Crown copyright in legislation

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Whether copyright exists in legislation is of considerable constitutional importance. This article locates the question within changing historical contexts and then explores options for clarifying the modern law.

I INTRODUCTION

The issue of the Crown copyright in legislation has for a long time lain dormant in New Zealand. It was re-activated by the sudden appearance of a copyright notation at the end of Acts of Parliament printed by the Government Printer in September 1988.[1] There was an immediate and vigorous reaction from the legal publishers[2] supported by the Book Publishers Association of New Zealand and the New Zealand Law Society.[3] The New Zealand Law Society linked this event with the impending sale of the Government Printing Office and feared that Crown copyright might be sold as one of its assets. The Hon Geoffrey Palmer MP, when Minister of Justice, assured the publishers that Crown copyright would not be sold. However, he added:[4]

> This notation does no more than state the existing law. Clearly, Crown copyright subsists in statutes under the Copyright Act.

He also raised the possibility that in the future the publishers might have to pay fees in order to reproduce legislation. This response spurred the publishers to further action. They invited D Graham MP to introduce a Private Member's Bill to abolish Crown copyright. The Copyright (Crown Copyright) Amendment Bill[5] was introduced into the House on 14 March 1989. The Crown Copyright Bill has now been superseded by the

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1 The notation read as follows:
Government of New Zealand - 1988. Applications to reproduce or publish this legislation should be made to the Government Printer, PO Box 12-411, Wellington, New Zealand.

2 Commerce Clearing House (New Zealand) Ltd (CCH), Butterworths (New Zealand) Ltd and Brooker & Friend Ltd.

3 New Zealand Law Society (NZLS). Letter to Hon G Palmer, MP, 6 December 1988.

4 Hon G Palmer, MP, Letter to Butterworths, CCH, Brooker & Friend, NZLS, 20 January 1989.

5 Hereafter referred to as Crown Copyright Bill.

commencement of the Acts and Regulations Publication Act 1989[6] on 19 December 1989.

The legal publishers responded to the issue because their direct financial interests were at stake. However, it is submitted that this issue is very much wider than this and strikes at the roots of our democratic system of Government.

An historical survey of the topic of Crown Copyright in legislation shows that resurgence of interest in the topic has often been associated with periods of change in the politics of a country. The metamorphosis of New Zealand's economy achieved by deregulation has brought the issue of Crown copyright in legislation into sharp relief. The topic raises two major questions. First, is the Government's assumption that Crown copyright subsists in legislation is correct? Second, as a matter of policy should New Zealand have Crown copyright in legislation? These questions must be addressed in the context of copyright as a whole, that is, by reference to historical origins of copyright and the nature of copyright and the justifications for copyright.

II COPYRIGHT IN CONTEXT

A *The Historical Origins of Copyright*

The modern concept of copyright evolved from the different methods by which the Crown controlled printing in the sixteenth century.[7] The Crown gave large powers of control to the Stationers' Company, which was incorporated in 1556 to supervise the printing and publishing of books. This was achieved by a compulsory system of registration of published books. The printer or publisher in whose name the book was registered obtained an incontestable title to the book. This right was protected by the imposition of penalties upon those who infringed it. It could be assigned, sold or settled in trust. This led to the concept of property in a book. In addition, the Crown granted patents for certain books giving the patentee the exclusive right to print such books. These rights of publishers and printers were protected by provisions in ordinances of the Star Chamber issued in 1586 and 1637 to control the press. They contained the seeds of the law of copyright.

After the Restoration, the provisions of the 1637 Ordinance were re-enacted in substance by the 1662 Licensing Statute. The change of political ideas brought about by the Glorious Revolution in 1688 led to the House of Commons' declining to renew the Licensing Acts in 1694. The whole of the machinery for the regulation of printing, built up by the Tudor and early Stuart Kings, continued in substance under the Commonwealth and given parliamentary sanction after the Restoration, ceased. This left the legal position of copyright obscure and thus caused the passing of the first copyright statute, the Copyright Act of 1709.

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6 Formerly, the Statutory Publications Bill.

7 This account is based on Holdsworth *A History of English Law* (Methuen, London, 1956) Vol VI, 360-377.

B *The Nature of Statutory Copyright*

Copyright is the exclusive right[8] to reproduce a work in any material form, to publish the work or to make any adaptation of the work.[9] As copyright is an exclusive right, it is also a right of prohibition to stop other people from copying, publishing or adapting the work. It therefore protects the personal property of a person. Property is the relationship between object and a person to whom the object belongs, or is "proper" to.[10] As with other forms of personal property, copyright may be conceived as a "bundle of rights" which defines the object, though in the case of copyright, the object is intangible. Works are required to be "original" to acquire copyright protection.[11] In practice, this requirement appears to be satisfied if a sufficient degree of skill and labour has been expended by the author.[12]

Statutory copyright is a right of limited duration. Under the normal operation of the Act, the term is for 50 years from the death of the author.[13] Under the Crown copyright provision it is for 50 years from the end of the year in which the work is made.[14] This is in contrast to prerogative copyright which is perpetual in duration.[15] After the expiration of the copyright term, the private rights in relation to the work cease, and it may be used freely by anyone.

C *Justifications for Copyright*

There are two principal justifications for copyright.[16] First, copyright gives a property right to the author in her or his work. Persons wishing to reproduce the work must therefore pay royalties to the author. The intellectual work of the author is rewarded by these royalties. In addition, considerable investment is often required to create, publish and distribute works. The property right ensures that there is a reasonable expectation of recouping the investment and making a profit. If there were no property right, a third party could copy the work at a lower price having not had to make an initial investment, and so undersell the originator. In the absence of the copyright there would be little financial incentive to create new works. Secondly, the works produced by authors form a considerable national asset. Therefore, the encouragement of creativity, by the provision of an economic incentive, is in the public interest in that it is a contribution to the intellectual wealth of the country.[17]

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8 Section 6(1), Copyright Act 1962.
9 Section 7(3), Copyright Act 1962.
10 KJ Gray and DD Symes *Real Property and Real People - Principles of Land Law* (Butterworths, London, 1981) 7.
11 Section 7(1), Copyright Act 1962.
12 S Ricketson *The Law of Intellectual Property* (Law Book Co Ltd, Sydney, 1984) 53.
13 Section 8(1)(a), Copyright Act 1962.
14 Section 52(3), Copyright Act 1962.
15 See part IX, below.
16 SM Stewart *International Copyright and Neighbouring Rights* (Butterworths London, 1983) 3.
17 Above n 16.

The balance between these two justifications for copyright is determined by the duration of the term of copyright. The private justification for copyright is served during the copyright term, while the public justification is satisfied at the end of the copyright term, when the work is available for the public to reproduce.

III STATUTORY CROWN COPYRIGHT

It has been assumed by the Government,[18] the Government Printing Office[19] and the Justice Department[20] that Crown copyright in legislation exists either under the normal operation of the Copyright Act 1962 or by virtue of section 52 of the Act.

A Normal Operation of the Copyright Act 1962

Copyright subsists in literary works under section 7. Section 9(4) provides that where a work is made in the course of employment, the employer is entitled to copyright. It could be argued that Parliamentary Counsel are the authors of legislation and since they are employed by the Crown,[21] under section 6A of the Statutes Drafting and Compilation Act 1920,[22] the Crown is entitled to copyright in their work, that is, in legislation.

However, it is submitted that Parliamentary Counsel cannot be regarded as the authors of legislation when it has been passed by Parliament. This is because a Bill drafted by Parliamentary Counsel is transformed into a different entity by the parliamentary process. Similarly, the suggestion that the Crown has copyright by virtue of the fact that members of Parliament are the authors of legislation is not sustainable. Even if it were accepted that Members of Parliament as a collective body could fit the concept of an author, they cannot be said to be employed by the Crown[23] as this would step over the boundary marked by the doctrine of the separation of powers.[24]

The requirement of originality raises several questions. Would an Act substantially copied from overseas legislation satisfy this requirement? Possibly, its adaptation to suit New Zealand circumstances would constitute a sufficient degree of skill and labour to do so. A related question is whether an Act which itself infringed copyright, being a copy of an overseas Act or a privately drafted code, could attract copyright protection.

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18 Above n 4.

19 Government Printing Office (GPO). Draft paper to Minister responsible for GPO, 7 December 1988.

20 Department of Justice, Law Reform Division "Copyright Act 1962: Options for Reform" July 1989, p 42.

21 D McGee *Parliamentary Practice in New Zealand* (Government Printer, Wellington, 1985) 48.

22 Inserted by s2, Statutes Drafting and Compilation Act 1988.

23 W Hodge, Submission to Commerce and Marketing Select Committee on Copyright (Crown Copyright) Amendment Bill, 11 May 1989.

24 F Cooke, "Crown Copyright in Legislation" Intellectual Property VUW LLB (Hons) Seminar, July 1989.

These questions raise doubts about the appropriateness of Crown copyright to legislation and are addressed below.

It is submitted that the only legitimate claim which the Crown could have had to copyright in legislation was under section 17 of the Act which vests copyright in the typographical arrangement of a work in the publisher. However, now that the Government Printing Office has been sold by the Crown, this claim is no longer possible.

B Section 52 of the Copyright Act 1962

Section 52 is essentially a copy of section 39 of the Copyright Act 1956 (UK) which evolved from section 18 of the Copyright Act 1911 (UK). There are no significant changes in wording between any of these provisions. Section 39 of the 1956 UK Act has also been used as a model for legislation in Canada[25] and Australia.[26]

Section 52 deals with unpublished and published works separately. Section 51(1) deals with unpublished works, specifically including works in which copyright would not otherwise subsist. Presumably this refers to works where the author is not a New Zealand citizen or resident as this a requirement for the subsistence of ordinary copyright in unpublished works under section 7. Possibly the subsection also envisages works which do not have an author in the usual sense. Section 52(2) deals with published works.

