

(Taylor, P., 2006)

[Home](#) / [New Zealand](#) / [Crime](#)

Lawyers lose their cloak of immunity



By [Phil Taylor](#), Phil Taylor

29 Sep, 2006 06:04 PM ⌚ 9 mins to read

David Watt

Barristerial immunity - it sounds like an inoculation against a nasty affliction. Well, if you were a barrister, in a way it was.

It is the law which has protected barristers from being sued for negligence since Napoleon was touring Europe, and which our Supreme Court swept away this month in a unanimous five-judge decision.

The judges, headed by Sian Elias, saw no reason for lawyers to have such protection when other professions charged with a duty of care did not.

The judges described it as an "anomalous immunity". Its abolition was "long overdue", said Justice Ted Thomas.

They have the support of Law Commission president Sir Geoffrey Palmer, who applauds the elimination of an anachronism.

Palmer says he hopes Parliament will leave this new piece of case law alone. "It was an exception to the general law and now that exception is not found to be justified, it seems to me, that's fine."

Arguments that it would open the way for unreasonable or vexatious clients to blame their lawyers for a lost case, or that barristers might consequently become overly cautious for fear of making a mistake, haven't gained much support.

Processes exist to strike out unmeritorious claims and, says Palmer, competent barristers have nothing to fear.

"I don't think it is going to make much difference. People do the best they can usually and they have to meet a proper standard of care. The standard of a reasonable lawyer, not a super human standard. That's no different than for doctors or accountants or anyone else."

Australia recently decided to retain the immunity, which makes it the odd one out. New Zealand's move puts us in step with England, which removed immunity six years ago.

P England, notes Palmer, "hasn't seen the heavens fall in". Only a few negligence claims have been brought before the English courts.

In the one case so far determined, the House of Lords ultimately ruled the lawyer could not be found solely responsible for the disappointing outcome for her client.

What might a lawyer have to do to be sued for negligence? It would have to be a