

Supreme Court Bill

Government Bill

Explanatory note

General policy statement

Overview

This Bill implements Government policy to establish the Supreme Court of New Zealand as New Zealand's final appellate court and to end New Zealand appeals to the Judicial Committee of the Privy Council.

The overarching objective of the Bill is to improve access to justice through—

- improving the accessibility of New Zealand's highest court; and
- broadening the range, and increasing the volume, of appeals considered by New Zealand's highest court; and
- using the greater understanding of local conditions of the Judges of New Zealand's highest court.

The proposals contained in the Bill reflect the results of more than two years of consultation with the community and policy development by the Government. This process began with release of a Government Discussion Paper – *Reshaping New Zealand's Appellate Structure* – in December 2000.

The present proposal for a new final appellate court, at the apex of New Zealand's court structure, emerged from public submissions on that discussion paper. These submissions emphasised the need for a distinct and independent two-tier appellate court structure above the High Court, if New Zealand appeals to the Judicial Committee of the Privy Council were to be ended.

Key features in the design of the Supreme Court were subsequently identified in the report of the Ministerial Advisory Group, established by the Attorney-General and chaired by the Solicitor-General. The report – *Replacing the Privy Council – A New Supreme Court* – was released by the Government in April 2002 (and is available at www.crownlaw.govt.nz).

Summary of key elements

The key elements of the New Zealand Supreme Court are consistent with key features of final appellate courts in comparative overseas countries with a common law tradition, such as the United Kingdom, Australia, and Canada.

Jurisdiction

The Supreme Court will be New Zealand's final appellate court. It will be possible for proceedings originating in any New Zealand court to ultimately reach the Supreme Court. Currently, depending on the particular context, appeal provisions terminate at various levels across New Zealand's courts. In other words, at present, there is no single final appellate court.

As with final appellate courts in comparative countries, virtually all appeals determined in the Supreme Court will be second or subsequent appeals, following a judgment of an intermediate appellate court.

Most appeals made to the Supreme Court will occur following a judgment of the Court of Appeal – New Zealand's principal intermediate appellate court. In practice, most appeals will be resolved at this intermediate appellate level, and therefore the volume of appeals determined by the Supreme Court will be considerably lower than the number determined by the Court of Appeal.

In exceptional circumstances, the Supreme Court may give leave to bring appeals direct from certain decisions of some New Zealand courts other than the Court of Appeal. This special provision will apply only to a proceeding where the appeal on the decision would normally be made to the Court of Appeal. In other words, in exceptional circumstances, an appellant may appeal directly to the Supreme Court and thereby "leapfrog" the Court of Appeal. It is expected that the occasions of such appeals will be rare.

Leave provisions

Before the Supreme Court will hear and determine an appeal, it will be necessary for the appellant to apply to the Supreme Court for leave to appeal. This is consistent with the practice in final appellate courts in comparative countries.

In determining whether or not to grant leave, the Supreme Court must be satisfied that the case fulfils one of the statutory criteria, as, like other final appellate Courts, the Court is concerned with matters of general or public importance. These matters could concern the Treaty of Waitangi, which is New Zealand's founding document, or tikanga Māori, or be of general commercial significance, or arise where the hearing of an appeal may be necessary in the interests of justice or to avoid a substantial miscarriage of justice.

The Court will normally determine applications for leave to appeal after an examination of written submissions, but may choose to conduct an oral hearing. The Supreme Court will not be required to give reasons for refusing an application for leave to appeal, but may do so.

Constitution of Supreme Court

The Supreme Court will be composed of the Chief Justice, and four other Judges appointed by the Governor-General. The Chief Justice is the head of New Zealand's judiciary. On appointment, the other four Judges will become New Zealand's most senior Judges after the Chief Justice.

In the absence or unavailability of the Chief Justice, the next senior-most Judge of the Supreme Court will be the Acting Chief Justice. This represents a change from the current statutory provisions of the Judicature Act 1908, whereby the Acting Chief Justice is the senior Judge of the High Court who is not a member of the Court of Appeal. The change in designation reflects the importance of the Supreme Court.

All Supreme Court Judges will enjoy concurrent appointment as Judges of the High Court. This will enable them to exercise the inherent powers of a Judge of the High Court. (Judges of the Court of Appeal also have concurrent appointment as High Court Judges for the same reasons.) As with all other Judges in New Zealand, a Supreme Court Judge must retire on attaining the age of 68 years.

Powers of Supreme Court

Appeals in the Supreme Court will be conducted by way of a rehearing. The Court hears the matter on the basis of the evidence from the Court below, but is entitled to receive further evidence. The Court determines the legal rights and obligations of the parties as at the date of the rehearing.

There may be occasions when a Supreme Court Judge is unable to hear a proceeding. To provide for this possibility, the Governor-General may appoint acting Judges of the Supreme Court from retired Judges of the Supreme Court or Court of Appeal who have not reached the age of 75 years.

This will establish a panel of acting Judges. The Chief Justice will be able to draw from that panel when satisfied that a permanent member of the Supreme Court is unavailable.

Ending of appeals to Privy Council

The Bill ends appeals from any decisions of a New Zealand court to the Judicial Committee of the Privy Council with effect from the commencement of the Bill (the 28th day after assent).

As a transitional measure, the Bill provides for the continuation of existing appeals and applications for leave or special leave to appeal to the Judicial Committee, where these proceedings have been initiated before the commencement of the Bill.

Clause by clause analysis

Clause 1 relates to the Bill's Title.

Part 1

Supreme Court of New Zealand

Preliminary matters

Clause 2 provides that the Bill comes into force 28 days after assent.

Clause 3 states the Bill's purpose, which is to—

- establish the Supreme Court of New Zealand as the court of final appeal for New Zealand, provide for its jurisdiction and related matters; and
- end the bringing of appeals to the Privy Council; and
- make related amendments to enactments relating to courts or judicial proceedings.

Clause 4 defines certain terms used in the Bill.

Clause 5 provides that the Bill binds the Crown.

Establishment and jurisdiction of Supreme Court

Clause 6 establishes the Supreme Court of New Zealand as the court of final appeal for New Zealand.

Clause 7 gives the Supreme Court jurisdiction to hear and determine appeals by parties to a civil proceeding in the Court of Appeal against any decision made in the proceeding (whether the decision is substantive or interlocutory) unless—

- some other enactment provides that the decision is final or binding; or
- the decision is a refusal to give leave to appeal to the Court of Appeal.

Clause 8 gives the Supreme Court jurisdiction in extraordinary circumstances (as determined by the Supreme Court) to hear and determine direct appeals by parties to a civil proceeding in the High Court against any decision made in the proceeding unless—

- some other enactment provides that the decision is final or binding; or
- the decision is a refusal to give leave to appeal to the High Court or the Court of Appeal; or
- the decision was only an interlocutory decision.

Clause 9 gives the Supreme Court jurisdiction in extraordinary circumstances (as determined by the Supreme Court) to hear and determine direct appeals by parties to a civil proceeding in a court other than the Court of Appeal or the High Court, but to the extent only that some other enactment provides for the bringing of a direct appeal to the Supreme Court against the decision.

Clause 10 gives the Supreme Court jurisdiction to hear and determine certain criminal appeals expressly authorised by the Crimes Act 1961, the Summary Proceedings Act 1957, or the Courts Martial Appeals Act 1953. The Bill amends those Acts to provide—

- rights to appeal to the Supreme Court against decisions of the Court of Appeal;
- rights to appeal directly to the Supreme Court against decisions of the High Court, or of a District Court dealing with an indictable offence:

- rights to appeal directly to the Supreme Court against certain decisions of the Courts Martial Appeals Court.

The rights to appeal directly to the Supreme Court against decisions of the High Court, a District Court, or the Courts Martial Appeals Court can also be exercised only in extraordinary circumstances (as determined by the Supreme Court).

Clause 11 provides that the ability of parties to have appeals heard and determined by the Supreme Court is dependent on compliance with the various procedural requirements of the Bill, and of the various rules, orders, and directions for regulating the terms and conditions on which appeals may be allowed, made, or given under the Bill or the Judicature Act 1908.

Leave to appeal to Court

Clause 12 provides that the Supreme Court will hear appeals only if it gives the appellant leave to appeal to it.

Clause 13 states the criteria to which the Court must have regard in deciding whether to give leave to appeal. It must not give leave unless satisfied that—

- the proposed appeal involves a significant issue relating to the Treaty of Waitangi or tikanga Māori; or
- the proposed appeal involves some other matter of general or public importance; or
- a substantial miscarriage of justice may have occurred, or may occur unless leave is given; or
- the proposed appeal involves a matter of general commercial significance; or
- it is necessary in the interests of justice for the Court to hear and determine the proposed appeal.

In deciding whether to give leave to appeal against an interlocutory decision of the Court of Appeal, the Supreme Court must also be satisfied that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal before the proceeding concerned has concluded. (It should be noted that, by virtue of *clause 8(1)(c)*, the Supreme Court's jurisdiction to hear appeals against interlocutory decisions is limited to orders made in civil proceedings in the Court of Appeal.)

Clause 14 provides that the Supreme Court must not give leave to appeal directly to it against a decision made by a court other than the Court of Appeal unless (in addition to being satisfied of one or more of the matters stated in *clause 13(1)*) it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court.

Clause 15 provides for the consideration of applications to the Supreme Court for leave to appeal. The parties may make written submissions to the Court. Neither the parties nor their representatives have a right to appear before the Court, but they may appear if the Court thinks fit. The Court may consider the written submissions in any manner it thinks fit.

Clause 16 provides that the Court may give reasons for refusing to give leave to appeal, but does not have to do so.

Constitution of Court

Clause 17 provides that the Court will comprise the Chief Justice and 4 other High Court Judges. It should be noted that all Judges of the Court of Appeal are also Judges of the High Court.

Clause 18—

- provides that the Chief Justice is the head of the New Zealand judiciary, and has seniority over the other Judges of the Supreme Court; and
- establishes the seniority of the other Judges of the Court.

Clause 19 provides that if there is no Chief Justice, or the Chief Justice is outside New Zealand or unable to act as Chief Justice, the senior Judge of the Supreme Court can act as Chief Justice. At present, the Judicature Act 1908 provides that the senior Judge of the High Court acts in the place of the Chief Justice. *Clause 19* does not affect clause XII of the Letters Patent Constituting the Office of Governor-General of New Zealand 1983, which provides that—

- if the Chief Justice is not able to act as Administrator of the Government in place of the Governor-General, the President of the Court of Appeal acts as Administrator; and
- if neither the Chief Justice nor the President of the Court of Appeal is able to act as Administrator, the senior Judge of the Court of Appeal acts as Administrator.

Clause 20 provides that no person can be appointed as a Judge of the Supreme Court unless he or she—

- is already a Judge of the High Court (whether sitting in the High Court or the Court of Appeal); or
- is appointed as a Judge of the High Court when appointed as a Judge of the Supreme Court.

It also provides that Judges of the Supreme Court continue to be Judges of the High Court, and may as Judges of the Supreme Court exercise the powers of Judges of the High Court.

Clause 21 provides that a Judge of a New Zealand court other than the High Court vacates office as a Judge of that court when appointed as a Judge of the Supreme Court.

Clause 22 provides that a Judge of the Supreme Court holds office until he or she ceases to be a Judge of the High Court.

Powers and judgment of Court

Clause 23 provides that appeals to the Supreme Court proceed by way of rehearing.

Clause 24 states the general powers of the Supreme Court on appeal in a proceeding that has been heard in a New Zealand court. The Supreme Court—

- can make any order, or grant any relief, that could have been made or granted by that court; and
- also has all the powers the Court of Appeal would have if hearing the appeal.

The Court can also make ancillary or interlocutory orders.

Clause 25 gives the Supreme Court the power to remit a proceeding to another New Zealand court.

Clause 26 provides that the Supreme Court comprises 5 Judges. Given that there are to be only 5 Judges, this means that all 5 Judges must sit on any case (and explains the need to be able to appoint acting Judges of the Court sometimes). But—

- 2 or more Judges can act as the Court to decide whether an oral hearing of an application for leave to appeal to the Court should be held, or determine an application for leave; and
- the judgment of the Court can be delivered by any number of Judges provided by rules made under the Judicature Act 1908.

