LAW·COMMISSION
TE·AKA·MATUA·O·TE·TURE

Study Paper 6

TO BIND THEIR KINGS IN CHAINS

AN ADVISORY REPORT TO THE MINISTRY OF JUSTICE

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Wellington, New Zealand

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Preface

THIS STUDY PAPER reproduces the report of the Law Commission contemplated by the Interpretation Act 1999 section 28(2). The report was provided to the Ministry of Justice on 7 December 2000. The words of its title are of course taken from verse 8 of Psalm 149.

The Commissioner having the carriage of the project is DF Dugdale.

I
Introduction

1 THIS PAPER IS PREPARED by the Law Commission in response to the invitation implied in subsection (2) of section 28 of the Interpretation Act 1999, which provides as follows:

28 REVIEW OF THIS PART–

(1) The Ministry of Justice must, by 30 June 2001, report to the Minister of Justice–
  (a) Whether it is desirable that the law be changed so that all enactments bind the Crown unless provided otherwise; and
  (b) Whether changes in the law may be required to impose criminal liability on the Crown for the breach of any enactment.

(2) In preparing the report, the Ministry must consider any reports prepared by the Law Commission or any other body relating to the liability of the Crown.

(3) As soon as practicable after receiving a report from the Ministry, the Minister must present a copy of it to the House of Representatives.

The Commission having (as this paper confesses) started this particular hare feels under an obligation to pursue the issue to finality. Part II of the paper sets out the background to section 28, Part III addresses the question posed in section 28(1)(a) and Part IV the question posed in section 28(1)(b).

II
Background

THE FUNCTION OF AN INTERPRETATION ACT

2 AN INTERPRETATION ACT is primarily[1] a draftsman's tool of trade. The ultimate ancestor of the New Zealand interpretation statutes (as of those of the United Kingdom) is Lord Brougham's Act (13 and 14 Vict c 21) of 1850, of which the long title was "An Act for shortening the language used in Acts of Parliament".

> The Interpretation Act is a drafting convenience. It is not to be expected that it would be used so as to change the character of legislation.[2]

An interpretation act makes it unnecessary to repeat the same formulae in statute after statute.

BINDING THE CROWN

3 It is well settled that the Crown is bound by a statute only if such an intention appears from its terms. *Roy n'est lie per ascun statute si il ne soit expressement nosme*.[3] Despite the inclusion of *expressement* in that statement of the rule it is clear that an intention to bind the Crown can be implied.

> If it can be affirmed that, at the time when the statute was passed and received the royal sanction, it was apparent from its terms that its beneficent purpose must be wholly frustrated unless the Crown were bound, then it may be inferred that the Crown has agreed to be bound. Their Lordships will add that when the court is asked to draw this inference, it must always be remembered that, if it be the intention of the legislature that the Crown shall be bound, nothing is easier than to say so in plain words.[4]

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1 "Primarily" only because in New Zealand the ordinance of 1851 referred to in footnote 5 and its various statutory successors have included a direction as to an interpretative approach emphasising purpose.

2 *Blue Metal Industries Ltd and Anor v RW Dilley and Anor* [1970] AC 827, 848 (PC).

3 The judgment of Dickson J (in which five judges of the seven member Canadian Supreme Court concurred) in *Regina v Eldorado Nuclear Ltd* (1984) 4 DLR (4th) 193 refers to suggestions that the common law rule is based on a misunderstanding of the late medieval precedents (199) but confirms that whether or not this be so the current common law position is as stated.

4 *Province of Bombay v Municipal Corporation of Bombay* [1947] AC 58, 63 (PC).

THE NEW ZEALAND HISTORY

4 New Zealand has had an interpretation statute since 1888.[5] The statute current until its repeal by the Interpretation Act 1999 was the Acts Interpretation Act 1924. That statute, like all its New Zealand predecessors, included a provision (section 5(k), based on words in an 1867 Canadian enactment[6] substantially affirming the common law[7]) as follows:

> No provision or enactment in any Act shall in any manner affect the rights of Her Majesty, her heirs or successors, unless it is expressly stated therein that Her Majesty shall be bound thereby . . .