Crown copyright in legislation could subsist either because an Act of Parliament is
(1) "made" (52(1));
(2) "first published" (52(2))
by or under the direction or control of Her Majesty or a Government Department. It is submitted that Crown copyright cannot subsist under either of these sections for the reasons set out below.

1 Section 52(1)

It is submitted that Crown copyright in legislation cannot subsist under section 52(1) because an Act of Parliament is made by the Parliament of New Zealand. The Constitution Act 1986 provides:[27]

> The Parliament of New Zealand continues to have full power to make laws.

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25 Section 11, Copyright Act 1952 (Canada).
26 Section 176, Copyright Act 1968 (Australia).
27 Section 15(1), Constitution Act 1986. But see s14 which provides that Parliament shall also "consist of the Sovereign in right of New Zealand".

Therefore, Her Majesty does not make laws and neither are they made under Her Majesty's direction or control. Regarding Government Departments, Barton QC has said:[28]

> I assume that no-one has seriously suggested that statutes are "made by or under the direction ... of ... a Government Department". Any such suggestion hardly merits consideration.

2 Section 52(2)

The Department of Justice relied on this subsection as the basis of Crown copyright in legislation. Their reasoning was that an Act of Parliament was first published by the Government Printing Office, which was a Government Department. This argument is now of historic interest only, as when the Government Printing Office was sold, it ceased to be a Government Department.[29]

IV PREROGATIVE COPYRIGHT

A The Crown and its Prerogative

The Crown denotes the executive branch of government. The prerogative rights and powers of the Crown are derived from and controlled by the Common Law. Their defining feature is that they are unique to the Crown.[30] However, Dicey's classic definition of the prerogative that "[t]he residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the Crown"[31] is more evocative of the tumultuous history behind the constitutional development of the Crown and its prerogative. The early English cases on Crown copyright took place when constitutional change was at its most frenetic. An historical account of the changing attitudes towards the Crown is therefore crucial to understanding the cases.[32]

At the start of the seventeenth century, responsibility for government belonged to the Monarch, and the prerogative was the sole source of executive power. The Monarch and the prerogative were inseparable. From 1629 to 1640, the King ruled by prerogative alone, by issuing proclamations which were duly enforced by the Star Chamber. The common law courts effectively sanctioned this use of the prerogative.

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28 G Barton QC, Opinion on Crown Copyright, 31 July 1989, para 8.

29 Section 13, Acts and Regulations Publication Act 1989 omits the Government Printing Office for the First Schedule to the State Sector Act 1988 which lists Departments of Public Service.

30 SE de Smith *Constitution and Administrative Law* (5ed, Penguin Books, Harmondsworth, 1985) 139.

31 Dicey *Introduction to the Study of the Law of the Constitution* (10ed MacMillan & Co Ltd, London, 1959) 424.

32 Above n 7, Vol VI and Vol XI. Sir William Anson *The Law and Custom of the Constitution* (4ed, Clarendon Press, Oxford, 1935) Vol 11.

The ensuing Civil War irrevocably altered the relative status of the Monarchy and Parliament. After the Restoration in 1660, both the King and Parliament were recognised as necessary parts of the Constitution. But the King was still in the stronger position. Charles II was believed by most of his subjects to be the King by divine right, and the vagueness of the limits of the prerogative made it a very useful instrument. The Bill of Rights 1688 and the Act of Settlement 1701 finally settled the contest between King and Parliament. Sovereignty was transferred from the King to Parliament. The prerogative was separated from the King and made subject to law. Thus was born the abstract concept of the Crown[33] as the entity to which the prerogative attached. The prerogative was put at the disposal of the majority of the House of Commons. This led to the evolution of cabinet government.

The executive power was still entirely derived from the prerogative, but gradually statues became the legitimate source of power and the prerogative was relegated to a secondary role.

B Introduction to Early Case Law

The early case law is a reflection of the constitutional development and changing attitudes towards the Crown outlined above. Although the cases clearly establish that the Crown had prerogative over printing Acts of Parliament, the rationales advanced for its justification are difficult to reconcile. This has led to confusion about the true basis of the Crown prerogative. These difficulties dissolve if the cases are examined against their historical background.[34]

1 General prerogative over printing

The introduction of printing into England in 1471 caused problems for government and led it to be considered a matter of state:[35]

> The quick and extensive circulation of sentiments and opinions which that invaluable art introduced, could not but fall under the gripe of government, whose principle strength was built upon the ignorance of the people who were to submit to them.

The Crown exercised oppressive and unlimited control over the Press. Before 1640 this was by proclamations of the Monarch and decrees of the Star Chamber which were in substance continued by the Licensing Acts after the Restoration.[36] The leading cases must be considered against the background of this general prerogative over printing.

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33 G Marshall *Constitutional Theory* (Clarendon Press, Oxford, 1971) 17.

34 This approach has also been taken by M Taggart in "Copyright in Written Reasons for Judgment" (1984) 10 Sydney LR 319, 325 and by defendant's counsel in *Attorney-General (New South Wales)* v *Butterworths & Co (Australia) Ltd* (1937-1938) 38 SR NSW 195.

35 *Speeches of Thomas Lord Erskine* (Reeves & Turner, London, 1880) 18.

36 Above n 8, Vol VI, 311.

***Stationers* v *The Patentees about the Printing of Roll's Abridgement*:**[37] Atkins owned a Crown patent to "print all law books that concern the common law." The Company of Stationers obtained copies of Roll's Abridgement which they printed. Atkins obtained an injunction in the Court of Chancery which was upheld in a Committee of Parliament. The case turned on the validity of the Crown patent which was granted to Atkins as an exercise of the prerogative. Two bases were suggested upon which the patent could be upheld: first, the King's general prerogative over printing:[38]

> The Kings [*sic*] prerogative over printing is necessary as to religion, conservation of the publique peace, and necessary to preserve good understanding between King and people.

The second basis was the King's particular prerogative over law books, which was justified on two counts. First:[39]

> All the laws of England are called the King's laws; because when he passeth a bill he saith, le Roy veult; or when it hath past both Houses and the King will not pass it, he saith, le Roy avisera.

Second, the salaries of the judges were paid by the King.

It is unclear from the reported judgment which prerogative provided the basis for the ratio decidendi. Previous commentators have favoured the former rationale as being "the less radical result".[40] However, it is arguable that the second reason was the true ratio. The holding was:[41]

> The King hath a particular prerogative over law books, and so he would have had, if the art of printing had never been known.

This suggests that had there been no general prerogative over printing, the particular prerogative over law books would have sufficed to uphold the validity of the patent.

***Roper* v *Streater*:**[42] Roper bought from the executors of Coke the third part of Coke's reports, which he printed. Streater pleaded a Crown patent for printing all law

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37 (1666) Carter 89; 124 ER 842.

38 Above n 37, 90; 843.

39 Above n 37, 91; 843.

40 M Taggart "Copyright in Written Reasons for Judgment" (1984) 10 Sydney LR 319. CJ Bannon QC "Copyright in Reasons for Judgment and Law Reporting" (1982) 56 ALJ 59.

41 Above n 37, 91; 843.

42 (1665) Skin 233; Bacon's Abridgment Vol VI, p507.

books. At first instance in 1672 the patent was declared invalid, but this judgment was reversed on a writ of error in Parliament for the following reasons:[43]

> ... that the invention of printing was new, that this privilege had always been allowed ..., that it concerned the state, and was a matter of public care; that it was in the nature of a proclamation which none but the King could make; and that the King had the making of judges, sergeants, and officers of the law ....

Of the five individual reasons which can be discerned, four of them appear to be based on the general prerogative over printing. Only the last reason is connected with the particular prerogative over law books.

Company of Stationers v ***Seymour***: [44] The issue in this case was whether a patent granting the sole printing of almanacs was valid. In his argument for the validity of the patent, Sergeant Pemberton emphasised that the press was a late invention and:[45]

> [T]he exorbitancies and licentiousness thereof has, ever since it was first found out, been under the care and restraint of the magistrate; for great mischiefs and disorder would ensue to the commonwealth, if it were under no regulation ....

The Court echoed his argument, holding that:[46]

> Matters of state and things that concerned the government, were never left to any man's liberty to print that would.

All the preceding cases concerned the validity of patents granted by the King as an exercise of his prerogative. The patents were upheld because the King's general prerogative over printing was considered justified.

2 *The Concept of Property*

With the expiry of the Licensing Acts in 1694, the whole of the machinery for the regulation of printing, backed by the general prerogative, ceased. A new basis had to be found for the right to print statutes as it could no longer be subsumed under the general prerogative. The growing importance of property in the economy with the rise of capitalism and the enactment of the first copyright statute provided the inspiration. The statute based copyright on the author's property in the book. The concept of property was thus seized upon to provide the new basis for the prerogative.

Basket v ***University of Cambridge***:[47] Both the plaintiff and the defendant claimed a right to the printing of statutes based on letters patent. The issue was whether the plaintiff had a sole right, or whether the defendant had a concurrent right to

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43 Above n42.
44 (1678) 1 Mod 256; 86 ER 865.
45 Above n 44, 865.
46 Above n 44, 258; 866.
47 (1758) 2 Keny 397; 96 ER 1222.

print statutes.[48] Both parties admitted the power of the Crown to grant patents and the outcome therefore depended on the nature of the power. The defendant sought to disprove the King's general prerogative over printing, claiming that the prohibition of certain seditious and heretical books was founded on a statute, 2 Hen 4, c 17, and not on the King's prerogative.[49] This argument seems to have been approved by Lord Mansfield CJ who very briefly stated that the defendant had a concurrent right to print Acts of Parliament.[50] Therefore the patents could only operate in law as copyrights of the Crown.

