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Struggling for Acceptance

The New Zealand Human Rights Commission

*A History of the First Twenty Years
1978 – 1998*

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Introduction

In the past twenty years human rights have commanded the growing attention of both the most powerful and powerless people in the world. The global focus on nuclear and biological disarmament and on the implementation of 'development' programmes in 'developing' countries is evidence of a world more aware of basic human rights. The recent vote for independence in East Timor, the resulting atrocities, and the world's swift reaction to these, further demonstrate that human rights violations will not be tolerated.

The United Nations has also renewed its emphasis on human rights, first outlined fifty years ago in the 1948 Universal Declaration of Human Rights. They have both implemented several UN Development Programmes in Asia, Africa and South America, and focused on drafting many new human rights covenants such as the Declaration of the Rights of Indigenous People.

In addition, the number of countries establishing institutions devoted to human rights has risen dramatically in recent years. The United Nations has provided strong support for these institutions, most obviously by conducting international meetings and promoting international information exchanges. Many countries have worked together effectively - for example New Zealand, while maintaining close ties with Australia and Canada has also worked with Hong Kong and Mongolia on the development of their human rights institutions. The increase in national human rights institutions in the Asia and Pacific region also demonstrates the increasing importance of human rights in this area of the world.

This study explores the development of the New Zealand Human Rights Commission from its inception in 1978 through to the present. It will examine the factors that have had the most impact on the Commission, and how the Commission has responded. As a body established by statute, the New Zealand Human Rights Commission protects and promotes human rights through a series of functions. The Commission has the authority to report any human rights issues directly to the Prime Minister, receive and mediate complaints of discrimination, make public statements on human rights issues, and examine the human rights implications of new and existing legislation. This study examines each of the Commission's key functions, how they have developed, and the Commission's overall effectiveness.

Although most obvious aspects of human rights have received academic attention over the past two decades, little work has been produced on the national human rights institutions themselves, perhaps because of their relative newness. New Zealand's Human Rights Commission, one of the first in the world, is only twenty years old. Most human rights institutions are between five and fifteen years old, and are consequently still in the early establishment stage of development.

Very little has been written about the New Zealand Human Rights Commission. The most informative works produced have been written from legal perspectives and have related more to the Commission's legal functions than to the institution. These publications have not had great relevance to this study.

The most prominent writer on the New Zealand Human Rights Commission has been Jerome Elkind, who has commented regularly on the Human Rights Commission since 1977. While Elkind has provided thorough commentary on all aspects of the Commission, his work has

taken a strong legal perspective, and as such he tends to provide detailed analysis of the Human Rights Commission Act and other legal documents rather than an historical perspective on the Commission.¹

Other writers in New Zealand who have commented on the Commission include Margaret Wilson, Grant Huscroft, and Paul Rishworth, all of whom are law lecturers and have taken similar legal approaches. An example of a recent production by Grant Huscroft and Paul Rishworth is *Rights and Freedoms: The New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993*.² This collection of essays has been useful in the examination of the two primary Acts - the 1977 Human Rights Commission Act and its replacement the 1993 Human Rights Act.

On the topic of the Commission, its wider role or duties past that of statutory requirements, the most helpful author has been Margaret Bedggood (formerly Mulgan), who was the Chief Human Rights Commissioner from 1989-1994. Bedggood has written about the Commission's role, position and the importance of international human rights instruments and standards.³ While other Chief Commissioners have also written about the Commission their work has mirrored the legal interpretation of the previous authors.

Two other works deserve special mention, both being Honours dissertations for Law degrees. John Kovacevich's *The Human Rights Commission Act 1977*⁴ covers the Act in close detail. Kovacevich's interpretation of the Act was unique and thorough, illuminating the links between the New Zealand Act and overseas jurisdictions. Sara Rowan's *Baigent and International Human Rights*,⁵ while not specifically on the Human Rights Commission, emphasised the growing importance of international human rights standards in New Zealand courts and had several implications for the work of the Commission.

Finally, of recent value has been the newly formed journal *Brooker's Human Rights Law and Practice*. This journal has provided a forum for topical human rights debate, and while contributed to most heavily by staff of the Human Rights Commission it has nevertheless provided space for reactions to human rights issues from others outside the field.