A line of New Zealand cases made it clear that despite the word *expressly* an intention to bind the Crown could be implied from the terms of a statute. The most cogent justification advanced in the cases for that view was that "the Legislature cannot bind itself as to how it shall and how it shall not express itself in the future".[8]

THE LAW COMMISSION'S 1990 REPORT

5 The Law Commission was entrusted by the Minister of Justice of the day with the task of examining and reviewing the provisions of the Acts Interpretation Act 1924. The Commission reported in December 1990.[9] This part of the present paper is concerned with the Commission's proposals in that report for a provision to be substituted for section 5(k).

6 There exists a philosophy that among the three branches of government the judicial should be strengthened at the expense of the executive. It is a philosophy amply demonstrated by the assumption by the Courts during the concluding decades of the twentieth century of ever-widening powers to review administrative acts. The Law Commission thought it appropriate despite the austerely mechanical function of an interpretation act to seize the occasion of the review to advance this philosophy. Its proposal was that the new provision should read:

> Every enactment binds the Crown unless it otherwise provides or the context otherwise requires.

In other words the presumption was to be reversed. Moreover the new presumption was to apply to existing (not just future) legislation.[10]

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5 It was preceded by an Interpretation Ordinance of 1851 largely based on the 1850 United Kingdom Act.

6 31 Vict c 1 s 33(7).

7 *Cushing v Dupuy* (1880) 5 App Cas 409, 420 (PC).

8 *In re Buckingham* [1922] NZLR 771, 773 (SC). A useful example in an entirely different context of the application of this rule is the decision of the High Court of Australia in *South-Eastern Drainage Board v Savings Bank of South Australia* (1939) 62 CLR 603.

9 New Zealand Law Commission *A New Interpretation Act: To Avoid "Prolixity and Tautology": NZLC R17* (Wellington, 1990). The part of the report discussed in this paper is chapter IV "The Crown".

10 Above n 9, 71.

7 The proposal that the change in the presumption should apply to existing legislation received no support and is so self-evidently unreasonable that it is unnecessary to spend time on it, though in fairness it should be noted that such a measure was enacted in British Columbia without the skies falling in. In relation to the reversal of the presumption the Law Commission summarised its argument as follows:[11]

> The Law Commission has two reasons for this proposal:
>
> - In principle, the Crown should be subject to the general law of the land, including the statute law; the rule of law and fairness require that; and
> - The present law is unclear and confusing.

The reasons advanced in the first bullet point are addressed in part III. As to the second point, the only matter relied on to support the epithets "unclear" and "confusing" was the line of cases already mentioned in paragraph 4 addressing the question of whether an intention to bind the Crown should be implied. But the Commission's own proposal (set out in the previous paragraph) envisages a corresponding inquiry in providing an exception "unless the context otherwise requires". It is difficult to see how the change proposed by the Commission would make the law any less uncertain. In practice, in the overwhelming majority of cases, there is no question of a contextual implication rebutting either presumption. The procedural processes we recommend later in this paper designed to encourage express provision should minimise reliance on either presumption. We do not accept that either presumption results in avoidable uncertainty. There is nothing in the uncertainty point.

THE LEGISLATIVE HISTORY

8 An Interpretation Bill was eventually introduced in 1997. Clause 27 provided:

> No enactment binds the Crown unless the enactment expressly provides that the Crown is bound by the enactment.

The explanatory note accounts for the rejection of the Law Commission's recommendation of a reversal of the presumption thus:

> The reason for this is that it has not been possible at this stage to quantify the precise effects (both fiscal and otherwise) of implementing the recommendation.

In other words it would be a leap in the dark. The Bill was referred to the Justice and Law Reform Committee on 2 September 1997. The stance in its submissions of the Law Commission (its composition now completely changed from that of 1990) was correctly reported by the Select Committee in these terms:[12]

> Since publishing its report, the Law Commission has reconsidered the issue of whether the presumption should be that the Crown is bound. While it reaffirms that, in principle, the Crown should be subject to the general law of the land, it recognises that there are certain public functions to be performed that require the Crown to have certain additional powers and immunities not enjoyed by citizens. The Law Commission is satisfied that a principled and practical approach requires careful consideration of specific cases rather than a simple reversal of the presumption. To reverse the presumption without being able to predict the effects would infringe the principle of the rule of law that laws must be certain as to their effect.

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[11] Above n 9, 53.

[12] 1998 Reports of Select Committees (L.23) 598, 603.

