



ANNUAL REPORT

CROWN LAW DEPARTMENT

2001

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1. GENERAL

1.1 ROLE

The Crown Law Department is under the Ministerial direction of the Attorney General and Minister of Justice.

In September 2001, the Attorney General and Minister of Justice Hon. Tevita Poasi Tupou resigned after 33 years of dedicated service to His Majesty's Government. The office of the Attorney General and Minister of Justice remained vacant as of 31st December 2001.

The Department, in turn, is headed by the Solicitor General, Mr. 'Aisea Taumoepeau.

The Attorney General is the Crown's First Law Officer. He is vested with wide common law powers that include: filing of *ex officio* information, entering of a *nolle prosequi* in certain criminal prosecutions, and maintaining relator actions in matters affecting the general public.

These powers are exercised by the granting of the Attorney General's *fiat*. As such, he decides whether or not and in what precise circumstances, he will issue his certificate.

In conjunction with these common law powers, the Attorney General has certain statutory responsibilities. The instigation of criminal proceedings in an increasing number of offences is now contingent upon the Attorney General's consent being first obtained. As such, all prosecutions under the Criminal Offences Act, subject to section 197 of that Act, are the responsibility of the Attorney General. He has similar responsibilities under:

- Section 3: Crown Proceedings Act;
- Section 4: Maintenance of Illegitimate Children Act;
- Section 8: Defamation Act;
- Section 84: Quarantine Act; and
- Sections 19, 20, 21: Electoral Act.

The Department's role is based upon the accepted traditional functions of Government Law Officers. Generally, these functions revolve around the following basic categories:

- (1) Providing legal advice to Government;
- (2) Representing Government in all Litigation;
- (3) Criminal Prosecutions;
- (4) Law Officer functions;
- (5) Legislative Drafting.

1.2 LAW REFORM COMMITTEE

The Law Reform Committee continued to meet during the year to consider amendments to existing laws and to evaluate new Bills to be put before the Legislative Assembly.

In 2001, several Acts and amendments were enacted by Parliament upon the recommendation of the Law Reform Committee.

The permanent members of the Law Reform Committee are as follows:

- Attorney General & Minister of Justice
- Minister of Police
- Minister of Health
- Chief Justice
- Chief Secretary and Secretary to Cabinet
- Solicitor General
- Senior Crown Counsel
- President of the Tonga Law Society
- Law Reform Committee Secretary

Depending on the issues under discussion, the Committee has the ability to co-opt members to assist with their deliberation. The Committee continues to form an integral part in the legislative process.

1.3 OFFICE

The Department continues to be located in the Roy Cocker Building, Fatafehi Road, Nuku'alofa. The Department occupied half of the first and one quarter of the second floors of the building.

The Department consisted of 13 rooms used as offices, one library and a conference room.

1.4 ESTIMATE

The estimated budget expenditure of the Department for the 2000/2001 financial year was \$292,730.

2. STAFF

2.1 STAFF AS AT 31 DECEMBER 2001

In January 2001 the Department had a total of 18 established staff. Eleven (11) of those staff made up the legal staff, and the remaining seven (7) made up the support staff.

The legal officers hold law degrees from various universities in New Zealand, Australia and the United Kingdom and, two are graduates of the University of the South Pacific. All the legal officers have been admitted to practice law in the jurisdictions where they studied and also here in Tonga.

The support staff carried out mainly administrative and clerical duties.

Both the legal and support staff contributed well to the efficient operation of the Department during 2001.

By 31 December 2001 the staff was reduced to 14. Listed in Schedule 1 are the staff members of the Department as at 31 December 2001.

2.2 STAFF MATTERS

In January 2001, Mr. 'Otenili Taufatofua, Interpreter was dismissed from the Civil Service.

On 24 March 2001, Mr. John Cauchi, Senior Crown Counsel ended his employment with the Department after the expiry of his contract under the Australian Staffing Assistance Scheme. Mr. Cauchi had been with the Department since 1996.

On 25 April 2001, Mr. Semisi Tapueluelu, Assistant Senior Crown Counsel resigned. Mr. Tapueluelu had served the Department for 4 years. He migrated to New Zealand.

On 27 June 2001 the following promotions were approved:

Mrs. Linda Folaumoetu'i, Assistant Senior Crown Counsel was promoted to the post of Senior Crown Counsel

Mr. 'Aminiasi Kefu, Crown Counsel was promoted to the post of Assistant Senior Crown Counsel.

