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The *Lawson* Case and the Impact of International Law on Municipal Law: Is There a "Right" to Adequate Housing in New Zealand?

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I INTRODUCTION

Over the last 10 years the Government has adopted various economic and legislative measures to overcome a decline in employment, productivity and income. Although New Zealand may now be on track towards sustained economic growth, there have been questions as to the efficacy, political legitimacy, and even legality of some of the reforms that were implemented to overcome the slump.[1] The impending judgment of *JOM Lawson* v *Housing New Zealand and Ministers of Housing and Finance*,[2] concerns particularly the effect of the changes in the housing sector.

There is no express "right" to adequate housing in New Zealand domestic law. But the issue in the *Lawson* case is whether some of the Government's actions were a breach of what is argued to be such a right under international law. As the judgment has not yet been delivered, this paper will consider first whether there is a right to housing at international law, and secondly will examine whether there is a corresponding right in New Zealand domestic law. Although the case focuses on housing, the implications are broad and impact on all economic, social and cultural human rights.

There is also the broader question of what is a "right". Hohfeld argued that "duty" and "right" are correlative terms, so that the existence of a duty is indication of a correlative right.[3] His analysis is simple and rigorous and remains valid.[4] Applying Hohfeld's analysis, this paper will accordingly look for any legal duties which might represent the correlative of any legal right to housing.

II THE LAWSON CASE

The Facts

The plaintiff and her husband were joint tenants of a two bedroom property, owned by Housing New Zealand.[5] They had rented the property since 1947. At the time of action

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[1] See for example J Kelsey *The New Zealand Experiment: a world model for structural adjustment?* (Auckland University Press with Bridget Williams Books, Auckland, 1995).
[2] The judgment is expected during September 1996.
[3] L Lloyd Hampstead and M Freeman *Lloyd's Introduction to Jurisprudence* (5 ed, Stevens & Sons, London, 1985) 542.
[4] Above n 3, 443.
[5] Hereinafter known as "HNZ".

the plaintiff and her husband were receiving the married rate of national superannuation of $304.24 per week.

In 1992 the Government made changes to the method for providing accommodation assistance. As part of the reforms, state housing rents were to be increased to market rentals. Once tenants were paying market rates, they were to become eligible for the Accommodation Supplement. Tenure protection was intended to be granted to the elderly and to those with exceptional difficulties in moving. The transition to market rents was to be phased in over a two year period.

As a result of the reforms the plaintiff's rent increased from $72 per week before the first round of rent increases, to the market rate of $165 per week after the last round was completed. The plaintiff received an accommodation supplement of $52 per week, and she and her husband also received a tenure protection allowance of $10 per week. The plaintiff refused to pay part of the rent, notifying HNZ that she and her husband would only be paying $75 a week rent to HNZ plus any accommodation supplement received. At the time of the action the plaintiff owed HNZ the sum of $2,624.61 in rental arrears.

The Plaintiff's Arguments

The action was brought against several defendants. The first defendant is HNZ, which is a Company under the Housing Restructuring Act. The second and third defendants are the Minister of Housing and the Minister of Finance respectively. They are each Shareholding Ministers for HNZ. Relief was claimed against the defendants under the Judicature Amendment Act 1972, the common law or Part VII of the High Court Rules.

The counsel for the plaintiff produced extensive evidence showing the impact of the reforms on affordability of state housing. It was implicit from the content of the material presented that the changes by the Government were retrogressive and that the new policy was not affordable by tenants.

The first cause of action against the first defendant, was that HNZ had failed to exercise its discretion genuinely, that is, its decision as to how much rent to charge must be based on the exercise of 'independent judgement' and not dictated by Government. Furthermore, the plaintiff argued that under section 4(1)(b)[6] of the Housing Restructuring Act 1992, HNZ must take into account the interests of the community.

The second cause of action against all the defendants, was that the charging of the market rents without regard to affordability was a breach of section 8 of the New Zealand Bill of Rights Act 1990 which states that there is a "right not to be deprived of life". It was submitted that market rents would deprive the Plaintiff and other tenants in similar situations of adequate and affordable shelter and as such it was *prima facie* in breach of section 8.[7] This submission was not particularly well developed by the plaintiff however, and is open to objection on a number of grounds, and it seems unlikely to succeed. Accordingly, this aspect of the plaintiff's argument is not analysed in detail in this paper.

The third cause of action against all the defendants was that of legitimate expectation. It was submitted that the Plaintiff had a legitimate expectation to be consulted, and be heard, and to receive fair treatment prior to the decision to grant or refuse the benefit.

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[6] Section 4(1) of the Housing Restructuring Act 1992 states that the principle objective of the company shall be to operate as a successful business...and to this end be- (b) an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates.

[7] The only instances where a similar argument has ever succeeded appear to have been in India. The most well-known cases in this regard are *Olga Tellis & Ors* v *Bombay Municipal Corporation and Ors* Nos. 5068-5069 of 1981, and *Vayyapuri Kapppusami and Ors* v *the State of Maharashtra and Ors*. In these cases, more popularly known as the "*Bombay Pavement Dwellers Case*" [1986] (S.C.) 180, the Supreme Court of India found that to forcibly evict pavement dwellers in Bombay would deprive them of their means of livelihood due, in particular, to the proximity of their hutments to their source of income and employment. It took the rather forward looking view, that "it would be sheer pedantry to exclude the right to livelihood from the content of the right to life." Mention should also be made of the case of *Frances Coralie Mullin* v *Union Territory of Dehli* [1981] 2 S.C.R. 516, in which the Indian Supreme Court found that "The right to life includes the right to live with human dignity and all that goes with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter..." 529. See also S Leckie "The UN Committee on Economic, Social and Cultural Rights and the Right to Adequate Housing: Towards an Appropriate Approach" (1989) 11 Human Rights Quarterly 528. In the recent case of *Shantistar Builders* v *Narayan Khimalal Totame* [1990] 4 AIR 630, the Court held that article 21 included the right to shelter. Notably, these cases were not cited by the counsel for the plaintiff in the *Lawson* case.

The first cause of action against the second and third defendants was that they had failed to have proper regard to the Government's international obligations. It was alleged that the discretion granted to the second and third defendants in respect of various actions which resulted in change to the Crown's social objectives ought to be exercised in a manner that takes into proper account the Government's international obligations. The charging by a State-Owned Enterprise of market rents regardless of their affordability and their impact on living standards was alleged to be in breach of the right to an adequate standard of living including housing. This argument, which raises a number of important issues in terms of both international and domestic law, will be the central focus of this paper.

