

TONY ELLIS

BARRISTER

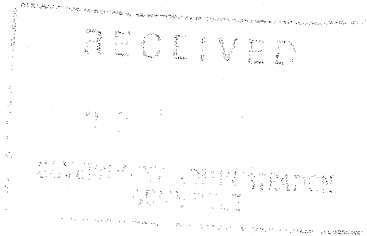
LLB, LLM, FCIS, GRAD, DIP MGT & DIP BUS ST

Wellington Chambers
Level 13
Vogel Building
Aitken Street
P.O. Box 12538
Wellington

Telephone (04) 473 1952
Fax (04) 499 1464
Email ellist@ihug.co.nz

22 July 2005

Justice and Law Reform Committee
Parliament House
WELLINGTON



Judicature Amendment (No 3)

1. I write this submission on behalf of the New Zealand Council of Civil Liberties, and wish to be heard on the submission.
2. The Council welcomes long overdue improvements to the operation of the Court of Appeal.

Number of Judges

3. The number of judges has not been increased since 1987. The proposed increase whilst welcome is insufficient.
4. For example (from my own cases) the Court heard in February 2005, **Savelio v R** one of the original **Taito v The Queen** [2003] 3 NZLR 577 appeals,¹ one of the points taken was undue appellate delay,(ie over 4 years 4 months) the decision has still not been delivered.
5. Equally a pre trial murder appeal has been waiting 5 months for a hearing. The number of permanent Judges of the Court is too small given the increase in workload since 1987.
6. Increasing the potential pool by two, (and as I understand it only appointing one more judge) will not sufficiently increase output. In any event the Court needs to produce quality judgments, not quantity.
7. Members should be aware of the actual way the Court operates. It normally sits in divisions of 3 judges, whilst a full court of 5 Judges is reserved for important cases
8. A civil or more commonly a criminal division will consist usually of one Judge of the Court of Appeal, and two High Court Judges on secondment for a short period from the High Court.
9. As will be seen below it would be far more cost effective to have more permanent judges rather than temporary ones. In any event temporary

¹ Where the Privy Council found the appeal process adopted by the Court of Appeal was unlawful

judges are objectionable being contrary to the principle of judicial independence.

"B" Team.

10. The reality of life is that many in the profession see temporary judges on a three-month secondment to the Court of Appeal, as the "B" team, albeit I have heard much less flattering descriptions.
11. It should not be the case that a criminal appellant) receives a second rate appeal, which a significant number of practitioners believe happens on occasions. (Many more criminal cases are heard by divisions including High Court Judges than civil ones are

Double Dipping

12. Because of the High Court workload, High Court Judges seconded to the Court of Appeal, are partially replaced acting Judges of the High Court.
13. This puts into place a very undesirable practice, of temporary judges contrary to the concept of judicial independence, and also promotes double dipping, where a Judge may receive his/her judicial pension as high as \$180,000 p.a. and then an additional salary of \$283,000 on top of that.
14. This practice is currently under attack in a case to be heard by the Court of Appeal in August.
15. However the practice has eventuated because of the undesirable practice of appointing temporary Judges to the Court of Appeal.
16. There should be a sufficient permanent number of Judges to provide justice fairly to all, and without having to rely on temporary appointments.
17. Undoubtedly some of the judiciary will favour the temporary appointment to the Court of Appeal as a training exercise, but the matter must be approached in principle, who wants to have an appeal heard by a trainee?

Delivery of Court Judgments

18. Again in **Taito** the Privy Council observed that judgments were not being delivered lawfully in accordance with the Judicature Act.
19. The proposed amendment delegates the method of delivery to the Rules Committee.
20. With respect this is far too important a constitutional principle to delegate. Undoubtedly one international principle of importance is that judgments are delivered in public.

21. There is no objection to delivery by the registry of the Court, provided the judgment is duly signed, or otherwise authenticated by the Judges who decide the case.
22. There has on occasions been criticism of some judgments that only one Judge appears to have made the decision, but the judgment is issued in all three names, this may be a function of time, if it is true it is lamentable and sufficient Judges must be appointed to ensure all three pay proper attention to a judgment issued in their names.
23. Minutes and other Court records also appear out of the Court without identifying the Judge or Judges involved. This is far from acceptable.
24. **Lester and Pannick²** state: *The right to public pronouncement of the judgment, like the right to a public hearing, is intended to contribute to a fair trial through public scrutiny.*
25. This is plainly a right parliamentarians should protect.
26. The clause should be rewritten and replaced with a clause along these lines:

Any judgment of the Court may publicly be issued by one or more Judges of the Court, or by the Registrar of the Court.

Yours faithfully



TONY ELLIS

PRESIDENT NEW ZEALAND COUNCIL FOR CIVIL LIBERTIES

² Human L and Practice, 2 ed, LexisNexis UK, 2003, Para 4.6.44

