



National Council of Women of New Zealand

Te Kaunihera
Wahine O Aotearoa

National Office
Level 4 Central House
26 Brandon Street
PO Box 25-498
Wellington 6146
(04) 473 7623
www.ncwnz.org.nz

11 April 2003

S03.20

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

Introduction

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 42 nationally organised societies. It has 34 branches spread throughout the country to which women from some 150 societies are affiliated. The Council's function is to serve women, the family and the community at local, national and international level through research, study, discussion and action.

General Comments

NCWNZ has made submissions on judiciary- related matters including a submission on the Law Commission Discussion Paper No 4 The Structure of the Courts, December 1987, and Government Discussion paper Reshaping New Zealand's Appellate Structure, December 2000. Our views have reflected a desire for our own Courts to determine our own cases because of their awareness of our political, social and economic background. We recently surveyed all members again on the question of the establishment of a second-tier appellate Court in New Zealand, i.e. a Supreme Court. A slight majority of respondents gave cautious support for the concept and for the public policy objective of this Bill "To enhance access to justice for all New Zealanders to a fully indigenous appellate structure, which reflects New Zealand Society and is domiciled in New Zealand".

However, concerns raised by members about this Bill, even those who support the concept, centre on the issues of impartiality, the appointment process and the costs.

Part 1

Supreme Court of New Zealand

Clauses 17-22: *Constitution of Court*

On the matter of the appointment process, the Law Commission Discussion Paper No 4 The Structure of the Courts, December 1987, paragraph 110, stated that the creation of a Supreme Court would face problems of finding additional judges of the quality required and the small volume of work available for such judges. Clauses 17-22 of this Bill appear to address this potential problem, as does the authority for cases not currently permitted to proceed beyond the Court of Appeal, but do not allay our concerns at the small number of judges involved and the inevitable interconnectedness of this small and specialised judicial population. Support was given to the concept of having at least one "external" judge, i.e. someone not currently presiding in the New Zealand High Court, but with expertise in New Zealand Law including the constitutional significance of the Treaty of Waitangi. It was suggested that a pool of such judges could be drawn from those countries mentioned in the explanatory note to the Bill and with whom we share a common law tradition such as the United Kingdom, Australia and Canada.

Clause 42: Ending of appeals to Her Majesty in Council

Those respondents who did not support the abolition of access to the Privy Council suggested that, in a small society such as ours, with overlapping interests and connections, there is a reduced ability to resist political and economic pressures. They also saw the Privy Council as a neutral forum.





Part 2

Amendments, repeals, transitional provisions and savings

We urge careful scrutiny of these procedures, and of the schedules to ensure a smooth transition and to reduce the need to test the legislation through extensive and expensive appeals.

Additional Matter - Cost

Although Part 2 of the Bill includes the heading 'savings' we have been unable to find any reference to this other than in the explanatory notes to the Bill, where net benefit costs and compliance costs are addressed. We are concerned about the generalised tenor of comments such as "there is likely to be a small increase in legal aid expenditure". This suggests that there has been little in-depth cost analysis of this proposal. Our members have raised concerns about both capital and operational costs. Legal aid expenditure is only a small part of the overall cost, being lawyers' fees, not administrative costs. If the true costs are largely to be borne by the litigant, then most individuals will be excluded from accessing the Supreme Court. If the costs are largely to be borne by the taxpayer, the question is raised as to whether more benefit could be achieved for many more people by allocating this money to other areas of the judicial system, e.g. making it possible for court cases, both criminal and civil, to proceed more expeditiously.

Conclusion

NCWNZ continues to take a keen interest in matters pertaining to the proposals to establish a Supreme Court of New Zealand. While giving cautious support to the principle, members feel that all such changes will certainly impose extra and different costs and would urge these to be considered carefully prior to implementation.

Beryl Anderson
National President

Mary Gavin
Convener, Public Issues Standing Committee