

**Justice and Electoral Committee
Parliament
Parliament Buildings
Wellington**

20 November 2003

Dear Sir/Madam

Judicial Matters Bill

1. I write this submission on behalf of the New Zealand Council for Civil Liberties. The Council wish to be heard orally on the submission.
2. The Council wishes to address Part 1 of the Bill, Judicial Conduct Commissioner and Judicial Conduct Panel.
3. This part of the Bill is nothing more than an elaborate piece of window dressing, and does not give effect to the Comments of the United Nations High Commissioner for Human Rights of 15 March 2000, made in the context of a complaint regarding a New Zealand Judge to the UN Special Rapporteur on Judicial Independence. (Appendix 1).
4. It would also appear to be nothing more than an unnecessary complication (at least as far as superior courts judges are concerned) to the current unencumbered right of Parliament to impeach a Judge. The right of Parliament rather than the Executive to exercise that power is one that I hope any Parliamentarian would be loath to surrender without full and adequate reasons, of which none are evident here.
5. A cynic might consider this a disguised attempt at making it harder to remove a judge rather than addressing the real problems connected with judicial mistakes of a kind not warranting removal.
4. This Bill does not conform to international norms. New Zealand entered into the First Optional Protocol to the International Covenant on Civil and Political Rights on 26 October 1989. According to the fourth report of the New Zealand Government on its compliance with the ICCPR at para 47

"Use of international human rights norms is not confined to the courts. The Cabinet Office manual (3rd ed, Cabinet

office, Wellington 1996) requires all legislative proposals to have regard to international obligations”

5. To explain what is considered wrong with Bill, firstly I detail a brief summary followed by some specific details:

(a) The Bill does not provide for “*judicial discipline*” merely removal.

There is no sanction other than removal. Given no Judge has ever been removed from office, but Judges have made errors in office which warrant something less than dismissal, one would expect disciplinary sanctions to be provided for. However no provisions are made for a sanction less than dismissal. This raises serious questions as to whether the legislation has any practical purpose;

(b) The removals provisions are a hollow shell, with an elaborate procedure for a Judicial Commissioner and Judicial Conduct Panel whose finding at both stages are subject to the absolute discretion of the Attorney-General as to whether to accept them or not. (Clauses 17 and 33) ;

(c) There is no provision for a complaint and (subsequent removal) of any of the Heads of Bench, eg Chief Justice, President of the Court of Appeal etc.

6. Taking for example the case of Mr S who made a complaint regarding Judge Bouchier of the District Court. (See Appendix 2 and 3). He firstly complained of bias by the Judge to LawAsia¹, the Chairman of the Judicial Section the Chief Justice of Western Australia referred the matter to the UN Special Rapporteur on the Independence of the Judiciary and Lawyers. The finding by the Special Rapporteur included these comments:

“Judge Bouchier’s conduct is tantamount to her having interfered in the administration of criminal justice in the matter, resulting in the integrity of the judge being brought into question. The Special Rapporteur expresses surprise and concern over the fact that there is no procedure in New Zealand to discipline judges for such misconduct. Mere expression of regret by the judge concerned for such misconduct may not help to command respect for the independence of the judiciary. Legislation providing for a disciplinary procedure to deal with complaints against judges with, adequate safeguards as provided in principles 17-20 of the Principles on the Independence of the Judiciary is not inconsistent with judicial independence.”

¹ The Law Association for Asia and the Pacific

6. This legislation does not tackle real issues such as this. The entire Part 1 should be withdrawn and replaced with some legislation of some practical use.
7. The Bill makes numerous references to the NSW Judicial Officers Act 1986, the members of the Committee could do worse than read that Bill to see the obvious structural defects in this one.
8. If we have to be burdened with such a useless and potentially constitutional offensive piece of legislation then some amendments need to be made. In respect of some specific clauses I comment as follows:
 - (a) Clause 4: A new definition of the next most senior judge is required, so that when a complaint is made regarding the Head of Bench that complaint is referred to the next most senior Judge.
 - (b) Clause 15 (h) Whilst a complaint can be made about a current Judge someone no longer a judge is immune. This may be logical if the only remedy is removal, however one wonders why Judges unlike other professionals are immune in this way. If a Doctor for instance has retired, a complaint regarding the treatment received 5 years ago, now discovered, may still be possible as least in the Courts if not before the professional body. I am left in doubt as to if this is not just another cynical example of putting Judges beyond reach by inviting a "resignation".
 - (c) Clause 15(1) Why is this clause in? A previous complaint did not attract the current "remedy" with the potential for publicity. What if the complaint was previously made but not determined, why should the complainant not have the right to withdraw it without compromising a fresh right to exercise a statutory complaint, and what if the complaint was upheld, why cannot the new "remedy" now be applied for?
 - (d) Clause 20(2) needs amendment if the complaint is regarding the Chief Justice.

Is the Chief Justice the correct person to consult? This has the potential to disqualify the Chief Justice from sitting on the panel, which may be preferable in respect of any complaint about a Superior Court Judge. The Attorney-General could for instance consult any Supreme Court Judge. Allegations of Judicial Officers, or the Attorney-General being involved in "panel packing" should be avoided, by careful drafting.

- (e) Clause 29(3) should be repeated as Clause 28(3) also.
- (f) Clause 29(5) a maximum penalty of a \$3,000 fine for “contempt” is pathetically low. A realistic figure would be \$30,000 with power for the amount to be amended from time by regulation rather than statutory amendment.
- (g) Clause 33 (and clause 17) the power of the Attorney-General “*at her absolute discretion*” to decide whether or not to take steps renders the Bill pointless. Why have a Commissioner, and then a 3 person Judicial Conduct Panel if the Attorney-General is free to ignore them?

Yours faithfully

TONY ELLIS
PRESIDENT

for and on behalf of New Zealand Council for Civil Liberties