Clause 27 is an exception to *clause 26*, and provides that a single Judge of the Supreme Court can—

- make incidental orders and give incidental directions; or
- review a decision of the Registrar made within the civil jurisdiction of the Court under a power conferred by a rule of Court.

But the Court can discharge or vary an incidental order or direction made or given by a single Judge.

Clause 28 provides that the Chief Justice presides over the Court. If the Chief Justice is absent or the office of Chief Justice is vacant, the most senior available Judge presides.

Clause 29 provides what is to happen in certain situations when one or more Judges are absent.

Subclause (2) is a further exception to *clause 21*, and applies if a Judge of the Supreme Court dies or becomes unavailable when the Court is about to begin hearing a case, or after the hearing of a case has begun and before it has been determined. It provides that if at least 3 Judges of the Court are still available, the remaining Judges may continue to deal with the case if they wish.

Subclauses (4) and (5) provide that if one or more Judges are absent when the Court is supposed to sit, the Judge or Judges present (or the Registrar, if all Judges are absent) may (or must) adjourn the sitting.

Clause 30 provides that the judgment of the Supreme Court must be in accordance with the opinion of the Judges hearing the proceeding concerned. But if the Judges present are equally divided, the decision appealed from stands.

Clause 31 enables judgments of the Supreme Court to be enforced by the High Court.

Clause 32 provides for the appointment of acting Judges of the Supreme Court. The Governor-General may appoint a panel of acting Judges of the Supreme Court. They—

- must be retired Judges of the Supreme Court or the Court of Appeal; and
- must not have reached the age of 75 years.

The Chief Justice may authorise an acting Judge to act as a member of the Supreme Court if—

- there is a vacancy in the Supreme Court; or
- a Judge of the Supreme Court is for any reason unavailable to hear proceedings or particular proceedings.

Administrative provisions

Clause 33 provides for the salaries and allowances of Judges to be determined, as they are for other Judges, by the Higher Salaries Commission.

Clause 34 requires fees received under the Bill to be paid into the Crown Bank Account.

Clause 35—

- gives the Supreme Court power to punish for contempt of court; and
- authorises the arrest of people who commit a contempt of court.

Clause 36 provides for the appointment of a Registrar, Deputy Registrars, and other officers of the Supreme Court.

Clause 37 provides that the powers and duties of the Registrar, Deputy Registrars, and other officers of the Supreme Court will be prescribed by rules under the Judicature Act 1908.

Clause 38 provides for the Supreme Court to have a seal for sealing writs and other instruments or documents.

Clause 39 provides for the making of regulations—

- prescribing matters for which fees are payable:
- prescribing scales of fees:
- prescribing the fees, allowances, and expenses payable to interpreters and to people giving evidence:
- empowering the waiver, reduction, or postponement of fees:
- prescribing criteria for waiving, reducing, or postponing fees.

Clause 40 provides for reviews by a Judge of the Supreme Court of decisions of the Registrar or a Deputy Registrar relating to the waiver, reduction, or postponement of fees.

Clause 41 empowers the Supreme Court to appoint technical advisers to give advice in appeals in civil proceedings involving questions arising from expert evidence.

Ending of appeals to Her Majesty in Council

Clause 42 ends appeals to the Privy Council against decisions of New Zealand courts made after the commencement of the Bill (28 days after assent).

Part 2

Amendments, repeals, transitional provisions, and savings

Substantive amendment to Judicature Act 1908

Clause 43 amends section 57 of the Judicature Act 1908, which at present provides that the Court of Appeal has 8 members, the Chief Justice, the President, and 6 other Judges.

The Court of Appeal is now to have either 6 or 7 members, the President, and either 5 or 6 other Judges.

Substantive amendment to Te Ture Whenua Maori Act 1993

Clause 44 amends Te Ture Whenua Maori Act 1993 by inserting 2 new sections relating to rights of appeal from determinations of the Maori Appellate Court.

New *section 58A* gives rights of appeal from the Maori Appellate Court to the Court of Appeal.

New *section 58B* gives rights of appeal, in exceptional circumstances only, from the Maori Appellate Court directly to the Supreme Court.

Other substantive amendments

Clause 45 makes to various enactments amendments that, while perhaps not as significant as those effected by *clauses 43 and 44*, are more than mere consequential amendments—

- Child Support Act 1991: section 120 is amended to enable appeals on questions of fact as well as questions of law, and to enable an appeal against a decision of the Family Court, which at present can be made only as far as the Court of Appeal, to proceed on to the Supreme Court.
- Children, Young Persons, and Their Families Act 1989: a new section 347 is substituted to enable appeals on questions of fact as well as questions of law, and to enable an appeal against a decision of the Family Court, which at present can be made only as far as the Court of Appeal, to proceed on to the Supreme Court.
- Courts Martial Appeals Act 1953: new section 10 and *section 10A* are substituted to enable an appeal against a decision of the Courts Martial Appeal Court, which at present can be made only as far as the Court of Appeal (and only if the

appellant has obtained a certificate from the Attorney-General that the decision involves a point of law of exceptional public importance and it is desirable in the public interest that a further appeal should be brought),—

- to proceed on to the Supreme Court on appeal; or
 - in exceptional circumstances only, and whether or not the Attorney-General's certificate has been obtained, to proceed directly to the Supreme Court on appeal from the Courts Martial Appeal Court.
- Crimes Act 1961: a new *section 406A* is inserted, to enable appeals against determinations of the High Court or the Court of Appeal on matters referred under section 380 or section 406 of that Act.
 - Family Proceedings Act 1980: section 174 is amended to enable appeals on questions of fact as well as questions of law, and to enable an appeal against a decision of the Family Court or District Court, which at present can be made only as far as the Court of Appeal, to proceed on to the Supreme Court.
 - Guardianship Act 1968: section 31B is amended to enable appeals on disputes between guardians to proceed to the Court of Appeal (which also has the effect of enabling them to proceed on to the Supreme Court).
 - Human Rights Act 1993:
 - section 123 is amended to enable appeals on express refusals by the Human Rights Review Tribunal to declare that an enactment is inconsistent with the right to freedom from discrimination (at present there is only a right to appeal against a decision granting such a declaration):
 - section 124 is amended to enable an appeal against a decision of the Human Rights Review Tribunal, which at present can be made only as far as the Court of Appeal, to proceed on to the Supreme Court.
 - Summary Proceedings Act 1957: a new section 144 is substituted, enabling certain criminal appeals to proceed beyond the Court of Appeal.

Consequential amendments and repeals

Clause 46 effects consequential amendments and repeals.

Clause 47 provides for 11 Imperial enactments (10 relating to the Privy Council and one relating to naval prizes) and certain related Imperial subordinate legislation to cease to have effect as part of the law of New Zealand.

Transitional and savings

Clause 48 allows certain appeals to be determined by Privy Council—

- appeals made to the Privy Council before the commencement of the Bill;
- appeals arising out of successful applications to New Zealand courts for leave to appeal to the Privy Council made before the commencement of the Bill;
- appeals arising out of successful applications to the Privy Council for special leave to appeal to it made before the commencement of the Bill;
- appeals arising out of successful applications to the Privy Council for special leave to appeal to it made after a New Zealand court has, before the commencement of the Bill, refused leave to appeal to the Privy Council.

But the parties to an appeal can waive their ability to appeal to the Privy Council if—

- the Privy Council has not begun hearing the appeal; and
- the parties agree in writing that an application should be made to the Supreme Court for leave to appeal to the Supreme Court against the decision concerned.

Clause 49 limits the ability of parties to proceedings that have already had some connection with the Privy Council to appeal to the Supreme Court. They cannot appeal to the Supreme Court against a decision—

- if the Privy Council has already declined to give special leave to appeal against it; or
- if the Privy Council has already heard or begun hearing an appeal against it; or
- if—

- *clause 48* enables an appeal against it to be heard and determined by the Privy Council; and
- all parties have not agreed in writing that an application should be made to the Supreme Court for leave to appeal to the Supreme Court against it.

Clause 50 provides that certain applications must be determined as if appeals to the Privy Council had not ended (and the Imperial legislation to which *clause 47* applies had not ceased to have effect as part of the law of New Zealand). The applications are—

- applications for leave to appeal to the Privy Council made to a New Zealand court before the commencement of the Bill;
- applications for special leave to appeal to the Privy Council made to the Privy Council after the refusal of a New Zealand court before the commencement of the Bill to grant leave to appeal to the Privy Council;
- applications for special leave to appeal to the Privy Council made to the Privy Council before the commencement of the Bill.

The clause also provides that appeals brought with leave given on any of those applications must be determined as if appeals to the Privy Council had not ended (and the Imperial legislation to which *clause 47* applies had not ceased to have effect as part of the law of New Zealand).

Clause 51 makes transitional arrangements for applications to the Supreme Court for leave to appeal to the Supreme Court.

Until the commencement of the first rules regulating the making of leave applications,—

- the rules in force regulating the making of applications to the Court of Appeal for leave to appeal to the Court of Appeal apply to applications to the Supreme Court for leave to appeal to the Supreme Court; but
- the Chief Justice may issue practice directions—
 - modifying the application of those rules; or
 - providing for any matter those rules do not provide for.

Until the appointment of the first Registrar of the Supreme Court, the Registrar and other officers of the Court of Appeal are also the Registrar and other officers of the Supreme Court.

Until the establishment of the first Supreme Court Registry, the Court of Appeal Registry is also the Supreme Court Registry.

Clause 52 limits the ability to appeal to the Supreme Court against decisions made before the commencement of the Bill. This is because the Bill creates certain new rights of appeal.

The Supreme Court can hear and determine an appeal against a decision made before the commencement of the Bill if—

- there was an ability to appeal to the Privy Council against it, or to apply to a New Zealand court or the Privy Council for leave to appeal to the Privy Council against it; and
- no party to the proceeding had, before the ability to do so had been ended by *clause 42*,—
 - appealed to the Privy Council against it; or
 - applied to a New Zealand court or the Privy Council for leave or special leave to appeal to the Privy Council against it.

Otherwise, there is no right to appeal to a New Zealand court on any grounds against a decision made before the commencement of the Bill unless, when the decision was made, the person had the right to appeal against the decision to that court on those grounds.

Regulatory Impact and compliance cost Statement

Nature and magnitude of problem and the need for government action

New Zealand's final appellate court – the Judicial Committee of the Privy Council – is based in London. Access is limited in terms of the scope of matters that may be appealed, is expensive and involves time delays. Most members of the Privy Council are appointed from outside New Zealand and cannot be removed by any New Zealand procedure. Major Commonwealth countries have ended the right of appeal to the Privy Council.

Statement of public policy objectives

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.

Statement of feasible options for achieving desired objectives

Three options were canvassed in a public Discussion Paper approved by Cabinet and released in December 2000. These options were to restrict appeals to one level of appeal beyond the High Court, or to modify the High Court or Court of Appeal to allow for two-tiers of appeal beyond the trial court. These options were rejected by public submissions.

A clear preference was expressed for the development of a separate, distinct and independent second tier appellate court as an alternative to the retention of the right of second-level appeals to the Privy Council.

Net benefits and costs of proposal

Benefits

Improved access to justice for New Zealanders. Lower costs to litigant parties, including governmental litigants. More speedy resolution of disputes under appeal. A reduction in the number of petitions for the Royal prerogative of mercy.

Costs

There is likely to be both a capital cost in establishing premises for the new Court – possibly spread over two financial years – and an annual operation cost for the judges and ancillary staff and resources. There is likely to be a small increase in legal aid expenditure.

Consultation

The Ministry of Justice has consulted the Department for Courts, Crown Law Office, Te Puni Kkiri, the Department of Prime Minister and Cabinet, the Treasury, and the Ministry of Economic Development.

The initial options for alternatives to appeals to the Judicial Committee of the Privy Council were the subject of a public Discussion Paper. In addition, the Minister consulted representatives of the judiciary, Māori, and the law profession, and the Lord Chancellor in London.