Miss Sela Tupou, Assistant Crown Counsel was promoted to the post of Crown Counsel.

Mr. 'Ofa Pouono, Assistant Crown Counsel was promoted to the post of Crown Counsel.

Mr. Posesi Bloomfield, Assistant Crown Counsel was promoted to the post of Crown Counsel.

On 1 August 2001 Mr. Tevita Havea, Crown Counsel, was transferred to the Ministry of Civil Aviation. Mr. Havea had been employed in the Department for 5 years.

In August 2001, Mrs. Fe'ofa'aki Bogidua, Clerk/Typist Grade III resigned. She had

served the Department for 2 years.

On 1 September 2001 Mr. Posesi Bloomfiled, Crown Counsel was transferred to the Ministry of Marine & Ports to work at the Tonga International Registry of Ships office in Piraeus, Greece.

2.3. REGIONAL & INTERNATIONAL CONFERENCES

In 1999, members of the legal staff attended various regional and international conferences representing Government.

The following is a summary of the various meetings the legal staff attended:

February

Mrs. Linda Folaumoetu'i, Assistant Senior Crown Counsel attended a workshop by SPC/UNESCO/PIF for Legal Experts on the Protection of Traditional Knowledge and Expressions of Culture held in Noumea, New Caledonia.

March

The Solicitor General attended a Conference on Key Development in Corporate Law and Equity which was held in Melbourne, Australia.

Mr. 'Aminiasi Kefu, Crown Counsel and Mr. Posesi Bloomfiled, Crown Counsel attended a Litigation Skills Programme held under the Pacific Islands Law Officers Meeting (PILOM) sponsorship. Funding however was provided by New Zealand under the New Zealand Overseas Development Aid.

Mr. Tevita Havea, Crown Counsel attended the 2001 UNSCINCPAC Military Operations and Law Conference held in Honolulu, Hawaii.

May

The Solicitor General attended the Global Forum on Fighting Corruption and Safeguarding Integrity II which was held in the Hague, Netherlands.

Miss Sela Tupou, Assistant Crown Counsel attended a workshop on Juvenile Justice organised by the UNICEF Pacific Regional Office held in Nadi, Fiji.

July

The Solicitor General attended the Intergovernmental Expert Group Meeting on the proposed United Nations Convention against Corruption held in Vienna, Austria.

August

The Solicitor General attended the Reform of Criminal Law Conference which was held in Canberra, Australia.

September

The Solicitor General and Mrs. Folaumoetu'i attended the 6th Annual Conference and General Meeting organised by the International Association of Prosecutors (IAP) held in Sydney, Australia.

October

Mrs. Folaumoetu'i attended the Senior Law Officers and Law Ministers Meeting held in London, United Kingdom.

Mr. Kefu attended the 20th Pacific Islands Law Officers Meeting (PILOM) held in Sigatoka, Fiji.

2.4 CONTINUING LEGAL EDUCATION

In 2001 the Department was not allocated any scholarships for both under-graduate and post-graduate legal training. However one student under the Department's sponsorship was completing her under-graduate law degree at the University of Otago, New Zealand. She is expected to join the Department in 2002.

As for continuing legal training for present staff, the Department was able to send Messrs. Kefu and Bloomfield, Crown Counsels to the PILOM Litigation Skills Programme. This training was fully funded by the New Zealand Overseas Development Aid (NZODA).

In November 2001 Mrs. 'Alisi Taumoepeau, Senior Crown Counsel resumed duty after completing her Doctorate of Laws degree at Victoria University, Wellington, New Zealand.

3. LEGAL ADVICE

The Department continued to provide legal advice to various Government Ministries and Departments. The various topics included opinions on company documents, memorandums of understandings, international conventions, and employment.

The Department issued a total of 972 written communications. Of those written communications 191 were strictly legal advice provided to Government. Oral advice was given where appropriate but is discouraged within the Department. The remainder of the communications related to administrative matters for Court cases and staff.

The main Government Departments/Ministries that requested and received legal advice from the Department were the Prime Minister's Office, Ministry of Foreign Affairs, Ministry of Labour, Commerce & Industries, Ministry of Finance, Ministry of Lands, Survey & Natural Resources, Ministry of Marine & Ports, Ministry of Police, Ministry of Education and Ministry of Justice.