9 But the genie that the Law Commission released in its 1990 report was not to be put back into its bottle so easily. The New Zealand Law Society submitted strongly that the Law Commission's original recommendation should be restored because "[c]lause 27 of the Bill conflicts with the basic constitutional assumption that the Crown is under the law".[13] The Select Committee presented its report on 4 December 1998. It said:[14]

> We have spent considerable time discussing whether the presumption should be reversed in respect of future legislation, or whether the status quo should be maintained. We consider the principle that the Crown should be subject to the general law of the land is a very important one. However, the issues surrounding the goal of achieving equality between the Crown and the citizen are complex, particularly in relation to imposing criminal liability on the Crown.

It recommended that clause 27 remain unchanged, but that there be inserted a new clause. These recommendations were adopted, and clause 27 and the new clause now appear in the statute book as the Interpretation Act 1999 sections 27 and 28. Section 28 is the section reproduced in paragraph 1.

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[13] New Zealand Law Society submission dated 3 April 1998, para 17.

[14] Above n 12, 605.

III
Reversing the presumption

THE LAW COMMISSION'S 1990 ARGUMENT

10 WE NOW ADDRESS the question posed by section 28(1)(a), namely whether it is desirable that the law be changed so that all enactments bind the Crown unless provided otherwise. We have already set out the Law Commission's reasons for its 1990 proposal (paragraph 7), and we begin by discussing the first of these, namely that:

> In principle, the Crown should be subject to the general law of the land, including the statute law; the rule of law and fairness require that . . .

The point was indeed made by an English judge as long ago as 1561 that:[15]

> . . . it is a difficult argument to prove that a statute, which restrains men generally from doing wrong, leaves the King at liberty to do wrong . . . and when he ordained a remedy for the mischief, it is not to be presumed that he intended to be at liberty to do the mischief.

But it is equally true that governments must be allowed to govern, and that the nature of government requires the executive to have certain powers and immunities unavailable to the private citizen. So that for all the superficial attraction of general propositions as to what fairness demands, in fact a more nuanced response is required. In some cases it will be appropriate that the Crown be bound by some or all of the provisions of a statute and in some it will not.

A PIECEMEAL APPROACH PREFERABLE

11 It is a logical corollary of the fact that it cannot sensibly be argued that *all* statutes should in *all* respects bind the Crown that any rule, even a rebuttable one, imposing such a blanket liability is insupportable. The same reasoning supports the view that an acts interpretation act is not the right vehicle for the imposition of such a blanket liability. The optimum solution is that each statute should expressly address the question of whether and to what extent the Crown is bound thereby.

> [I]t is most desirable that Acts of Parliament should always state explicitly whether or not the Crown is intended to be bound by any, and if so which, of their provisions.[16]

It is worth repeating the observation already quoted made 20 years previously by the Privy Council that:[17]

> . . . it must always be remembered that, if it be the intention of the legislature that the Crown should be bound, nothing is easier than to say so [*(sc)* in the particular statute] in plain words.

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[15] *Willion v Berkley* 1 Plowden 339, 380; 75 ER 339, 380 per Anthony Brown J.

[16] *Lord Advocate v Dunbarton DC* [1990] 2 AC 580, 604 per Lord Keith of Kinkel.

[17] Above n 4.

12 Where there is an express provision it may need to be fairly elaborate. Some examples follow. The Commerce Act 1986 section 5 provides as follows:[18]

5 APPLICATION OF ACT TO THE CROWN–

(1) Subject to this section, this Act shall bind the Crown in so far as the Crown engages in trade.
(2) The Crown shall not be liable to pay a pecuniary penalty under section 80 of this Act.
(3) The Crown shall not be liable to be prosecuted for an offence against this Act.
(4) Where it is alleged that the Crown has contravened any provision of this Act and that contravention constitutes an offence, the Commission or the person directly affected by the contravention may apply to the Court for a declaration that the Crown has contravened that provision; and, if the Court is satisfied beyond a reasonable doubt that the Crown has contravened that provision, it may make a declaration accordingly.