As so little has been written on the topic of the Human Rights Commission, the most important sources for this study have been the Commission's records and publications. These contain a wealth of information regarding the Commission's development, although the supporting papers to the minutes are missing from 1980-1984. Other publications by the Commission have also been valuable. The Commission's annual reports contain much reaction to Government as do their numerous submissions to Select Committees and Ministers. Other papers in the Commission's archives are in a chaotic order and have not been sorted to great effect. Correspondence between the Commission and individuals, groups and institutions is kept well-ordered, but the notes and work of past staff and Commissioners remains largely unsorted. Due to the sensitive and confidential nature of complaints to the Commission, these files were not used, unless already summarised in case study form by the Commission.

This, then, is a study of the first twenty years of the Human Rights Commission in New Zealand. It examines its origins, the way it has operated and its various distinctive phases. This study will examine the forces shaping the evolution of the Commission and the Commission's relations with Government, the media and the public.

The Commission's first twenty years are divided into four phases - pre-1978, 1978-1983, 1984-1992 and 1993-1998. Turning points which

correspond to the greatest changes in Commission development sometimes also correspond to the Chief Commissioner terms.

Chapter one, *Leading the Way Pre-1978*, demonstrates that both national and international human rights movements were influential on the establishment of a Human Rights Commission in New Zealand. It follows the Parliamentary debates leading to the 1977 Human Rights Commission Act and draws out the political and social conditions which were necessary for the Act to come into being.

Chapter two, *Setting Standards? 1978-1983*, examines the first five years of the New Zealand Human Rights Commission. It identifies the topics the Commission first chose to focus on and the reasons why. These were the formative years during which the Commission faced some of its most difficult trials, and was probably at its least effective. Chapter two will demonstrate that the lack of Government support was the main reason for the Commission's troubles in setting standards.

Consolidation 1984-1992, chapter three, looks at the following nine years of the Commission at the end of which a new Human Rights Act was being drafted. This period is the development and consolidation phase of the Commission, during which its effectiveness and strength increased in direct relation to the external support of Government.

Chapter four, *Two Steps Forward, One Step Sideways 1993-1998* will examine the most recent years of the Commission. It analyses the new Act which was passed in 1993 to greatly extend the functions and powers of the Commission, and looks at how the Commission coped with such a large extension of its duties. Chapter four looks at the current problems facing the Commission, and the apparent withdrawal of Government support for human rights, with its curtailing of the Commission's powers.

Finally, the conclusion, *The New Zealand Human Rights Commission at 20*, brings the study to a close by the application of the findings to the wider issue of support for national human rights institutions around the world. It also supports the need for further research into human rights in New Zealand and the little recognised volatility of human rights in this country.

¹ J.B. Elkind, 'Thoughts on the Human Rights Commission Bill 1976', *New Zealand Law Journal*, No. 6, April 1977, pp.123-9; 'Human Rights - How to Make it Work', *New Zealand Law Journal*, no.10, 1978, pp.189-199; 'Application of the International Covenant on Civil and Political Rights in New Zealand', *American Journal of International Law*, No. 75, 1981, pp.169-172; 'The Human Rights Commission as a Law Determining Agency', *New Zealand Law Journal*, June 1984, pp.198-202; 'The Optional Protocol: A Bill of Rights for New Zealand', *New Zealand Law Journal*, March 1990, pp.96-101; 'Anti-Discrimination Law in New Zealand', *Human Rights Law and Practice*, 1:1, March 1996, pp.230-243.

² Grant Huscroft and Paul Rishworth (eds), *Rights and Freedoms: The New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993*, Brookers: Wellington, 1995.

³ Margaret Bedgood, 'The Role of a National Institution', *Culture, Ethnicity and Human Rights in International Relations*, Rorden Wilkinson (ed.), New Zealand Institute of International Affairs: Wellington, 1997, pp.95-98; Margaret Mulgan, 'Implementing International Human Rights Norms in the Domestic Context: The Role of a National Institution', *Canterbury Law Review*, 5:2, 1993, pp.235-250.

⁴ John Ivan Stephen Kovacevich, *The Human Rights Commission Act 1977*, LLB(Hons): University of Auckland, New Zealand, 1987.

⁵ Sara Rowan, *Baigent and International Human Rights*, LLB(Hons): Otago University, New Zealand, 1995.