III IS THERE A RIGHT TO ADEQUATE HOUSING AT INTERNATIONAL LAW?

The starting point must be then, whether New Zealand is under any duty in international law to provide adequate housing. This part of the paper considers this question in respect of treaties and customary international, which are the two principal sources of international law.[8] It shows that there is undoubtedly a duty in treaty law, but that the exact content of the right generated by it is unclear. Consequently, it is difficult to determine whether the Government's actions in respect of the Lawsons were a breach of the right provided in treaty law. Whether there is a duty at customary international law, is less certain however.

Treaties

The primary source of the right to adequate housing is found in article 11(1) of the International Covenant on Economic, Social and Cultural Rights.[9] Article 11(1) states:

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[8] G Dickinson, M Liepner, S Talos and D Buckingham *Understanding Law and the Global Community* (2 ed, McGraw-Hill Ryerson Ltd, Toronto, 1995) 560.

[9] Hereinafter known as the "ICESCR", to which New Zealand is party. It was ratified by New Zealand on 28 December 1978. The right to adequate housing is also found in more specific conventions including article 5(e) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women, article 27 of the Convention on the Rights of the Child, article 43 of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. Not all these treaties state the right in precisely the same terms, and the nature of the obligation may vary according to the particular context. The general right is however that stated in the ICESCR.

> The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.

Article 11(1) is cast in very broad terms. One of the barriers to the legal implementation of housing rights has been the absence of a universally recognised definition of the set of entitlements comprising the right to adequate housing.[10] The *traveaux preparatoires* of the ICESCR provide little elucidation beyond making it clear that the phrase was intended to signify more than a right to bare shelter,[11] and there has been a reluctance on the part of the international community to consider the scope of the right.[12] As recently as HABITAT II this year,[13] States refrained from defining the right.

The most useful and authoritative definition of the right to adequate housing is found in General Comment No. 4, of the United Nations Committee on Economic, Social and Cultural Rights.[14] It defines the right as having various components. These include legal security of tenure; availability of services, materials and infrastructure; affordable housing; habitable housing; accessible housing; location; and culturally adequate housing. The factor that is particularly relevant in relation to the *Lawson* case is "affordable housing". In relation to this, in its General Comment No.4, the Committee on Economic, Social and Cultural Rights stated that:[15]

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[10] The requirement at United Nations negotiations that legal outcomes be created by consensus seems to be largely responsible for the lack of definition, as consensus on a matter such as the scope of the right to adequate housing is virtually impossible due to the different resources, needs and interests of each State. Consequently, States do not usually attempt to define the right. Below n 12.

[11] A Devereaux "Australia and the Right to Adequate Housing" (1991) 20 Fed.L.R. 224.

[12] Interview with Priscilla Williams and Catherine Grant, United Nations Division, Ministry of Foreign Affairs and Trade, 14.8.96.

[13] HABITAT II, held in Instanbul from 3 to 14 June 1996 was the sixth and last in a series of large United Nations Conferences on socio-economic issues.

[14] Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies (1996) United Nations Document No. HRI/GEN/1/Rev.2 59. While such general comments are not legally binding, they are intended to assist States by clarifying the nature of their obligations, and draw on the Committee's experience in examining numerous State reports from all regions of the world.

[15] Above n 14, 61.

> Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases.

Applying the facts of *Lawson* to this statement, it would appear that *prima facie*, the Government was in breach of its obligations at international law. There was a rent increase to an unreasonable rent level, as it was incommensurate with Mr and Mrs Lawson's income. Although the Government provided them with subsidies, they were not substantial enough to mitigate the huge rent increases.

The Government could of course raise the defence that there is still plenty of affordable housing in New Zealand, but that the Lawsons might have to relocate to a different neighbourhood where the market rents are lower. It is unlikely that the Government would give this defence however, as the weekly tenure protection that the Lawsons were receiving was aimed at the elderly and those with exceptional difficulties in moving,[16] and to insist that the Lawsons relocate would make that policy appear redundant. The forced relocation of pensioners would also generate unfortunate publicity for the Government, which would be particularly undesirable for the Government in an election year. This does however raise the question of how contextual is any right to housing, and how much must individual hardship be considered in relation to the right? The Lawsons had been living in their state home for 27 years, and their sense of loss of rights was clearly acute. But what, really is the State's obligation under these circumstances?

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[16] See "Human Rights in New Zealand - Report to the United Nations Committee on Economic, Social and Cultural Rights" (Information Bulletin No.49, Ministry of Foreign Affairs and Trade, Wellington, 1994) 6.

Article 11(1) is moreover subject to article 2(1) of the Covenant, which describes the nature of the general legal obligations undertaken by States parties to the Covenant.[17] It says that:

> Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Again, the Committee on Economic, Social and Cultural Rights has helped to clarify the nature of the duties found in article 2(1) of the Covenant, in the course of general comments.

The principal obligation reflected in article 2(1) is to take steps "with a view to achieving progressively the full realisation of the rights recognised" in the Covenant. In relation to this phrase, the Committee has noted that the concept of progressive realisation constitutes a recognition of the fact that full realisation of all economic, social and cultural rights will generally not be able to be achieved in a short period of time.[18]

Nevertheless, the Committee has commented that progressive realisation should not be misinterpreted as depriving the obligation of all meaningful content. The Committee says that while it is necessarily a flexible device, the phrase must also be read in the light of the overall objective of the Covenant, which is to establish clear obligations for States parties in respect of the full realisation of the rights in question.[19] The Committee has also addressed the issue of retrogressivity, commenting that section 2(1):[20]

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[17] Above n 14, 55.
[18] Above n 14, 57.
[19] Above n 18.
[20] Above n 14, 58.

> imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.

In requiring Governments "to take steps" to realise the rights under the ICESCR, section 2(1) is imposing an obligation which is of immediate effect, as it is not qualified or limited by other considerations. Thus while the full realisation of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the State concerned.[21] Retrogressive actions are incompatible with this.

The action that the government took was clearly retrogressive in relation to Mrs Lawson in that it reduced the affordability of her housing, and this is true of many state tenants.