The Dangerous Goods Act 1974 section 4 provides as follows:[19]

4 ACT TO BIND THE CROWN–

(1) Except as provided in this section, this Act shall bind the Crown.
(2) Part II of this Act shall not bind the Crown.
(3) Any provision in this Act or in any regulation made under it shall not bind the Crown to the extent that the provision requires–
    (a) The payment of any fee or fine; or
    (b) The forfeiture of any dangerous goods or the forfeiture of the containers of any dangerous goods.
(4) No bylaw made by a Harbour Board under section 37 of this Act shall bind the Crown.
(5) For the purposes of this section and notwithstanding section 187 of the Education Act 1964–
    (a) Any Education Board and the governing body of any secondary school or technical institute or teachers college, being a school, institute, or college established or deemed to have been established under Part III of the Education Act 1964; and
    (b) Any university or constituent college of a university, being a university or constituent college that has been duly constituted by any Act or Provincial Ordinance–

    shall be deemed to be the Crown.
(6) In any case where the Crown stores or uses or intends to store or use dangerous goods on premises which, except for subsection (2) of this section, would require to be licensed under Part II of this Act, the Crown shall advise the licensing authority for the district in which those premises are situated of the address of the premises and the nature and quantity of dangerous goods which are, or are intended to be, so stored or used.

The surviving subsections of the Resource Management Act 1991 section 4 in their current form provide as follows:

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[18] This provision, like the Fair Trading Act 1986 s 4, is copied from the Trade Practices Act 1974 s 2A of the Commonwealth of Australia.

[19] These and other examples are discussed by Steven Price "Crown Immunity on Trial – the desirability and practicability of enforcing statute law against the Crown" (1990) 20 VUWLR 213, 231–241.

4 ACT TO BIND THE CROWN–

(1) Except as provided in subsections (2) to (5), this Act shall bind the Crown.

(2) This Act does not apply to any work or activity of the Crown which–

  (a) Is a use of land within the meaning of section 9; and

  (b) The Minister of Defence certifies is necessary for reasons of national security.

(3) Section 9(1) does not apply to any work or activity of the Crown within the boundaries of any area of land held or managed under the Conservation Act 1987 or any other Act specified in the First Schedule to that Act (other than land held for administrative purposes) that–

  (a) Is consistent with a conservation management strategy, conservation management plan, or management plan established under the Conservation Act 1987 or any other Act specified in the First Schedule to that Act; and

  (b) Does not have a significant adverse effect beyond the boundary of the area of land.

(5) No enforcement order, abatement notice, excessive noise direction, or information shall be issued against the Crown.

If the Crown is to be bound this and the question of what follows from the Crown being bound are important questions requiring careful consideration. A statement *tout court* that an Act is to bind the Crown, which is the most that a reversal of the presumption could achieve, is likely to prove ineffectual. That, as we will see in part IV, is most obviously so in the case of criminal liability. The Crimes Act 1961 for example, unlike its predecessors, provides in section 408: "This Act shall bind the Crown". There seems no reason to believe that the inclusion of this section in the 1961 statute changed anything. Certainly we have not seen government departments convicted and fined, or ministers and public servants taken to prison with gyves upon their wrists.

AN EDUCATIVE EFFECT?

13 The alternative rationale for a change in the presumption that has been advanced is that such a change would have an educative effect. The Law Society expressed the matter in this way:[20]

> Reversing the presumption would require the Crown to define the exemptions or immunities it considers necessary and to justify them. The position at present is that if the Crown does not address the issue in a new Act then it is not bound by the provisions of the Act. There is little incentive to address the issue because if it is forgotten the Crown is not prejudiced.

But this is uncomfortably similar to providing a pupil with an incentive to learning how to keep afloat by throwing him or her overboard. It is a sink or swim approach that may in some cases work and may in others be a disaster. There are better methods.

THE SOLUTION WE PROPOSE

14 If it is accepted:

- that in some cases it will be appropriate that the Crown be bound by some or all of the provisions of a statute and in some cases it will not;

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[20] The New Zealand Society submission dated 3 April 1998, para 18. The same point was made rather more faintly by the Law Commission in its 1990 report, 64.

- that a blanket provision for Crown liability is not therefore the optimum solution; and
- that the optimum solution is that each new statute should expressly state whether and to what extent the Crown is to be bound by its provisions and where appropriate spell out the consequential mechanisms

then the inquiry must be as to how best to ensure that this happens. There is in our view a better method than the rough and ready solution described in the previous paragraph. The method we advocate is a requirement that the issue of Crown liability be addressed as part of the process of Cabinet approval of government Bills.

