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Supplementary Submission to the Justice and Electoral Select Committee on the Supreme Court Bill

Introduction
While members of the National Council of Women of New Zealand (NCWNZ) were asked to express general comment on the proposal to establish a Supreme Court of New Zealand through the regular NCWNZ newsletter, *The Circular*, it was not possible to obtain responses from the wider membership to these specific questions posed later by the Select Committee.

The following responses are put forward by the NCWNZ Public Issues Standing Committee - nucleus committee, and several other members, known to have a particular interest in the issue. The answers received reveal a stronger bias toward the retention of the Privy Council than was registered in the more general consideration of the proposal.

1. Should the right of appeal to the Privy Council be abolished, maintained or extended?
NCWNZ does not have a consensus opinion on this, and perhaps while the views of interest groups in the legal, political and general community are still very polarised, it is unwise to proceed with the abolition clause in the Supreme Court Bill.

Members who supported the retention of the right of appeal to the Privy Council were consistent with many of the views expressed by the Law Society. The following points were repeatedly made:

(i) NZ has a small population and already has some problems in finding enough suitably qualified lawyers to sit on the bench of the High Court and Court of Appeal.
(ii) Our small population also makes the matter of complete impartiality more difficult
(iii) There is already opportunity for New Zealand's culture to be adequately represented as when a NZ case comes before the Privy Council, those New Zealand Judges with the appropriate intellectual rigor, for example Lord Cooke of Thorndon, have been invited to be members of the Privy Council. The opportunity for Judges of the Appeal Court to participate in sittings of the Privy Council must have enhanced the delivery of justice in this country. The issue of intellectual rigor was raised by several respondents one of whom, a lawyer, said :

"As I understand it all New Zealand Counsel who have ever appeared before the Privy Council have been impressed with the calibre of the Privy Counsel, the intellectual rigor of the Law Lords and their ability to grasp New Zealand issues and if appropriate to refer them back."

This is supported by Antonia Fisher, writing in the Auckland Women's Lawyers' Association (AWLA) Newsletter of September 2002, on her appearance before the Privy Council on behalf of Patient A in the case against Dr Bottrill described it as "an amazing experience". She went on to say "They were incredibly astute and had no difficulty appreciating the nuances of the New Zealand ACC scheme and its implications. The intimacy of the room encouraged discussion rather than formal Submissions and Patient's A case ended up being a lively intellectual debate on where the Court of Appeal went wrong and what the

Law should be in New Zealand ..... The Lordships approach the case afresh..... At one stage Lord Nicholls summarized a point I was grappling with in a beautifully succinct way and asked me if that was what I was suggesting".
Note: (AWLA is a member of NCW Auckland).

(iv) The specific issue of Maori rights was also raised. It is understood that, because the issue of sovereignty in the Treaty of Waitangi was contracted with Queen Victoria, Maori wish to maintain the option to appeal to the Privy Council.

(v) It is acknowledged that appeal to the Privy Council is hugely costly but so is the cost of going before the Court of Appeal, or any court, for that matter, as would be the cost of establishing and maintaining a Supreme Court.

2. If it is abolished, should New Zealand consider forming an international appeal court available not only for New Zealand, but also for other South Pacific and other Commonwealth nations?

Some respondents felt that this would not be practicable as even smaller populations have different forms of law. It would need the most astute legal minds and to operate very much on the lines that the Privy Council does and, as it would be establishing an Appellate Court outside New Zealand, it was reinventing the wheel anyway. Concerns about costs and unnecessary duplication were also raised. It was thought that until New Zealand became republic the existing appellate legislative framework should be used.

However, several respondents did support the establishment of an international Appeal Court favouring a South Pacific one with Judges drawn from the New Zealand Supreme Court and South Pacific equivalents, noting that New Zealand Judges already sit on higher courts in a number of Pacific countries.

3. If such an appeal court was established, what shape should it take? How and to what extent could the proposed Supreme Court be adapted to meet that role?

The most logical and cost effective model would be to sit in the country of the dispute and for judges to be drawn from an international pool which has been established on previously-agreed criteria.

If the proposed Supreme Court is to be adapted to include international appeals then the current Bill cannot be considered in its present form and will have to be significantly redrafted.

However, there was a very low response to this question as most respondents had rejected this concept.

Concluding Remark
Again, it should be noted, that the viewpoints expressed in this supplementary submission arose from a comparatively narrow consultation hence it should be considered by the committee in conjunction with the original submission written on this Bill (S03.20).

Beryl Anderson
National President

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