Nevertheless, in accordance with the Committee's comment that retrogressive measures would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources, an indication of the arguments that might be made by the Government can be drawn from its Periodic Reporting to the Committee.[22] It might seek to justify its actions by arguing that New Zealand's policies and legislation fully comply with the spirit and letter of the Covenant.[23] Furthermore, it might argue that the action was necessary to ensure the maintenance and preservation of all the rights embodied in the Covenant, as the Government's actions were part of an overall scheme to improve the state of the economy.[24] Without taking such measures, a further decline in the economy could make it even more difficult to implement mechanisms for the protection of those rights, including the right to adequate housing. In this respect, it

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[21] Above n 18.
[22] See above n 16.
[23] See above n 16, 36.
[24] See above n 16, 8.

might be argued that the Government's actions were a full use of its maximum available resources, as the redistribution of assistance was all that was affordable for the present, and also in terms of the future.

It might moreover be argued that the reforms had a progressive element in relation to other people with housing needs, because the result of the reforms was to make the distribution of housing support more even, so that a greater number of people have access to the accommodation supplement.[25]

On the other hand, it can be taken that at the time of the changes the Government had the resources available to ensure that Mrs Lawson's rent was not increased. The country was again experiencing economic growth, and the retrogressive measures taken by the Government were essentially for policy rather than resource reasons. Article 2(1) would not therefore appear to provide justification for the Government's action in revising Mr and Mrs Lawson's rent.

It is not possible here to resolve these issues precisely. What the arguments reveal is the complexity of discussing these issues as "rights" subject to judicial decision. The arguments go to the heart of Government economic and social policy, and involve political issues which are certain to be major issues in forthcoming elections. The balances between judicial and legislative functions are discussed below. But whatever the precise content of that right, there is no doubt that there are international obligations on New Zealand in this respect.

New Zealand ratified the ICESCR in 1978. Article 26 of the Vienna Convention on the Law of Treaties states the fundamental principle of treaty law *pacta sunt servanda*, that "Every treaty in force is binding upon the parties to it and must be performed by them in good faith".[26] As a party to the ICESCR and other conventions containing provisions pertaining to housing rights, New Zealand is thus under an obligation to

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[25] See above n 16, 6.
[26] M Shaw *International Law* (3 ed, Grotius Publications Ltd, Cambridge, 1991) 561.

implement them in good faith. It is consequently bound to have its national legislation, policy and practice in line with those international legal obligations.

Customary International Law

The question also arises whether there is a duty to provide adequate housing under customary international law, given its direct bearing on domestic legal obligations.[27] Customary international law requires proof of two elements: first, a widespread and consistent practice among States; and secondly, a genuine belief by States that such practice is legally binding, or *opinio juris*, as it is commonly called.[28]

The right to adequate housing has numerous bases in both international and regional human rights legal texts. Internationally, the right is found in a range of human rights treaties which have each been ratified by a large number of States. It can be identified in a number of United Nations declarations,[29] and the right has been extensively discussed and supported in global United Nation's conferences. It has also been the object of considerable and on-going work within the United Nation's human rights machinery.[30] Most recently, at HABITAT II States reaffirmed the existence of the right.

At the regional level, an array of texts contain clauses directly related to the right to adequate housing, including documents adopted under the auspices of various regional organisations.[31] The right is also constitutionally recognised in at least 30 States,[32] and

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[27] The dominant principle of English law, normally characterised as the doctrine of incorporation, is that customary rules of international law are to be considered part of the law of the land (i.e. as common law) and enforced as such, with the qualification that they are incorporated only so far as is not inconsistent with Acts of Parliament or prior judicial decisions of final authority. See I Brownlie *Principles of Public International Law* (4 ed, Clarendon Press, Oxford, 1990) 44. It appears that New Zealand has adopted this position, as evidence of this approach can be found in the recent New Zealand Court of Appeal cases of *The Governor of Pitcairn* v *Sutton* [1995] 1 NZLR 426 and *Controller and Auditor-General* v *Davison* [1996] 2 NZLR 278.

[28] Above n 8.

[29] These include the Declaration on the Rights of the Child, 1959 (paragraph 4); the Declaration on Social Progress and Development, 1969 (part II, article 10(f)); the Vancouver Declaration on Human Settlements, 1976 (section III); the Declaration on the Right to Development, 1986 (article 8.1); and the draft declaration on the rights of indigenous peoples (articles 20 and 23).

[30] R Sacher "Working Paper on the Right to Adequate Housing" (1992) United Nations Document No. E/CN.4/Sub.2/1992/15, 12.

[31] These include the Council of Europe, the European Economic Community (EEC), the Conference on Security and Cooperation in Europe (CSCE), the Organisation of American States (OAS) and the Organisation of African Unity (OAU). See above n 30, 13.

virtually all States maintain policies and legislation proscribing the denial of or, more positively, directed at realising adequate housing.[33]

Despite the considerable number of instruments containing provisions relating to adequate housing as well as State practice, it is not, in the end, very clear that this right is part of customary international law. Even if there is such a right at customary international law, it will be at a very general level. It can therefore safely be said that its content will be more limited than under the ICESCR. Counsel in the *Lawson* case did not try to argue the customary international law question, correctly in the author's view. Furthermore, it is not necessary to answer this question finally, as the Treaty right at international law is binding on New Zealand.

IV WHAT IS THE STATUS OF THE "RIGHT"?

The obligation on the State to provide adequate housing, and the correlative "right", may thus be found in treaty law. As party to the ICESCR, New Zealand has international obligations in this respect. But what is the status of that "right" generated by those obligations? Could the Lawsons demand that the Government provide them with a cheaper house? Or could they argue that they should be left under a century old government policy, without being forced out because of new economic orthodoxy? What is their "right"?

This issue is more than just a theoretical one, as it may also go to the justiciability of the "rights" claimed by the Lawsons. While the domestic Courts have shown themselves increasingly willing to take into account the State's international obligations in the civil and political sphere, many commentators argue that economic, social and cultural rights are qualitatively different. Undoubtedly, their adjudication domestically involves the Courts in political and economic judgments which they have traditionally been reluctant to make.

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[32] See for example the South African Constitution 1996 which states in article 26(1) that "Everyone has the right to have access to adequate housing".
[33] See above n 30.

The right to adequate housing is a classic economic, social and cultural right. The concept of these rights has, as noted, long generated controversy among philosophers.[34] A number of commentators continue to contest the status of those rights, as "rights".[35] They consider that civil and political rights are capable of immediate and full realisation whereas economic, social and cultural rights constitute no more than long term aspirational goals,[36] or privileges.