15 The Cabinet Office Manual[21] notes in paragraph 5.26 as follows:[22]

> Compliance with legal principle or obligations in a number of areas must be noted when "bids" are made for Bills to be included in the programme and priorities are awarded. In particular, Ministers must draw attention to any aspects that have implications for, or may be affected by:
>
> - the principles of the Treaty of Waitangi;
> - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990;
> - the principles in the Privacy Act 1993;
> - international obligations; and
> - the guidelines contained in *Legislative Change: Guidelines on Process and Content* (revised edition, 1991).

There could be inserted a provision requiring that every proposed Bill should expressly state whether and to what extent the Crown is to be bound by the Bill and to the extent that it is not, the reasons.

16 So our answer to the question posed in section 28(1)(a):

> Whether it is desirable that the law be changed so that all enactments bind the Crown unless provided otherwise . . .

is "No", but there should be adopted the practice of each new government Bill, rather than relying on the presumption in the Interpretation Act 1999 section 27, expressly stating whether or not and to what extent the Crown is to be bound by its provisions. The procedures laid down in the Cabinet Office Manual for bidding for proposed Bills to be included in the legislation programme should be amended to ensure that each proposed new Bill in respect of which a bid is made expressly includes such a statement and that, to the extent that the Crown is not to be bound, the justification for this be expressed. The standard format for the covering submission should be altered to take account of this change.

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[21] The current edition revised to take into account the changes consequent on MMP was published by the Cabinet Office, Department of the Prime Minister and Cabinet, in August 1996.

[22] See also the standard format for covering submissions in appendix 6 to the Cabinet Office Manual, para 4, 122.

IV
Criminal liability of the Crown

NO BASIC CONSTITUTIONAL IMPEDIMENT

17 WE NOW EXAMINE the question: "Whether changes in the law may be required to impose criminal liability on the Crown for the breach of any enactment". It is a fundamental difficulty that "the Crown" is a metaphor lacking precise definition. "The Crown" can mean all or any of:

- the Sovereign;
- the Governor-General;
- the Executive;
- a Government department;
- a particular public servant or other person exercising a public function.

There are Commonwealth cases of high authority to the effect that, while at common law there could not be a criminal prosecution of the Crown, it is as a matter of constitutional law theoretically possible for a statute to provide for Crown criminal liability. This was the view of four of the five judges of the Australian High Court in *Cain v Doyle*.[23] Only the Chief Justice (Sir John Latham CJ) disagreed with this view. He said:[24]

> But the fundamental idea of the criminal law is that breaches of the law are offences against the King's peace and it is inconsistent with this principle that the Crown can itself be guilty of a criminal offence.

The decision of the Supreme Court of Canada in *Canadian Broadcasting Corp v Attorney-General for Ontario*[25] proceeds on the same premise as was accepted by the majority in *Cain v Doyle*.

THE STATUTE MUST BE UNEQUIVOCAL

18 But it is equally clear that while common law judges are prepared to accept that the Crown may be subjected by statute to criminal liability, a clear and unequivocal statement is needed. Such a statement would need to define just what is meant by "the Crown" in the particular context. Crown criminal liability is not to be spelled out of a general statement in a statute.[26] This judicial stance reflects no doubt the intuitive view that, as an eminent English judge once put

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[23] (1946) 72 CLR 409; discussed by W Friedmann (1950) 113 MLR 24.

[24] Above n 23, 418. Latham had had extensive experience as a successful conservative politician.

[25] (1959) 16 DLR 2d 609.

[26] *Cain v Doyle* (1946) 72 CLR 409; *Canadian Broadcasting Corp v Attorney-General for Ontario* (1959) 16 DLR 2d 609; *Canadian Broadcasting Corp et al v The Queen* (1983) 145 DLR 3d 42.

it, "laws are made by rulers for subjects".[27] Dixon J expressed the matter in *Cain v Doyle* in this way:[28]

> There is, I think, the strongest presumption against attaching to a statutory provision a meaning which would amount to an attempt to impose upon the Crown a liability of a criminal nature. It is opposed to all our conceptions, constitutional, legal and historical. Conceptions of this nature are, of course, not immutable and we should beware of giving effect to the strong presumption in their favour in the face of some clear expression of a valid intention to infringe upon them. But we should at least look for quite certain indications that the legislature had adverted to the matter and had advisedly resolved upon so important and serious a course.