Business Compliance Cost Statement

Most appeals to the Privy Council involve civil (including commercial) disputes. Establishment of a final appellate court in New

Zealand will reduce the costs to litigant parties to proceedings, and should assist businesses and other New Zealanders currently discouraged from pursuing a second appeal.

Hon Margaret Wilson

Supreme Court Bill

Government Bill

Contents

1	Title	22	Term of office of Judges
	Part 1		<i>Powers and judgment of Court</i>
	Supreme Court of New Zealand	23	Appeals to proceed by rehearing
	<i>Preliminary matters</i>	24	General powers
2	Commencement	25	Power to remit proceedings
3	Purpose	26	Exercise of powers of Court
4	Interpretation	27	Interlocutory orders and directions may be made and given by one Judge
5	Act binds the Crown	28	Presiding Judge
	<i>Establishment and jurisdiction of Supreme Court</i>	29	Procedure if Judges absent
6	Supreme Court established	30	Judgment of Court
7	Appeals against decisions of Court of Appeal in civil proceedings	31	Decisions of Court may be enforced by the High Court
8	Appeals against decisions of High Court in civil proceedings	32	Acting Judges
9	Appeals against decisions of other courts in civil proceedings		<i>Administrative provisions</i>
10	Appeals against decisions in criminal proceedings	33	Salaries and allowances of Judges
11	Procedural requirements	34	Fees to be paid into Crown Bank Account
	<i>Leave to appeal to Court</i>	35	Contempt of Court
12	Appeals to be by leave	36	Appointment of officers
13	Criteria for leave to appeal	37	Powers and duties of officers
14	No direct appeal from court other than Court of Appeal unless exceptional circumstances established	38	Seal
15	Applications for leave	39	Regulations
16	Court not required to give reasons for refusal to give leave	40	Reviews of decisions of Registrars about fees
	<i>Constitution of Court</i>	41	Technical advisers
17	Constitution of Court		<i>Ending of appeals to Her Majesty in Council</i>
18	Chief Justice, and seniority of Judges	42	Ending of appeals to Her Majesty in Council
19	Acting Chief Justice		Part 2
20	Judges to be Judges of High Court		Amendments, repeals, transitional provisions, and savings
21	Judges of other courts vacate office on appointment		<i>Substantive amendment to Judicature Act 1908</i>
		43	Constitution of the Court

<i>Substantive amendment to Te Ture Whenua Maori Act 1993</i>	49	Limitations on right to appeal to Court
44 New sections 58A and 58B inserted	50	Transitional effect of sections 42 and 47
58A Further appeal to Court of Appeal from Maori Appellate Court	51	Transitional arrangements for leave applications
58B Direct appeal to Supreme Court from Maori Appellate Court in exceptional circumstances	52	Rights to appeal against decisions made before commencement of Act
—		
Schedule 1		
Amendments		
Schedule 2		
Consequential repeals		
Schedule 3		
Provisions containing references to former Supreme Court		
Schedule 4		
Imperial legislation ceasing to have effect as part of law of New Zealand		
<i>Other substantive amendments</i>		
45 Other substantive amendments		
<i>Consequential amendments and repeals</i>		
46 Consequential amendments and repeals		
47 Imperial enactments ceasing to have effect in New Zealand		
<i>Transitional and savings</i>		
48 Certain appeals may still be determined by Privy Council		

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Supreme Court Act **2002**.

Part 1
Supreme Court of New Zealand

Preliminary matters

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2 Commencement

This Act comes into force on the 28th day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is to—

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- (a) establish the Supreme Court of New Zealand as the court of final appeal for New Zealand, and provide for its jurisdiction and related matters; and
- (b) end appeals to the Judicial Committee of the Privy Council from decisions of New Zealand courts; and
- (c) make related amendments to certain enactments relating to courts or judicial proceedings.

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4 Interpretation

In this Act, unless the context otherwise requires,—

acting Judge means an acting Judge of the Supreme Court appointed under **section 32(1)**

Chief Justice means the Chief Justice of New Zealand appointed under section 4(1) of the Judicature Act 1908 5

civil proceeding—

(a) means any proceeding that is not a criminal proceeding; and

(b) includes a proceeding under the Bail Act 2000 10

decision means a judgment, decree, order, direction, or determination

District Court includes—

(a) a Family Court and a Youth Court; and

(b) a District Court sitting in its admiralty jurisdiction 15

High Court includes the High Court sitting in its admiralty jurisdiction, or sitting as a permanent Prize Court under the jurisdiction conferred by section 8 of Admiralty Act 1973

interlocutory application— 20

(a) means an application in a proceeding or intended proceeding for—

(i) an order or a direction relating to a matter of procedure; or

(ii) in the case of a civil proceeding, for some relief ancillary to the relief claimed in the pleading; and 25

(b) includes an application for a new trial; and

(c) includes an application to review a decision made on an interlocutory application

New Zealand court means— 30

(a) the Supreme Court, the Court of Appeal, the High Court, or a District Court; or

(b) any of the following specialist courts: a court-martial constituted under Part 6 of the Armed Forces Discipline Act 1971, the Courts Martial Appeal Court constituted by the Courts Martial Appeals Act 1953, the Employment Court, the Environment Court, the Maori Appellate Court, and the Maori Land Court 35

Privy Council means the Judicial Committee of the Privy Council 40

Registrar means the Registrar of the Supreme Court appointed under **section 36(1)**

Supreme Court and the **Court** mean the Supreme Court of New Zealand established by **section 6**

working day means a day that is not— 5

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, or Waitangi Day; or
- (b) the day observed as anniversary day in Wellington; or
- (c) a day in the period commencing on 25 December in one year and ending with 15 January in the next year. 10

5 Act binds the Crown

This Act binds the Crown.

Establishment and jurisdiction of Supreme Court

6 Supreme Court established 15

This section establishes as the court of final appeal for New Zealand a court of record called the Supreme Court of New Zealand.

Compare: 1908 No 89 s 57(1)

7 Appeals against decisions of Court of Appeal in civil proceedings 20

The Supreme Court can hear and determine an appeal by a party to a civil proceeding in the Court of Appeal against any decision made in the proceeding unless—

- (a) an enactment other than this Act makes provision to the effect that the decision is final or binding; or 25
- (b) the decision is a refusal to give leave or special leave to appeal to the Court of Appeal.

8 Appeals against decisions of High Court in civil proceedings 30

The Supreme Court can hear and determine an appeal by a party to a civil proceeding in the High Court against any decision made in the proceeding, unless—

- (a) an enactment other than this Act makes provision to the effect that the decision is final or binding; or 35

- (b) the decision is a refusal to give leave to appeal to the High Court or the Court of Appeal; or
- (c) the decision was made on an interlocutory application.

9	Appeals against decisions of other courts in civil proceedings	5
	The Supreme Court can hear and determine an appeal against a decision made in a civil proceeding in a New Zealand court other than the Court of Appeal or the High Court to the extent only that an enactment other than this Act provides for the bringing of an appeal to the Supreme Court against the decision.	10
10	Appeals against decisions in criminal proceedings	
	The Supreme Court can hear and determine appeals authorised by—	
	(a) Part XIII or section 406A of the Crimes Act 1961; or	15
	(b) section 144 of the Summary Proceedings Act 1957; or	
	(c) section 10 or section 10A of the Courts Martial Appeals Act 1953.	
11	Procedural requirements	
	Sections 7 to 10 are subject to—	20
	(a) the provisions of this Act; and	
	(b) all applicable rules, orders, and directions for regulating the terms and conditions on which appeals may be allowed made or given under this Act or the Judicature Act 1908.	25
	Compare: 1908 No 89 s 66	
	<i>Leave to appeal to Court</i>	
12	Appeals to be by leave	
	(1) Appeals to the Supreme Court can be heard only with the Court's leave.	30
	(2) References in enactments other than this Act to the leave of the Supreme Court must be read subject to sections 13 and 14 .	
13	Criteria for leave to appeal	
	(1) The Supreme Court must not give leave to appeal to it unless it is satisfied that—	35

- (a) the proposed appeal involves a significant issue relating to the Treaty of Waitangi or tikanga Māori; or
 - (b) the proposed appeal involves some other matter of general or public importance; or
 - (c) a substantial miscarriage of justice may have occurred, or may occur unless leave is given; or 5
 - (d) the proposed appeal involves a matter of general commercial significance; or
 - (e) it is necessary in the interests of justice for the Court to hear and determine the proposed appeal. 10
- (2) The Supreme Court must not give leave to appeal to it against an order made by the Court of Appeal on an interlocutory application unless (in addition to being satisfied of one or more of the matters stated in **subsection (1)**) it is satisfied that it is necessary in the interests of justice for the Supreme Court to hear and determine the proposed appeal before the proceeding concerned is concluded. 15
- 14 No direct appeal from court other than Court of Appeal unless exceptional circumstances established**
- The Supreme Court must not give leave to appeal directly to it against a decision made, a conviction entered, or a sentence imposed, in a proceeding in a New Zealand court other than the Court of Appeal unless (in addition to being satisfied of one or more of the matters stated in **section 13(1)**) it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court. 20 25
- 15 Applications for leave**
- (1) The parties to an application for leave to appeal to the Supreme Court may make written submissions to the Court, and may include in the submissions— 30
- (a) additional relevant written material; and
 - (b) responses to submissions made by any other party.
- (2) Neither the parties nor their representatives have a right to appear before the Court on the application; but the Court may if it thinks fit— 35
- (a) authorise the parties, their representatives, or both to appear;
 - (b) exclude from any authority to appear a party who is an appellant in custody.

- (3) In determining the application, the Court must consider—
- (a) the written submissions before it; and
 - (b) if an oral hearing was held, the matters raised at the hearing.
- (4) The Court may consider the written submissions in any manner it thinks fit. 5
- Compare: 1961 No 43 s 392B

16 Court not required to give reasons for refusal to give leave

The Supreme Court may give reasons for refusing to give leave to appeal to it, but does not have to do so. 10

Constitution of Court

17 Constitution of Court

- (1) The Supreme Court comprises—
- (a) the Chief Justice; and 15
 - (b) 4 other Judges, appointed by the Governor-General as Judges of the Supreme Court.
- (2) The Supreme Court's jurisdiction is not affected by a vacancy in the number of its Judges. 20
- Compare: 1908 No 89 s 4

18 Chief Justice, and seniority of Judges

- (1) The Chief Justice is the head of the New Zealand judiciary, and has seniority over the other Judges of the Supreme Court.
- (2) Other Judges of the Supreme Court appointed on different dates have seniority among themselves according to those dates. 25
- (3) Other Judges of the Supreme Court appointed on the same date have seniority among themselves as follows:
- (a) Judges who have been Judges of the Court of Appeal are senior to Judges who have not been Judges of the Court of Appeal: 30
 - (b) Judges who have been Judges of the Court of Appeal have among themselves the seniority they would have if still Judges of the Court of Appeal:
 - (c) Judges who have not been Judges of the Court of Appeal but have previously been Judges of the High 35

Court have seniority among themselves according to their seniority as Judges of the High Court:

- (d) Judges who have not previously been Judges of the High Court but have previously held other judicial office in New Zealand are senior to Judges who have not previously held judicial office in New Zealand. 5
- (4) Judges of the Supreme Court are senior to the Judges of the Court of Appeal, and to the Judges of the High Court who are not Judges of the Supreme Court.
- (5) This section does not apply to acting Judges. 10
Compare: 1908 No 89 s 57(6)

19 Acting Chief Justice

- (1) While the office of Chief Justice is vacant, or the Chief Justice is outside New Zealand, the senior Judge of the Supreme Court is authorised to act as Chief Justice. 15
- (2) If because of illness or a reason other than absence from New Zealand the Chief Justice is unable to perform the duties of that office, the Governor-General may authorise the senior Judge of the Supreme Court to act as Chief Justice until the Chief Justice resumes those duties. 20
- (3) While authorised to act as Chief Justice, the senior Judge of the Supreme Court can perform the duties of the Chief Justice, and exercise any power of the Chief Justice.
- (4) The fact that the senior Judge of the Supreme Court performs a duty of the Chief Justice or exercises a power of the Chief Justice is conclusive proof of his or her authority to do so. No action of the Judge, and no decision of the Court, may be questioned on the ground that the occasion for the Judge to perform the duty or exercise the power had not arisen or had ceased. 25 30
- (5) This section does not affect clause XII of the Letters Patent constituting the Office of Governor-General of New Zealand 1983 (SR 1983/225).
Compare: 1908 No 89 s 5