***Millar* v *Taylor*:**[51] In this case, the existence of the Crown prerogative was used to support the existence of Common Law copyright by analogy. The comments on the Crown prerogative are therefore strictly obiter. The flavour of the judgments of the majority is encapsulated in the following extracts from the judgment of Lord Mansfield:

> Crown-copies are, as in the case of an author, civil property: which is deduced, as in the case of an author, from the King's right of original publication.[52]
>
> ...
>
> Acts of Parliament are the works of the legislature; and the publication of them has always belonged to the King, as the executive part, and as the head and Sovereign.[53]
>
> ...
>
> His whole right rests upon the foundation of property in the copy by the common law. Whatever the common law says of property in the King's case, from analogy to the case of authors, must hold conclusively, in my apprehension, with regard to authors.[54]

Yates J dissented from the majority, expressing the opinion that no common law copyright existed. His Honour foreshadowed future developments by distinguishing prerogative copyright as being founded on the King's right as head of the political constitution.[55]

3 *Character of the duty*

In 1774 the decision of *Donaldson* v *Beckett*[56] overruled *Millar* v *Taylor*[57] on the existence of common law copyright after the enactment of the 1709 statute. This seems to have thrown some doubt on the reasoning of *Millar* v *Taylor*, and thus acted as a catalyst for the emergence of a new ground for the prerogative.

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48 Above n 47, 401; 1224.
49 Above n 47, 410; 1227.
50 Above n 47, 421; 1231.
51 (1769) 4 Burr 2303; 98 ER 201.
52 Above n 51, 2401; 254.
53 Above n 51, 2404; 255.
54 Above n 51, 2405; 256.
55 Above n 51, 2383; 244.
56 (1774) 4 Burr 2408; 98 ER 257.
57 Above n 56.

The following trilogy of cases all involved the King's prerogative over religious books, but considered the prerogative over statutes in tandem. This was possible because the Monarch's position as head of the Church was considered equivalent to the Monarch's position as head of State.

***Eyre and Strahan* v *Carnan*:**[58] The plaintiff, the King's printer, brought a Bill to restrain the defendant from printing and publishing a Form of Prayer, which the King had ordered to be read in all Churches. Skinner CB held, with regard to the prerogative, that:[59]

> This is certain respecting such origin, that it has ever been a trust reposed in the King, as executive magistrate, and the supreme head of the Church to promulgate to the people all those civil and religious ordinances which were to be the rule of their civil and religious obedience.

Skinner CB saw this trust as an extension of the "ancient mode of promulgating the ordinances of the state"[60] whereby the King sent a transcript of all Acts to the sheriff of every county, and caused them to be proclaimed at the County Court. The making of this link seems to have enabled his Lordship to ignore the relatively recent and conflicting dicta.

***Universities of Oxford and Cambridge* v *Richardson*:**[61] The plaintiffs brought a bill against the defendant for importing certain religious books and selling them in England. The arguments of the defendant reflected the adoption of the new rationale in *Eyre and Strahan* v *Carnan*:[62]

> The interest of the public is the main foundation of this prerogative. All that respects the printing is certainly the just subject of monopoly; on account of the important duty upon His Majesty to supply his subjects with these books; but when they are printed, every principle opposes a restraint of the sale on behalf of the King.[63]

Eldon LC, finding for the plaintiffs, used the duty to publish legislation to support his reasoning:[64]

> The duty cannot be exercised without great expence [*sic*]; and then every infringement, having a tendency to defeat the purposes of that expence [*sic*] incurred in the necessary establishment for the execution of that duty, has a tendency, not only to the pecuniary damage of those intrusted to discharge it, but also to put an end to the regular supply by authorised persons.

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58 (1781) Bacon's Abridgment Vol VI, 509.
59 Above n 58, 511.
60 Above n 58.
61 (1802) 6 Ves 689; 31 ER 1260.
62 Above n 58.
63 Above n 62, 695; 1263.
64 Above n 62, 704; 1267.

Manners **v** ***Blair***:[65] Blair, the King's printer in Scotland, sought to restrain Bible societies from importing bibles from England by virtue of his patent. The Lord Chancellor enumerated the following different principles upon which the prerogative had been held to rest: that it was a species of copyright; that it was a result of the King's position as head of the Church and lastly; that it was as a result of the character of the duty imposed upon the chief executive officer of the government to superintend the publication of Acts of Parliament.[66] This final justification was held to be supported by recent authorities: *Donaldson* v *Beckett*,[67] *Eyre and Strahan* v *Carnan*[68] and *Universities of Oxford and Cambridge* v *Richardson*.[69] This enabled the Court to hold that the Crown had a right to grant a patent to print bibles in Scotland. If the prerogative had been based on the King's position as head of the Church in England there could have been no such right in Scotland, as the King was not the head of the Church in Scotland.

4 Attorney-General (New South Wales) v *Butterworths & Co (Australia) Ltd*[70]

This case has provided the only opportunity, since *Manners* v *Blair*[71] established the "modern" justification for the prerogative in 1828, for a Commonwealth court to consider the issue of Crown copyright in legislation. It is therefore of special significance and deserves consideration under a separate heading. However, it is submitted, with respect, that the reasoning in this case was anomalous and ignored important precedents.

Butterworths, a legal publishing company, commenced publishing a series of volumes entitled "The Public Acts of New South Wales" which consisted of the Statutes of New South Wales accompanied by annotations and an index volume. The Attorney-General of New South Wales claimed that Butterworths was infringing Crown copyright, and sought an injunction to restrain them from doing so.

Counsel for the Attorney-General based the claim to Crown copyright both on section 18 of the Copyright Act 1911 (UK) (the statutory Crown copyright provision) and the Crown prerogative. However, the reasoning of the judgment focused on the prerogative. Long Innes CJ dealt with the issues as follows.

(1) *Whether the prerogative had been curtailed or abridged by section 18 of the Copyright Act 1911 (UK).* His Honour held that the prerogative could not have been so curtailed, with regard to the opening words of that section, namely:

> Without prejudice to any rights or privileges ...

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65 (1828) 3 Bli NS 391; 4 ER 1379.
66 Above n 65, 402; 1383.
67 Above n 56.
68 Above n 58.
69 Above n 61.
70 (1937-1938) 38 SR NSW 195.
71 Above n 65.

(2) *Whether the prerogative had been lost by disuetude.* His Honour held that there was a surplus of evidence to show that the prerogative had not been lost by desuetude, thus avoiding a decision on whether there was any principle upon which the prerogative *could* be lost by desuetude.

The Defendant submitted that, although courts once held that there was such a prerogative, this view of the law was mistaken; it followed that the prerogative never existed and should not now be held to exist. This submission was based on intricate reasoning. Specifically, counsel claimed that the grounds were held to be mistaken in the case of *Jefferys* v *Boosey*.[72] This case had overruled *Millar* v *Taylor* as to the existence of common law copyright. Since *Millar* v *Taylor* based common law copyright and the prerogative on the same grounds, namely, property, counsel argued that by analogy, *Jefferys* v *Boosey* also destroyed the grounds upon which the prerogative was based.

His Honour dismissed the broad submission by making a thorough survey of the case law which led him to the conclusion that the prerogative was still in existence. His Honour then refuted the specific argument by asserting that *Jefferys* v *Boosey* held that the analogy between Crown copyright and common law copyright was fallacious.

The Defendant argued that the prerogative rights of the Crown in right of New South Wales were only those which had been expressly delegated to the Governor (*Musgrave* v *Pulido*[73]). Long Innes CJ dealt with this argument by restricting *Musgrave* v *Pulido* to Crown colonies. In the case of self-governing States and Dominions, the constitution of the State or Dominion determined the prerogative powers of the Governor. Because of this his Honour held that the prerogative was vested in the Crown in right of New South Wales.

Section 40A of the Judiciary Act 1903-1910 provided that if a question arose as to the limits inter se of the constitutional powers of the Commonwealth and the State, then the action should be removed to the High Court. Therefore, if the prerogative was executive in nature it would be caught by this section, whereas no consequence followed if the prerogative was proprietary in nature. Both counsel submitted that the prerogative

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72 (1854) 4 HLC 815; 10 ER 681.
73 (1879) 5 AC 102.

was proprietary in nature and so no question as to the constitutional powers arose. His Honour readily concurred with them. This required him to hold:[74]

> I do not think that the decision in *Millar* v *Taylor*, that the Crown had a property in the nature of copyright, has been affected by the later decisions.

His Honour held that the Attorney-General was entitled to succeed on the common law prerogative. However, before concluding the case, Long Innes CJ added that if the Attorney-General had not succeeded on the prerogative, he would have succeeded on section 18 of the Copyright Act 1911 (UK). His Honour then granted a perpetual injunction to the Attorney-General to restrain Butterworths from publishing the statutes.

The judgment in *AG(NSW)* v *Butterworths* was designed to refute the argument that the prerogative no longer existed. With respect, this was not the major thrust of the defence. The principle behind counsel's submissions was that the Common Law regarded some of the Crown's prerogatives as capable of expansion or contraction in accordance with the needs and conditions of the time. That is, when a prerogative was no longer required or justifiable then it contracted or disappeared altogether. Counsel submitted that the *grounds* for prerogative copyright no longer existed, or alternatively, could no longer be justified. Since the prerogative could only exist in tandem with the reasons for its existence, the prerogative itself no longer existed.

Counsel was addressing the underlying rationale for the prerogative, while his Honour was only concerned with the prerogative itself. It is submitted with respect, that his Honour failed to grasp this significant conceptual distinction.

Long Innes CJ dismissed counsel's specific argument that *Jefferys* v *Boosey* destroyed prerogative copyright by analogy, by asserting that the analogy was fallacious. It is respectfully submitted that his Honour misinterpreted the effect of *Jefferys* v *Boosey*. *Jefferys* v *Boosey* did not, in fact, hold that the analogy between common law copyright and prerogative copyright drawn in *Millar* v *Taylor* was fallacious. This analogy was not even mentioned in *Jefferys* v *Boosey*. In this case, a different analogy - between copyright and patents - was held to be fallacious.