Governments appear to draw a similar distinction. For, whereas civil and political rights relate to widely shared values to which governments are genuinely committed and raise issues that are manageable and within reach, economic, social, and cultural rights have not attracted the same level of governmental commitment, and concern issues that are considered to be inherently intractable and unmanageable and are thus much too complex to be dealt with under the rubric of rights.[37]

The New Zealand government also appears to take a different approach to economic, social, and cultural rights. For example, in January 1992, when the Associate Minister for Health was spelling out the rationale for applying the user pays principle in various social sectors, he made the comment that "health, education and welfare services are privileges, not rights".[38] It can be assumed that housing would be similarly regarded. When the Committee on Economic, Social and Cultural Rights questioned whether the comment accurately reflects the Government's view, during the course of presenting its Periodic Report to the Committee, the Government avoided answering the question directly, and instead stressed its continuing commitment to the welfare state.[39] Further evidence that New Zealand treats the rights differently is the fact that the Government chose not to include economic, social and cultural rights in the New Zealand Bill of Rights Act 1990.

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[34] See below n 35, 158. There is a huge body of literature on this subject. This part of the paper covers some of the more major issues and arguments on the topic, and it is by no means exhaustive.
[35] P Alston and G Quinn "The Nature and Scope of State Parties' obligations under the International Covenant on Economic, Social and Cultural Rights" (1987) 9 Human Rights Quarterly 159.
[36] Above n 35.
[37] Above n 35.
[38] P Hunt "Our rights before fights" *New Zealand Herald*, New Zealand, 27 January 1993, Section 2, 3.
[39] Above n 16, 12.

Nevertheless, in the last few years attitudes within the United Nations have changed in respect of these rights as there is an increasing recognition that the two groups of rights are "parts of a single whole",[40] and United Nations and various regional human rights bodies are trying to devise ways to implement economic, social and cultural rights. Even so, States still draw distinctions however between economic, social and cultural rights, and civil and political rights.

Various arguments are given in support of the differentiation between the two sets of rights. The first and most common is that civil and political rights are in a sense "negative rights", whereas economic, social and cultural rights are "positive" rights. The former are characterised as "negative" in that they require only that governments should abstain from activities that would violate them, whereas the latter rights require active intervention. Closely linked to this is a distinction between resource-intensive and cost-free rights. Thus it is said that civil and political rights can be realised without significant costs being incurred, whereas the enjoyment of economic, social and cultural rights requires a major commitment of resources.[41]

The distinction is not necessarily quite so clear cut however. Hunt argues that civil and political rights can also require positive action on the part of the State. He explains that if individuals are to enjoy rights such as the right to a fair trial, States must build courts, pay the salaries of judges, prosecutors, administrators and interpreters, and in some circumstances, provide individuals with free legal assistance.[42] The Human Rights Committee is also increasingly looking for "positive" action by States in enshrining civil and political rights in their law, in making them justiciable.[43]

Another reason for the alleged distinction between the rights is that civil and political rights are seen as essentially non-ideological in nature and are potentially compatible with most systems of government. By contrast, economic, social and cultural rights are

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[40] See in particular the Vienna Declaration and program of action adopted by the 1993 World Conference on Human Rights, reaffirmed in article 5 that "All human rights are universal, indivisible and interdependent and interrelated". See also below n 42, 142.
[41] Above n 35.
[42] P Hunt "Reclaiming Economic, Social and Cultural Rights" (1993) 1 Waikato Law Review 151.
[43] Above n 12.

often perceived to be of a deeply ideological nature, necessitating an unacceptable degree of intervention in the domestic affairs of States, and to be inherently incompatible with a free market economy.[44]

In its General Comment 3, the Committee of Economic, Social and Cultural Rights attempted to dispel the association of the rights with ideology. The Committee stated that:[45]

> in terms of political and economic systems the Covenant is neutral and its principles cannot accurately be described as being predicated exclusively upon the need for, or the desirability of a socialist or a capitalist system, or a mixed, centrally planned, or laissez-faire economy, or upon any other particular approach... the rights recognised in the Covenant are susceptible of realisation within the context of a wide variety of economic and political systems

It is also argued by some commentators that civil and political rights are justiciable whereas economic, social and cultural rights are not.[46] In support of their view they commonly argue that the most effective realisation of economic, social and cultural rights requires policy choices, for which judges lack the necessary expertise and political accountability.[47] Sir Ivor Richardson has also expressed the concern that the increased resort to the protection of rights creates difficulties for Judges, is costly, and can ultimately impinge upon the interests of the community.[48]

A separate group of theorists assert that economic, social and cultural rights are justiciable. Amongst other things, they argue that the judiciary has always been

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[44] Above n 35, 160.
[45] Above n 14.
[46] For some commentators the justiciability of a right one of the essential determinants of whether it is a "real" right. Kelson has in fact stated that "the essential element [of a right] is the legal power bestowed upon the [individual] by the legal order to bring about, by a law suit, the execution of a sanction as a reaction against the nonfulfillment of the obligation". See above n 35, 169.
[47] See above n 42, 154.
[48] Richardson's analysis focused predominantly on civil libertarian values, but his arguments are equally applicable to the justiciability of economic, social and cultural rights. See I Richardson "Right's Jurisprudence - Justice For All?" in P Joseph (ed) *Essays on the Constitution* (Brooker's Ltd, Wellington, 1995) 61.

involved in the formulation of law and policy. They also point out that civil and political rights may themselves be subject to some degree of policy-making.[49] Hunt claims that the judicial difficulties traditionally associated with the implementation of social rights has been overstated, and has stressed that the courts must get into the business of protecting economic, social and cultural rights.[50]

The nature of the compliance mechanisms under the two Covenants is also used to distinguish the rights.[51] Civil and political rights have had more compliance measures than economic, social, and cultural rights. The International Covenant on Civil and Political Rights[52] establishes the Human Rights Committee to consider Periodic Reports on compliance by States Parties and also provides under article 41 a State to State complaint mechanism; moreover under the First Optional Protocol States agree to allow individuals to bring human rights complaints against their own countries at the international level.[53] The compliance mechanism under the ICESCR is weaker and more permissive, comprising solely of Periodic Reports by States Parties to the United Nations Committee on Economic, Social and Cultural Rights.[54]

The nature of the States Parties' general obligations is also different in the ICCPR and the ICESCR. The general view is that under article 2(1) of the ICCPR there is an immediate obligation.[55] However, as already noted, under the ICESCR the States Parties general obligation is not immediate, but explicitly progressive. It is also subject to the availability of resources.