We have already mentioned[29] the lack of any discernible consequence of the enactment of section 408 of the Crimes Act 1961. The point being discussed in this paragraph is illustrated most clearly by the High Court decision in *Southland Acclimatisation Society v Anderson and the Mines Department*.[30] The Water and Soil Conservation Act 1967 section 3 provided that: "This Act shall bind the Crown". It contained an offence section. The Court approached the question of whether the Crown could be criminally liable under the offence section as one of interpretation and, accepting that it must be abundantly clear from the statute's terms that criminal liability was intended, held that there was no such clear indication.

PROCEDURAL PROBLEMS

19 Even if a Court can be persuaded that the legislature intended to impose criminal liability in respect of a particular offence on the Crown, various practical problems arise. When it was decided to remove most obstacles to *civil* liability against the Crown it was convenient, by the Crown Proceedings Act 1950, to sort out in advance various procedural problems that could be expected to arise (such as who should be named as defendant (section 14), how judgments against the Crown should be satisfied (section 24) and how discovery should work (section 27)). If it were to be decided that there was to be Crown *criminal* liability these matters would similarly need to be addressed, and it might be simplest to have a criminal equivalent of the Crown Proceedings Act 1950 (or, since the Crown Proceedings Act 1950 is badly in need of overhaul, a combined statute covering both criminal and civil proceedings).

MENS REA

20 There is another problem. In respect of offences of which *mens rea* (a guilty intention) is an element, it is in practice difficult to sheet home liability for systemic failure against corporations. The problems that stand in the way of imposing liability on corporations for such offences would exist even more strongly were it to be attempted to sheet home criminal liability against the Crown, which is not a corporation or a Crown agency which may not be. (There

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[27] *British Broadcasting Corporation v Johns* [1965] 1 Ch 32, 78 per Diplock LJ.

[28] Above n 23, 424.

[29] Para 12.

[30] [1978] 1 NZLR 838.

is also in the case of manslaughter the problem that the definition in the Crimes Act 1961 section 158 of *homicide*, the word used in the definition in section 171 of manslaughter, uses the expression "the killing of one human being by another", but this can be easily fixed). This precise problem does not exist where liability is strict.

CONCLUSION TO THIS PART

21 So the answer to the question posed in section 28(1)(b): "Whether changes in the law may be required to impose criminal liability on the Crown for the breach of any enactment", is that no changes in basic constitutional law are necessary for the imposition of criminal liability on the Crown, but that if the imposition of criminal liability is contemplated it would be necessary to define what is meant by "the Crown" in the context and the acts or omissions of which persons are to treated for these purposes as the acts of the Crown as so defined, and sensible to address both the various issues relating to procedure and penalties that are likely to arise and the problem relating to corporate criminal liability referred to in the previous paragraph.

AN ALTERNATIVE APPROACH

22 But is imposing a criminal liability on the Crown always (or ever) the best course? There are disciplinary devices available other than the imposition of *criminal* sanctions. Glanville Williams famously defined a crime as follows: [31]

> We have rejected all definitions purporting to distinguish between crimes and other wrongs by reference to the sort of thing that is done or the sort of physical, economic or social consequences that follow from it. Only one possibility now remains. A crime must be defined by reference to the *legal* consequences of the act. We must distinguish, primarily, not between crimes and civil wrongs but between criminal and civil proceedings. A crime then becomes an act that is capable of being followed by criminal proceedings, having one of the types of outcome (punishment etc) known to follow these proceedings.

It is possible to impose swingeing penalties by employing a *civil* process. The best example in New Zealand is the very large penalties of $500 000 maximum in the case of an individual and $5 million in the case of a corporation that may be imposed in civil proceedings under the Commerce Act 1980 sections 80 and 83.[32] As the only penalty that can be imposed on the Crown is pecuniary, it may be that this is a better approach than the imposition of criminal liability.

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[31] G Williams, "The Definition of Crime" [1955] *Current Legal Problems* 107, 123.

[32] In a project inspired by the Cave Creek disaster (and referred to in the select committee's report on the Interpretation Bill as a review of Systemic Safety) the Law Commission had contemplated the imposition of a penalty by this sort of process. That project did not proceed beyond the scoping stage because the lack of support for it by successive administrations seemed to the Law Commission to have the consequence that expenditure of public monies on the project's development was unjustified. A brief account of the project by a Commissioner can be found at [2000] NZLJ 389. The Law Commission believes that the project should proceed but that it would not be appropriate to carry on with it without a formal Ministerial request under the Law Commission Act 1985 s 7(3).

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