His Honour virtually ignored the reasoning of the cases which based the prerogative squarely on a duty imposed upon the Crown. It is submitted that his Honour ignored these cases because of the context in which the issue of the nature of the prerogative arose. If his Honour had held that the prerogative was executive in nature, the action would have had to be removed to the High Court. Therefore, with respect, his Honour's decision that the prerogative was proprietary in nature, was purely expedient. This is the only rational explanation for the highly arguable proposition that *Millar* v *Taylor* was unaffected by later decisions.

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74 Above n 70, 247.

Sir Maurice Byers QC, in an opinion on Crown copyright which he prepared for a group of Australian legal publishers, commented:[75]

> It is obvious that the basis formulated in *Manners* v *Blair* was, despite what Long Innes CJ had to say, a right derived, not from property, but from the constitution and the Crown's constitutional obligation.

Byers QC also criticised the case on the grounds that the applicability of the English cases to Australia was only incidentally touched upon. He limited the case to Australian State statutes, on the basis that the reasoning does not apply to the Commonwealth of Australia.[76]

5 The Prerogative in New Zealand

It is generally accepted that the Crown prerogative, when not expressly limited by statute, extends to all parts of the Commonwealth.[77] This principle has not been affected by the Imperial Acts Application Act 1988 which repealed the English Laws Act 1908. The English Laws Act 1908 imported into New Zealand the English statute and Common Law which existed in 1840, and thus operated in addition to the above principle.

The existence of the prerogative in New Zealand is unaffected by considerations applying to written constitutions which were canvassed by Sir Maurice Byers QC in his opinion on Crown copyright in Australia.

(a) The effect of the Copyright Act 1962

It is well established that the prerogative may only be abridged by specific words in a statute or by necessary implication.[78] Section 67 of the Copyright Act 1962 provides:

> Nothing in this Act shall affect any right or privilege of the Crown subsisting otherwise than by virtue of an enactment.

This suggests that the prerogative cannot have been extinguished by the Copyright Act 1962. However, the New Zealand Court of Appeal[79] has taken a restrictive approach towards the rule of law called "Crown privilege", that is, that the Crown may withhold documents in civil litigation on the grounds that their disclosure would be injurious to the public interest. Crown privilege is closely related in origin to the Crown prerogative so it possible that the New Zealand Court of Appeal would take a similar approach to Crown prerogative copyright.

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75 Sir Maurice Byers QC, Opinion on Crown Copyright, 15 March 1989.

76 Above n 79, para A1.

77 *Re Bateman's Trust* (1873) LR 15 Eq 355, 361; *Liquidators of the Maritime Bank of Canada* v *The Receiver-General of New Brunswick* [1892] AC 437, 441.

78 *Attorney-General* v *De Keyser's Royal Hotel* [1920] AC 508, 526.

79 *Fletcher Timber Ltd* v *Attorney-General* [1984] 1 NZLR 290.

(b) The effect of desuetude

It could be suggested that since prerogative copyright in statutes has never been enforced in New Zealand, it has been lost by desuetude. However, there is no principle of law that a prerogative may be lost merely by desuetude.[80] In *Parsons* v *Burk*[81] Hardie Boys J held that the prerogative writ of *ne exeat regno* to restrain people from travelling overseas was still in existence. This was despite the fact that it had never been used in New Zealand. In *McKendrick* v *Sinclair*[82] Lord Simon of Glaisdale held that a rule of the English Common Law, once clearly established, does not become extinct merely by disuse.

(c) Who is competent to exercise the prerogative?

The Governor General is clearly authorised to exercise the prerogative where there has been an express delegation as in the Letters Patent.[83] Furthermore, it is inherent in the idea of Her Majesty's Government that the Government can exercise the prerogative in general.[84]

(d) Arguments against the existence of the prerogative

Barton QC, in his opinion on Crown copyright in legislation, suggested that the New Zealand Courts would hold that there was no prerogative in New Zealand today.[85] He noted that Parliament, not Her Majesty, makes enactments with the advice and consent of the House of Representatives. It is respectfully submitted that despite this the duty of promulgating the statutes still belongs to the Crown, as the executive part of government.

Barton QC argued, principally on policy grounds, that the Crown should not have an exclusive right to promulgate statutes, and that if taken literally such a right would lead to absurdities. With respect, this may be so, but it is not in issue. The issue is simply whether the prerogative exists or not in New Zealand. Courts would have to employ some very creative reasoning to overcome the obstacles in the path of concluding that no prerogative copyright exists. In reality, a court would be attempting to decide the question of whether New Zealand *should* have Crown copyright. This is an issue of policy which is properly within the province of Parliament.

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80 FW Maitland, *The Constitutional History of England*, (Cambridge University Press, London, 1931) 418.

81 [1971] NZLR 244.

82 [1972] SLT 110 (HL).

83 KJ Scott *New Zealand Constitution* (Clarendon Press, New Zealand, 1962) 74.

84 HV Evatt *The Royal Prerogative* (Law Book Co Ltd, Sydney, 1980) 85.

85 Above n 28, para 17.

6 *Modern prerogative copyright*

The modern view of the prerogative was foreshadowed by Chitty in 1820 when he said:[86]

> It is therefore on grounds of policy and public convenience that the prerogative copyright exists, and its applicability must be restrained to the reasons for its existence.

This principle is reflected in the reasoning of the cases which established "the character of the duty" as the rationale for prerogative copyright.[87] The principle has also been reiterated more recently.[88] Applying this principle, the Government could only use Crown copyright in order to facilitate its obligation to make legislation publicly accessible. The Government would not be able to use Crown copyright to prevent publishers from reproducing legislation, as this is detrimental to public access.

Alternatively, it could be said that prerogative copyright exists, subject to the long-standing practice that it will not be enforced except in exceptional circumstances. This is supported by a statement of the Crown Solicitor in 1932:[89]

> The position therefore is that the Crown has a prerogative over the publication of Government papers, but has apparently waived its copyright privilege in the past following the practice of the Imperial Government.

The Government Printer said in 1948:[90]

> In practise [sic] it may be said that the Government allows the reproduction of certain classes of Government publications without restriction.

Further, it could be argued that this practice is so entrenched that it has crystalised into a constitutional convention. Failure to observe such a convention would bear no legal sanction but would expose a government to negative political consequences.[91]

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86 J Chitty *A Treatise on the Law of the Prerogatives of the Crown* (Butterworths, London, 1820).

87 See part IV. *B. 3* above.

88 Hon G Palmer, MP, Letter to President of New Zealand Law Society, 9 January 1989; Book Publishers' Association of New Zealand, Letter to Palmer, 13 February 1989.

89 Crown Solicitor, "Copyright in Government Publications" Crown Law Office, Wellington, 17 May 1932.

90 Government Printer, Memorandum for the Registrar of Copyrights, Justice and Prisons Department, Wellington, 25 February 1948.

91 de Smith, above n 30, 51.

Lastly, prerogative copyright in legislation could be held by the Crown on trust for the people.[92] This can be supported by analogy to preferential payment of the Crown debt, which rests:[93]

> ... on the ground that by the King is in reality to be understood the nation at large to whose interest that of any private individual ought to give way.

Barton QC's response to this suggestion was that:[94]

> [It] would have to overcome the difficulty that if all the citizens have an absolute right of access to legislation, including a right to reproduce statutes, then the Crown's copyright would be nugatory.

With respect, this ignores basic principles of trust law. The Crown would have the legal interest in the copyright, while the public would receive an equitable beneficial interest. The public would not have an absolute right of access to legislation. The Crown would retain the ability to restrict any reproduction which jeopardised public access as a whole, for instance, the reproduction of misleading or inaccurate copies. Therefore the Crown's copyright would not be nugatory.

V THE LEGAL STATUS OF CROWN COPYRIGHT IN NEW ZEALAND

It is submitted that the following statements reflect the current legal status of Crown copyright in legislation:

1 The Copyright Act 1962 no longer vests statutory copyright in legislation in the Crown;

2 Limited prerogative copyright exists in legislation.

The existence of prerogative copyright in legislation as opposed to statutory Crown copyright has important repercussions for the nature of copyright in legislation. The most significant repercussion is that prerogative copyright is perpetual and is not limited to the term specified in the statute. Further, prerogative copyright does not rely on showing that a work has been made or first published "by or under the direction or control of Her Majesty or any Government Department". Prerogative copyright depends solely on the character of the Crown as head of state and the corresponding duty to supervise the publication of legislation. It is narrower in that section 52 of the Copyright Act covers many subsidiary documents and works, such as regulations and reports which may or may not be the subject of prerogative copyright.

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92 P Smailes, Brooker & Friend Ltd, Brief to Dr Barton.

93 *FCT* v *EO Farley Ltd* (1940) 63 CLR 278, 301.

94 Barton QC, Letter to P Smailes, Brooker & Friend Ltd, 31 July 1989.

VI COMPARATIVE STUDY

A *United Kingdom and the New Statutory Scheme*

Section 39 of the Copyright Act 1956 (UK) was similar in wording and in effect to the present section 52 of the Copyright Act 1952 (NZ). However, significant changes were wrought by the Copyright, Designs and Patents Act 1988 (UK). The Crown copyright provisions of the new Act leave no room for alternative interpretations as to whether Crown copyright subsists in legislation. Section 163 of the new Act has evolved from the previous "catch-all" Crown copyright provision.[95] It covers only those works:

> ... made by Her Majesty or by an officer or servant of the Crown in the course of his duties.

The new Act has therefore dispensed with Crown copyright by virtue of first publication by a government department.

