profit on sale of fixed assets	–	–	–
17,135	Total other revenue	19,574	18,810	20,700

NOTE 3: PERSONNEL COSTS

2006		2007
Actual		Actual
\$000		\$000
14,846	Salaries and wages	16,174
102	Movement in retirement and long service leave	(98)
14,948	Total personnel costs	16,076

NOTE 4: OPERATING COSTS

2006		2007	2007	2007
Actual		Actual	Main	Supp
\$000		\$000	Estimates	Estimates
			\$000	\$000
40	Audit fees for audit of the financial statements	40	45	41
44	Bad debts written off	16	18	18
(48)	Increase (decrease) provision for doubtful debts	46	18	33
(16)	Increase (decrease) provision for doubtful work in progress	16	67	30
214	Consultancy costs	260	256	256
28,510	Crown Solicitors fees	31,687	30,467	31,687
1,409	Operating lease costs	1,529	1,530	1,530
4,415	Other operating costs	5,617	4,362	7,093
34,568	Total operating costs	39,211	36,763	40,688

NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

NOTE 5: DEPRECIATION CHARGE

2006		2007	2007	2007
Actual		Actual	Main	Supp
\$000		\$000	Estimates	Estimates
			\$000	\$000
53	Office equipment	55	33	54
149	Computer equipment	151	250	166
79	Computer software	93	141	150
280	Leasehold improvements	291	302	285
197	Furniture & fittings	200	200	200
76	Library	75	77	77
834	Total depreciation charge	865	1,003	932

NOTE 6: CAPITAL CHARGE

Crown Law pays a capital charge to the Crown on its taxpayers' funds as at 30 June and 31 December each year. The capital charge rate for the year ended 30 June 2007 was 8.0% (2006: 8.0%).

NOTE 7: REVALUATION RESERVE - LIBRARY

The Library asset was independently valued at net current value as at 30 June 2001 by Stephanie Lambert NZCL of Lambert Library Services. Since that date, Crown Law has changed its valuation method for the library collection from fair value to historical cost. This decision, which is consistent with FRS-3: Accounting for Property, Plant and Equipment, has been made as the cost of the valuation exceeds the benefits of an updated valuation.

NOTE 8: DEBTORS AND RECEIVABLES

2006		2007
Actual		Actual
\$000		\$000
1,475	Trade debtors	2,059
(32)	<i>Less</i> provision for doubtful debts	(78)
1,786	Work in progress	1,820
(33)	<i>Less</i> provision for doubtful work in progress	(49)
154	Prepayments	221
3,350	Total debtors and receivables	3,973

NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

NOTE 9: FIXED ASSETS

2006 Actual \$000		2007 Actual \$000
	Office equipment	
513	At cost	569
(347)	Accumulated depreciation	(402)
166	Office equipment – net book value	167
	Computer equipment	
1,052	At cost	1,016
(869)	Accumulated depreciation	(755)
183	Computer equipment – net book value	261
	Computer software	
644	At cost	744
(532)	Accumulated depreciation	(625)
112	Computer software – net book value	119
	Leasehold improvements	
2,544	At cost	2,704
(557)	Accumulated depreciation	(849)
1,987	Leasehold improvements – net book value	1,855
	Furniture and fittings	
1,040	At cost	1,077
(444)	Accumulated depreciation	(645)
596	Furniture and fittings – net book value	432
	Library	
697	Base collection at valuation – 30 June 2001	697
103	Additions at cost	118
(368)	Accumulated depreciation	(443)
432	Library – net current value	372
	Total fixed assets	
6,593	At cost and valuation	6,925
(3,117)	Accumulated depreciation	(3,719)
3,476	TOTAL CARRYING AMOUNT OF FIXED ASSETS	3,206

NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

NOTE 10: CREDITORS AND PAYABLES

2006 Actual \$000		2007 Actual \$000
3,684	Trade creditors	4,310
2,763	Accrued work in progress – Crown Solicitors Fees	3,120
146	Other accrued expenses	304
188	GST payable	271
<u>6,781</u>	Total creditors and payables	<u>8,005</u>

NOTE 11: PROVISION FOR REPAYMENT OF SURPLUS TO THE CROWN

The provision for repayment of surplus to the Crown is equivalent to the net operating surplus as recorded in the Statement of Financial Performance.

NOTE 12: PROVISION FOR EMPLOYEE ENTITLEMENTS

2006 Actual \$000		2007 Actual \$000
	Current liabilities	
701	Annual leave	987
85	Long service leave	23
<u>786</u>	Total current portion	<u>1,010</u>
	Non-current liabilities	
121	Long service leave	91
167	Retirement leave	160
<u>288</u>	Total long term portion	<u>251</u>
<u>1,074</u>	Total provision for employee entitlements	<u>1,261</u>

NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

NOTE 13: FINANCIAL INSTRUMENTS

Crown Law is party to financial instrument arrangements as part of its everyday operations. These include instruments such as bank balances, investments, accounts receivable and trade creditors.

CREDIT RISK

Credit risk is the risk that a third party will default on its obligations to Crown Law, causing Crown Law to incur a loss. In the normal course of its business, Crown Law incurs credit risk from trade debtors and transactions with financial institutions. Crown Law does not require any collateral or security to support financial instruments with financial institutions that Crown Law deals with, as these entities have high credit ratings. For its other financial instruments, Crown Law has in excess of 97% of the outstanding revenue represented by debtors and work in progress due from government departments and ministries.

FAIR VALUE

The fair value of all financial instruments is equivalent to the carrying amount disclosed in the Statement of Financial Position.

CURRENCY AND INTEREST RATE RISK

There are no financial instruments that potentially subject Crown Law to material foreign exchange or interest rate risks.

NOTE 14: CONTINGENCIES

Crown Law does not have any contingent assets as at 30 June 2007 (30 June 2006: Nil).

There were no contingent liabilities as noted in the Statement of Contingent Liabilities.

NOTE 15: RELATED PARTY INFORMATION

Crown Law is a wholly owned entity of the Crown. Crown Law enters into trading activities with the Crown, other departments and ministries, and Crown Entities. These activities are conducted on an arms-length basis and are not considered to be related party transactions. Apart from those transactions described above, Crown Law has not entered into any related party transactions.

NOTE 16: EVENTS AFTER BALANCE DATE

No other significant events, which may impact on the actual results, have occurred between the year end and the signing of the financial statements.

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Website: <http://www.crownlaw.govt.nz>

AUDITOR

Audit New Zealand (on behalf of the Controller and Auditor-General)
Wellington

BANKERS

Westpac Banking Corporation
Government Branch
Wellington

ANNUAL REPORT

ANNUAL REPORT

FURTHER INFORMATION about CROWN LAW can be found by visiting our website at www.crownlaw.govt.nz or by CONTACTING our Human Resources Team by e-mail at hr@crownlaw.govt.nz

This document is available on the Crown Law website at the following address
http://www.crownlaw.govt.nz/artman/docs/cat_index_3.asp