Other Government Departments/Ministries received legal advice but at a lesser number. Schedule 2 contains a breakdown of the number of legal advice issued.

4. LEGISLATION

4.1 2001 ACTS OF PARLIAMENT

The Legislative Assembly enacted the following legislation in 2001:

1. 2000/2001 Supplementary Appropriation Act, 2001

This Act provides for the appropriation of money from the General Revenue and other funds of the Kingdom to supplement the expenses of Government for the financial year 2000/2001.

2. 2000/2001 Supplementary Appropriation Act (no. 2) 2001

(Official Printing yet to be finalised.)

3. Therapeutic Goods Act 2001

(Official Printing yet to be finalised.)

4. Nurses Act 2001

(Official Printing yet to be finalised.)

5. Medical and Dental Practice Act 2001

(Official Printing yet to be finalised.)

6. Pharmacy Act 2001

(Official Printing yet to be finalised.)

7. Health Practitioners Review Act 2001

This Act establishes the Health Practitioner Review Council. The Council is given power to review decisions of the Boards established to register Health practitioners and also decisions of the Boards regarding complaints and disciplinary proceedings and for ancillary purposes.

8. Mental Health Act 2001

(Official Printing yet to be finalised.)

9. Education (Amendment) Act 2001

This Act amends section 42(1) of the Education Act (Cap 86) which provides for the composition of the Scholarships Committee.

10. Commissioner for Public Relations Act 2001

This Act establishes the Office of the Commissioner for Public Relations and matters related thereto.

11. Drugs and Poisons (Amendment) Act 2001.

This Act amends the Drugs and Poisons Act (Cap 79) by repealing Part I of the Act which deals with the Sale of Drugs and Poisons and, Schedules A, B and C.

12. Interpretation (Amendment) Act 2001

This Act amends section 31(1) of the Interpretation Act (Cap 1) by increasing the fines that Corporations may incur when they are found guilty of offences where the penalty is a term of imprisonment only.

13. Bank of Tonga (Amendment) Act 2001

This Act amends the Bank of Tonga Act (Cap. 105) to reflect the purchase by Westpac Banking Corporation of Bank of Hawaii International Inc.'s shares in the Bank of Tonga.

14. Magistrates (Amendment) Act 2001

(Royal Assent was refused for this Act)

15. Supreme Court (Amendment) Act 2001

(Royal Assent was refused for this Act)

16. Court of Appeal (Amendment) Act 2001

(Royal Assent was refused for this Act)

17. Criminal Offences (Amendment) Act 2001

(Official Printing yet to be finalised.)

18. Off-Shore Banking (Repeal) Act, 2001.

This Act repeals the Off-Shore Banking Act (Cap. 110).

19. Maintenance of Illegitimate Children (Amendment) Act 2001

This Act amends the Maintenance of Illegitimate Children Act (Cap. 30) by inserting a section 21 which allows the Chief Justice to make rules of procedure and practice in relation to the adoption of illegitimate children.

20. Official Secrets (Amendment) Act 2001

(Royal Assent was refused for this Act.)

21. Immigration (Amendment) Act 2001

This Act amends the Immigration Act (Cap. 62) by inserting section 13A. This section requires every airline operating in the Kingdom to distribute arrival cards to its passengers disembarking in the Kingdom and to request them to complete those cards. Airlines who breach this section may be liable upon conviction to a fine not exceeding \$10,000.

22. Methylated Spirits Act 2001

(Official Printing yet to be finalised.)

23. Shipping (Amendment) Act 2001

(Official Printing yet to be finalised.)

24. Companies (Amendment) Act 2001

This Act makes various amendments to the Companies Act 1995.

25. 2001/2002 Supplementary Appropriation Act 2001

This Act provides for the appropriation of money for the services of Government for the financial year 2001/2002.

26. Ports Authority (Amendment) Act 2001

(Official Printing yet to be finalised.)

4.2 SUBSIDIARY LEGISLATION

The following were subsidiary legislation promulgated during 2001:

Naturalization (Amendment) Regulations 2001

These regulations make various amendments to the Naturalization Regulations 1996.

Civil Aviation (Passenger Service Charge) (Amendment) Regulations 2001

These regulations make various amendments to the Civil Aviation (Passenger Service Charge) Regulations 1996, as amended.

5. INTERNATIONAL LAW

The Department continued to provide advice to Government in the field of international law.