Section 164 provides that the Crown is entitled to copyright in every Act of Parliament. Crown copyright is vested by Royal Letters Patent in the controller of Her Majesty's Stationery Office (HMSO).

Section 165 creates the new category of parliamentary copyright which subsists in works:

> ... made by or under the direction or control of the House of Commons or the House of Lords.

This copyright vests in the Speaker of the House in the House of Commons and the Clerk of the Parliaments in the House of Lords. A formal agreement has been signed, whereby these officers have delegated administration of copyright to HMSO in all the parliamentary material which HMSO publishes.

Section 166 provides that Bills are parliamentary copyright from their first introduction in either House until they receive the Royal Assent or fall. On receiving the Royal Assent, they become Crown copyright.

This new statutory scheme for copyright in Bills and Acts of Parliament was not discussed in either House[96] or in committee.[97] Therefore, one can only question the underlying rationale for the scheme. Was it thought necessary in principle to separate the copyright of Bills and Acts? Was it thought inappropriate for the Crown to have

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95 Her Majesty's Stationery Office (HMSO), *Copyright: A Brief Guide for Departments*, November 1989, p 6, para 10.

96 House of Lords (UK), 28 October 1987, 25 February 1988.

97 House of Commons (UK), Standing Committee E, 9 June 1988, Clauses 162 to 167 ordered to stand part of the Bill.

copyright in Bills? Is parliamentary copyright in effect a theoretical compromise between no copyright and Crown copyright? As will be seen later, the practical implications of the change do not appear to be significant. The scheme must therefore be based on principle.

The Civil Service Department issues circulars to Government Departments and Crown bodies laying down the practice to be followed in relation to Crown copyright.[98] In turn, HMSO produces "Dear Publisher" letters based on the above circular, offering guidance on reproduction of Crown copyright material.[99]

The Civil Service Department circular has not been revised in the light of the 1988 Act as of April 1990, but it remains the authoritative document for guidance. The circular states that Crown copyright in legislation will not normally be enforced, because it is in the public interest that legislation should be diffused as widely as possible. However, Crown copyright is reserved and may be asserted to protect official material from misuse or to recapture public funds.

The detailed practical application of these principles is described by HMSO in the "Dear Publisher" letter. This has been recently revised incorporating the changes made by the 1988 Act.[100] The most notable feature of this revision is that no distinction has been made between Crown and parliamentary copyright. The letter clarifies the circumstances in which publishers should seek permission before reproducing Crown and parliamentary copyright material. Generally, permission is not required, though the source should always be acknowledged. Reproduction of extracts over 30% of the complete text without annotations, is not allowed within an embargo period of six months from the date of official publication. Permission is required where the official publication is used as camera ready copy, and in such a case fees are charged. The misuse of Crown or parliamentary copyright material is not permitted, for example, reproduction of such material so as to result in unfair or misleading selection, undignified association, or undesirable use for advertising purposes.

The administration of Crown and parliamentary copyright in the UK is based on well-established principles, in marked contrast to the neglect of Crown copyright in New Zealand. As a result, the existence of Crown copyright in legislation is accepted without question by UK publishers. The only potential issue is whether fees should be charged for the use of copyright material.[101]

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98 General Notice Gen 75/76, "Crown Copyright" Civil Service Department, 12 August 1975.

99 Copyright Seminar 1989 "HMSO's Role in Copyright", HMSO Books.

100 Publications Division, HMSO "Dear Publisher: Reproduction of Crown and Parliamentary Copyright Material" November 1989.

101 Internal Butterworths memorandum, London, UK Office to Wellington, New Zealand Office, 5 October 1988.

B *Australia*

The issue of Crown copyright in legislation has been recently debated in Australia. There are interesting parallels to the New Zealand situation. Crown copyright in Australia is governed by section 176 and 177 of the Copyright Act 1968 (Australia). Section 176 corresponds to section 52(1) of the New Zealand Act, and section 177 to section 52(2) of the New Zealand Act. Apart from the two limbs of Crown copyright's being separated, there are no practical differences in phraseology from the New Zealand section. However, the administration of Crown copyright in legislation in Australia is slightly more formalised than in New Zealand. Crown copyright in legislation in Australia is administered by the Australian Government Printing Service (AGPS). Currently, blanket licences are issued to commercial publishers to publish legislation. In 1988, the legal publishers became aware that AGPS was conducting a review, with the intention, they suspected, of removing the blanket licence and charging royalties.[102]

As indicated above, the publishers obtained an opinion on the legal status of Crown copyright from Sir Maurice Byers QC. He considered that the existence of a written constitution in Australia had significant consequences for the existence of prerogative copyright. Sir Maurice criticised *Attorney-General (New South Wales)* v *Butterworths & Co Ltd* on the basis that it was incorrect to apply the English case law to the Australian constitutional situation. He submitted that because the rights of the Crown in Australia are derived, not from the prerogative but from the Constitution, the English case law is inapplicable. In this sense, he argued that the position was similar to that of the United States.[103] Section 1 of the Australia Act 1986 provides that the Constitution is supreme law deriving its character from the will of the people. Therefore, the Constitution is public property and thus unsusceptible to copyright. As a consequence, federal and state statutes made as an exercise of constitutional power, are also public property and uncopyrightable. It is submitted that this opinion is of limited value in the New Zealand situation, as it is based solely on the existence of a written constitution which is absent in New Zealand.

C *The United States of America*

1 *The general rule*

The United States represents the other end of the spectrum from the United Kingdom and Commonwealth countries. The rule is that the law, whether in statutes or judgments, cannot be reduced to property through copyright. This was first enunciated, in relation to judgments in *Wheaton* v *Peters*.[104] The owners of the copyright of Wheaton's Reports of the Supreme Court of the United States brought a suit in equity against Peters for publishing a volume of condensed Reports of the Supreme Court. The Supreme Court remanded the case back to the Circuit Court to determine whether

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102 Letter from Australian legal publishers to Senators and MPs, 6 December 1988.
103 Article 111, Section 1 of US Constitution.
104 11 US (8 Pet 591) 223 (1834).

Wheaton had complied with the statutory prerequisites to obtain copyright. However, M'Lean J added:[105]

> It may be proper to remark that the court are unanimously of the opinion that no reporter has or can have copyright in the written opinions delivered by this court; and that the judges thereof cannot confer on any reporter any such right.

The underlying reasons for this rule were expressed in *Banks* v *Manchester*.[106] The case concerned a statutory scheme whereby the reporter of the Ohio Supreme Court was to secure the copyright in that court's opinions for the benefit of the State. The Court held that the statutory scheme was invalid as the reporter could not obtain copyright:[107]

> The whole work done by the judges constitutes the authentic exposition and interpretation of the law, which, binding every citizen, is free for publication to all, whether it is a declaration of unwritten law, or an interpretation of a constitution or a statute.

In *Nash* v *Lathrop*,[108] the Massachussets Supreme Judicial Court followed these precedents in ordering the contracted reporter to permit a competing publisher to copy opinions. The Court clearly articulated the public policy basis of the rule:[109]

> Every citizen is presumed to know the law thus declared, and its needs no argument to show that justice requires that all should have free access to the opinions, and that it is against sound public policy to prevent this, or to suppress and keep from the earliest knowledge of the public the statutes, or the decisions and opinions of the justices.

The rule was applied to statutes in *Davidson* v *Wheelock*[110] where the Court rejected a claimed contractual grant of the exclusive right to publish statutes:[111]

> The materials for such publication are open to the world. They are public records, subject to inspection by everyone ... They may be digested or compiled by any one, and it is true such compilation may be so original as to entitle the author to a copyright on account of the skill and judgment displayed in the combination and analysis; but such compiler could obtain no copyright for a publication of the laws only; neither could the legislation confer any such exclusive privilege upon him.

In *Howell* v *Miller*[112] the same conclusion was reached with regard to the statutes of Michigan. This long-standing common law jurisprudence was first enshrined in statute in 1895, from which the present section 105 of the 1976 Copyright Act evolved:

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105 Above n 104, (668) 237-238.
106 128 US 244 (1888).
107 Above n 106, 253.
108 6 NE 559 (1886).
109 Above n 108, 560.
110 27 F 61 (CCD Min 1866).
111 Above n 110, 62.
112 91 F 129 (6th Cir 1898).

> Copyright protection under this title is not available for any work of the United States Government, ...

A "work of the United States Government" is defined in section 101 as "a work prepared by an officer or employee of the United States Government as part of that person's official duties".

2 *The concept of "the public domain"*

Legislation is said to be "in the public domain". Two senses of this concept can be distinguished:[113]

(1) Literary works that have been dedicated to the public, either purposely or inadvertently, and that are therefore available to anyone to publish or copy. They are truly public property.

(2) Documents, papers etc, which in one way or another are subject to authorship, control, supervision or ownership by the Government. This sense of the concept is derived from the usage of "public domain" in land law as referring to vast stretches of land which are controlled by the Government rather than by private individuals.

Legislation is in the public domain in both these senses in the United States. The operation of the public domain was illustrated in *Building Officials & Code Administration* v *Code Technology*.[114] A private developer and publisher of a copyrighted model building code, which had been adopted by the State, brought an action against the publisher of another edition of the state building code. The Court stated that the issue was whether the adoption of the privately developed code into the official regulations had the effect of stripping the code of copyright protection, due to its entry into the public domain. After perusing the early cases establishing the rule that statues are in the public domain and are not subject to copyright, the Court examined the rationale of the rule:[115]

> The citizens are the authors of the law, and therefore its owners, regardless of who actually drafts the provisions, because the law derives its authority from the consent of the public, expressed through the democratic process.

The suggested rationale that the law is in the public domain because it is the work of government employees was therefore rejected, and the fact that the code was privately drafted, did not affect the operation of the rule. The Court elaborated:[116]

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113 JE Smith "Government Documents: Their Copyright and Ownership" (1972) 22 ASCAP 147.

