

Litigation - New Zealand

Law Commission publishes review of New Zealand courts

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Introduction

The New Zealand Law Commission has released a report on its review of the legislation establishing New Zealand's court system.⁽¹⁾ The review included consideration of:

- the Judicature Act 1908, which established the High Court and Court of Appeal and deals with judicial review;
- the Supreme Court Act 2003, which set up New Zealand's Supreme Court (its highest appellate court); and
- the District Courts Act 1947, which governs the district courts.

The commission was charged with reviewing the legislation with a view to modernising and consolidating it into a single statute. The report contained a number of recommendations. The government recently proposed that it will introduce new court legislation broadly adopting the commission's recommendations later in 2013.

Consolidation

The commission recommended that the three statutes be consolidated into a single statute with the aim of enhancing the accessibility of courts and access to justice. It also recommended a modernisation of the language so that what are currently referred to as 'superior' courts and 'inferior' courts will become 'senior' courts and 'junior' courts, respectively.

Regulation of judiciary

The first recommendation relating to judicial officers was that there should be more transparency in judicial appointments in order to maintain the confidence of the public and prospective applicants. The commission suggested that this occur through:

- publication of the procedure of appointment;
- mandatory consultation with the relevant head of bench, the solicitor general and the New Zealand Law Society and Bar Association; and
- a requirement that the attorney general be satisfied that the appointment is based on merit.

On potential conflicts of interests, the commission reported that there should also be clear provisions preventing judges from taking other employment, unless the chief justice has approved the office as consistent with judicial office. The commission did not see the need for a compulsory register of the

financial interests of judges, as it considered that this would intrude too far on the privacy of the judiciary. It did, however, recommend that there be a statutory obligation on the heads of bench to develop clear rules and processes for recusal based on a common set of principles developed by the judges.⁽²⁾

The commission also recommended that there be a statutory requirement for the chief justice to publish an annual report on the judiciary at the end of each financial year. The report would contain updates on the business of each court. It also recommended a requirement for the publication of a list of reserved judgments for all judges in all courts on the Courts of New Zealand website.

Judicial specialisation

Judicial specialisation has been the subject of debate among the profession and the judiciary in recent years. The High Court currently has a commercial list procedure for commercial matters, which is intended to enable such matters to be dealt with more swiftly than ordinary proceedings. The commission recommended that the commercial list be abolished, but that there should be a panel of commercial judges in the High Court. It considered that judges should spend no more than 50% of their time on panel work. It did not consider that there was a need for any further specialised panels.

Vexatious litigants

The existing procedure for the declaration of a person as a vexatious litigant is little used because of its high threshold. The existing threshold can be satisfied only once a litigant has commenced multiple proceedings without reasonable grounds. As a result, it is a reasonably ineffective deterrent. The commission recommended that the procedure be replaced with a provision establishing three tiers of civil restraint order. The first would be a limited order that could be made by a judge of any court where a party has made two or more applications in a particular proceeding that are totally without merit. The order would restrain the party from making any further applications in that proceeding, without leave of the judge. The second order would be an extended order that could be made in any court where a party has persistently issued claims or made applications that are totally without merit. This type of order would restrain the party from issuing proceedings or making applications concerning any matter involving or relating to the proceedings in which the order is made, except with leave of the court. The third tier of order is a general order that could be made only by a High Court judge where a party persists in issuing claims or applications that are totally without merit and in circumstances where an extended order would not be appropriate. The order would restrain the party from issuing any claim or application without leave from a High Court judge.

New courts legislation

The commission's recommendations were made following extensive consultation with the profession. The justice minister has since released information on the government's proposals for new legislation on the courts. The draft legislation adopts many of the commission's recommendations, including those relating to regulation of the judiciary, judicial specialisation and vexatious litigants. It is aimed at improving the flexibility, responsibility and transparency of the court system. The government intends to introduce the Courts Bill later this year.

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Endnotes

⁽¹⁾ Law Commission *Review of the Judicature Act 1908* (NZLC Report 126, 2012).

⁽²⁾ Please see "Judicial challenge to inquiry into conduct of Supreme Court judge" and "High Court rules in Supreme Court judge conduct case" for commentary on the refusal of a Supreme Court judge to recuse himself in a particular case and his subsequent actions.

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