Schedule 3 lists all the Conventions that Government has signed as of December 2001. This list is based on the files and records on international conventions held by the Department.

Government acceded to the following international treaties and conventions in 2001:

The Agreement establishing the Pacific Islands Forum Secretariat

Pacific Island Country Trade Agreement (PICTA)

Pacific Agreement on Closer Economic Relations (PACER)

World Health Organisation Constitution, Amendments to Articles 24 & 25

Convention on Offences and Certain Act Committed on board Aircraft (1963, (Tokyo Convention)

6. COURT WORK

The legal staff of the Department continued to appear in litigation matters which the Crown was a party.

6.1 THE JUDICIARY

The judiciary continues to be headed by Hon. Gordon Ward, Chief Justice and is assisted by Hon. Anthony Ford, Puisne Judge.

Both judges alternated in sitting in the Supreme Court Circuit in 'Eua, Ha'apai and Vava'u. The Crown had matters in all the Circuits.

The Court of Appeal sat in July and consisted of Justices Burchett and Spender from Australia and Justice Tompkins from New Zealand. All judges are senior and well respected jurists in their respective jurisdictions.

6.2 CRIMINAL CASES

Criminal cases continued to take up most of the Court work of the legal staff. A total of 298 criminal cases were received and 170 of those were able to be dealt with during the year. Most criminal matters received during 2001 were dealt with at first call where the accused pleaded guilty. The main offences are property offences followed by sexual and assault offences. Young offenders dominated the type of offenders, and usually they offended in groups. Also significant during 2001 was that a number of cases were brought by the Crown before the Court of Appeal for appeals against sentences. All the appeals were successful.

6.3 CIVIL CASES

A total of 25 civil claims involved the Crown and 14 of those were closed during the year. In some cases the Crown incurred costs, and in other cases it was awarded costs. Schedule 4 contains a table of the cases where the Crown was awarded costs and which are in the process of being collected. Schedule 5 contains a table of the cases where Government was found liable. Schedule 6 contains a table of the civil cases that were settled during 2001.

6.4 GUARDIAN AD LITEM CASES

A total of 63 cases were received and 26 were closed during the year. Adoption matters continue to take up a significant part of the legal staff's Court work. This involves legal staff making reports on the suitability of applicants for adoption of illegitimate children.

During 2001 a number of applications were made by applicants who reside overseas. Most are Tongan and a few were non-Tongans. The children continue to come from poor backgrounds with natural mothers who are financially unable to raise the child. Also significant is that most of the applicants are related to the natural mothers of the children.

6.5 LAND CASES

A total of 7 cases were received and 4 were closed during the year. There were a few land cases where the Minister of Lands was sued for unlawful registration of allotments. Most of the conflicts were between family members. Further the matters involved previous Ministers of Lands.

6.6 BAILIFF CASES

There were only 2 cases received and both were closed during the year. The legal staff represent the Bailiff Division of the Ministry of Justice when they execute warrants of distress. There are a number of cases that have yet to be finalised.

6.7 INLAND REVENUE CASES

There were no cases from the Inland Revenue Department to recover unpaid taxes. However there are a number yet to be finalised from previous years..

The following are summaries of some of the significant cases in the Court of Appeal and the Supreme Court where the Department's staff represented the Crown:

Rex – v – Timote Tu'itavuki Holani, CA. 6/00

This case involved an appeal by the Crown against the sentence imposed on the accused for manslaughter by negligence. The accused was sentenced to 18 months imprisonment that was suspended for 2 years, subject to the condition that he undertake an alcohol education course and that he abstain from consuming alcohol for 2 years from the date of sentence. His driver's licence was cancelled and he was precluded from obtaining a driver's licence for 3 years.

The accused had consumed alcohol over a lengthy period and was heavily intoxicated, and continued to drive a van at a high speed when his passengers were urging him to stop. He tried to overtake two cars when an approaching car appeared. He then swerved the van to the left and lost control of the van, and collided with a parked van. One of the passengers died as a result of the injuries she received in the collision.

The Court of Appeal held that the suspension of the whole sentence was inappropriate. Too much weight was put on the mitigating factors and not on the seriousness of the offence, and the need for a sentence to demonstrate clearly and beyond doubt to the community that when a serious or fatal injuries are caused by persons driving when intoxicated, a relatively severe penalty must be imposed. The order to undertake an alcohol education programme or to abstain from consuming alcohol is impossible to enforce or police, and the accused did not have an alcohol problem. The sentence should be at the lower end of the scale since this was a Crown appeal. The Court also held that in circumstances similar to the present and with mitigating factors equally persuasive, a longer sentence or a shorter or no period of suspension may be appropriate when sentencing in the Supreme Court.