20 Judges to be Judges of High Court 35

- (1) No person can be appointed as a Judge of the Supreme Court under **section 17(1)(b)** unless he or she—

- (a) was a Judge of the High Court (whether sitting in the High Court or the Court of Appeal) immediately before being appointed as a Judge of the Supreme Court; or
- (b) is appointed as a Judge of the High Court when appointed as a Judge of the Supreme Court. 5
- (2) Every Judge of the Supreme Court—
- (a) continues to be a Judge of the High Court; and
- (b) may as a Judge of the Supreme Court exercise any of the powers of a Judge of the High Court. 10
- Compare: 1908 No 89 s 57(4)
- 21 Judges of other courts vacate office on appointment**
- (1) A Judge of a New Zealand court other than the High Court vacates office as a Judge of that court when appointed as a Judge of the Supreme Court.
- (2) A Judge of the Supreme Court who has vacated office as a Judge of a New Zealand court under **subsection (1)** may attend the sittings of that court to give judgment in, or otherwise complete a matter in relation to, a proceeding heard by that Judge when he or she sat in that court. 15
- 22 Term of office of Judges** 20
- A Judge of the Supreme Court holds office until he or she ceases to hold office as a Judge of the High Court.
- Powers and judgment of Court*
- 23 Appeals to proceed by rehearing** 25
- Appeals to the Supreme Court proceed by way of rehearing.
- 24 General powers**
- (1) On an appeal in a proceeding that has been heard in a New Zealand court, the Supreme Court—
- (a) can make any order, or grant any relief, that could have been made or granted by that court; and 30
- (b) even if the proceeding has not been heard in the Court of Appeal, has all the powers the Court of Appeal would have if hearing the appeal.
- (2) In any proceeding, the Supreme Court can make any ancillary or interlocutory orders (including any orders as to costs) it thinks fit. 35

25 Power to remit proceedings

The Supreme Court can also remit a proceeding that began in a New Zealand court to any New Zealand court that has jurisdiction to deal with it.

Compare: 1908 No 89 s 62

5

26 Exercise of powers of Court

(1) For the purposes of the hearing and determination of a proceeding, the Supreme Court comprises 5 Judges of the Court.

(2) Any 2 or more Judges of the Supreme Court can act as the Court—

10

(a) to decide whether an oral hearing of an application for leave to appeal to the Court should be held, or the application should be determined just on the basis of written submissions:

(b) to determine an application for leave to appeal to the Court.

15

(3) The judgment of the Supreme Court may be delivered in any manner, and by any number of Judges, provided by rules made under section 51C of the Judicature Act 1908.

(4) **Subsection (1)** is subject to **sections 27(1) and 29(3)**.

20

Compare: 1908 No 89 s 58(2)

27 Interlocutory orders and directions may be made and given by one Judge

(1) In a proceeding before the Supreme Court, any Judge of the Court may make any interlocutory orders and give any interlocutory directions the Judge thinks fit (other than an order or direction that determines the proceeding or disposes of a question or issue that is before the Court in the proceeding).

25

(2) The Judges of the Supreme Court who together have jurisdiction to hear and determine a proceeding may discharge or vary an order or direction made or given under **subsection (1)**.

30

(3) Any Judge of the Supreme Court may review a decision of the Registrar made within the civil jurisdiction of the Court under a power conferred on the Registrar by a rule of Court, and may confirm, modify, or revoke that decision as the Judge thinks fit.

35

28 Presiding Judge

- (1) The Chief Justice presides over the Supreme Court.
- (2) If the Chief Justice is absent, or the office of Chief Justice is vacant, the most senior available Judge of the Supreme Court presides over the Court. 5
- (3) The fact that a Judge of the Supreme Court other than the Chief Justice presides over the Court is conclusive proof of the Judge's authority to do so. No action of the Judge, and no judgment or decision of the Court, may be questioned on the ground that the occasion for the Judge to preside over the Court had not arisen or had ceased. 10

29 Procedure if Judges absent

- (1) This subsection applies to a proceeding that the Supreme Court is about to begin hearing, or has begun hearing and has not determined, if— 15
- (a) a Judge of the Court dies or becomes unavailable; and
- (b) at least 3 Judges of the Court are still available to determine it.
- (2) The remaining Judges must decide whether a proceeding to which **subsection (1)** applies must be adjourned or reheard, or may continue. 20
- (3) If the remaining Judges decide that a proceeding to which **subsection (1)** applies may continue, they— 25
- (a) may act as the Supreme Court in relation to the proceeding; and
- (b) can determine the proceeding and any interlocutory matters (including the question of costs).
- (4) If at the time appointed for a sitting of the Supreme Court one or more Judges are absent, the Judge or Judges present may adjourn or further adjourn the sitting to some other time. 30
- (5) If at the time appointed for a sitting of the Supreme Court all the Judges are absent, the Registrar must adjourn or further adjourn the sitting to some other time.

Compare: 1908 No 89 ss 58D(3), 61

30 Judgment of Court

- (1) The judgment of the Supreme Court must be in accordance with the opinion of the Judges hearing the proceeding concerned. 35

- (2) If the Judges present are equally divided in opinion, the decision appealed from or under review is taken to be affirmed.

Compare: 1908 No 89 s 59

31 Decisions of Court may be enforced by the High Court

A judgment, decree, or order of the Supreme Court may be enforced by the High Court as if it had been given or made by that court.

5

Compare: 1908 No 89 s 63

32 Acting Judges

- (1) The Governor-General may appoint as acting Judges of the Supreme Court retired Judges of the Supreme Court or the Court of Appeal who have not reached the age of 75 years. 10
- (2) Each acting Judge must be appointed for a stated term that—
- (a) is not more than the time until the Judge will reach the age of 75 years: 15
- (b) in any case, is not more than 24 months.
- (3) During the term of his or her appointment, an acting Judge may act as a Judge of the Supreme Court to the extent only that the Chief Justice authorises under **subsection (4)**.
- (4) The Chief Justice may authorise an acting Judge to act as a member of the Supreme Court— 20
- (a) to hear and determine any proceedings within a stated period; or
- (b) to hear and determine stated proceedings.
- (5) The Chief Justice may authorise an acting Judge to act as a member of the Supreme Court only if satisfied that— 25
- (a) there is a vacancy in the Supreme Court; or
- (b) a Judge of the Supreme Court is for any reason unavailable to hear proceedings or particular proceedings.
- (6) An acting Judge is authorised when the Chief Justice gives the Attorney-General a certificate, signed by the Chief Justice and at least 2 other Judges of the Supreme Court who are not acting Judges, to the effect that in their opinion it is necessary for the proper conduct of the Court's business for the acting Judge to be authorised to act as a member of the Supreme Court— 30
- (a) to hear and determine proceedings within the period concerned; or 35

- (b) to hear and determine the proceedings concerned.
- (7) An acting Judge has the jurisdiction, powers, protections, privileges, and immunities of a Judge of the Supreme Court and the High Court in relation only to acting as a member of the Supreme Court, under the authority of **subsection (4)**, in the hearing and determination of a proceeding. 5
- (8) While acting as a member of the Supreme Court, under the authority of **subsection (4)**, in the hearing and determination of a proceeding, but not otherwise, an acting Judge must be paid—
- (a) a salary at the rate for the time being payable to a Judge of the Supreme Court other than the Chief Justice; and 10
- (b) any applicable allowances fixed by the Governor-General for acting Judges.
- (9) The fact that an acting Judge acts as a member of the Supreme Court is conclusive proof of the Judge's authority to do so. No action of the Judge, and no decision of the Court, may be questioned on the ground that the occasion for the Judge to act as a member of the Court had not arisen or had ceased. 15

Compare: 1908 No 89 ss 11A, 11B

Administrative provisions 20

33 Salaries and allowances of Judges

- (1) There must be paid out of public money to the Judges of the Supreme Court other than the Chief Justice, without further appropriation than this section,—
- (a) salaries at a rate determined by the Higher Salaries Commission; and 25
- (b) any applicable allowances determined by the Higher Salaries Commission; and
- (c) any applicable additional allowances, being travelling allowances or other incidental or minor allowances, determined from time to time by the Governor-General. 30
- (2) A determination under **subsection (1)**, or a provision of a determination under **subsection (1)**, may be stated to come into force on—
- (a) the date on which the determination is made; or 35
- (b) any other date, whether before or after the date on which the determination is made.

- (3) If no date is stated for a determination or a provision of a determination, it comes into force on the date on which the determination is made.
- (4) **Subsection (2)** is subject to the Higher Salaries Commission Act 1977. 5
- (5) This section does not apply to acting Judges.
Compare: 1908 No 89 s 9A
- 34 Fees to be paid into Crown Bank Account**
All fees received under this Act must be paid into the Crown Bank Account. 10
Compare: 1908 No 89 s 53
- 35 Contempt of Court**
- (1) A person commits an offence who—
- (a) assaults, threatens, intimidates, or wilfully insults a Judge of the Supreme Court, the Registrar of the Court, a Deputy Registrar or officer of the Court, or a witness, during his or her sitting or attendance in Court, or in going to or returning from the Court; or 15
- (b) wilfully interrupts or obstructs the proceedings of the Supreme Court, or misbehaves in the Court; or 20
- (c) wilfully and without lawful excuse disobeys an order or direction of the Supreme Court in the course of the hearing of a proceeding.
- (2) A member of the police or officer of the Supreme Court, with or without the assistance of any other person, may, by order of a Judge of the Court, take into custody and detain until the rising of the Court a person who commits an offence against **subsection (1)**. 25
- (3) The Supreme Court may sentence a person who commits an offence against **subsection (1)** to imprisonment for a period not exceeding 5 days, or to pay a fine not exceeding \$5,000, or both, for every offence. 30
- (4) The Supreme Court has the same power and authority as the High Court to punish any person for contempt of Court in any case to which **subsection (1)** does not apply. 35
- (5) Nothing in **subsections (1) to (3)** limits or affects the power and authority referred to in **subsection (4)**.
Compare: 1908 No 89 s 56C

- 36 Appointment of officers**
- (1) A Registrar of the Supreme Court must be appointed under the State Sector Act 1988.
- (2) There may also be appointed under that Act Deputy Registrars of the Supreme Court, and any other officers required for the conduct of the Court's business. 5
- Compare: 1908 No 89 ss 27, 72
- 37 Powers and duties of officers**
- The Registrar, Deputy Registrars, and other officers of the Supreme Court have the powers and duties prescribed by rules made under section 51C of the Judicature Act 1908. 10
- Compare: 1908 No 89 ss 28, 73
- 38 Seal**
- (1) The Supreme Court has a seal for sealing writs and other instruments or documents issued by the Registrar that must be sealed. 15
- (2) The Registrar has custody of the seal.
- Compare: 1908 No 89 s 50
- 39 Regulations**
- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 20
- (a) prescribing the matters for which fees are payable under this Act:
- (b) prescribing scales of fees for the purposes of this Act and for the purposes of proceedings before the Supreme Court: 25
- (c) prescribing the fees, travelling allowances, and expenses payable to interpreters and to people giving evidence in proceedings before the Supreme Court:
- (d) in order to promote access to justice, empowering the Registrar or a Deputy Registrar of the Supreme Court to waive, reduce, or postpone the payment of a fee required in connection with a proceeding or intended proceeding, or to refund, in whole or in part, such a fee that has already been paid, if satisfied on the basis of criteria prescribed under **paragraph (e)** that— 30 35