114 628 F 2d 730 (1st Cir 1980).

115 Above n 114, 734.

116 Above n 114, 734-735.

> Along with this metaphorical concept of citizen authorship, the cases go onto emphasise the very important and practical policy that citizens must have free access to the laws which govern them ... The holder of a copyright has the right to refuse to publish the copyrighted material and may prevent anyone else from doing so, thereby preventing any access. We cannot see how this aspect of copyright protection can be squared with the right of the public to know the law to which it is subject.

The Court therefore held that the privately developed code entered the public domain by reason of its official adoption into law.

D Canada

Canada is an example of a country moving from the Commonwealth principle that Crown copyright exists in legislation towards the United States principle that legislation is in the public domain.

A recent review of copyright law has recommended that statutes should be in the public domain.[117] This recommendation is coupled with a moral right of integrity vested in the government to ensure accuracy. The concept of a moral right of integrity is not new to Canadian copyright law. Section 12(7) of the Canadian Copyright Act 1952 provides:

> Independently of the author's copyright, and even after the assignment, either wholly or partially, of the said copyright, the author shall have the right to claim authorship of the work as well as the right to restrain any distortion, mutilation or other modification of the said work which would be prejudicial to his honour or reputation.

The moral right of integrity is derived from continental jurisprudence where it is known as the *droit moral*. It would give the government the power to obtain injunctions to stop the distribution of factually incorrect material.

Essentially, the recommendation substitutes the moral right of integrity for Crown copyright. It succeeds in overcoming the potential pitfalls which advocates of Crown copyright associate with the abolition of Crown copyright, that is, the lack of provision for an official version of legislation and the integrity of legislation. Specifically, the right to claim authorship would ensure an official version of legislation, and the right to restrain distortion would protect the integrity of legislation. Simultaneously, the recommendation disposes of the aspects of the Crown copyright which made it inappropriate and objectionable when applied to legislation.

However, it is not clear under what circumstances the moral right can be invoked, as the report does not include draft legislation. If, as in section 12(7), the modification

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117 Canadian Parliamentary Sub-Committee Report on Revision of Copyright, October 1985, Recommendation 10.

must be "prejudicial" to "honour and reputation", the the moral right does no more than parallel the common law remedies for defamation and passing off.[118]

It is submitted that the recommended Canadian model deserves thorough consideration in the New Zealand context. However, despite major amendment of the Copyright Act in 1988, these recommendations have not yet been adopted in Canada.

E Other Countries

The Berne Convention[119] provides that:[120]

> It shall be a matter for legislation in the countries of the Union[121] to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

An examination of the provisions which individual countries have made for copyright in legislation reveals a distinct pattern.[122]

Countries with a British heritage have, on the whole, retained the concept of Crown copyright, although it may be expressed as State copyright (eg, South Africa) or Government copyright (eg, India). In some cases, this has been accomplished simply by adoption of the Copyright Act 1911 (UK) or the Copyright Act 1956 (UK). Examples include Fiji, Gambia, Israel and Jamaica.

However, some countries have adopted the major part of the British Crown copyright provision from the 1956 UK Act, but have inexplicably dropped the second limb of that provision which vests copyright in the Crown if first published by or under the control of the government. It was submitted earlier that it is only this limb which is capable of vesting Crown copyright in legislation. Therefore in these countries, which include Cyprus, Malaysia, Nigeria and Uganda, the status of Crown copyright in legislation is debatable.

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118 HG Fox "Canadian Law of Copyright and Industrial Designs" (2ed, Carswell Company Limited, Toronto, 1967) 571-572.

119 Berne Convention for the Protection of Literary and Musical Works.

120 Article 2(4), Berne Convention.

121 The countries to which the convention applies (ie; the members) constitute the Union.

122 United Nations Educational, Scientific and Cultural Organisation (UNESCO) and World Intellectual Property Organisation (WIPO), *Copyright Laws and Treaties of the World* (UNESCO, Paris and The Bureau of National Affairs Inc, Washington DC, 1990). The Appendix to this article tabulates the relevant provisions.

The majority (61.2%) of countries which have made a provision concerning copyright in legislation have chosen to make legislation uncopyrightable. This has been achieved in three ways:

(1) By providing that legislation is not proper subject matter for copyright eg, most EC countries, Japan, Korea.

(2) By providing in the interpretation section of the copyright statute that "literary work" does not include any "written law" eg, Kenya, Malawi, Zambia.

(3) By providing that reproduction of legislation is not an infringement of copyright eg, Brazil, Uruguay.

Eight Latin American Countries have provided that reproduction is allowed provided that the reproduction is a faithful copy of the official edition. In the case of El Salvador express government permission is required, while Venezuela has instituted a checking process.

Barbados and Ghana both provide that the Crown and the Republic respectively are the trustees of legislation for the public. Barbados further provides that the Crown may obtain injunctions to ensure accuracy of legislation.

The Philipines provides that there is no copyright in legislation, but requires prior approval where it is exploited for profit.

VII POLICY ISSUES AND OPTIONS FOR REFORM

The parliamentary debate upon the introduction of the Copyright (Crown Copyright) Amendment Bill[123] to the House and the subsequent submissions to the Select Committee[124] crystallised the issues impacting on the existence of Crown copyright.[125] The advocates of the Bill, largely the legal publishers, claimed that access to the law was at stake, while the Government was concerned to protect the integrity of the law.

The publishers employed a great deal of constitutional rhetoric to get their point across. They asserted that access to the law was a basic constitutional principle in a democracy:[126]

> It is the right of all citizens at all times to have the most comprehensive and totally unrestricted access to the proceedings of Parliament and the documents resulting from those proceedings.

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123 New Zealand Parliamentary Debates (1989) Vol 44: 9701.

124 Commerce and Marketing Select Committee.

125 See part I, above.

126 Book Publishers' Association of New Zealand Inc, Submission to Commerce and Marketing Select Committee on Copyright (Crown Copyright) Amendment Bill.

Any restriction or controls on the dissemination of legislation by the enforcement of Crown copyright was said to be "totally repugnant".[127] The Law Society illustrated how this might happen:[128]

> The prospect of deliberate suppression of publication of the law for political ends may be unthinkable. But the prospect either of
> (a) control (through copyright) of publication of the law for revenue-based objectives; or
> (b) non-publication of the law by the Crown either through inability, disinclination or expediency,
> is quite conceivable.

The spectre of the political manipulation was also raised:[129]

> It takes little imagination to recognise that it is a very small step from the enforcement of Crown Copyright to the manipulative use of it. Eg: extensive debate on unpopular legislation could easily be stifled by delaying the release of Bills.

The argument on behalf of the Crown was the removing Crown copyright would:[130]

> ... remove the control of the Crown on the accuracy and integrity of the law ... There has to be total confidence that the law as it is available is certified as being accurate, and that is one of the purposes of Crown copyright.

Further:[131]

> In the absence of copyright, organisations could deal in incomplete or misleading versions of the law. For example, Dominion Breweries Ltd could issue a copy of the Sale of Liquor Act that highlighted in big letters those aspects of the law that it felt were related to the sale of its product.

At the time of the debate on the introduction of the Crown Copyright Bill, the Hon G Palmer, MP indicated that access to legislation would be guaranteed by the Statutory Publications Bill, shortly to be introduced. In fact, guaranteed access to legislation was already on the statute books. As Wild CJ pointed out in *Victoria University of Wellington Students' Association* v *Government Printer*,[132] making legislation accessible to the public has been a constitutional obligation since 1852 when section 60 of the New Zealand Constitution Act 1852 provided that every Act was to be printed in the Government Gazette. The modern descendant of this section was section 13 of the Acts Interpretation Act 1924, which provided that all Acts could be obtained by

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127 Brooker & Friend Ltd, Submission to Commerce and Marketing Select Committee on Copyright (Crown Copyright) Amendment Bill.

128 NZLS, Submission to Commerce and Marketing Select Committee on Copyright (Crown Copyright) Amendment Bill.

129 Above n 128.

130 Above n 123, 9706, Hon P Wollaston, MP.

131 Above n 123, 9712, R Northey, MP.

132 [1973] 2 NZLR 21.

purchase at the Office of the Government Printer. As Wild CJ noted, this section imposed no specific duty. It was only a general obligation imposed on the Crown.[133]

This section has now been repealed by the Acts and Regulations Publication Act 1989 which is the offspring of the Statutory Publications Bill. This Act substitutes a new, comprehensive and more detailed scheme for the provision of public access to legislation.

Section 4 of the Act provides that the Chief Parliamentary Counsel, under the control of the Attorney-General, is responsible for the publication of the official version of the law. Section 9 gives power to the Attorney-General to designate places where legislation is to be available for purchase. Section 10 places a duty on the Chief Parliamentary Counsel to ensure that legislation is available for purchase at these places at a reasonable price.

The integrity of legislation is protected by section 17(b) of the Acts Interpretation Act 1924 which provides that any reference to an Act of Parliament must be made to a copy of the Act published under the authority of the New Zealand Government. The Evidence Act 1908 (as amended by section 23 of the Acts and Regulations Publication Act 1989) provides that any copy of an Act of Parliament purported to be published under the authority of the New Zealand Government shall be deemed to be a correct copy of that Act of Parliament. The effect is that there is only one official version of legislation.

The Acts and Regulations Publication Act 1989 furnishes additional safeguards. Section 4(2) provides that every copy of an Act of Parliament published under that section, is published under the authority of the New Zealand Government. Section 29 provides that a copy of an Act of Parliament published under section 4 is a correct copy of that Act of Parliament.