The Court then allowed the appeal and quashed the sentences in the Supreme Court. The accused was thus sentenced to 18 months imprisonment from the date of the Court's judgment, and that he only serve six months , the balance of which is suspended for 2 years. There was no order for alcohol education course or to abstain from alcohol. The accused's driver's licence was cancelled and precluded from obtaining a driver's licence for three years.

Kingdom of Tonga – v – Loto’a Havea CA. 5/00 / Loto’a Havea – v – Kingdom of Tonga, CA 6/00

The Crown and Havea both appealed against the orders of Justice Finnigan of 31 March 2000 in respect of a claim by a landholder against Government for damage to his land. The Crown appealed against liability to pay damages of \$27,026 and costs. Havea however appealed to increase the damages to conform with a valuation that assessed compensation at \$112,000.

In relation to Havea’s appeal, the Court held that the valuation was not applicable in the land tenure system here in Tonga. Havea’s appeal was thus dismissed.

The Court of Appeal held that it would be wrong to allow both the value of that part of the allotment lost, and the value of the trees. This would amount to an overlap of these damages which are separate torts and so separate damages are due. The Court also assessed that the sum awarded should be the value of what was damaged. The Court thus awarded a total sum of \$18,026, which was made up of \$9526 for damages to the lost surface of the part removed, and \$8,500 for loss of amenity and damage at large. Havea was ordered to pay the Crown’s costs for the appeal.

Minister of Lands – v – Tevita ‘Ameleki a.k.a. Tevita ‘Ameleki Finau, CA. 13/00 / Henele Nai – v – Tevita ‘Ameleki Finau, CA. 13A/00

This case involved an appeal by the Crown against a costs order made by Justice Finnigan in the Land Court when the matter was first heard. Nai however appealed against the substance of the judgment of Justice Finnigan.

At the outset the Crown withdrew its appeal as Justice Finnigan had dealt with the costs order after the appeal was filed. There was thus no issue to be raised in the Crown’s appeal.

The former Minister of Lands had registered a town allotment under the name of Finau. However the Minister cancelled the registration because the estate holder had not signed Finau’s application for an allotment form. The Minister then registered Nai’s application because the estate holder had signed his application.

Justice Finnigan held that this cancellation was unlawful and, that the first registration under Finau’s name was valid. The reason was that the estate holder had committed an inequitable breach of his assurance to Finau that the allotment would be allocated to him. Further, the Minister had breached his duty to consult the estate holder. Also, the Minister had failed to ascertain whether other land was available for Nai in the estate he was living on as required under section 50 of the Lands Act.

The Court of Appeal ruled that section 8 of the Land Act does not require the Minister to consult an estate holder prior to a grant of a tax or town allotment, but he may do so. Therefore a lack of consultation should not render invalid and void the grant of a tax or town allotment.

The reasons given was that the Minister is the representative of the Crown to grant allotments to subjects, and so it would be inconsistent to hold that lack of consultation with an estate holder should mean any grant by the Minister on behalf of the Crown is invalid. Moreover, the Minister has the sole authority to grant allotments and the requirement to consult is a procedural step. Further, a lack of consultation should not invalidate the grant of an allotment. Lastly, section 34(2) requires consultation but this only applies to tax allotments.

The town allotment was thus ordered to be registered under Finau's name. Costs was awarded against the Crown and Nai.

Robert James Wall – v – Rex, CA. 31/00

This case involved an appeal by the accused against his sentence after he pleaded guilty to 11 counts of embezzlement. He was sentenced to 5 years imprisonment on each count concurrently, and 12 months to be suspended for 2 years

The accused was an employee of MMI Services Pty Ltd, an Australian insurance company. He was given authority to sign cheques together with a member of Insurance Corporation of Tonga, MMI's agent in Tonga. The accused had told the ICT representative to sign blank cheques for payment of policy holders. However the accused cashed the cheques and used it for his personal use. The accused used up \$181,008 in total.

The Court of Appeal held that an appropriate sentence in this case is 5 years imprisonment. A reduction for a guilty plea should be stated by the sentencing judge. The Court held that a reduction of one year for the guilty plea is appropriate. The Court also agreed that the accused was unlikely to re-offend and so a suspension period is warranted.