- (i) the person otherwise responsible for payment of the fee is unable to pay or absorb the fee in whole or in part; or
 - (ii) unless one or more of those powers are exercised in respect of a proceeding that concerns a matter of genuine public interest, the proceeding is unlikely to be commenced or continued: 5
 - (e) prescribing, for the purposes of the exercise of a power under **paragraph (d)**, the criteria—
 - (i) for assessing a person's ability to pay a fee; and 10
 - (ii) for identifying proceedings that concern matters of genuine public interest:
 - (f) empowering the Registrar or a Deputy Registrar of the Supreme Court to postpone the payment of a fee pending the determination of— 15
 - (i) an application for the exercise of a power specified in **paragraph (d)**; or
 - (ii) an application for review under **section 40**:
 - (g) providing for the postponement under the regulations of the payment of a fee, including (without limitation) providing— 20
 - (i) for the recovery of the fee after the expiry of the period of postponement; and
 - (ii) for restrictions to apply (after the expiry of the period of postponement and for so long as the fee remains unpaid) on the steps that may be taken in the proceeding in respect of which the fee is payable: 25
 - (h) providing for the manner in which an application for the exercise of a power specified in **paragraph (d) or paragraph (f)** is to be made, including (without limitation) requiring the application to be in a form approved for the purpose by the chief executive of the Department for Courts. 30
- (2) No fee is payable for an application for the exercise of a power specified in **paragraph (d) or paragraph (f) of subsection (1)**. 35

Compare: 1908 No 89 s 100A

- 40 Reviews of decisions of Registrars about fees**
- (1) A person aggrieved by a decision of the Registrar or a Deputy Registrar under regulations under **section 39(1)(d)** may apply to a Judge of the Supreme Court for a review of the decision.
- (2) An application must be made within— 5
- (a) 20 working days after the date on which the applicant is notified of the decision; or
- (b) any further time the Judge allows on application made for that purpose before or after the expiration of that period. 10
- (3) The application may be made informally.
- (4) The review—
- (a) must be conducted by rehearing;
- (b) may be dealt with on the papers, unless the Judge decides otherwise. 15
- (5) The Judge may confirm, modify, or reverse the decision.
- (6) No fee is payable for an application under this section.
- Compare: 1908 No 89 s 100B

- 41 Technical advisers**
- Sections 99B to 99D of the Judicature Act 1908 (which relate to the appointment of technical advisers to give advice in appeals in civil proceedings involving questions arising from expert evidence) apply to the Supreme Court and proceedings in the Supreme Court as if references in those sections to the Court of Appeal were references to the Supreme Court. 20 25

Ending of appeals to Her Majesty in Council

- 42 Ending of appeals to Her Majesty in Council**
- (1) No appeal to Her Majesty in Council lies or may be brought from or in respect of any civil or criminal decision of a New Zealand court made after the commencement of this Act— 30
- (a) whether by leave or special leave of any court or of Her Majesty in Council, or otherwise; and
- (b) whether by virtue of any Act of Parliament of the United Kingdom or of New Zealand, or the Royal prerogative, or otherwise. 35
- (2) **Subsection (1)** is subject to **section 48**.

Part 2
Amendments, repeals, transitional provisions,
and savings

Substantive amendment to Judicature Act 1908

- 43 Constitution of the Court** 5
- Section 57 of the Judicature Act 1908 is amended by repealing subsection (2), and substituting the following subsection:
- “(2) Subject to this Part, the Court of Appeal comprises—
- “(a) a Judge of the High Court appointed by the Governor-General as a Judge of the Court of Appeal and as President of that Court: 10
- “(b) not fewer than 5 nor more than 6 other Judges of the High Court appointed by the Governor-General as Judges of the Court of Appeal.”

Substantive amendment to Te Ture Whenua Maori Act 1993 15

- 44 New sections 58A and 58B inserted**
- Te Ture Whenua Maori Act 1993 is amended by inserting, after section 58, the following sections:
- “58A Further appeal to Court of Appeal from Maori Appellate Court** 20
- “(1) A party to an appeal under section 58 may appeal to the Court of Appeal against all or part of the determination of the Maori Appellate Court on the appeal.
- “(2) On an appeal under **subsection (1)**, the Court of Appeal may make any order or determination it thinks fit. 25
- “58B Direct appeal to Supreme Court from Maori Appellate Court in exceptional circumstances**
- “(1) A party to an appeal under section 58 may, with the leave of the Supreme Court, appeal to the Supreme Court against all or part of the determination of the Maori Appellate Court on the appeal. 30
- “(2) On an appeal under **subsection (1)**, the Supreme Court may make any order or determination it thinks fit.
- “(3) This section is subject to **section 14 of the Supreme Court Act 2002** (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are 35

exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).”

Other substantive amendments

- 45 Other substantive amendments**
The enactments specified in **Part 1 of Schedule 1** are amended in the manner indicated in that schedule. 5

Consequential amendments and repeals

- 46 Consequential amendments and repeals**
- (1) The enactments specified in **Part 2 of Schedule 1** are amended in the manner indicated in that schedule. 10
- (2) The enactments specified in **Schedule 2** are repealed.
- (3) The enactments specified in **Schedule 3** are amended by omitting the word “Supreme” wherever it occurs, and substituting in each case the word “High”.
- (4) Regulations 2 and 3 of the Law Practitioners (Victoria Reciprocity) Order 1937 (SR 1937/242) are amended by omitting the word “Supreme” wherever it occurs without being immediately followed by the words “Court of Victoria”, and substituting in each case the word “High”. 15
- (5) This section has effect as if, immediately before the commencement of this Act, section 12 of the Judicature Amendment Act 1979 had ceased to apply to the Oamaru Gasworks Act 1875, the Statutes Amendment Act 1947, the Law Practitioners (Victoria Reciprocity) Order 1937, and the enactments specified in **Schedule 3**. 20
25
- 47 Imperial enactments ceasing to have effect in New Zealand**
- On the commencement of this Act, the following Imperial enactments cease to have effect as part of the law of New Zealand: 30
- (a) the Imperial enactments listed in **Part 1 of Schedule 4**;
- (b) the Imperial subordinate legislation listed in **Part 2 of Schedule 4**.

Transitional and savings

- 48 Certain appeals may still be determined by Privy Council**
- (1) The following proceedings may be heard and determined, or continue to be heard and determined, by the Privy Council: 5
- (a) an appeal to the Privy Council made before the commencement of this Act:
 - (b) an appeal to the Privy Council arising out of a successful application to a New Zealand court for leave to appeal to the Privy Council made before the commencement of this Act: 10
 - (c) an appeal to the Privy Council arising out of a successful application to the Privy Council for special leave to appeal to it made before the commencement of this Act:
 - (d) an appeal to the Privy Council arising out of a successful application to the Privy Council for special leave to appeal to it made at any time in respect of a matter in respect of which a New Zealand court has, on an application for leave to appeal to the Privy Council made before the commencement of this Act, refused leave to appeal to the Privy Council. 20
- (2) **Subsection (1)** does not apply to an appeal if—
- (a) the Privy Council has not begun hearing the appeal; and
 - (b) all parties agree in writing that an application should be made to the Supreme Court for leave to appeal to the Supreme Court against the decision concerned. 25
- 49 Limitations on right to appeal to Court**
- (1) There is no right to appeal to the Supreme Court against a judgment, decree, order, conviction, or sentence—
- (a) if the Privy Council has declined to give special leave to appeal against it; or 30
 - (b) if the Privy Council has already heard or begun hearing an appeal against it; or
 - (c) if—
 - (i) **section 48** enables an appeal against it to be heard and determined, or to continue to be heard and determined, by the Privy Council; and 35
 - (ii) all parties have not agreed in writing that an application should be made to the Supreme Court

for leave to appeal to the Supreme Court against it.

- (2) **Subsection (1)** overrides **sections 7 to 10**.

50 Transitional effect of sections 42 and 47

- (1) The following applications must be determined as if **sections 42 and 47** had not been enacted: 5
- (a) all applications for leave to appeal to the Privy Council made to a New Zealand court before the commencement of this Act:
 - (b) all applications for special leave to appeal to the Privy Council made to the Privy Council after the refusal of a New Zealand court before the commencement of this Act to grant leave to appeal to the Privy Council: 10
 - (c) all applications for special leave to appeal to the Privy Council made to the Privy Council before the commencement of this Act. 15
- (2) All appeals brought with leave given on an application to which **subsection (1)** applies must be heard and determined as if **sections 42 and 47** had not been enacted.

51 Transitional arrangements for leave applications 20

- (1) In **subsection (2)**, **leave application** means an application to the Supreme Court for leave to appeal to the Supreme Court.
- (2) Until the commencement of the first rules made after the commencement of this Act under section 51C of the Judicature Act 1908 (or under that section and section 409 of the Crimes Act 1961) containing provisions regulating the making of leave applications,— 25
- (a) the rules for the time being in force under that section (or those sections), with all necessary modifications, apply to leave applications as if they were applications for leave to appeal to the Court of Appeal against a decision of the High Court; but 30
 - (b) the Chief Justice may issue practice directions—
 - (i) modifying the application of those rules to leave applications; or 35
 - (ii) providing for any matter (relating to leave applications) that those rules do not provide for.
- (3) Until the appointment of the first Registrar of the Supreme Court, the Registrar and every Deputy Registrar or officer of

- the Court of Appeal is also the Registrar or a Deputy Registrar or officer of the Supreme Court.
- (4) Until the establishment of the first Supreme Court Registry, the Court of Appeal Registry is also the Supreme Court Registry. 5
- 52 Rights to appeal against decisions made before commencement of Act**
- (1) This subsection applies to a decision made in a proceeding if—
- (a) the decision was made before the commencement of this Act; and 10
 - (b) there was an ability—
 - (i) to appeal to the Privy Council against the decision; or
 - (ii) to apply to a New Zealand court or the Privy Council for leave or special leave to appeal to the Privy Council against the decision; and 15
 - (c) no party to the proceeding had, before the ability to do so had been ended by **section 42**,—
 - (i) appealed to the Privy Council against the decision; or 20
 - (ii) applied to a New Zealand court or the Privy Council for leave or special leave to appeal to the Privy Council against the decision.
- (2) The Supreme Court can hear and determine an appeal against a decision to which **subsection (1)** applies to the same extent it could if the decision were made after the commencement of this Act; but the time within which an application for leave to appeal to the Supreme Court must be made, or any other action must or may be taken, must be determined by reference to the date on which the decision was actually made. 25
- (3) **Subsection (2)** overrides **subsection (4)**. 30
- (4) A person does not have a right to appeal to a particular New Zealand court on any grounds against a decision made before the commencement of this Act unless, when the decision was made, the person had the right to appeal against the decision to that court on those grounds. 35
- (5) **Subsection (4)** does not limit or affect the right of any person to appeal to a New Zealand court on any grounds against a decision made— 40

- (a) on or after the commencement of this Act; but
- (b) on appeal against a decision—
 - (i) made before that commencement; or
 - (ii) made at any time on appeal against a decision made before that commencement.

