

NEW ZEALAND COURT OF APPEAL:
JUDGMENT IN *CONTROLLER AND AUDITOR-GENERAL V.*
*SIR RONALD DAVISON**

(Denial of Sovereign Immunity; State and
Private Actions; Public Policy Considerations)

[February 16, 1996]

+Cite as 36 I.L.M. 721 (1997)+

Introductory Note

by

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On February 16, 1996 the New Zealand Court of Appeal rendered judgment on three applications for judicial review arising out of what had come to be known in New Zealand as the "Winebox Inquiry". The Inquiry began as the result of certain documents being tabled (in a winebox) before the New Zealand House of Representatives. It was alleged that the documents implicated several New Zealand companies in the evasion of New Zealand income tax by the use of the Cook Islands as a tax haven, and that the New Zealand Inland Revenue Department and Serious Fraud Office had been incompetent at the least in failing to detect and prevent the abuse.

The alleged transactions were exemplified by one which was referred to as the "Magnum transaction". It involved several subsidiaries of the European Pacific Group of Companies. One subsidiary paid \$881,582 (New Zealand dollars) in tax to the Cook Islands Government on behalf of another subsidiary. A tax credit for that amount was issued by the Cook Islands Government and used to offset New Zealand income tax. At the same time, a third subsidiary sold a \$10,000,000 promissory note to the Cook Islands Government for \$10,881,582. A fourth subsidiary then bought the promissory note from the Government for \$10,050,000. The result was that all the tax, except for \$50,000, was in substance repaid. These transactions were not disclosed to the New Zealand Inland Revenue Department.

A commission was constituted to inquire into whether the New Zealand Inland Revenue Department and Serious Fraud Office had acted lawfully, properly and competently, and whether any changes were required to New Zealand law to protect New Zealand's tax base from the effects of fraud, evasion and avoidance. The Right Honorable Sir Ronald Davison, a retired Chief Justice of New Zealand, was appointed as sole Commissioner of Inquiry. The three

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[*Bruce Smith, Paul S. Hudson et al. v. Socialist People's Libyan Arab Jamahiriya*, November 26, 1996, U.S. Court of Appeals, Second Circuit, appears at 36 I.L.M. 100 (1997); *Hugo Princz v. Federal Republic of Germany*, July 1, 1994, U.S. Court of Appeals, D.C. Circuit, appears at 33 I.L.M. 1483 (1994); *Letelier v. Republic of Chile*, November 5, 1980, U.S. District Court for the District of Columbia, appears at 19 I.L.M. 1418 (1980), and *Trendtex Trading Corporation v. Central Bank of Nigeria*, January 13, 1977, Court of Appeal of England and Wales, appears at 16 I.L.M. 471 (1977).