

House of Representatives
Supplementary Order Paper

Wednesday, 30 June 2010

Courts (Remote Participation) Bill

Proposed amendment

Dr Kennedy Graham, in Committee, to move the following amendment:

Clause 9

To omit this clause (lines 18 to 26 on page 6) and substitute the following clause:

- 9 Use of audio-visual links in criminal substantive matters**
- (1) AVL must not be used in any criminal substantive matter for the appearance of a defendant, unless the defendant so elects.
 - (2) AVL must not be used in any criminal substantive matter for the appearance of any other participant unless the judicial officer in the proceeding determines to allow its use for the appearance of that participant in the proceeding—
 - (a) in accordance with the criteria in **sections 5 and 6**; and
 - (b) taking into account whether the parties to the proceeding consent to the use.
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Explanatory note

This Supplementary Order Paper amends the Courts (Remote Participation) Bill. The purpose of the amendment is to ensure that a defendant's right to be physically present in one's own trial for substantive criminal hearings is protected.

The right of an individual to be present at one's own trial is a fundamental right in the common law tradition. Section 25(e) of the New Zealand Bill of Rights Act 1990 enshrines "the right to be present at the trial...".

While the exercise of such a right may not be absolute, it constitutes a fundamental right of the New Zealand criminal law.

The right to be present at trial is protected by section 376(1) of the Crimes Act 1961, which states that “Every accused person shall be entitled to be present in Court during the whole of his trial, unless he misconducts himself by so interrupting the proceedings as to render their continuance in his presence impractical.”

Further, section 354 of the Act protects the right to present a defence. It provides that everyone accused of a crime “may make his full answer thereto by himself or by counsel.”

It is a hallmark of repressive regimes that a person can be convicted without the ability to participate in the deliberations of, and appear before, the tribunal empowered to convict. The right to be present—in order to be effective—must mean that the state cannot so organise the Court system as to engineer the non-participation of the accused. [See A. & P. Butler, *The New Zealand Bill of Rights Act* (LexisNexis; 2005), 850–1.]

This Bill, as currently drafted, would have the state “so organise the Court system” as to engineer the effective non-participation of the accused. Surrendering the principle of physical presence in a criminal trial would be tantamount to a violation of natural justice. Specifically it violates the second principle of natural justice—*audi alteram partem*.

This right needs to be protected to ensure that defendants receive a fair trial.