5

ss 45, 46(1)

Schedule 1 Amendments

Part 1 Substantive amendments

Child Support Act 1991 (1991 No 142)	5
Insert in section 97, before the words “Court of Appeal”, the words “Supreme Court, the”.	
Omit from section 120(3) the words “on a question of law” and substitute the words “against the decision”.	
Omit from section 120(4) the words “on a question of law arising in an appeal under that subsection”.	10
Repeal subsections (6) and (7) of section 120.	
Children, Young Persons, and Their Families Act 1989 (1989 No 24)	15
Repeal section 347 and substitute:	
“347 Appeal to Court of Appeal	
“(1) A party to an appeal under section 341 may, with the leave of the Court of Appeal, appeal to the Court of Appeal against all or part of any order the High Court made in the appeal.	20
“(2) On the appeal, the Court of Appeal has the same power to adjudicate the High Court had.”	20
Courts Martial Appeals Act 1953 (1953 No 100)	25
Repeal section 10 and substitute:	
“10 Appeals to Court of Appeal	
“(1) The appellant in an appeal under this Act or the Chief of Defence Force may, within 14 days after the decision of the Courts Martial Appeal Court was given, apply to the Attorney-General for a certificate that—	30
“(a) the decision involves a point of law of exceptional public importance; and	30
“(b) it is desirable in the public interest that a further appeal should be brought.	30
“(2) If given a certificate under subsection (1) , the appellant in an appeal under this Act or the Chief of Defence Force may appeal to the Court of Appeal against the decision of the Courts Martial Appeal Court.	35

Part 1—*continued***Courts Martial Appeals Act 1953** (1953 No 100)—*continued*

- “(3) The Courts Martial Appeal Court may extend the period within which an application for a certificate under **subsection (1)** must be made, whether that period has expired or not.
- “(4) In an appeal to the Court of Appeal,—
- “(a) the Court of Appeal has the same powers as the Courts Martial Appeal Court; and 5
- “(b) the provisions of this Act, as far as they are applicable and with any necessary modifications, apply to the appeal as they apply for the purposes of an appeal to the Courts Martial Appeal Court. 10
- “10A **Direct appeals to Supreme Court in exceptional circumstances**
- “(1) The appellant in an appeal under this Act or the Chief of Defence Force may, with the leave of the Supreme Court appeal to the Supreme Court against the decision of the Courts Martial Appeal Court. 15
- “(2) In an appeal to the Supreme Court,—
- “(a) the Supreme Court has the same powers as the Courts Martial Appeal Court; and
- “(b) the provisions of this Act, as far as they are applicable and with any necessary modifications, apply to the appeal as they apply for the purposes of an appeal to the Courts Martial Appeal Court. 20
- “(3) This section is subject to **section 14 of the Supreme Court Act 2002** (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).” 25
- Crimes Act 1961** (1961 No 43) 30
- Insert, after section 406:
- “406A **Appeals against decisions made on references**
- “(1) A party to proceedings in which the High Court heard and determined a question referred to it under section 406(a) may, with the leave of the court concerned, appeal to the Court of Appeal or the Supreme Court against the High Court’s determination of the question. 35

Part 1—*continued***Crimes Act 1961** (1961 No 43)—*continued*

“(2) A party to proceedings in which the Court of Appeal heard and determined a question referred to it under section 380 or section 406(a) may, with the leave of the Supreme Court, appeal to the Supreme Court against the Court of Appeal’s opinion on or determination of the question. 5

“(3) A party to an appeal to the Court of Appeal under **subsection (1)** may, with the leave of the Supreme Court, appeal to the Supreme Court against the Court of Appeal’s determination of the appeal.”

Family Proceedings Act 1980 (1980 No 94) 10

Omit from section 174(5) the words “on a question of law arising in an appeal under that subsection” and substitute the words “in the appeal”.

Repeal subsections (7) and (8) of section 174.

Guardianship Act 1968 (1968 No 63) 15

Repeal subsections (1)(b)(i) and (3) of section 31B.

Harassment Act 1997 (1997 No 92)

Omit from section 36(1) the words “on a question of law”.

Repeal section 36(3).

Omit from section 42(2)(g) the words “or the Court of Appeal” and substitute the words “the Court of Appeal, or the Supreme Court”. 20

Human Rights Act 1993 (1993 No 82)

Repeal section 123(2) and substitute:

“(2) A party to a proceeding under section 92B or section 92E may appeal to the High Court against all or any part of a decision of the Tribunal— 25

“(a) dismissing the proceeding; or

“(b) granting one or more of the remedies described in section 92I; or

“(c) granting the remedy described in section 92J; or 30

“(d) refusing to grant the remedy described in section 92J; or

“(e) constituting a final determination of the Tribunal in the proceeding.

“(2A) For the purposes of **subsection (2)(d)**, the Tribunal does not in a proceeding refuse to grant the remedy described in section 92J unless— 35

Part 1—*continued***Human Rights Act 1993** (1993 No 82)—*continued*

- “(a) a party to the proceeding expressly applies to the Tribunal for the remedy in relation to a particular enactment; and
 “(b) the Tribunal does not grant the remedy in relation to that enactment.”

5

Repeal section 124(5) and substitute:

- “(5) The same judgment must be entered in the High Court, and the same execution and other consequences and proceedings must follow on it, as if the decision of the Court of Appeal on an appeal under this section had been given in the High Court.”

10

Summary Proceedings Act 1957 (1957 No 87)

Repeal section 144 and substitute:

“144 Appeal to Court of Appeal or Supreme Court

- “(1) Either party may, with the leave required by this section, appeal to the Court of Appeal or the Supreme Court against— 15
 “(a) a determination of the High Court on a case stated for its opinion under section 107; or
 “(b) a determination of the High Court (other than a determination made on an interlocutory application (within the meaning of the Supreme Court Act 2002)) made in a general appeal. 20
 “(2) Either party may, with the leave required by this section, appeal to the Supreme Court against a decision of the Court of Appeal on an appeal under **subsection (1)**.
 “(3) An appeal to the Court of Appeal cannot be brought without— 25
 “(a) the leave of the High Court; or
 “(b) the special leave of the Court of Appeal, given after the High Court has refused leave.
 “(4) An appeal to the Supreme Court cannot be brought without the leave of the Supreme Court. 30
 “(5) A party wishing to appeal to the Court of Appeal under this section against a determination must, within 21 days after the determination, or any further time the High Court allows, give notice of application for leave to appeal in the manner directed by the rules of the High Court. 35
 “(6) Within 21 days after the refusal of the High Court to give leave, or any further time the Court of Appeal allows, the

Part 1—*continued***Summary Proceedings Act 1957** (1957 No 87)—*continued*

applicant may apply to the Court of Appeal, in the manner directed by the rules of that court, for special leave to appeal to that court.

- “(7) The High Court must not grant leave, and the Court of Appeal must not grant special leave, unless satisfied, as the case may be, that— 5
- “(a) a question of law involved in the proposed appeal is one that, because of its general or public importance or for any other reason, should be decided by the Court of Appeal; or 10
- “(b) there would arise in the proposed appeal a question of fact so important that it should be considered or reconsidered by the Court of Appeal.
- “(8) On an appeal under this section,— 15
- “(a) the Court of Appeal or Supreme Court has the same power to adjudicate on the proceeding that the High Court had; and
- “(b) the same judgment must be entered in the High Court, and the same execution and other consequences and proceedings follow, as if the decision of the Court of Appeal or Supreme Court had been given in the High Court.” 20

Part 2

Consequential amendments

Animal Products Act 1999 (1999 No 93) 25

Repeal section 154(3).

Repeal section 155 and substitute:

“155 **Appeals to Court of Appeal or Supreme Court**

- “(1) A party to an appeal under section 154 may, with the leave of the court concerned, appeal to the Court of Appeal or the Supreme Court against any determination of the High Court in the appeal. 30
- “(2) On an appeal under this section, the Court of Appeal or the Supreme Court has the same power to adjudicate on the proceedings as the High Court had.” 35

Part 2—*continued***Bail Act 2000** (2000 No 38)

Insert in section 58(1), before the words “the Court of Appeal”, the words “the Supreme Court or”.

Insert in section 67, after subsection (3):

- “(3A) No decision of a High Court Judge appealed against under section 66 is suspended merely because the defendant has applied for or been given leave to appeal to the Supreme Court against a decision of the Court of Appeal on the appeal under section 66.” 5
- Insert, after section 69: 10
- “69A **Execution of decision of Supreme Court on appeal relating to bail**
- “(1) If, on an appeal to the Supreme Court against a decision of the Court of Appeal on an appeal under section 66 against a refusal to grant bail to a defendant, the Supreme Court determines that bail should be granted, the Supreme Court must order that the defendant be released on bail, subject to any conditions the Supreme Court thinks fit. 15
- “(2) If, on an appeal to the Supreme Court against a decision of the Court of Appeal on an appeal under section 66 in respect of any condition of bail, the Supreme Court cancels or amends a condition of bail or substitutes or imposes any other condition, the Registrar of the Court whose decision was appealed against must send written notice to the defendant and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions (if any) required to give effect to the Supreme Court’s decision. 20 25
- “(3) If, in any case to which **subsection (2)** applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond, the Registrar must refer the matter to a High Court Judge who may issue a warrant for the arrest of the defendant. 30
- “(4) If, on an appeal to the Supreme Court against a decision of the Court of Appeal on an appeal under section 66 against a refusal to grant bail to a defendant, the Supreme Court determines that bail not be granted or, as the case may be, not be 35

Part 2—*continued***Bail Act 2000** (2000 No 38)—*continued*

continued, a warrant for the detention in custody of the defendant must be issued out of the Supreme Court and signed by a Judge of the Court.

“(5) The person who executes the warrant under **subsection (4)** must ensure that a copy of the notice of the result of the appeal is given to the defendant when the warrant is executed or as soon as practicable after the warrant is executed. 5

“(6) A defendant to whom **subsection (4)** applies who is not in custody may be arrested without warrant by any member of the police or any officer of a penal institution.” 10

Insert in section 70(1), after the words “the Court of Appeal”, the words “or the Supreme Court”.

Insert in section 70(2), after the words “the Court of Appeal”, the words “or the Supreme Court (as the case may be)”.

Repeal section 71 and substitute: 15

“71 **Reserved question of law**

If under section 380(5) of the Crimes Act 1961 the High Court has decided to respite the execution of the sentence or postpone the sentence of a person, the Court may in its discretion either— 20

“(a) commit the person to prison; or

“(b) grant the person bail on any terms, and subject to any conditions, the Court thinks fit.”

Insert in section 72(1), after the words “the Court of Appeal”, the words “or the Supreme Court”. 25

Insert in section 72(3), after the words “the Court of Appeal”, the words “or the Supreme Court”.

Courts Security Act 1999 (1999 No 115)

Insert in the definition in section 2 of **Judge**, after paragraph (a):

“(aa) any other Judge of the Supreme Court:”. 30

Insert in section 3(5), before paragraph (a):

“(aa) the Supreme Court:”.

Crimes Act 1961 (1961 No 43)

Insert in section 2(1), after the definition of **Superintendent**:

“**Supreme Court** means the Supreme Court of New Zealand established by **section 6** of the Supreme Court Act 2002”. 35

Add to section 19DA:

Part 2—continued

Crimes Act 1961 (1961 No 43)—continued

“(6) If, on appeal from the Court of Appeal, the Supreme Court quashes the sentence of community work, it must, at the same time, direct that the case be remitted to the High Court to be dealt with under section 19D.”

Omit from section 379A(1) the words “Court of Appeal, may appeal to that Court” and substitute the words “court concerned, may appeal to the Court of Appeal or the Supreme Court”. 5

Omit from section 379A(2) the words “Court of Appeal, may appeal to that Court” and substitute the words “court concerned, may appeal to the Court of Appeal or the Supreme Court”. 10

Repeal section 379A(3) and substitute:

“(3) On an appeal under this section the Court of Appeal or Supreme Court may confirm or vary the decision of the Court or Judge (as the case may be), or set the decision aside and make any other order (being an order that could have been made in the first place) that the Court of Appeal or Supreme Court thinks appropriate.” 15

Insert in section 379A(5), after the word “appeal”, the words “to the Court of Appeal”.

Add to section 379CA(1) the words “or, with the leave of the Supreme Court, to the Supreme Court”. 20

Insert in section 379CA(2), after the words “the Court of Appeal”, the words “or the Supreme Court”.

Insert in section 379CA(4), after the word “appeal”, the words “to it”. 25

Repeal section 380(5) and substitute:

“(5) If the result of the trial is conviction, the Court may in its discretion respite the execution of the sentence or postpone sentence until the question reserved has been decided by the Court of Appeal, and one of the following has happened: 30

“(a) no application for leave to appeal to the Supreme Court against the Court of Appeal’s decision has been made within the time required:

“(b) the Supreme Court has refused leave to appeal against the Court of Appeal’s decision: 35

“(c) the Supreme Court has given leave to appeal against the Court of Appeal’s decision, but—

“(i) no appeal has been brought within the time required; or

Part 2—*continued***Crimes Act 1961** (1961 No 43)—*continued*

“(ii) an appeal has been brought but abandoned:

“(d) the Supreme Court has decided an appeal against the Court of Appeal’s decision.”