The Committee on Economic, Social and Cultural Rights makes it clear however, that too much should not be made of the different nature of the obligations in respect of the two Covenants, "the fact that realisation over time, or in other words progressively, is

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[49] Above n 47.
[50] Above n 42, 141.
[51] Above n 42, 144.
[52] Hereinafter known as the "ICCPR".
[53] Above n 8, 564.
[54] Above n 8, 561. There is however increasing interest internationally, in developing an individual complaints mechanism under the ICESCR also.
[55] It has however been argued that the immediate obligation under the ICCPR can be subject to progressive application in some circumstances, under article 2(2). See above n 42, 147.

foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content".[56]

States have clear legal duties under treaties to which they are party. They cannot disregard these duties. Although the actual status of the economic, social and cultural rights within these treaties as "rights" has been subject to much debate, the preceding arguments suggest that they should be regarded as "real" rights. The fact that human rights are directed towards the creation of societal conditions by the State in which individuals may develop to their fullest potential, as well as protecting individuals from the exercise of State authority in certain areas of their lives,[57] is further support of their status as "real" rights. Thus, the distinctions between the rights outlined, would not appear to affect its qualitative status as a "right". Rather, those differences would appear to be relevant only insofar as they make a difference to the speed with which the rights are implemented.[58]

Certainly, from the Lawsons' viewpoint, such distinctions are likely to be seen as fine ones. New Zealand has international obligations in the economic, social and cultural area, just as it does in the civil and political sphere. The Government's changes to its housing policy are no less real for the Lawsons than derogations from their civil and political rights might be. They would undoubtedly find hard to understand any distinction which might be drawn by the Courts between their treatment of civil and political, and economic, social and cultural rights.

V DOES THE RIGHT EXTEND TO MUNICIPAL LAW?

The New Zealand Government is under duties with respect to housing in a number of statutes, the most notable of which are the Housing Restructuring Act 1992 and the Human Rights Act 1993.[59] Consequently, it could be said that New Zealand citizens have "rights" in respect to housing. However, the protections contained in these statutes are not so broad as to protect people such as the Lawsons. Indeed, it was

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[56] Above n 14.
[57] S Davidson *Human Rights* (Open University Press, Buckingham, 1993) 24.
[58] Above n 57, 43.
[59] Sections 53 to 56 of the Human Rights Act 1993 prohibit discrimination in the provision of land, housing and other accommodation.

through the implementation of the Housing Restructuring Act 1992 that the Lawsons found themselves in the position which led them to bring proceedings. The real question is whether in New Zealand there is any right in respect of housing which extends beyond the protections found in those statutes. Ultimately the determination of this question is dependent upon whether New Zealand's duties at international law in respect of the "right to adequate housing" create rights for New Zealand citizens at the municipal level, notwithstanding the fact that they have not been expressly incorporated into New Zealand municipal law.

The Orthodox Position

The orthodox position in New Zealand is that unincorporated treaties which affect private rights or alter the law do not enter the domestic law unless or until treaty obligations are expressly given effect to by Parliament. This rule arises because the ratification of a treaty is an executive act, and if international obligations formed part of New Zealand municipal law without Parliament enacting legislation to implement them, the sovereignty of Parliament would be violated. The principle was stated thus in *Ashby* v *Minister of Immigration*:[60] "it is well settled that the making of a treaty is an executive act while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action".[61]

Ministerial Decision Making

It is at this point that the first cause of action against the second and third defendants in the *Lawson* case becomes relevant. As noted, the plaintiff in *Lawson* argued that the Ministers failed to have regard to New Zealand's international legal obligations with regard to housing, and that the international covenants are relevant considerations in the exercise of discretions by the shareholding Ministers. The counsel for the plaintiff in *Lawson* relied on and referred to a number of authorities in this respect. However, there are three possible directions that Williams J could take in determining this particular issue. First, he could take the *Ashby* approach that Ministers are not in any way bound by any treaty. Secondly, he could take the approach found in *Tavita* v

[60] [1981] 1 NZLR 222.
[61] Above n 60, 229.

Minister of Immigration[62] that Ministers are bound to "consider explicitly" the obligations in the exercise of their discretion. Thirdly, he could take the *Minister for Immigration and Ethnic Affairs* v *Teoh*[63] approach that Ministers are obliged in New Zealand law to exercise any discretion in conformity with treaty obligations. Which of these three possibilities represents New Zealand law would obviously have a crucial effect on the *Lawson* case. It is therefore necessary to examine the recent case law.

There has been an increasing tendency on the part of the courts to require decision makers exercising judicially reviewable powers to have regard to international obligations.[64] In recent years the law in New Zealand and generally in the Commonwealth has been changing in this respect, although recent decisions have not finally settled the issues. *Ashby* was the first of these cases. It concerned an attempt to stop the South African Springbok rugby team's 1981 tour of New Zealand. The plaintiffs claimed that the tour would involve a violation by New Zealand of its obligations under the Convention on the Elimination of All Forms of Racial Discrimination. The Springboks needed entry permits before they could come into the country. According to statute, the Minister of Immigration had a discretionary power to issue the permits. The plaintiffs argued that the Minister should exercise his discretion in a manner consistent with New Zealand's international obligations, and decline to issue entry permits to the Springboks. It was acknowledged on behalf of the Minister that he had not taken into account either of the international instruments relied on.

Although at first instance the Chief Justice dismissed the plaintiff's application, he accepted that the Convention was a relevant consideration. He was not prepared to find however, that the Minister had failed to take it into account. In the Court of Appeal, the Minister filed an affidavit which confirmed that he had not given specific consideration to the Convention, but that he was aware of the active opposition of the government of New Zealand and the United Nations to apartheid. The appeal was

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[62] [1994] 2 NZLR 257.
[63] (1995) 128 ALR 353.
[64] R Harrison "Domestic Enforcement of International Human Rights in Courts of Law: Some Recent Developments" [1995] NZLJ 262.

dismissed.[65] The court found that when exercising his discretion, the Minister was not required to take the Convention into account. The chief principle which *Ashby* is taken to stand for is that Ministers cannot be judicially compelled to comply with international Treaties, even those to which New Zealand is a Party, when they are exercising ministerial discretion.[66] Nevertheless, there was recognition in the Court that some international obligations are so manifestly important that no reasonable Minister could fail to take them into account.[67]