Furthermore, section 9 of the Fair Trading Act 1984 would provide a remedy where inaccurate and misleading copies of legislation are reproduced, without recourse to Crown copyright. Civil and criminal remedies exist for cases in which misrepresentation, omissions or errors in reproduction of legislation cause damage or amount to fraudulent use. For example, if a legal publisher published an inaccurate or abridged version of legislation and claimed it to be identical to the official version, the Crown would be able to sue in defamation for damage to its reputation.[134] Alternatively, if the public was induced to purchase a copy of legislation in the belief that it was the official version, and the Crown suffered loss of sales, an action in passing off would lie.

Finally, as the publishers pointed out, they achieve a very high standard of accuracy by a policy of self-regulation. Any relaxation of this standard would result in a commercial backlash against the publishers.

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133 Above n 132, 25.

134 *Lee* v *Gibbings* (1892) 67 LT 263; 8 TLR 773.

In practical terms the issues of integrity and access to the law have no relevance to Crown copyright in legislation. The concerns of both the legal publishers and the Government are taken care of by other statutory provisions. These issues are also conceptually distinct from Crown copyright. However when the policy question of whether New Zealand should retain Crown copyright in legislation is addressed, they may be factors which should be considered.

The present legal status of Crown copyright in legislation is highly arguable. Such an uncertain state of affairs is unsatisfactory and demands a review. The comparative study of Crown copyright in legislation[135] reveals several alternative solutions which New Zealand could adopt:

(1) The total abolition of Crown copyright in legislation.

(2) The substitution of Crown copyright in legislation by a statutory right, exerciseable by the Government, to prevent the inaccurate reproduction of legislation.

(3) The substitution of Crown copyright by parliamentary copyright.

(4) The unequivocal retention of Crown copyright in legislation.

Option (3) is not recommended. Parliamentary copyright does not appear to be fundamentally different from Crown copyright and therefore all the objections to copyright in legislation remain.

Option (4) is the minimal requirement for reform. It would involve the redrafting of section 52 of the Copyright Act to make the existence of Crown copyright in legislation unequivocal. Section 164 of the Copyright, Designs and Patents Act 1988 (UK) could be used as a model. It establishes the existence of Crown copyright in Acts of Parliament by express words. In addition prerogative copyright should be expressly extinguished as it adds nothing of value to statutory copyright and only confuses the law. It is recommended, that should this option be chosen, it should be made subject to a statutory proviso that Crown copyright in legislation will only be enforced in exceptional circumstances.

Options (1) and (2) are favoured for the following reasons. First, Crown copyright in legislation is incompatible with the public's rights to know the law. Secondly, Crown copyright allows the Government to charge royalties to commercial publishers which could reduce the availability of legislation from these publishers. Thirdly, the concept of copyright has no relevance to legislation and leads to absurdities when applied to it. This reasoning is expanded below.

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135 See Appendix.

1 *The public's right to know the law*

It is submitted that this right underpins two key principles of democracy: "The Rule of Law" and "Freedom of Information". The Rule of Law means, inter alia, that government should be conducted within a framework of recognised rules and principles and that no-one may be punished except for a legally defined crime. The public's right to know the law is an integral part of this principle, it would be meaningless without it.

The maxim "Ignorance of the law is no excuse" is a basic assumption of the legal system and an aspect of the Rule of Law. The public's right to know the law is implicit in this maxim, and the corollary is that legislation is presumed to be accessible. It has been held that where this presumption is rebutted, the maxim does not apply. For example, in *R* v *Bailey*[136] an offence was committed within a few weeks of the statute creating the offence being passed. The accused was pardoned as he could not have had notice of the offence. The United States policy that law is in the public domain is based on the concept of "Due Process" which is analogous to the Rule of Law:[137]

> Due process requires people to have notice of what the law requires of them so that they may obey it and avoid its sanctions. So long as the law is generally available for the public to examine, then everyone may be considered to have constructive notice of it; any failure to gain actual notice results from simple lack of diligence. But if access to the law is limited, then the people will or may be unable to learn of its requirements and may be therefore deprived of the notice to which due process entitles them.

2 *Freedom of information*

Freedom of information is the right to seek, receive and impart information and is a cornerstone of democracy. It is a part of the International Covenant on Civil and Political Rights[138] by which New Zealand is bound. Freedom of information, as recognised by the Official Information Act 1982, fosters a better democracy by encouraging participation in public affairs and ensuring the accountability of the government.[139] This was elegantly expressed in *Reference re Alberta Statutes* by Duff J:[140]

> There can be no controversy that such institutions [Parliaments] derive their efficacy from the free public discussion of affairs, from criticism and answer and counter-criticism, from attack upon policy and administration and defence and counter-attack; from the freest and fullest analysis and examination from every point of view of political proposals.

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136 (1800) Russ & Ry 1; 168 ER 651.
137 *Building Officials & Code Administration* v *Code Technology* above n 114, 734.
138 Article 19(2).
139 Committee on Official Information "Towards Open Government" (1980) 14.
140 [1938] SCR 100, 133

And further, Cannon J said:[141]

> Under the British system, which is ours, no political party can erect a prohibitory barrier to prevent the electors from getting information concerning the policy of government. Freedom of discussion is essential to enlighten public opinion in a democratic State.

Legislation is the end product of the process of policy formulation and decision-making by government. It is the core of government information and its availability is therefore paramount in a democratic state.

Attached to the public's right to know the law in a democracy is the correlative duty of the State to make legislation available. The Government is under a statutory obligation imposed by the Acts and Regulations Publications Act 1989 to make legislation accessible. This obligation has been judicially expressed by Wild CJ in *VUWSA* v *Government Printer*:[142]

> I think it can be accepted that the Crown is broadly responsible for making the text of enactments of the Legislature available for public information. People must be told what Parliament is doing and must be able to read the letter of the law.

It is submitted that the public's right to know the law is incompatible with the existence of Crown copyright in legislation. Statutory copyright is an exclusive property right. The hallmark of property is that the use and access to it can be restricted by the owner. The exclusive nature of copyright allows the owner to charge fees for other people to reproduce material or to prevent the publication of material at all. This is the antithesis of the principle that access to legislation must be totally unrestricted and is in direct conflict with the requirement to ensure the widest possible dissemination of legislation, as was pointed out in *Building Officials & Code Administration* v *Code Technology*:[143]

> [T]he holder of a copyright has the right to refuse to publish the copyrighted material at all and may prevent anyone else from doing so, thereby preventing any public access to the material. We cannot see how this aspect of copyright protection can be squared with the right of the public to know the law to which it is subject.

The nature of legislation and that of copyright cannot be reconciled, and therefore no copyright should subsist in legislation. Furthermore, Crown copyright in legislation could become a mechanism whereby a malevolent or negligent government could restrict access to legislation. Any mechanism which has the potential to jeopardise New Zealand's democracy should be abolished.

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141 Above n 140, 145.
142 Above n 132.
143 Above n 114, 735.

VIII ROYALTIES AND "USER PAYS"

The motive behind the Government's assertion of Crown copyright appears to be the ability to charge royalties for reproducing legislation. The Hon G Palmer, MP commented:[144]

> It may also be appropriate to require reasonable fees from commercial publishers of legislation as a contribution towards the substantial subsidies which the Government pays to keep legislation at affordable levels.

This policy is consistent with the introduction of a new financial management system in the public sector by the Public Finance Act 1989.[145] Briefly, this new system requires identification of the inputs (ie: the resources used to produce goods and services), the outputs (ie: the goods and services produced) and the outcomes (ie: the effects of outputs on the community).[146] The system allows the costs of goods and services to be ascribed to the end-user, hence the popular terminology "user pays". Commercial publishers use the official version of legislation as the raw material for their finished product. Crown copyright provides a mechanism whereby the Government can recover the costs of producing the official version of legislation.

It is submitted that the Government should not require the commercial publishers to subsidise the costs of producing the official version of legislation. First, the cost of getting legislation to the people is a cost of democracy and should therefore be borne by the Government alone.[147] Secondly, demanding royalties from the commercial publishers would ultimately be counter-productive to the paramount goal of making legislation accessible to the public. The commercial publishers fulfil a vital role in making legislation accessible. Government Print publishes "raw" Acts and Amendments consolidating these at irregular intervals. By contrast, the commercial publishers produce up-to-date consolidated and annotated versions of the most widely-used legislation. Frequent consolidation is essential to accessibility. The Income Tax Act 1976 is virtually unusable if the plethora of amendments made each year have to be consulted separately. Government Departments, as well as professional users, therefore use the service provided by the commercial publishers in preference to that of the GPO.[148] If the commercial publishers were charged royalties for their use of the official version of legislation, the increased cost would be passed on to their customers, thus restricting availability to those who could afford it. In some cases, the legislation

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144 Above n 4.

145 The Audit Office, *Central Government Management: A New Approach*, October 1989.

146 G Scott and P Gorringe, "Reform of the Core Public Sector: The New Zealand Experience", Paper delivered to the Bicentennial Conference of the Royal Australian Institute of Public Administration, Price Waterhouse Management Consultants, "Marketing Plan for Legislation: A Report for Government Printing Office" December 1985, 31, 33, 35, 43.

147 Price Waterhouse Management Consultants, "Marketing Plan for Legislation: A Report for Government Printing Office" December 1985, 31, 33, 35, 43.

148 Above n 147; 34, 39.

services offered by the commercial publishers might become uneconomic and be terminated, thus depriving users of their access to legislation.

When Price Waterhouse Management Consultants carried out a survey of the market for legislation in 1985 a common criticism of the GPO was the delay in making legislation available.[149] The GPO is still having trouble shaking off this reputation amongst users. The commercial publishers often produce legislation-based material more speedily than the GPO. For example, when the Local Government Amendment Act 1989 was passed on 6 March 1989 Brooker & Friend Ltd had the full text available by 16 March 1989. The GPO did not have the official version ready until several weeks later.[150]

In summary, the commercial publishers play a vital role in making legislation available to the public. Jeopardising this role, by charging royalties, would be counter-productive. Furthermore, charging royalties to commercial publishers would be contrary to another aspect of the new financial regime in the public sector. This is the promotion of a "level playing field" between suppliers to the government and the removal of barriers to the entry of private sector competition. Charging royalties would effectively create a monopoly for Government Print, while doing nothing to encourage better performance on its part.