Insert in section 381, after subsection (3):

“(3A) The decision of the Court of Appeal to refuse to grant leave is final.” 5

Insert in section 383(1), after the words “the Court of Appeal”, the words “or, with the leave of the Supreme Court, to the Supreme Court”.

Omit from section 383(2) the words “Court of Appeal, may appeal to the Court of Appeal” and substitute the words “court concerned, may appeal to the Court of Appeal or the Supreme Court”. 10

Omit from section 383(3) the words “Court of Appeal” and substitute the words “court concerned”.

Insert after section 383: 15

“**383A Right of appeal against decision of Court of Appeal on appeal against conviction or sentence**

“(1) With the leave of the Supreme Court, a convicted person may appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383. 20

“(2) With the leave of the Supreme Court, the Solicitor-General may appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383(2).

“(3) If an appeal under **subsection (1) or subsection (2)** against a sentence of detention is not heard before the date on which the convicted person has completed serving the sentence, on that date the appeal lapses, and must be treated as having been dismissed by the Supreme Court for non-prosecution. 25

“(4) For the purposes of **subsection (2)**, **sentence** includes any method of disposing of a case following conviction. 30

“**384 Right of appeal against sentence or conviction for contempt of Court**

“(1) This subsection applies to a person—
 “(a) found guilty in the High Court of a criminal contempt of that court or any other court committed in the face of that court or the other court; or 35

Part 2—continued

Crimes Act 1961 (1961 No 43)—continued

- “(b) found guilty in a District Court of a criminal contempt of that court committed in the face of that court during a proceeding on indictment.
- “(2) A person to whom **subsection (1)** applies may appeal to the Court of Appeal or, with the leave of the Supreme Court, to the Supreme Court against any sentence imposed (other than an order of the High Court or a Judge of the High Court that he or she be detained in custody until the rising of the Court) as if he or she had been convicted on indictment. 5
- “(3) This subsection applies to a person found guilty in the High Court of a criminal contempt (other than a contempt committed in the face of the court) of that Court or any other Court. 10
- “(4) A person to whom **subsection (3)** applies may appeal to the Court of Appeal or, with the leave of the Supreme Court, to the Supreme Court against the finding, or any sentence imposed (other than an order of the High Court or a Judge of the High Court that he or she be detained in custody until the rising of the Court); and this Part applies as if the finding that he or she is guilty of a criminal contempt of court were a conviction 15 20
- “(5) With the leave of the Supreme Court, a person convicted of contempt of Court may appeal to the Supreme Court against a decision of the Court of Appeal on appeal under this section.”
- Insert in section 385, before subsection (1):
- “(1AA) This subsection applies to— 25
- “(a) an appeal to the Supreme Court or the Court of Appeal against conviction:
- “(b) an appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383 against conviction.” 30
- Omit from section 385(1) the words “against conviction the Court of Appeal shall” and substitute the words “to which **subsection (1AA)** applies, the Court of Appeal or the Supreme Court must”.
- Insert in the proviso to section 385(1), after the words “Court of Appeal”, the words “or the Supreme Court”. 35
- Omit from section 385(2) the words “shall, if it allows an appeal against conviction” and substitute the words “or the Supreme Court must, if it allows an appeal to which **subsection (1AA)** applies”.

Part 2—*continued***Crimes Act 1961** (1961 No 43)—*continued*

Insert in section 385, after subsection (2):

“(2A) This subsection applies to—

“(a) an appeal to the Supreme Court or the Court of Appeal against sentence:

“(b) an appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383 against sentence.” 5

Omit from section 385(3) the words “against sentence the Court of Appeal” and substitute the words “to which **subsection (2A)** applies, the Court of Appeal or the Supreme Court”. 10

Omit from the heading to section 386 the words “**Court of Appeal**” and substitute the words “**appellate courts**”.

Insert in section 386(1), after the words “Court of Appeal”, the words “or the Supreme Court”.

Insert in section 386(2), after the words “Court of Appeal”, the words “or the Supreme Court”. 15

Insert in section 386(3), after the words “Court of Appeal” in both places where they occur, the words “or the Supreme Court”.

Insert in section 386(4), after the words “Court of Appeal” where they first occur, the words “or the Supreme Court”. 20

Insert in section 386(4), after the words “Court of Appeal” where they secondly occur, the words “or the Supreme Court (as the case requires)”.

Omit from the heading to section 389 the words “**Court of Appeal**” and substitute the words “**appellate courts**”. 25

Insert in section 389, after the words “Court of Appeal” in each place where they occur, the words “or the Supreme Court”.

Insert in section 392(1), after the words “Court of Appeal”, the words “or the Registrar of the Supreme Court”.

Insert in section 392A(1), after the words “application for leave to appeal”, the words “(other than an application for leave to appeal to the Supreme Court)”. 30

Repeal section 393 and substitute:

“**393 Certain powers exercisable by one Judge**

“(1) A Judge of the Court of Appeal may exercise, in the same manner as it may be exercised by that court and subject to the same provisions, the power of that court to give leave to appeal against conviction or sentence. 35

Part 2—*continued***Crimes Act 1961** (1961 No 43)—*continued*

- “(2) A Judge of the Supreme Court or, as the case may be, of the Court of Appeal may exercise, in the same manner as it may be exercised by that court and subject to the same provisions, any power of that court to—
- “(a) extend the time within which notice of appeal or of an application for leave to appeal may be given; or 5
- “(b) allow the appellant to be present at any proceedings in cases where he or she is not entitled to be present without leave; or
- “(c) issue a warrant for the detention of the accused pending a new trial; or 10
- “(d) grant bail to an appellant.
- “(3) If on an application by an appellant a Judge refuses to exercise a power referred to in **subsection (1) or subsection (2)** in favour of the appellant, the appellant may have the application determined by the court concerned.” 15
- Omit from the heading to section 394 the words “**Court of Appeal**” and substitute the words “**appellate courts**”.
- Insert in section 394(1), after the words “Court of Appeal” in both places where they occur, the words “or the Supreme Court”. 20
- Insert in section 394(2), after the words “Court of Appeal”, the words “or the Supreme Court”.
- Insert in section 395(1), after the words “leave to appeal”, the words “to the Court of Appeal”.
- Insert in section 395(1A), after the words “Court of Appeal”, the words “or, as the case requires, the Supreme Court”. 25
- Insert in section 395(2), after the words “Court of Appeal”, the words “or the Supreme Court”.
- Insert in section 399(4), after the words “Court of Appeal”, the words “or the Supreme Court”. 30
- Insert in section 399(4H), after the words “Court of Appeal”, the words “or the Supreme Court”.
- Insert in section 399(5), after the words “Court of Appeal”, the words “or the Supreme Court”.
- Repeal section 409(1) and substitute: 35
- “(1) There may be made under the Judicature Act 1908 rules of Court regulating the practice and procedure in proceedings under this Act in the Supreme Court, the Court of Appeal, the High Court, and District Courts, or any of them.”

Part 2—*continued*

- Crown Proceedings Act 1950** (1950 No 54)
Omit from the definition of **Court** in section 2(1) the words “Judicial Committee of the Privy Council” and substitute the words “Supreme Court”.
- Declaratory Judgments Act 1908** (1908 No 220) 5
Omit from section 12 the words “Privy Council” and substitute the words “Supreme Court”.
- Domestic Violence Act 1995** (1995 No 86)
Omit from section 126(2)(i) the words “or the Court of Appeal” and substitute the words “the Court of Appeal, or the Supreme Court”. 10
- Electoral Act 1993** (1993 No 87)
Insert in section 8(1)(d)(i) after the words “Court of Appeal” the words “or the Supreme Court”.
- Employment Relations Act 2000** (2000 No 24) 15
Omit from the heading to section 214 the words “to Court of Appeal”.
Repeal section 214(1) and substitute:
“(1) A party to a proceeding under this Act who is dissatisfied with a decision of the Court (other than a decision on the construction of an individual employment agreement or a collective employment agreement) as being wrong in law may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the decision; and section 66 of the Judicature Act 1908 applies to any such appeal.” 20
- Repeal section 214(7). 25
Insert after section 214:
“214A **Appeals to Supreme Court on question of law in exceptional circumstances**
“(1) A party to a proceeding under this Act who is dissatisfied with a decision of the Court (other than a decision on the construction of an individual employment agreement or a collective employment agreement) as being wrong in law may, with the leave of the Supreme Court, appeal to the Supreme Court against the decision. 30
“(2) In its determination of the appeal, the Supreme Court may confirm, modify, or reverse the decision appealed against or any part of that decision. 35

Part 2—*continued***Employment Relations Act 2000** (2000 No 24)—*continued*

- “(3) Neither an application for leave to appeal nor an appeal operates as a stay of proceedings on the decision to which the application or the appeal relates unless the Court or the Supreme Court so orders.
- “(4) This section is subject to **section 14 of the Supreme Court Act 2002** (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).”

Evidence Act 1908 (1908 No 56)

Insert in the definition of **Court** in section 2, before the words “the Court of Appeal”, the words “the Supreme Court,”

Habeas Corpus Act 2001 (2001 No 31)

Omit from section 15(1) the words “right of appeal conferred by section 16” and substitute the words “rights of appeal conferred by section 16 of this Act and **sections 7 to 10 of the Supreme Court Act 2002**”.
Insert in section 16, after subsection (1):

- “(1A) With the leave of the Supreme Court, a party to the proceeding in which the determination was made may appeal to the Supreme Court—
- “(a) against a determination refusing an application for the issue of a writ of habeas corpus;
- “(b) if the substantive issue is the welfare of a person under the age of 16 years, against a final determination that orders the release from detention of a detained person.”

Insert in section 16(3), after the words “Court of Appeal”, the words “or the Supreme Court”.

Repeal section 17(2) and substitute:

- “(1A) The following must be given precedence over all other matters before the Supreme Court:
- “(a) an application for leave to appeal against a decision of the Court of Appeal on an appeal under this Act;
- “(b) an application for leave to appeal under **paragraph (a) or paragraph (b) of section 16(1A)**;
- “(c) an appeal against a decision of the Court of Appeal on an appeal under this Act:

Part 2—*continued***Habeas Corpus Act 2001** (2001 No 31)—*continued*

“(d) an appeal under **paragraph (a) or paragraph (b) of section 16(1A)**.

“(2) Judges of the Court of Appeal or the Supreme Court, and employees of the Department for Courts, must use their best endeavours to ensure that every appeal under this Act or **paragraph (a) or paragraph (b) of section 16(1A)** is disposed of as a matter of priority and urgency.” 5

Insert in section 19(2), after the words “Court of Appeal”, the words “or the Supreme Court”.

Insert in section 20(1), after the words “Court of Appeal”, the words “and the Supreme Court”. 10

Higher Salaries Commission Act 1977 (1977 No 110)

Omit from section 12B(1)(a) the words “the President of the Court of Appeal, the” and substitute the words “the other Judges of the Supreme Court, the President of the Court of Appeal, the other”. 15

Imperial Laws Application Act 1988 (1988 No 112)

Add to the item in the First Schedule relating to the Naval Prize Act 1864 “: the Title, Preamble, sections 1 to 3, 10 to 12, and 14 to 56.”

Omit from the First Schedule the references to enactments relating to the Judicial Committee of the Privy Council, and the heading “**Enactments Relating to the Judicial Committee of the Privy Council**” before them. 20

Omit from the Second Schedule the references to orders in council relating to the Judicial Committee of the Privy Council, and the heading “**Orders in Council Relating to the Judicial Committee of the Privy Council**” before them. 25

Omit from the Second Schedule the reference to the Prize Court Rules 1939 and the heading “**Order in Council Relating to Prize**” before it.

Judicature Act 1908 (1908 No 89) 30

Add to section 2:

“**Supreme Court** means the Supreme Court of New Zealand established by **section 6** of the Supreme Court Act **2002**.”

Omit from section 4(1) the number “37” and substitute the number “42”. 35

Omit from section 9A(1) the words “the President of the Court of Appeal, to the” and substitute the words “the other Judges of the

Part 2—continued

Judicature Act 1908 (1908 No 89)—continued

Supreme Court, to the President of the Court of Appeal, to the other”.