The more recent case of *Tavita* also appears to have cast doubt on the absolute nature of the principle in *Ashby*. In that case, Mr Tavita, a citizen of Western Samoa, was an overstayer in New Zealand who was attempting to seek the cancellation of a warrant for his removal on humanitarian grounds. An appeal to the Minister was declined. Mr Tavita commenced judicial review proceedings, placing reliance on the ICCPR and the 1989 Convention on the Rights of the Child. He sought an interim order for a stay of his removal.[68]

The Crown had argued in this case that the Minister was entitled to ignore international instruments, consistent with *Ashby*. But in *Tavita* the Court found this argument "unattractive...apparently implying that New Zealand's adherence to the international instruments has been at least partly window-dressing".[69] Cooke P went on to state that when statutory discretion is being exercised by the decision maker, international human rights obligations must be taken into account as a mandatory relevant consideration. Consequently, the decision of the New Zealand Court of Appeal in *Tavita* severely eroded the basic principle of *Ashby* that discretionary powers do not have to be exercised in accordance with treaty obligations.[70] Nevertheless, *Ashby* has not been specifically overruled. Moreover, the persuasiveness of *Tavita* is questionable as it was an interim judgment, and is explicitly not a final ruling on the legal issue.

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[65] See P Hunt and M Bedggood "The International Law Dimension of Human Rights in New Zealand" in G Huscroft (ed) *Rights and Freedoms* (Brooker's Ltd, Wellington, 1995) 37, 54.
[66] J Elkind "*Ashby* v *Minister of Immigration*: Overruled?" [1994] NZLJ 95.
[67] Above n 60, 225.
[68] Above n 64.
[69] Above n 62, 266.
[70] Above n 66, 98.

Although the Court of Appeal has been presented with the opportunity to clarify the law further in the New Zealand context in the recent cases of *Puli'uvea* v *The Removal Review Authority & Anor*,[71] and *Rajan* v *The Minister of Immigration*,[72] it has avoided dealing with this aspect.

The High Court of Australia has gone considerably further in than the New Zealand courts to date in its important judgment in *Teoh*. *Teoh* was a case with a close factual resemblance to *Tavita*. It also concerned the United Nations Convention on the Rights of the Child, to which Australia is also a party. A majority of the High Court of Australia held that, while the provisions of an international treaty to which Australia is a party do not form part of Australian law unless incorporated into the domestic law by stature, and so cannot operate as a direct source of individual rights and obligations, nevertheless the ratification of a convention is a positive statement by the Executive Government to the world and to the Australian people that the Executive Government and its agencies will act according to the convention. In *Teoh* the Australian High Court held that ratification of an international convention by the Executive can create a legitimate expectation that the Executive will act in accordance with the convention.[73] Accordingly, the ratification of the convention, it was held, was an adequate foundation for a "legitimate expectation" that administrative decision makers would act in conformity with that convention.[74]

How will the New Zealand courts treat *Teoh*? As a decision from the High Court of Australia, it is highly persuasive. However, the Australian Government responded negatively to the *Teoh* case, and introduced the *Administrative Decisions (Effect of International Instruments) Bill 1995* into the House of Representatives on 28 June 1995.[75] The primary provision in the Bill is clause 5 which provides that, the "fact that Australia is bound by, or a party to, a particular international instrument, or that an

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[71] Unreported, 8 July 1996, Court of Appeal, CA 236/95.
[72] Unreported, 30 July 1996, Court of Appeal, CA 177/95.
[73] Above n 63, 366.
[74] Above n 63, 373.
[75] Report of the Senate Legal and Constitutional References Committee *Trick or Treaty? Commonwealth Power to Make and Implement Treaties* (The Parliament of the Commonwealth of Australia, 1995), 91.

enactment reproduces or refers to a particular international instrument, does not give rise to a legitimate expectation".[76] The passage of the Bill in Australia would of course only change the law of Australia, leaving it still open for the High Court's approach to be followed in other jurisdictions including New Zealand.

In this respect however, the comments of Thomas J in the New Zealand Court of Appeal *Winebox*[77] decision, raised doubts about the authority of a case which has been reversed in Parliament. Thomas J commented that:

> It seems to me that the authority of a case which has been effectively reversed by an Act of Parliament must be seriously weakened. In effect, the rationale of the case has not been accepted. It would be stilted for later courts to fail to have regard to the subsequent history of an authority and to the fact that it was an informed Parliament which declared that it no longer represented the law in that country.

Accordingly, if the Bill is passed in Australia - which appears to be increasingly unlikely[78] - the authority of the *Teoh* case may be substantially weakened in New Zealand. That said, in the recent Court of Appeal case *NZ Maori Council & Ors* v *Attorney-General & Ors*[79], Thomas J, in his dissenting judgment, appeared to affirm the persuasiveness of *Teoh* in New Zealand law when he commented that:[80]

> If an international treaty which has been signed and ratified but not passed into law can found a legitimate expectation, it is automatic that this country's recognised fundamental constitutional document, the Treaty of Waitangi, can also found a legitimate expectation. The reasoning of the majority in the Teoh case seems to me to be directly applicable.

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[76] See above n 75. Notably, all the implications of such a broad statement may not have been intended, and may cause surprise on the part of Australia's treaty partners. Presumably other States party to a treaty with Australia, at the very least, are entitled to a legitimate expectation that it will comply with its treaty obligations in accordance with the principle of *pacta sunt servanda*!

[77] *Controller and Auditor-General* v *Davison* [1996] 2 NZLR 278.

[78] See for example "NZ sets a lesson for Australia" *The Canberra Times*, Canberra, Australia, 8 July 1996, 5 which stated that there is now no real likelihood that the legislation will get the support of the Opposition in the Senate.

[79] Unreported, 13 June 1996, Court of Appeal, CA 78/96.

[80] Above n 79, 42.

The leading English case is *Brind* v *Secretary of State for the Home Department*,[81] and it supports the more traditional approach. The Ministers of Housing and Finance in the *Lawson* case, argued Brind in support of their position. In *Brind*, the House of Lords was confronted with issues akin to those raised in *Ashby* and came to a similar view. *Brind* concerned the European Convention on Human Rights, a treaty which has not been incorporated into English domestic law by way of statute. According to Lord Ackner, if the Minister was obliged to exercise his discretion in conformity with the Convention, "this inevitably would result in incorporating the Convention into English domestic law by the back door".[82] Thus, it was held that although the courts would interpret domestic legislation in a manner which conformed to the Convention where possible, there was no corresponding presumption of domestic law that the courts would review the exercise of administrative discretion on the basis that such discretion had to be exercised in conformity with the Convention.