The accused was thus sentenced to 4 years imprisonment on each count to be served concurrently, and the last 12 months of the sentence to be suspended for 2 years from the date of release.

Siaki Jagroop – v – Le'o Soakai & Kingdom of Tonga, CA. 7/01

This case involved an appeal by Jagroop against a ruling by the Chief Justice striking out his claim of negligence against the Ministry of Police.

Jagroop was tricked into giving money to a Teg Rajan. Rajan was later apprehended by the Police on a charge of obtaining money by false pretences and

his passport was confiscated by the Police. The Police then informed Jagroop that the charge against Rajan would be prosecuted. The Police however did not proceed with the prosecution and they returned Rajan's passport. Rajan was then returned to Fiji on the basis that his visa had expired. Jagroop then filed a claim for negligence against the Police for the lost of opportunity to recover his money from Rajan. The Crown however applied for a strike out and the Chief Justice granted the application.

The Chief Justice ruled that the claim was in conflict with the principle which protects from the imposition of a duty of care the function of the police in the investigation and the prosecution of crime. The Chief Justice also added that even if a duty of care did arise, the claim would be excluded upon grounds of public policy.

The Court of Appeal ruled that there is a qualification where the Police have assumed responsibility. In this case the police advised Jagroop that they would prosecute and leave everything for them. Evidence to that effect could well lead to a finding of an assumption of responsibility by the Police which induced Jagroop to refrain from taking steps to recover his money. The Court again reiterated the legal principle that if a cause of action may possibly succeed, he is entitled to pursue it. Further, decisions on strike out should be on the basis of actual facts and not hypothetical facts.

The Court thus allowed the appeal, and so the claim was reinstated for trial. Costs was awarded against the Crown.

Rex – v – Surendra Naidu, CA. 24/01

This case involved an appeal by the Crown against the sentence imposed on the accused for forgery and knowingly dealing with forged documents. The accused was sentenced to a fine of \$4,000 for forgery and, \$3,000 for the knowingly dealing charge.

The Crown appealed these sentences because they were considered inadequate, do not reflect the level of criminality, nor the abuse of trust the offences involved, and it failed to give consideration to the need for general deterrence, particularly in respect of offences that are difficult to detect.

The Court of Appeal held that offences of this kind involve abuse of trust warrant a custodial sentence. The Court directed that the sentences imposed in the Supreme Court be confirmed, and that the accused pay compensation of \$14,100 to his employer, in default of which he shall serve 6 months imprisonment.

Attorney General – v – Saulala and others, Cr. 10/01

This case involved a charge of criminal contempt against comments made in a television broadcast . The charges claimed that the Defendants had made comments which were likjely to prejudice the due administration of justice by interfering with or affecting the fairness of the trial of a civil action brought by the Minister of Police against the *Taimi 'o Tonga* newspaper.

Before the matter proceeded to trial the Defendants made an application to strike out the matter on the grounds that there was no sufficient particulars to allow the Defendants to know with any precision the allegation against them.

The Court then raised the issue that it had to know the particulars of the civil case, and there was no evidence of that. The Crown submitted that under the case of Craven – v – Smith (1869) LR 4Exch 146 the Court could take judicial notice of the pleadings of the civil case because it was a Court record.

The Chief Justice did not accept this. He held that the Court should not take notice of evidence which requires proof by evidence in the normal way and thus remove a party's obligation to produce it. The Court therefore ruled that the Crown by failing to produce the pleadings or other sufficient evidence of the civil proceedings in the civil case, had failed to establish a sufficient case for the Defendants to answer. The charges were thus dismissed.

Rex – v – (1) 'Ofa Simiki (2) Vika Pulini, Cr. 49-50/01

The Defendants were charged with the criminal defamation of the Minister of Police. The accused had drawn up a petition where allegations were made against the Minister of Police that he had collected money from a Chinese storekeeper in the early morning hours and, that he stamped visas at his residence

The Defendants relied on a defence that their actions were protected under sections 9 (absolute privilege) and 10 (qualified privilege) of the Defamation Act. The Crown argued that their actions were outside section 9 because the defamatory statements were made verbally in a public meeting and, that there was no petition to the King at that time.