The Government's reasoning behind the assertion of Crown copyright may also reflect the dicta of Eldon LC in *Universities of Oxford and Cambridge* v *Richardson*:[151]

> [T]he duty cannot be exercised without great expence [sic]; and then every infringement having a tendency to defeat the purposes of that expence [sic] incurred in the necessary establishment for the execution of that duty, has a tendency, not only to the pecuniary damage of those entrusted to discharge it, but also to put an end to the regular supply by authorised persons....

In other words, publication of legislation by commercial publishers is liable to reduce the profitability of legislation publication by the Government Printing Office. The potential profitability of legislation is a theme running throughout the Price Waterhouse report[152] on the marketing of legislation. It is submitted that profitability should not be an objective in the publication of legislation. The sole objective of publishing legislation should be to make it available to the public. There is a strong argument that legislation, particularly Bills, should be free to the public to encourage public participation in the legislative process and thus foster a better democracy. At the very least, legislation should remain available at cost.

The objectives of copyright are to reward the author for intellectual work and to stimulate creative activity. It is submitted that these objectives are inapplicable to

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149 Above n 147; 24, 28, 33, 34, 38, 43.
150 Above n 127.
151 (1802) 6 Ves 689, 704; 31 ER 1260, 1267.
152 Above n 147.

legislation since reward is irrelevant to the three candidates for the role of author of legislation: Parliamentary Counsel, Members of Parliament and the "Sovereign".

Parliamentary Counsel draft the legislation. However, they have already been remunerated for the work they carry out and do not expect or require further reward. Furthermore, it is submitted that though Parliamentary Counsel are the authors of draft legislation, they cannot be regarded as the authors of Acts of Parliament. When draft legislation is processed through Parliament it is transformed into an altogether different entity.

It is submitted that the work of Members of Parliament, whether they are viewed as individuals or as part of the collective body of Parliament, is a constitutional duty and therefore financial reward is irrelevant. A further point is that, in theory, legislation is the Act of the Sovereign and has no author:[153]

> It is sovereignty. It is the liege, the ligament of the people to the Sovereign.

The making of legislation is an integral part of the process of governing a country and a constitutional duty. It requires no financial incentive to stimulate it.

IX COPYRIGHT PRINCIPLES APPLIED TO LEGISLATION

Statutory Crown copyright exists for a term of limited duration, that is, 50 years from the end of the year in which the work was made.[154] It is submitted that this limited term is absurd when applied to legislation. What is copyright status of legislation when the statutory term has expired? Is it then in the "public domain" and available to all without restriction? If so, what is the distinction between legislation within 50 years from when it was made, and after 50 years? Where new amendments are incorporated into an Act over 50 years old, are the amendments alone subject to copyright? The rationale for the limited term is that it achieves a balance between the private interest purpose and the public interest purpose of copyright. The point at which the statutory term ends, signifies the point at which this balance has been reached. It is submitted that there is no private interest in the creation of legislation and therefore there is no such balance to be achieved in the case of legislation.

"Originality" is a statutory requirement for statutory copyright protection. It is arguable that some legislation is not original. Whether a particular Act of Parliament satisfies the requirement of originality would depend on its particular nature. Acts of Parliament which were substantially copied from overseas enactments would theoretically not qualify for copyright protection. Neither statutory copyright or prerogative copyright can exist in material which is itself an infringement of copyright.[155] It is possible that a copy of a United Kingdom Act would technically be a

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153 W Hodge, Submission to Commerce and Marketing Select Committee on Copyright (Crown Copyright) Amendment Bill, 11 May 1989.

154 Section 52(3), Copyright Act 1962.

155 *Universities of Oxford and Cambridge* v *Eyre & Spottiswoode Ltd* [1964] Ch 736.

breach of copyright, as UK Acts are now expressly Crown copyright by virtue of section 164 of the 1988 UK Copyright Act. It is submitted that whether Crown copyright subsists in a particular Act of Parliament should not depend on such considerations. These two features demonstrate that the concept of copyright is absurd when applied to legislation.

X CONCLUSION

The total abolition of Crown copyright, would be a radical change and could be perceived as unacceptable, thus stalling reform and leading to retention of the status quo. It is therefore recommended that the abolition of Crown copyright be tempered by the introduction of a statutory right, exercisable by the Government, to prevent the inaccurate reproduction of legislation. This could be achieved in a variety of ways:

(1) A moral right of integrity. This was the method chosen by the Canadian review of Crown copyright. However, it is submitted that this method would not be the most suitable for New Zealand, as it would involve the introduction of an unfamiliar concept.

(2) Statutory provisions for the Government to check and authorise all private reproduction of legislation. Venezuela uses such a procedure. It is submitted that this method is unnecessary in the New Zealand context and furthermore would be likely to result in lengthy delays in the private reproduction of legislation. Express Government authority should not be required.

(3) A specific right to obtain an injunction to restrain publication of legislation where inaccuracy, modification, or distortion would be likely to mislead the public. Barbados has a statutory provision similar to this.

This final method is recommended as it is specific, and limited to the evil it was designed to cure. It would not affect the publication and availability of accurate legislation.

The majority of countries in the world have no Crown copyright in legislation. This is clear evidence that it is an acceptable and workable solution. The qualified abolition of Crown copyright would not be a leap into the unknown, but a jump into tried and tested waters.

APPENDIX

The following table was collated from information provided in *Copyright Laws and Treaties of the World*.[156] There was no information available for some countries, and accordingly, they do not appear in the table. In each case reference is to the section or article of the copyright statute of that country unless otherwise indicated.

156 Above n 122.

APPENDIX

Country	Section/Article	Crown copyright in legislation	State/ govt copyright	Uncertain copyright status	Direct provision for no copyright	Faithful reproduction only	Public Trustee	No provision
Albania								X
Algeria								X
Argentina								X
Australia	Section 1	X						
Austria	Section 1				X			
Bangladesh	Sections 2(e), 13(d)		X					
Barbados	Section 16						X	
Belgium	Article 11				X			
Bolivia								X
Brazil	Art 666 Civil Code				X			
Bulgaria								X
Cameroon								X
Canada	Section 11	X						
Central Afr Rep	Article 10				X			
Chile								X
China								X
Colombia	Article 41					X		
Congo	Article 14				X			
Costa Rica								X
Cuba								X
Cyprus	Section 6			X				
Czechoslovakia	Section 2(2)				X			
Denmark	Secion 9				X			
Dominican Rep	Article 40					X		
Ecuador								X
Egypt	Article 4				X			
El Salvador	Article 41					X		
Ethiopia	Article 1651				X			
Fiji		X						
Finland	Article 9				X			
France	Article 9				X			

APPENDIX

Country	Section/Article	Crown copyright in legislation	State/ Govt copyright	Uncertain copyright status	Direct provision for no copyright	Faithful reproduction only	Public Trustee	No provision
Gambia		X						
Germany (East)	Section 2				X			
Germany (West)	Article 5(1)				X			
Ghana	Section 8						X	
Greece								X
Guatemala	Article 9				X			
Hungary	Article 1(3)				X			
Iceland	Article 9				X			
India	Sections 2(k), 17(d)		X					
Indonesia	Article 12(b)				X			
Iran								X
Iraq	Article 6(3)				X			
Ireland	Section 51(2)		X					
Israel		X						
Italy	Article 5				X			
Ivory Coast								X
Jamaica		X						
Japan	Article 13				X			
Kenya	Section 2				X			
Korea	Article 7				X			
Lebanon	Article 142				X			
Liberia								X
Libya	Article 4(3)				X			
Liechtenstein	Article 23				X			
Luxembourg	Article 12				X			
Malawi	Section 2				X			
Malaysia				X				
Malta	Section 2				X			
Mexico	Article 21				X			

APPENDIX

Country	Section/Article	Crown copyright in legislation	State/ govt. copyright	Uncertain copyright status	Direct provision for no copyright	Faithfully reproduction only	Public Trustee	No provision
Monaco	Article 38				X			
Morocco								X
Nepal								X
Netherlands	Article 11				X			
New Zealand	Section 52	X						
Nicaragua	Article855(AdimCode)	X						
Nigeria	Section 4			X				
Norway	Article 9				X			
Pakistan	Sections2(m),12(2)(a)	X						
Panama	Article 1941					X		
Paraguay	Article 17					X		
Peru	Article 64					X		
Phillipines	Section 9				X			
Poland	Article 5(1)				X			
Portugal	Article7				X			
Roumania								X
South Africa	Section 39(2)		X					
Senegal								X
Sierra Leone	Section 32		X					
Singapore	Section 197		X					
Spain	Article 28		X					
Sri Lanka	Section 9(a)				X			
Sudan	Section 5(11)				X			
Sweden	Article 9				X			
Switzerland	Article 23				X			
Syrian Arab Rep	Article 142				X			
Thailand	Section 32				X			
Tonga	Section 7(a)				X			
Trinidad, Tobago								X

APPENDIX

Country	Section/Article	Crown copyright in legislation	State/ govt. copyright	Uncertain Copyright status	Direct provision for no copyright	Faithfully reproduction only	Public Trustee	No provision
Turninsia								X
Turkey	Article 31				X			
Uganda	Section 4			X				
USSR	Articles 484, 487				X			
UK	Section 164	X						
USA	Section 105				X			
Uruguay	Article 45					X		
Venezuala	Articles 4, 15					X		
Yugoslavia								X
Zaire	Article 7				X			
Zambia	Section 2				X			