In *Tavita*, when considering the *Brind* decision, Cooke P commented that:[83]

> It is not now appropriate to discuss how far *Brind*, in some respects a controversial decision, might be followed in New Zealand on the question whether, when an Act is silent as to relevant considerations, international obligations are required to be taken into account as such.

The *Brind* case has not been followed in a number of cases including *Teoh*, and the *New Zealand Maori Council* Case in which Thomas J favoured the *Teoh* reasoning over that in *Brind*.[84]

It would appear from the New Zealand and Australian cases that there is now room to invoke international human rights covenants in the context of administrative decision-making by the executive, either on the basis of the *Tavita* "relevant considerations" approach, or on the basis of the *Teoh* "legitimate expectation" approach, or both. How

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[81] [1991] AC 696.
[82] Above n 81, 716.
[83] Above n 69.
[84] Above n 79, 41.

far the courts will take this, however is still uncertain. The most recent developments noted above would suggest that in one Judges' mind at least, the line of reasoning in *Teoh* is attractive. The *Lawson* judgment, should it go to appeal, may help settle this issue once and for all.

This author anticipates however, that Williams J may try to avoid this question. The fact that the New Zealand Court of Appeal has itself avoided making a definitive ruling in the recent cases of *Puli'uvea* and *Rajan*, is likely to make him hesitant about tackling such a highly controversial and critical question. Furthermore, in cases such as this, where there is doubt about the precise content of an international obligation, the courts are likely to be very careful about importing international law vagueness into New Zealand municipal law. Again, this brings back the issue of the role of the judiciary, compared with that of the elected legislature. Consequently, it is anticipated that Williams J may find in favour of the plaintiff or the defendants on another, less significant ground, which would enable him to decide that it is unnecessary to consider the question of the relationship between ministerial decision-making and international law.

In the event that Williams J does address this issue, however it is to be expected that he will apply either the *Tavita* approach or the *Teoh* approach. It is unlikely that he will revert back to the traditional approach found in cases such as *Ashby* or *Brind*. He could however decide to follow the reasoning in *Ankers* v *Attorney-General*[85] that even if the Ministers had not specifically referred to their international obligations when taking their decisions, it could not be assumed that they had not considered them. Indeed, in the *Lawson* case the Crown argued that affordability concerns were fundamental overall to the Government's policies and Ministerial decisions.

VI CONCLUSION

Given that the legislation in place which pertains to housing has only narrow application, the question of whether there is otherwise a "right to adequate housing" in New Zealand municipal law is highly significant for the Lawsons, and for other people

[85] (1995) NZAR 241.

similarly affected by the housing reforms. Yet the issue is fraught with difficulties. Amongst other things, there are questions as to the content of any such right, the status of the right, the impact of unincorporated treaties on Ministerial decision-making, and whether economic, social and cultural rights are properly justiciable. These issues have been identified and discussed in this paper. However, it is not possible to come to any substantial conclusions without any further signals from the judiciary or Parliament.

The *Lawson* case thus stands at the edge of current debates about all these issues, and it provides a real opportunity to develop New Zealand domestic law in this respect. Even if it does not do so, the issues will remain. The international community's increasing focus on economic, social and cultural rights is likely to be reflected in domestic litigation as well. Sooner or later, the New Zealand courts will have to address these issues.

VII BIBLIOGRAPHY

A Butler "The New Zealand Bill of Rights and private common law litigation" [1991] NZLJ 261.

A Devereux "Australia and the Right to Adequate Housing" (1991) 20 Fed.L.Rev. 223.

A Funder "The Teoh Case" (1995) 6 PLR 264.

A Lester "Taking Human Rights Seriously" (1994-1995) 5 KCLJ 1.

"A New Zealand Guide to International Law and its Sources" (Report 34, Law Commission, Wellington, 1996).

Ankers v *Attorney-General* (1995) NZAR 241.

A Robertson and J Merrils *Human Rights in the World* (3 ed, Mancester University Press, Manchester, 1989).

Ashby v *Minister of Immigration* [1981] 1 NZLR 222.

C James *New Territory* (Bridget Williams Books, Wellington, 1992).

Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies (1996) United Nations Document No. HRI/GEN/1/Rev.2.

Controller and Auditor-General v *Davison* [1996] 2 NZLR 278.

C Staker "Australian Cases Involving Questions of Public International Law 1993" (1993) 14 Australian YIL 329.

Elika v *Minister of Immigration* [1996] 1 NZLR 741.

F Jacobs and S Roberts (eds) *The Effect of Treaties in Domestic Law* (Sweet & Maxwell, London, 1987).

F Jacobs "The Protection of Human Rights in the Member States of the European Community" in J O'reilly (ed) *Human Rights and Constitutional Law* (The Round Hall Press, Dublin, 1992) 243.

G Dickinson, M Liepner, S Talos and D Buckingham *Understanding Law and the Global Community* (2 ed, McGraw-Hill Ryerson Ltd, Toronto, 1995).

G Palmer *A Bill of Rights for New Zealand - A White Paper* (Government Printer, Wellington, 1985).

Governor of Pitcairn and Associated Islands v *Sutton* [1995] 1 NZLR 426.

G van Hoof "The Legal Nature of Economic, Social and Cultural Rights: a Rebuttal of Some Traditional Views" in P Alston and K Tomasevski (eds) *The Right to Food* (Martinus Nijhoff Publishers, Dordrecht, 1984) 97.

H Charlesworth "Australia's Accession to the First Optional Protocol to the International Covenant on Civil and Political Rights" (1991) 18 Melbourne U.L.R. 428.

H Gold *New Zealand Politics in Perspective* (3 ed, Longman Paul Ltd, Auckland, 1992).

Human Rights Fact Sheet No. 16 "The Committee on Economic, Social and Cultural Rights" (Centre for Human Rights, United Nations Office at Geneva, Geneva, 1992).

Human Rights Fact Sheet No. 21 "The Human Right to Adequate Housing" (Centre for Human Rights, United Nations Office at Geneva, Geneva, 1993).

Human Rights Fact Sheet No. 25 "Forced Eviction and Human Rights" (Centre for Human Rights, United Nations Office at Geneva, Geneva, 1996).