The Chief Justice ruled that the statements by the Defendants were protected by section 9 and so the action was therefore not maintainable. The Chief Justice reasoned that the Defendants were charged with preparing a petition to the King and on the evening of the incident they were required to read out the final draft of the petition, and the exact words of the petition was read out.

Rex – v – Mateni Tapueluelu, Cr. Appeal No. 6/01

This was a criminal appeal against the interpretation of the procedure for charging someone with criminal defamation. The Defendant was charged with the criminal defamation of the Minister of Police.

In the Magistrates' Court the Police Prosecutor had submitted that the matter cannot be committed to the Supreme Court because according to an amendment to section 8 of the Defamation Act (Act No. 27 of 2000) criminal defamation cases could only be dealt with in the Magistrates' Court and that the defendant was not entitled to a jury trial. The Magistrate did not accept this and ruled that the Defendant was entitled to a jury trial. The Crown appealed to the Supreme Court.

The Supreme Court held that the Crown's position was inconsistent with clause 99 of the Constitution where the law of jury trial shall never be repealed. Clause 11 also provided that every person charged with an offence shall, if he so elect be tried by a jury. The Court ruled that although the charge may be dealt with in the Magistrates or Supreme Court, clause 99 of the Constitution provides that any such offence is, in fact, an indictable offence triable in the Supreme Court and clause 11 enshrines that right.

The appeal was thus dismissed and the matter was remitted for preliminary inquiry, and that the Defendant is entitled to a trial by jury in the Supreme Court.

SCHEDULE 1

Crown Law Department Staff as of 31 December 2001:

Attorney General & Minister of Justice ***Vacant***

Solicitor General

‘Aisea H. Taumoepeau

LL.B (NZ), LL.M (Melbourne), Barrister & Solicitor of the High Court of New Zealand, Law Practitioner (Tonga)

Senior Crown Counsel (2)

‘Alisi N. A. Taumoepeau

LL.B, LL.M (Hons)(NZ) MA (CM), Dip. Litigation Skills, Barrister & Solicitor of the High Court of New Zealand, Law Practitioner (Tonga)

Linda S. Folaumoetu’i

B.A. LL.B (NZ), LL.M(Melbourne) Dip Litigation Skills, Barrister & Solicitor of the High Court of New Zealand, Law Practitioner (Tonga)

Assistant Senior Crown Counsel (2)

‘Asipeli ‘A. Kefu,

LL.B (NZ), Barrister & Solicitor of the High Court of New Zealand, Law Practitioner (Tonga)

Vacant

Crown Counsel (4)

Sela L. L. Tupou,

B.A., LL.B (NZ), Barrister & Solicitor of the High Court of New Zealand, Law Practitioner (Tonga)

‘Ofa Pouono

LL.B (Fiji), Dip. Legal Practice (Fiji), Barrister & Solicitor of the High Court of Fiji, Law Practitioner (Tonga)

Vacant

Vacant

<i>Assistant Crown Counsel (2)</i>	Sione Sisifa <i>LL.B (Fiji), Dip. Legal Practice (Fiji), Barrister & Solicitor of the High Court of Fiji, Law Practitioner (Tonga)</i>
	Vacant
<i>Assistant Legal Officer (2)</i>	Vacant
	Vacant
<i>Assistant Secretary</i>	Vacant
<i>Senior Interpreter</i>	Seinimili T. Fonua <i>Dip. Legal Studies (Fiji)</i>
<i>Interpreter</i>	Vacant
<i>Assistant Interpreter</i>	Vacant
<i>Computer Operator Grade I</i>	Silia P. T. Tokai Simaili Ma'ake
<i>Clerk Class I</i>	Taufa 'Otuhouma
<i>Clerk/Typist Grade II</i>	Katalina F. Leha
<i>Clerk/Typist Grade III</i>	Vacant
<i>Drivers</i>	Suiti Leilani Fekau
	Vacant
<i>Housekeeper</i>	Kalo Lea'aekovi

SCHEDULE 2**Legal Advice Issued during 2001**

GOVERNMENT DEPARTMENT/MINISTRY	NUMBER OF LEGAL ADVICE ISSUED
Prime Minister's Office	39
Ministry of Foreign Affairs	29
Ministry of Labour, Commerce & Industries	24
Ministry of Finance	23
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Tonga Visitors Bureau	2
Ministry of Fisheries	2
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Ministry of Works	1
Audit Department	1
Office of the Commissioner of Public Relations	1