Omit from section 51C(1) the words “(including the practice and procedure on appeals from any court or person to the Court of Appeal or the High Court)” and substitute the words “and of the Supreme Court (including the practice and procedure on appeals from any court or person to the Supreme Court, the Court of Appeal, or the High Court)”. 5

Omit from section 51C(2)(f) the words “High Court or the Court of Appeal” and substitute the words “High Court, the Court of Appeal, or the Supreme Court”. 10

Omit from heading to section 51E the words “or Court of Appeal” and substitute the words “, **Court of Appeal, or Supreme Court**”. Insert in section 51E(1), after the words “Court of Appeal”, the words “or to the Supreme Court”. 15

Insert in section 51F(1), after the words “Deputy Registrars”, the words “(whether of the High Court, the Court of Appeal, or the Supreme Court)”.

Repeal section 57(6) and substitute:

“(6) The Judges of the Court of Appeal have seniority over all the Judges of the High Court (including any additional Judge of the Court of Appeal) except the Chief Justice and the other Judges of the Supreme Court. 20

“(6A) The President of the Court of Appeal has seniority over the other Judges of the Court of Appeal. 25

“(6B) Other Judges of the Court of Appeal appointed on different dates have seniority among themselves according to those dates.

“(6C) Other Judges of the Court of Appeal appointed on the same date have seniority among themselves according to their seniority as Judges of the High Court. 30

“(6D) A Judge of the Court of Appeal who resigns office as a Judge of that Court without resigning office as a Judge of the High Court then has, as a Judge of the High Court, the seniority that he or she would have had if he or she had not been appointed as a Judge of the Court of Appeal.” 35

Omit from section 57(7) the words “, not being the Chief Justice,”.

Omit from section 58D(1) the words “or 7”.

Part 2—*continued***Judicature Act 1908** (1908 No 89)—*continued*

Repeal subsections (2) and (3) of section 60 and substitute:

“(2) If present at a sitting of the Court of Appeal, the President presides.

“(3) If the President of the Court of Appeal is absent from a sitting of the Court, the senior Judge of the Court present presides.” 5

Omit from section 87(1) the words “or the Court of Appeal” and substitute the words “, the Court of Appeal, or the Supreme Court”.

Omit from section 87(2) the words “or the Court of Appeal” and substitute the words “, the Court of Appeal, or the Supreme Court”.

Insert in section 99B(1), after the words “Court of Appeal”, the words “or the Supreme Court”. 10

Legal Services Act 2000 (2000 No 42)

Omit from section 6(a) the words “or the Court of Appeal” and substitute the words “the Court of Appeal, or the Supreme Court”.

Omit from section 7(1)(b) the words “or the Court of Appeal” and substitute the words “, the Court of Appeal, or the Supreme Court”. 15

Maori Language Act 1987 (1987 No 176)

Insert in the First Schedule, before the item “The Court of Appeal”, the item “The Supreme Court”.

Oamaru Gasworks Act 1875 (1875 No 30) 20

Omit from section 35 the word “Supreme” and substitute the word “High”.

Oaths and Declarations Act 1957 (1957 No 88)

Insert in section 9 after paragraph (c):

“(ca) the Registrar or a Deputy Registrar of the Supreme Court; or”. 25

Property (Relationships) Act 1976 (1976 No 166)

Omit from section 2G the words “under section 39, the High Court or the Court of Appeal or the Privy Council” and substitute the words “the High Court, Court of Appeal, or Supreme Court”. 30

Omit from the heading to section 39B the words “**and to Privy Council**”.

Repeal section 39B(2).

Omit from section 73(3)(c) the words “Privy Council” and substitute the words “Supreme Court”. 35

Part 2—*continued***Resource Management Act 1991** (1991 No 69)

Repeal section 299 and substitute:

“299 Appeal to High Court on question of law

- “(1) A party to a proceeding before the Environment Court under this Act or any other enactment may appeal on a point of law to the High Court against any decision, report, or recommendation of the Environment Court made in the proceeding. 5
- “(2) The appeal must be made in accordance with the High Court Rules, except to any extent that those rules are inconsistent with sections 300 to 307.” 10

Sentencing Act 2002 (2002 No 9)

Insert in section 72(1)(a), before subparagraph (i):

- “(ia) by the Supreme Court on appeal against a sentence imposed by the High Court, or imposed by the Court of Appeal on appeal from the High Court; or” 15

Insert in section 72(1)(b), before subparagraph (i):

- “(ia) by the Supreme Court on appeal against a sentence imposed by a District Court presided over by a trial Judge, or imposed by the Court of Appeal on appeal from a District Court presided over by a trial Judge; or” 20

Insert in section 91, after subsection (8):

- “(8A) If the sentence is imposed by the Supreme Court, any Judge of that court may sign the warrant.” 25

Insert in section 143(3)(a) before subparagraph (i):

- “(ia) by the Supreme Court on appeal against a sentence imposed by the High Court, or imposed by the Court of Appeal on appeal from the High Court; or” 30

Insert in section 143(3)(b), before subparagraph (i):

- “(ia) by the Supreme Court on appeal against a sentence imposed by a District Court presided over by a trial Judge, or imposed by the Court of Appeal on appeal from a District Court presided over by a trial Judge; or” 35

Part 2—*continued*

Statutes Amendment Act 1947 (1947 No 60)

Omit from section 44 the word “Supreme” in both places where it occurs and substitute in each case the word “High”.

Schedule 2 Consequential repeals

s 46(3)

Admiralty Act 1973 (1973 No 119) Section 13(3).	
Animal Welfare Act 1999 (1999 No 142) Sections 153(3) and 154(3).	5
Children, Young Persons, and Their Families Act 1989 (1989 No 24) Section 348(3).	
Commerce Act 1986 (1986 No 5) Section 97(4).	10
Dairy Industry Restructuring Act 2001 (2001 No 51) Section 132(5).	
Family Proceedings Act 1980 (1980 No 94) Section 175(6).	15
Family Protection Act 1955 (1955 No 88) Section 15(4).	
Harassment Act 1997 (1997 No 92) Section 34(4).	
Judicature Act 1908 (1908 No 89) Sections 5 and 58(2)(b).	20
Judicature Amendment Act 1957 (1957 No 9) Section 5.	
Law Reform (Testamentary Promises) Act 1949 (1949 No 33) Section 5A(4).	25
Telecommunications Act 2001 (2001 No 103) Section 60(5).	
Te Ture Whenua Maori Act 1993 (1993 No 4) Repeal section 72(4).	

s 46(4)

Schedule 3
Provisions containing references to former
Supreme Court

Adoption Regulations 1959 (SR 1959/109)	
Regulation 13(2).	5
Animal Remedies Regulations 1980 (SR 1980/145)	
Regulation 37.	
Courts-Martial Appeal Rules 1954 (SR 1954/215)	
Regulations 9(a), 9(b), and 22(a).	
Gaming and Lotteries (Licensed Promoters) Regulations 1978 (SR 1978/144)	10
Forms 2 and 3 in the First Schedule, Third Schedule.	
Incorporated Societies Regulations 1979 (SR 1979/93)	
Second Schedule.	
Joint Family Homes Regulations 1965 (SR 1965/65)	15
Regulations 18(d) and 20.	
Licensed Interpreters Regulations 1958 (SR 1958/22)	
Second Schedule.	
Patents Regulations 1954 (SR 1954/211)	
Regulation 154(1)(e).	20
Periodic Detention Order 1966 (SR 1966/)	
Regulation 2(a)(i).	
Periodic Detention Order 1967 (SR 1967/31)	
Regulations 2(a), 3, and 4.	
Periodic Detention Order 1968 (SR 1968/112)	25
Regulations 2(a), 3, 6(a), and 7.	
Periodic Detention Order 1971 (SR 1971/253)	
Regulations 2(1)(a)(i) and 2(2).	
Periodic Detention Order 1972 (SR 1972/)	
Regulations 2(1)(a) and 2(2).	30

Periodic Detention Order (No 2) 1972 (SR 1972/89) Regulations 2(1)(a)(i) and 2(2)(a).	
Periodic Detention Order (No 3) 1972 (SR 1972/99) Regulations 2(1)(a)(i) and 2(2)(a).	
Periodic Detention Order (No 4) 1972 (SR 1972/144) Regulations 2(1)(a)(i) and 2(2)(a).	5
Periodic Detention Order 1973 (SR 1973/60) Regulations 2(1)(a)(i) and 2(2)(a).	
Periodic Detention Order (No 3) 1973 (SR 1973/190) Regulations 2(1)(a)(i) and 2(2)(a).	10
Periodic Detention Order (No 4) 1973 (SR 1973/204) Regulations 2(1)(a)(i) and 2(2)(a).	
Periodic Detention Order (No 2) 1974 (SR 1974/66) Regulations 2(1)(a)(i) and 2(2)(a).	
Periodic Detention Order (No 4) 1974 (SR 1974/239) Regulations 2(1)(a)(i) and 2(2)(a).	15
Real Estate Agents Regulations 1977 (SR 1977/) Form 2 in the First Schedule.	
Trust Estates Audit Regulations 1958 (SR 1958/71) Regulation 2(d).	20

ss 47(1) **Schedule 4**
**Imperial legislation ceasing to have effect as part of
 law of New Zealand**

Part 1
 Imperial Acts 5

- Appellate Jurisdiction Act 1876** (39 and 40 Vict., No c. 59)
 The final paragraph of section 6.
- Appellate Jurisdiction Act 1887** (50 and 51 Vict., No c. 70)
 Sections 3 and 5.
- Appellate Jurisdiction Act 1908** (8 Edw. 7, No c. 51) 10
 Sections 1, 3(1), 4, 5, and 7.
- Court of Chancery Act 1851** (14 and 15 Vict., No c. 83)
 Section 16 (as amended by section 1 of the Statute Law Revision Act
 1875 (38 and 39 Vict., c. 66)).
- Judicial Committee Act 1833** (3 and 4 Will. 4, No c. 41) 15
 Section 1 (as amended by section 1 of the Statute Law Revision Act
 1874 (37 and 38 Vict., c. 35) and section 1 of the Statute Law
 Revision (No 2) Act 1888 (51 and 52 Vict., c. 57)), section 3, section
 5 (as amended by section 16 of the Court of Chancery Act 1851 (14
 and 15 Vict., c. 83)), sections 6 to 9, 11 to 13, 15 to 21, 23, and 24, 20
 and section 28 (as amended by section 6 of the Judicial Committee
 Act 1843 (6 and 7 Vict., c. 38)).
- Judicial Committee Act 1844** (7 and 8 Vict., No c. 69)
 Sections 1 and 8.
- Judicial Committee Act 1881** (44 and 45 Vict., No c. 3) 25
- Judicial Committee Act 1915** (5 and 6 Geo. 5, No c. 92)
- Judicial Committee Amendment Act 1895** (58 and
 59 Vict., No c. 44) as amended by section 3 of the Appellate
 Jurisdiction Act 1913 (3 and 4 Geo. 5, c. 21) and section 13 of the
 Administration of Justice Act 1928 (U.K.) 30
- Naval Prize Act 1864** (27 and 28 Vict. No c. 25)
 Sections 4 to 6, 9, and 13.
- Privy Council Registrar Act 1853** (16 and 17 Vict., No c. 85)

Part 2
Imperial subordinate legislation

- 1909 No 1228—Order in Council making continuing Order directing that all Appeals to His Majesty in Council shall be referred to the Judicial Committee (SR & O. and S.I. Rev. 1948, Vol XI, p 205). 5
- 1910 No 70 (L.3)—The New Zealand (Appeals to the Privy Council) Order 1910 (SR & O. and S.I. Rev. 1948, Vol XI, p 409; SR 1973/181).
- 1972 No 1994—The New Zealand (Appeals to the Privy Council) (Amendment) Order 1972 (S.I. 1972/1994; SR 1973/181). 10
- 1982 No 1676—The Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 (S.I. 1982/1676).