"Human Rights in New Zealand - Report to the United Nations Committee on Economic, Social and Cultural Rights" (Information Bulletin No. 49, Ministry of Foreign Affairs & Trade, Wellington, 1994).

I Brownlie *Principles of Public International Law* (4 ed, Clarendon Press, Oxford, 1990).

In *Re J* Unreported, 30 October 1995, High Court, M 1291/95.

I Richardson "Right's Jurisprudence - Justice For All?" in P Joseph (ed) *Essays on the Constitution* (Brooker's Ltd, Wellington, 1995) 61.

J Elkind and A Shaw "The Municipal Enforcement of the Prohibition Against Racial Discrimination: A Case Study on New Zealand and the 1981 Springbok Tour" (1984) 55 BYIL 189.

J Elkind "*Ashby* v *Minister of Immigration*: Overruled? " [1994] NZLJ 19.

J Elkind "The Optional Protocol and the Covenant on Civil and Political Rights" [1991] NZLJ 409.

J Gooley "The Role of International Conventions" [1995] 9 ALMD ADVANCE 1.

J Kelsey *The New Zealand Experiment: a world model for structural adjustment?* (Auckland University Press with Bridget Williams Books, Auckland, 1995).

K Keith "Application of International Human Rights Law in New Zealand" (Judicial Colloquium on the Domestic Application of International Human Rights Norms, Guyana, 1996).

K Keith "New Zealand Treaty Practice: The Executive and the Legislature" [1964] 1 NZULR 272.

Krishnan and Others v *State of Andhra Pradesh and Others* [1993] 4 LRC 234.

K Vasek and P Alston (eds) *The International Dimensions of Human Rights* (Greenwood Press, Westport, 1982).

K Walker and P Mathew "*Minister for Immigration* v *Ah Hin Teoh*" (1995) 20 MULR 236.

L Henkin (ed) *The International Bill of Rights - the Covenant on Civil and Political Rights* (Columbia University Press, New York, 1981).

L Lloyd Hampstead and M Freeman *Lloyd's Introduction to Jurisprudence* (5 ed, Stevens & Sons, London, 1985).

Lord Browne-Wilkinson "The Infiltration of a Bill of Rights" [1992] P.L. 397.

L Sumner *The Moral Foundation of Rights* (Clarendon Press, Oxford, 1987).

M Bhandari *Basic Structure of the Indian Constitution* (Deep & Deep Publications, New Dehli, 1993).

M Chen and G Palmer *Public Law in New Zealand* (Oxford University Press, Oxford, 1993).

M Haleem "The Domestic Application of International Human Rights Norms" in *Developing Human Rights Jurisprudence* (Commonwealth Secretariat, Judicial Colloquium in Bangalore, 1988) 92.

Minister v *Teoh* (1995) 128 ALR 353.

M Kirby "The Role of the Judge in Advancing Human Rights by Reference to International Human Rights Norms" (1988) 62 Aust.L.J. 514.

M Shaw *International Law* (3 ed, Grotius Publications Ltd, Cambridge, 1991).

M Templeton (ed) *New Zealand as an International Citizen* (New Zealand Ministry of Foreign Affairs & Trade, Wellington, 1995).

N Grief "The Domestic Impact of the European Convention on Human Rights as Mediated Through Community Law" [1991] P.L. 555.

NZ Maori Council & Ors v *Attorney-General & Ors Unreported*, 13 June 1996, Court of Appeal, CA 78/96.

"NZ sets a lesson for Australia" *The Canberra Times*, Canberra, Australia, 8 July 1996, 10.

P Alston and G Quinn "The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights" (1987) 9 Human Rights Quarterly 156.

P Bayne "Administrative law, human rights and international humanitarian law" (1990) 64 Aust.L.J. 203.

P Hunt and M Bedggood "The International Law Dimension of Human Rights in New Zealand" in G Huscroft (ed) *Rights and Freedoms* (Brooker's Ltd, Wellington, 1995) 37.

P Hunt "Our rights before fights" *New Zealand Herald*, New Zealand, 27 January 1993, Section 2, 3.

P Hunt "Reclaiming Economic, Social and Cultural Rights" (1993) 1 Waikato Law Review 141.

P Hunt "UN involvement hurts human rights work" *New Zealand Herald*, New Zealand, 15 March 1993, Section 1, 8.

P Joseph *Constitutional and Administrative Law in New Zealand* (The Law Book Co Ltd, Sydney, 1993).

Puli'uvea v *The Removal Review Authority & Anor* Unreported, 8 July 1996, Court of Appeal, CA 236/95.

Rajan v *The Minister of Immigration* Unreported, 30 July 1996, Court of Appeal, CA 177/95.

Report by the Senate Legal and Constitutional References Committee *Trick or Treaty? Commonwealth Power to Make and Implement Treaties* (The Parliament of the Commonwealth of Australia, 1995).

R Harrison "Domestic enforcement of international human rights in Courts of law: Some recent developments" [1995] NZLJ 256.

R Higgins "The Relationship Between International and Regional Human Rights Norms and Domestic Law" (1992) 18 Commw.L.B. 1258.

R Jennings and A Watts (eds) *Oppenheim's International Law* (9 ed, Longman, Essex, 1992).

R Lallah "The Domestic Application of International Human Rights Norms" (1991) 17 Commw.L.B. 665.

R Sachar "The Right to Adequate Housing" (United Nations, Centre for Human Rights, Geneva), 1996.

R Sachar "Working Paper on the Right to Adequate Housing" (1992) United Nations Document No. E/CN.4/Sub.2/1992/15.

S Davidson *Human Rights* (Open University Press, Buckingham, 1993).

Shantistar Builders v *Narayan Khimalal Totame* [1990] 4 AIR 630.

S Leckie "The UN Committee on Economic, Social and Cultural Rights and the Right to Adequate Housing: Towards an Appropriate Approach" (1989) 11 Human Rights Quarterly 522.

Tavita v *Minister of Immigration* [1994] 2 NZLR 257.

T Gilbertson "War Crimes" (1995) 25 VUWLR 315.

Van Gorkom v *Attorney-General and Another* [1977] 1 NZLR 535.

W Sadurski "Economic Rights and Basic Needs" in C Sampford and D Galligan (eds) *Law, Rights and the Welfare State* (Croom Helm, London, 1986) 49.

1 Folder MacK

MacKay, Andrea
The Lawson case and the impact of international law on municipal law