

Sir Owen Woodhouse

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The great liberal jurist and reformer, Sir Owen Woodhouse, died in Auckland on the 15th April at the age of 97. I last visited Sir Owen late last year not long after he had fallen and broken his femur. He recounted how the ambulance attendant, concerned to ensure he was aware of assistance available, had asked him if he “knew about ACC”? With his usual quick humour Sir Owen responded “I invented it”. The attendant took some convincing but, after a quick social history lesson, left with Sir Owen’s autograph. This anecdote is a reminder that many New Zealanders are not aware of his role in the radical reform which resulted in the establishment of our accident compensation scheme, and which we now take for granted as a key public institution.

Sir Owen chaired the Royal Commission of Inquiry for Personal Injury in New Zealand from 1966 to 1967 which, in what became known as the Woodhouse Report, recommended the abolition of the right to sue in the courts and the establishment of a national no fault compensation scheme. This was a radical move, described by the *American Journal of Comparative Law* as “an unparalleled event in our cultural history, the first casualty among the core legal institutions of the civilised world”. The surrender of the right to sue, in exchange for entitlements under ACC, has been described as a “social contract”. Sir Owen’s view was that the common law negligence action was a form of lottery and that a national no-fault scheme would enable seriously injured people, without proof of fault against some other person, to be provided with compensation approaching common law damages. Neither major political party has ever challenged the validity of the Woodhouse founding principles of Community Responsibility, Comprehensive Entitlement, Complete Rehabilitation, Real Compensation and Administrative Efficiency.

The foresight of Sir Owen and his fellow commissioners is also reflected in other lesser known recommendations in their report which included making the wearing of seat belts compulsory and requiring farm tractors to be fitted with safety frames. More broadly, they rejected experience rating of employer levies (on the basis that there was no international evidence that they had any significant positive effect on safety) in favour of the Swedish approach of active co-operation between management and workers, and between business and unions. This approach has been adopted in law since 2003 with ACC funding of workplace Health and Safety Representatives, and is now being strengthened in the Health and Safety Reform Bill following the strong endorsement of tripartism and worker participation in workplace health and safety by the Independent Task Force which arose out of the Pike River Disaster.

It was disappointing that the 40th anniversary of ACCs inception passed on the 1st April 2014 without any official acknowledgement of its founder. Working as a lawyer representing injured workers under the old system, I am very conscious of the huge benefit which ACC

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has provided to the millions of New Zealanders who have suffered accidental injury in the 40 years since the scheme came into effect, and I am sure that gratitude would be shared by other New Zealanders.

Sir Owen was always adamant that injured workers, and the nation would have been better served had his recommendations been implemented in full. I was surprised in 1980, the morning after I had been reported in the Wellington "Evening Post" bemoaning the inadequacy of ACC lump sum compensation for seriously disabled railway workers I represented, to receive a call from the Court of Appeal. It was Justice Woodhouse with a gentle rebuke for supporting lump sum compensation and providing my first lesson on the benefits for workers of delivering compensation for non-economic losses through a weekly pension assessed on loss of earning capacity. He remained willing, throughout his life, to join conferences and meetings on ACC issues and always captivated the audience with his eloquence, charm and humour.

ACC has not yet quite achieved the potential which Sir Owen envisaged, but it has survived a political era when "community responsibility" seemed like a vanishing value. It remains admired around the world as the ideal which many other countries aspired to, but which vested political interests denied them. Many may not know that, at the request of the Whitlam Government, Sir Owen developed a similar scheme for Australia which would have been implemented had it not been for the dismissal of that government in the constitutional crisis of 1975.

Sir Owen's view of accidents as complex events may have been hard to grasp 45 years ago but is certainly more readily understood today in a world where there is daily debate about the disabling effects of poor work organisation, and the health effects of toxic exposures, both in the workplace and the general environment. His recommendation was that the highest priority be given to the promotion of safety. He returned to this theme as President of the Law Commission in its 1988 report which, most notably, promoted a comprehensive disability scheme for the victims of disabling disease as well as accidents.

Sir Owen was a liberal judge with a strong social conscience who was influenced by his personal experience of major events of his era, such as the Napier Earthquake, the Great Depression and the Second World War. He served in the Royal Navy and was awarded a Distinguished Service Cross for naval operations. He was a progressive and compassionate judge and, as the Law Society has noted in its tribute, was the most liberal judge of the Court of Appeal to ever become its President.

The influence of his beloved wife, Peggy, was frequently mentioned with gratitude. They met when he was 16, and Sir Owen noted in his memoir that "Our marriage has been my life". It was wonderful to see his large extended family at All Saints Cathedral on the 30th April sharing their recollections, and celebrating the life of their remarkable father, grandfather and great-grandfather, a truly great New Zealander.